

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No. S-20 of 2024
[Imdad Ali and Naeem v The State]
Criminal Acquittal Appeal No. S-29 of 2024
[Dost Muhammad v Umed Ali and others]
Criminal Revision Application No. S-34 of 2024
[Dost Muhammad v Imdad Ali and others]

Counsel of Applicant : Mr. Aziz Ahmed Laghari, Advocate.

Counsel of Respondents : Mr. Neel Parkash, D.P.G, Sindh.

Date of Hearing : 08.09.2026

Date of Judgment : 22.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through the instant Criminal Appeal, appellants Imdad Ali and Naeem call in question the judgment dated 04-05-2017 passed by the learned First Additional Sessions Judge, Mirpurkhas, in Sessions Case No. 125 of 2013 (The State v Imdad Ali and others), arising from FIR No. 19 of 2013 of Police Station Taluka Mirpurkhas under sections 394 and 34, P.P.C. Each was convicted under section 394 read with section 34, P.P.C. and sentenced to four years' rigorous imprisonment and a fine of Rs. 20,000, with two months' simple imprisonment in default. Each was also directed to pay Rs. 50,000 to injured Jan Muhammad under section 544-A, Cr.P.C., with four months' simple imprisonment in default. Benefit under section 382-B, Cr.P.C. was extended. Their co-accused Umed Ali was acquitted under section 265-H(1), Cr.P.C.

2. Dost Muhammad, the complainant, has brought Criminal Acquittal Appeal No. S-29 of 2024 against Umed Ali's acquittal and Criminal Revision Application No. S-34 of 2024 seeking enhancement of the sentences imposed upon Imdad Ali and Naeem. All three matters arise from the same judgment and evidence, and are disposed of together. The papers also bear earlier filing references from 2017; the connected matters are described here by the numbers recorded in

the High Court order sheet dated 08-09-2026. The appellants in the conviction appeal were present on bail when arguments were heard and judgment reserved on that date.

3. The allegation in the FIR, as reproduced in the impugned judgment and pleadings, is that on 22-05-2013 at approximately 7:00 p.m. Jan Muhammad rode his Unique motorcycle towards a petrol pump to purchase diesel with Rs. 20,000 supplied by his brother Dost Muhammad. Near Sim Nala on the link road by Village Mubarak Laghari, Umed Ali allegedly stood armed with a pistol, Imdad Ali with a hatchet and Naeem with a lathi. The three allegedly stopped Jan Muhammad, caused injuries and took the cash and a Nokia mobile telephone. Muhammad Riaz and Muhammad Ibrahim were said to have arrived on another motorcycle; the assailants then fled. Riaz telephoned his father Noor Muhammad, who informed Dost Muhammad. The two relatives arrived, took Jan Muhammad for treatment, and Dost Muhammad subsequently lodged FIR No. 19 of 2013 on 23-05-2013.

4. The charge framed on 06-03-2014 alleged that the three accused, acting in furtherance of a common intention, committed robbery of Rs. 20,000 and a Nokia 5530 telephone and voluntarily caused lathi and hatchet injuries to Jan Muhammad. The accused denied the charge. The prosecution examined Dost Muhammad (PW-1, Ex.03), Muhammad Ibrahim (PW-2, Ex.04), Muhammad Riaz (PW-3, Ex.05), the injured Jan Muhammad (PW-4, Ex.06), Dr Muhammad Moosa (PW-5, Ex.07), and ASI Ghulam Hussain (PW-6, Ex.09). It gave up Noor Muhammad and Aas Muhammad at Ex.08 and closed its case at Ex.10. After their statements under section 342, Cr.P.C., none of the accused examined himself on oath or called a defence witness. That choice neither shifts the burden of proof nor fills a gap in the prosecution evidence.

5. The trial unfolded over a considerable period after the 2013 occurrence: the charge was framed in March 2014 and the recorded depositions

were taken in 2016. Such passage of time is a relevant caution in assessing small variations in remembered detail. It does not explain away contradictions embedded in the witnesses' substantive versions of what they saw, what they were told at the spot, and when the injured recovered his ability to speak. The date of the site memorandum and the time of medical examination come from documents and the relevant officials rather than an estimated recollection made years later. I have therefore separated contradictions which might naturally arise from memory from differences which concern a contemporaneous opportunity to verify the central allegation.

6. PW-1 Dost Muhammad was not an eye-witness. He said that he gave his brother Rs. 20,000 to purchase diesel; learnt of an assault and robbery through Riaz, Ibrahim and Noor Muhammad; and reached the spot to find Jan Muhammad unconscious. According to him, the injured disclosed the occurrence after receiving treatment and the FIR was registered on the following day. In cross-examination he acknowledged that PW-3 Riaz was the son of his uncle, PW-2 Ibrahim his cousin, and that previous criminal proceedings involving members of his family and the accused had been brought. He also admitted pending litigation about agricultural land to which Ibrahim and Umed Ali were parties. These admissions do not render PW-1 untruthful by themselves, but make it necessary to test the alleged source and timing of his information with care.

7. The source of PW-1's knowledge needs to be kept distinct from his proof that Rs. 20,000 was entrusted to Jan Muhammad. He may speak directly to giving the money and to finding his brother injured after receiving a call; his statement that named men committed the taking depends on information supplied by other persons. The amount said to have been carried is plausible for the intended diesel purchase, but the record offers no independent identification of the particular cash or telephone. Such proof is often unavailable: villagers do carry cash and telephones without preserving purchase papers. Its absence matters here only because the sole direct testimony of the taking is challenged and the other

purportedly supporting witnesses did not themselves see property pass to an accused.

8. PW-2 Ibrahim described the preparation of the injury memorandum at Civil Hospital Mirpurkhas on 23-05-2013 and of the site memorandum on 02-06-2013, producing them as Ex.04-A and Ex.04-B. His description of the occurrence itself was limited in the deposition supplied; in cross-examination he said he and Riaz were on a motorcycle and that Jan Muhammad was unconscious when he arrived. He acknowledged that he cultivated disputed agricultural land and that litigation by Umed Ali concerning that land included him as a party. The prosecution called him both an eye-witness and a mashir, but his sworn account must be assessed for what it actually says, rather than for the descriptive label assigned to him in a witness list.

9. PW-2 did not merely have a relationship with the complainant; he admitted a personal connection to the land litigation pleaded by Umed Ali. That fact does not bar his evidence. It does mean that calling him an independent eye-witness would be inaccurate. More importantly, his examination-in-chief, as reproduced in the record supplied, deals with acting as a mashir when the officer examined injuries and when the scene was pointed out days later. It does not provide the detail of a first-hand observation of robbery or the individual acts of the three assailants. His statement that Jan Muhammad was unconscious when he came upon him can be assessed against PW-3's account of receiving a spoken report at that same place. The contradiction is not resolved by treating PW-2's signature on official memoranda as confirmation of PW-3's account of the robbery.

10. PW-3 Riaz said that he and Ibrahim reached Sim Nala while the three accused were beating Jan Muhammad; the accused fled on seeing them; and Jan Muhammad then told them that the accused had taken the money and telephone. Riaz contacted Noor Muhammad, after which the family attended and shifted the injured to hospital. His testimony therefore purports to be direct evidence of some

assault, but his account of the taking of the property came from what the injured told him. He is a relative of the complainant, and the trial record records earlier disputes and proceedings between the families. In cross-examination he disputed the existence or effect of those disputes. Whether an injured man could speak to him at the spot is an issue of substance when the complainant and PW-2 describe that same man as unconscious there.

11. The interval between PW-3's arrival and the accused's alleged departure is significant. According to his deposition, he came upon a beating and the accused fled when they saw his motorcycle. On that version he had an opportunity to see people around the victim, but he did not say he witnessed a search of the victim, the removal of currency, or the taking of the telephone. His sight of an assault, if believed, can support a different part of the prosecution case from the allegation of robbery; the two are not interchangeable. Nor can a message purportedly relayed to him by the injured be treated as independent direct observation of the taking. Its force depends upon whether the injured gave a reliable and timely account. The versions of PW-1 and PW-2 about unconsciousness make that precise point contentious.

12. PW-4 Jan Muhammad testified that Umed Ali carried a pistol, Imdad Ali a hatchet and Naeem a danda; that the accused beat him, caused about nine injuries and took Rs. 20,000 and a Nokia telephone. In cross-examination he stated that Riaz and Ibrahim arrived first and that he told them what had happened; he also stated that he had become unconscious at the time of the occurrence. He said he did not know of the pending civil suit, and maintained that he had received treatment at Mirpurkhas and Hyderabad. His presence as an injured person is established by the medical examination, but the questions whether he could identify all the assailants, accurately narrate the taking of property, and give Riaz a prompt account require separate assessment.

13. The injured's evidence deserves attention as evidence from the person best placed to describe what he experienced. His nine documented injuries leave no sound basis to dismiss him as somebody who suffered no hurt at all. At the same time, the record does not give a clear account of when during the encounter he became unconscious, when he regained consciousness, and whether he observed the alleged removal of both articles before or after that interval. PW-4's assertion that he told Riaz and Ibrahim at the scene supplies one possible sequence; the complainant's statement that he first gave the account after hospital treatment supplies another. The Court cannot fill in those missing times for the prosecution. The legal question is whether his identification and account of taking remain safe enough for conviction despite the unresolved sequence, not whether his injuries merit sympathy.

14. PW-5 Dr Muhammad Moosa examined Jan Muhammad at Civil Hospital Mirpurkhas at about 7:50 p.m. on 22-05-2013, roughly fifty minutes after the alleged occurrence, on a police letter produced as Ex.07-A. The doctor described nine injuries: contusion swellings on the back, scapular region, shoulder, chest, forearm and thigh, an abrasion near the ankle, and a small lacerated wound in the right temporal region. The provisional certificate, radiologist's report, final certificate and four X-rays were produced as Ex.07-B to Ex.07-E. The doctor characterised the injuries as having been caused by a hard and blunt substance. In cross-examination he said Jan Muhammad was in his senses when brought to hospital; he did not obtain from him a history of how the injuries occurred; and he accepted that some injuries could be consistent with a motorcycle fall, while rejecting the suggestion that he had fabricated the certificate.

15. The clinical description itself warrants a measured reading. There were several contusions at separate locations, an abrasion at the right ankle and a small laceration at the right temple. A laceration is not an incised wound: it can be produced by blunt impact, and the doctor expressly classified the collection of injuries as caused by a hard, blunt substance. Their number and distribution are

consistent with an episode of bodily violence; without evidence about each impact, they do not prove which named person was present or which particular object was used. The doctor's concession concerning a possible motorcycle fall related to a possible mechanism for some injuries, not to a medical finding that an accident took place. Conversely, the presence of several injuries does not independently establish the alleged loss of cash or a telephone. Both sides overstate the certificate if they ask it to determine the entire event.

16. PW-6 ASI Ghulam Hussain said he registered the FIR on 23-05-2013, recorded statements, inspected injuries, and prepared the site memorandum on 02-06-2013. He also stated that during investigation Umed Ali produced a medical certificate purporting to show hospital admission elsewhere at the relevant time, whereupon his name was dealt with under section 169, Cr.P.C.; Umed Ali was nevertheless joined in the trial and charged. In cross-examination the officer accepted the subsisting land dispute, the delay in recording the site memorandum, his failure to inspect Jan Muhammad's motorcycle, and his failure to record independent villagers from the other communities. He said the police letter Ex.07-A used at the hospital had not been issued by him. None of those admissions alone determines the case, but each bears upon the independent checks available for the prosecution account.

17. The officer's chronology also shows that statements under section 161, Cr.P.C. were taken on 25-05-2013, after registration of the FIR, and that the injury memorandum was not made on the evening of treatment. A police witness may give an entirely satisfactory reason for performing investigative steps later; timing alone does not invalidate either step. In the present record, however, the early hospital letter is not shown through the officer who issued it, no account of a statement taken from the conscious injured person that night is established, and no neutral person from the nearby village was examined. These were the available means of checking the accused men's names and the robbery allegation closer to the time of injury. This deficiency matters precisely because there is genuine

medical evidence: the issue is who caused the injuries in the alleged robbery, rather than whether an injured person was brought to hospital.

18. The criminal case did not begin in a complete evidential vacuum: the police letter for treatment and the examination at 7:50 p.m. are contemporaneous events. They make it improper to dismiss Jan Muhammad's injuries or to say that no report of any occurrence reached official notice until the following afternoon. But Ex.07-A was a referral for medical care. PW-6 expressly disclaimed issuing it; the record described in the judgment does not show a proved, contemporaneous first version naming these three men and the two articles allegedly stolen. The Court cannot silently treat a medical referral as the functional equivalent of a prompt FIR. The police had an opportunity to preserve what was said at that stage and its failure to make the content of that earliest information clear limits the referral's value on identity and robbery.

19. In their statements under section 342, Cr.P.C., the accused denied the occurrence as alleged and maintained that the prosecution case was a product of the land dispute. Umed Ali referred specifically to Civil Suit No. 316 of 2010 and previous FIRs No. 98 of 2009 and No. 150 of 2010, with copies of their related records. The trial Court regarded the earlier acquittals and the pending suit as establishing animosity towards him. The defence documents are material to the possibility of mistaken or motivated implication; they do not, by mere production, demonstrate that the present injuries were self-inflicted or that every prosecution witness spoke falsely.

20. The trial Court accepted that Jan Muhammad had suffered injuries, treated the account of the beating as sufficient against Imdad Ali and Naeem, and invoked section 34, P.P.C. in finding robbery accompanied by hurt proved against them. It treated Umed Ali separately: no discharge or injury from his pistol was alleged, the investigator had initially found an alibi sufficient to release him, and prior litigation made his implication doubtful. It acquitted Umed Ali and sentenced

Imdad Ali and Naeem as stated above, citing their youth as a reason for the term selected. The different outcomes are a reason to examine the evidence against each accused, rather than to presume either that all must be convicted or that all must necessarily be acquitted.

21. Mr Aziz Ahmed Laghari, learned counsel for the convicted appellants, attacks the reliability of the related witnesses in the setting of admitted earlier litigation; submits that the allegation of hatchet blows does not accord with the medical description of entirely blunt-force injuries; points to the conflict over the injured's state of consciousness, the delay between the occurrence and FIR, the later site inspection, and the absence of recovered property or an independent witness; and seeks benefit of doubt. The complainant's acquittal appeal contends that the witnesses implicated all three accused and that conviction of two required Umed Ali's conviction as well. His revision maintains that section 394, P.P.C. warranted a higher sentence. The learned Deputy Prosecutor General supported the trial judgment. Those submissions are considered against the depositions and the reasons actually given by the trial Court.

22. The questions for determination are:

- (i) whether the evidence proves beyond reasonable doubt that Imdad Ali and Naeem participated in a robbery during which hurt was caused, individually or with common intention;
- (ii) whether any material illegality or perversity justifies reversing Umed Ali's acquittal; and
- (iii) whether the complainant has shown a lawful basis for enhancing the sentences. The answers must flow from a fresh appraisal of the conviction appeal and, separately, the narrower considerations governing an appeal against acquittal and a request for enhancement.

23. Section 394, P.P.C. requires proof of robbery or an attempt to commit it, voluntary hurt during that transaction, and the accused person's legally attributable participation. Section 34 does not make mere company with another accused an offence; the prosecution must prove the facts supporting a shared intention and participation. The testimony of an injured witness deserves serious consideration because the injuries ordinarily establish presence in the occurrence. It is nonetheless subject to the ordinary test of credibility and cannot be used to dispense with proof of the offence or of the identity of its perpetrators. Medical evidence can independently establish the injuries and their probable mechanism; it does not identify the person who caused them.

24. The structure of the offence should be kept in view. Section 390, P.P.C. defines robbery in terms of theft or extortion attended by the specified immediate violence or fear; section 394 applies where hurt is voluntarily caused while committing or attempting such a robbery and may also extend to persons jointly concerned. The evidence must therefore support the taking or attempted taking and the connection between that transaction and hurt. Proved hurt does not itself turn every roadside assault into a robbery, just as the absence of recovered property does not by itself defeat a credible account of its taking. Nor does the mere fact of injury safely support substituting a conviction for another hurt offence where the participation of each appellant in causing the injuries remains in reasonable doubt. The question is whether the charged combination of a robbery and the hurt attributed to these accused is proved on this evidence.

25. The scrutiny is not an exercise in rejecting testimony for minor imperfections of memory. A witness may estimate time or distance differently years later without losing credibility on the offence itself. *Muhammad Ilyas v The State* 2011 SCMR 460 recognises that minor contradictions may be disregarded when reliable corroboration sustains the account. The present differences concern the moment at which the injured could speak and the source of the first account of the stolen property; the medical incompatibility concerns the weapon attributed to a

convicted man. Those matters are capable of changing the identification and the legal character of the event. It would be unfair to label any witness here deliberately dishonest merely because accounts differ; the case nevertheless requires a candid assessment of whether the conflicting accounts together supply proof beyond reasonable doubt.

26. A family relationship is not a rule of exclusion. A close relative may be a truthful and natural witness, and where direct testimony withstands cross-examination, its relationship to the injured is not a reason to discard it. *Zahoor Ahmed v The State 2007 SCMR 1519* illustrates the importance of examining the actual evidence instead of rejecting a witness because of kinship. Yet where a prior, documented dispute is admitted and every claimed direct witness is connected with that dispute, the Court must give particular attention to objective checks, prompt disclosure, consistency on material facts, and any reliable independent support. Enmity may provide a reason for the alleged offence as well as a reason for implication. Neither inference can be chosen in the abstract.

27. The doctor saw a real injured person soon after the stated event. That strongly rebuts any suggestion that the medical evidence was invented many days later, but it does not decide whether the event occurred exactly as narrated. PW-4 alleged a hatchet in Imdad Ali's hands and spoke of hatchet as well as danda blows. Not one injury was recorded as an incised or other sharp-force wound; the doctor attributed all nine to hard and blunt force. A hatchet may conceivably be used by its blunt face or handle, and it would be unsafe to say that the medical account makes Imdad Ali's presence physically impossible. The prosecution, however, neither specified a blunt-side use in the ocular version nor secured a weapon or another objective item linking him with any particular blow. The absence of a sharp injury thus remains a material failure of corroboration for the distinctive weapon and role assigned to Imdad Ali.

28. The occurrence is placed at the time of Maghrib. PW-1 said there was no darkness; the investigating officer accepted that darkness normally spread after sunset at around 7:00 p.m. Recognition of known co-villagers need not fail merely because the light was diminishing, particularly at close range, and no precise lighting survey appears in the evidence. I do not found the decision upon an assumption that the witnesses could see nothing. But the prosecution has also not explained the precise distance, duration, and opportunity for each claimed observer to identify the three men in an encounter which, on PW-3's account, ended as soon as he approached. Those matters matter more where the witnesses' identification is the only connection with the alleged taking and where prior hostility was proved. The doubt arises from the quality of the whole account, rather than from a speculative finding that dusk made identification impossible.

29. I have also considered the fact that these persons were known to one another. Familiarity can make recognition possible under conditions in which identifying a stranger would be more difficult. PW-4 speaks of an encounter at close quarters, which would normally provide a meaningful opportunity to see assailants if he remained conscious and attentive. PW-3 approached while an incident was in progress, and the period available to him depends on when the alleged flight began. The prosecution's case cannot be rejected merely by invoking the clock time or Maghrib; equally, familiarity does not render every purported observation infallible. The quality of the opportunity to observe must be assessed together with the changed states of consciousness, the particular roles alleged, the admitted hostility and the objective evidence. On that collective assessment, the identification evidence cannot carry the full weight assigned to it below.

30. Naeem's alleged danda could account for blunt injuries, and that point must be fairly acknowledged. Compatibility of one weapon with the medical findings does not itself identify its wielder. PW-4 described collective beating without a dependable allocation of injuries; PW-3 said he came upon an assault in progress but gave no clear account of any particular danda blow; and PW-2's

deposition chiefly concerns later memoranda. The medical record supports hurt from a blunt substance, but the step from that general fact to a finding that Naeem wielded a lathi in a robbery rests on the disputed ocular identification. The trial Court treated medical compatibility as if it independently supplied that missing link. It does not.

31. The charge is of hurt in committing robbery, not merely of causing a set of injuries. No witness other than PW-4 claimed to have watched cash or a telephone actually being taken. PW-3 learned of the taking from PW-4 immediately afterwards, according to his own account; PW-1 learnt of it from others. There is no property recovery, identifying telephone record, purchase record, or other objective confirmation of the alleged cash and telephone in the material recited by the trial Court. Recovery is not an invariable legal condition of conviction: a reliable victim's testimony can prove a robbery even where the property has disappeared. Here, however, the same testimony is affected by the dispute about consciousness and by the other inconsistencies identified below. Section 34 cannot cure an unproved taking by attributing it collectively to everyone named in the FIR.

32. The prosecution's strongest response is that PW-4 personally identified men he knew, suffered documented injuries and described the loss of his money and telephone. If that testimony were shown to be steady and independently compatible with the surrounding record, the absence of an article recovered from the accused would carry little weight. The problem is narrower and more concrete. Neither PW-1 nor PW-3 personally saw the robbery; PW-3's asserted communication from PW-4 is disputed by the other account of unconsciousness; no objective trace of the articles appears in the trial Court's summary; and the allegation of participation by three known opponents arose formally after an unexplained interval. The Court cannot use the injuries as independent corroboration of the separate allegation that cash and a telephone were forcibly taken.

33. The diverging accounts of consciousness are not a trivial difference about a peripheral detail. PW-1 said Jan Muhammad was unconscious when he arrived and that the injured narrated the occurrence only after regaining his senses at hospital; PW-2 said the injured was unconscious when he reached the site. PW-3 said Jan Muhammad spoke to him at the site and gave the particulars of the alleged taking. PW-4 said he told the two men what happened, yet also said he became unconscious during the incident. PW-5 found him in his senses by 7:50 p.m. at the hospital. It is possible for a person to lose consciousness briefly and regain it, but the witnesses did not supply a coherent sequence establishing when that happened. The inconsistency goes to the asserted first disclosure, the source of PW-3's account of robbery, and the proffered explanation for not lodging an FIR that evening.

34. The available chronology deserves close attention. The alleged event was at about 7:00 p.m. on 22-05-2013. A police letter accompanied Jan Muhammad to the doctor at about 7:50 p.m., and the doctor recorded him as conscious. The FIR was lodged the following day; the pleadings refer to 1:00 p.m. and the investigator's deposition refers to the complainant approaching the station at about 4:00 p.m. Those hours might refer to different procedural steps; the difference alone is not proof of manipulation. The substantial and undisputed point is the overnight interval after both the family and the police had information and after the injured was medically observed to be conscious. Neither his treatment nor his condition, on this evidence, satisfactorily explains why the named accusation was first formally recorded only the next day.

35. An interval in reporting does not automatically invalidate an FIR. The injured's welfare may properly take priority, and prompt medical attendance here is an established fact favourable to the prosecution. The issue is that the prosecution relied on continued unconsciousness and later narration to explain the timing, whereas the doctor and PW-3 supply contrary evidence about his ability to speak. The witness said to have been told first, Riaz, was not asked to register an immediate complaint despite the police letter having been issued. The defence

allegation of prior land litigation supplies a concrete setting in which an unexplained interval matters. I do not infer fabrication solely from the passage of hours; I hold that the delay, viewed with the contradictory first-disclosure accounts, weakens the reliability of the later naming and description of the robbery.

36. The decision in *Mehmood Ahmed and others v The State and another* 1995 SCMR 127 illustrates why an unexplained reporting interval can be material where there is an opportunity for consultation and later selection of names. It does not establish a fixed number of hours after which every FIR is unreliable. The actual circumstances here have to do the work: relatives reached the place, a police medical referral was obtained on the evening of 22-05-2013, and the doctor said the injured was conscious when examined at 7:50 p.m. Yet the FIR formally naming all three accused and the stolen articles was recorded the next day. The absence of a demonstrated account of those particulars in the first medical referral prevents that document from resolving the problem. The trial Court needed to explain why the delay did not affect reliability in this particular history of litigation; it did not.

37. The earliest opportunities to distinguish a complaint of assault from a complaint of robbery were especially valuable here. The alleged injured was seen medically within the hour, a police referral had already been obtained, and two persons were said to have arrived while the assailants departed. The prosecution could have established the contents and author of that referral, explained whether a statement of the injured was taken that night and produced a clear chronology of station entries and the formal FIR. I do not create an adverse presumption from a document which the paper book does not reproduce in full. Rather, the prosecution cannot rely on that early document to cure the next day's delayed accusation when its contents have not been shown to contain the names, roles and articles now charged. The distinction matters because medical promptness and prompt attribution of guilt are separate propositions.

38. The position of Noor Muhammad is also important. PW-3 says he telephoned Noor Muhammad from the scene; PW-1 says Noor Muhammad passed on the accusation and urged him to lodge the FIR; he appears in the prosecution narrative as a link between those claiming to have seen events and the person who gave the formal report. The prosecution gave him up. It likewise gave up co-mashir Aas Muhammad, and no neutral neighbour or passer-by was called. Non-examination of an available witness is not a numerical rule for acquittal; the prosecution may succeed on a small number of credible witnesses. In this case, however, examining the first intermediary might have clarified what was reported at the earliest opportunity and whether the names and alleged stolen articles were mentioned then. His absence leaves the conflicting accounts of first disclosure unresolved.

39. The defence was not entitled to insist that every person named in the FIR be called. But Noor Muhammad was a specifically identified first recipient of PW-3's telephone call and the person who allegedly informed PW-1 before the police were approached. His evidence could have distinguished a report that a man had been injured from a report, made at once, naming the robbers and the missing articles. The decision to give him up is therefore evaluated for the narrow evidential gap it leaves; it is not a presumption that he would necessarily have contradicted the prosecution. Similarly, the failure to call other villagers matters only to the extent that they were reasonably available and might have checked the disputed identification. The officer's acceptance that the scene lay close to the village gives some factual basis for considering that possibility, without inventing an actual eyewitness who was never identified.

40. The site memorandum was not prepared until 02-06-2013, some eleven days after the incident of 22-05-2013, and the investigator attributed the interval to the complainant's unavailability for pointation. PW-2 confirmed its later preparation. There is no principled rule that every later site plan is worthless; this document can still identify the location indicated by the witnesses. Its delay does

mean that it provides weak independent confirmation of the scene as it existed at 7:00 p.m. on the date of the offence. The investigator neither inspected the motorcycle on which the injured said he travelled nor recorded nearby independent persons, despite describing the road as close enough to the village for voices to carry. A motorcycle fall was canvassed in cross-examination and the doctor did not rule out that mechanism for some injuries. This does not prove a fall occurred; it identifies an alternative which the available investigation did not adequately test.

41. The prosecution also cannot rely on an assumed failure of the defence to prove an accident. A suggestion put to a medical witness that some injuries could result from a fall is not affirmative defence evidence, and the doctor was careful not to say that they did result from a fall. In the same way, the defence's land-dispute documents prove the existence of a possible source of animosity but do not by themselves establish false reporting. The burden throughout remains upon the prosecution to prove the robbery and each appellant's involvement. Once the Court identifies specific, material gaps in that proof, neither an unproved fall nor a conclusively established false motive is required to afford the benefit of doubt.

42. Umed Ali's earlier history must be kept within its proper bounds. The defence placed before the trial Court copies of FIR No. 98 of 2009, FIR No. 150 of 2010, related judgments of acquittal and the pleadings of Civil Suit No. 316 of 2010. PW-1 and PW-2 accepted important aspects of the land dispute; the trial Court also recorded that the investigating officer initially dealt with Umed Ali under section 169, Cr.P.C. after a medical certificate purporting to show hospital admission was produced. The certificate's contents should not be elevated into a conclusive judicially proved alibi without proof of its source and accuracy. It is enough that the prosecution evidence against Umed Ali required careful independent support which was absent. The earlier litigation also gives a reason to examine PW-1 to PW-4 critically insofar as they implicate Imdad Ali and Naeem; it is not a reason to acquit them by association alone.

43. The prior cases do not establish a universal motive against Imdad Ali and Naeem merely because they were charged with Umed Ali in this FIR. The trial judgment found a specific documented grievance between Umed Ali and members of the complainant's side, including the litigation over agricultural land. The earlier proceedings involved other family members as well. These facts call for caution about a common narrative naming all three, but the position of each appellant still requires individual examination. The danger of falsely adding an opponent does not prove the entire injury report false. The proper approach is to ask what evidence, if any, independently differentiates each convicted appellant from Umed Ali and how securely it establishes participation in the charged robbery.

44. The trial Court's distinction between Umed Ali and the two convicted appellants had an intelligible starting point: Umed carried a pistol and no pistol use was alleged, whereas the other two were assigned striking weapons. One cannot reverse a conviction merely because a differently placed co-accused was acquitted. Equally, the acquittal exposed a weakness in identification by the same closely connected witnesses when the prosecution asserted a joint attack by three known men. *Mst Sughra Begum and another v Qaiser Pervez and others* 2015 SCMR 1142, following *Ghulam Sikandar and another v Mamaraz Khan and others* PLD 1985 SC 11, emphasises the need for genuinely distinguishing evidence where the same indivisible account has been disbelieved against a co-accused. The judgments in *Muhammad Mansha v The State* 2018 SCMR 772 and *Shahbaz v The State* 2016 SCMR 1763 likewise caution against sustaining a conviction upon a materially unreliable common narrative without strong independent corroboration. Here I do not apply a mechanical rule of identical treatment; I assess the different weapons and asserted acts and still find the case against each appellant insufficient for the reasons given.

45. That inquiry also explains the limited role of the Supreme Court authorities on acquitted co-accused. *Ghulam Sikandar and another v Mamaraz Khan and others* PLD 1985 SC 11 and *Mst Sughra Begum and another v Qaiser*

Pervez and others 2015 SCMR 1142 concern the danger of convicting on the very same indivisible evidence found unworthy of belief as to another accused, unless the case against the convict is separately supported. They do not dictate that every acquittal of a named participant automatically frees all others. Imdad Ali was assigned the hatchet and Naeem the lathi, so the roles are capable of distinction in principle. On this record the medical findings do not support the particular sharp-force allegation against Imdad Ali; they are compatible with a lathi but do not name Naeem or establish the taking. Neither convicted appellant has independent corroboration for the material element which remains in dispute.

46. Section 34, P.P.C. warrants an express answer because the trial Court used it alongside section 394. A common intention may develop at the scene and be inferred from proved conduct; a prior written agreement is unnecessary. If it were safely proved that both appellants blocked the victim, jointly took property and inflicted hurt to accomplish the taking, either might be liable even though a particular injury could not be assigned. What the section cannot do is supply the underlying acts by inference after the fact-finder has reasonable doubt whether a taking occurred and who among the alleged assailants participated. Equally, section 394's reference to persons jointly concerned in the robbery is conditional upon proof that the joint robbery was committed or attempted. The prosecution's difficulty concerns that antecedent proof, not a technical failure to assign every contusion to a named hand.

47. There is a real distinction between independent corroboration and simple repetition. PW-1's version came from other family members and what he later said the injured told him; PW-2 attested two official memoranda; PW-3 supplied an observation of an assault and an account attributed to PW-4; PW-4 was the only direct source for the alleged removal of property. Their number does not create four independent sources for the robbery. The doctor supplies an independent source for the injuries alone. Nor does the later site memo, prepared at the complainant's pointing out, independently verify that the named men gathered there

on 22-05-2013. The judgments in *Sardar Bibi and another v Munir Ahmad and others* 2017 SCMR 344, *Akhtar Ali and others v The State* 2008 SCMR 6, and *Muhammad Ali v The State* 2015 SCMR 137, discussed in *Muhammad Mansha*, reinforce the need for independent support where a common accusation has materially failed against one co-accused.

48. Taken individually, several omissions could be overcome in a strong case. A late site memorandum, non-recovery of stolen property, no independent villager, a prior family dispute, and a delay in the FIR are not each a mandatory ground of acquittal. They assume greater significance where the core testimony is internally uncertain on who struck with which weapon, where the alleged sharp weapon leaves no sharp injury, where witnesses disagree whether the injured could speak at the scene, and where there is no reliable confirmation of the robbery from a source independent of that account. Dr Moosa's evidence confirms hurt, not the identities of its authors or the alleged taking. The trial Court did not examine these weaknesses together, and its conclusion that the ocular account and medical evidence were wholly corroborative cannot be sustained as to Imdad Ali or as proof of robbery against Naeem.

49. The controlling rule is proof beyond reasonable doubt, not a balance of probabilities. In *Tariq Pervez v The State* 1995 SCMR 1345, *Muhammad Akram v The State* 2009 SCMR 230, *Muhammad Zaman v The State* 2014 SCMR 749 and *Bashir Muhammad Khan v The State* 2022 SCMR 986, the Supreme Court explained that a reasonable doubt arising from a material circumstance goes to the accused as of right. *Mst Asia Bibi v The State* PLD 2019 SC 64 also demonstrates the need to examine the substance of conflicting versions rather than count the witnesses who repeat an accusation. Those authorities do not require the accused to establish precisely how he came to be implicated. On this record, there is a real and rational doubt whether the prosecution proved that either appellant participated in the particular robbery charged. It is unnecessary to decide affirmatively that Jan

Muhammad fell from his motorcycle or that the prosecution witnesses acted from a common plan to implicate the accused.

50. The trial Court was entitled to give the prosecution a fair reading, including the injured's early presentation to hospital and the plausibility of blunt-force hurt from a lathi. Its error was to pass too quickly from that limited medical support to proof of both convicted men's participation in a robbery. It did not reconcile the mutually different accounts of when Jan Muhammad first narrated the taking, did not explain the absence of a sharp wound for the expressly alleged hatchet assault, and did not identify proof of the stolen items beyond PW-4's disputed account. Findings that evidence is 'confidence inspiring' do not answer those points unless the reasons show how each material difficulty is resolved. On independent reappraisal, they remain unresolved.

51. I therefore answer the first point in the negative. The benefit of doubt extends to both Imdad Ali and Naeem. The medical compatibility of a lathi with blunt injuries does not remove the separate uncertainty about Naeem's participation in a robbery. Nor can section 34 carry a conviction once the prosecution has failed to prove the foundation of a jointly committed robbery beyond reasonable doubt. The finding is confined to the prosecution evidence and the legal standard applicable to this criminal charge; it makes no determination of title, possession or wrongdoing in the parties' land litigation.

52. It is necessary to make clear the extent of the finding. This Court does not hold that Jan Muhammad was uninjured or that the relatives could never have encountered him on the road. Nor is the acquittal an affirmative judicial finding that an accident occurred. The conviction appeal turns on the failure to prove, to the criminal standard, the identities and participation of Imdad Ali and Naeem in the charged robbery accompanied by hurt. A different view of isolated pieces of evidence is possible, but isolated consistency on the hour of treatment and on blunt injuries does not supply the missing proof of taking or resolve the material

discrepancies about the first account. Benefit of doubt follows from identified weaknesses in the prosecution's own case, without placing any burden on either appellant to demonstrate a competing version.

53. The acquittal appeal requires a separate answer. An acquittal reinforces the presumption of innocence, and an appellate court interferes where the view of the evidence taken by the trial Court is perverse, arbitrary, based on a material misreading, or otherwise legally unsustainable. *Ghulam Sikandar and another v Mamaraz Khan and others PLD 1985 SC 11* requires proper weight for an acquittal and a reasoned examination before it is displaced. Even if another view might have been possible, the complainant must demonstrate that the acquittal cannot reasonably stand. Here Umed Ali's alleged role was carrying an unused pistol; the officer initially accepted a document offered in support of his presence elsewhere; and admitted prior litigation supplied a particular reason to check the allegation against him. No independent material proves his participation or the alleged taking. The trial Court's conclusion that his guilt was doubtful is a possible and defensible view, not a perverse one.

54. *Muhammad Usman and others v The State 1992 SCMR 489* and *The State and others v Abdul Khaliq and others PLD 2011 SC 554* explain the distinct caution that governs interference with acquittal. The initial presumption of innocence has been reinforced by the trial Court's verdict. Even so, it is not an absolute shield: ignoring a decisive piece of evidence, applying a wrong legal rule, or reaching a conclusion that no rational appraisal permits may justify reversal. The complainant therefore had a route to relief if he demonstrated such an error concerning Umed Ali. I have examined the medical material, the disputed alibi certificate, the ocular roles and the previous litigation with that test in mind. The record does not reveal a decisive incriminating fact against Umed Ali which the trial Court excluded from consideration.

55. The standard for overturning an acquittal cannot be satisfied by reasserting that all witnesses took the names of all three accused. The trial Court articulated specific grounds for its doubt concerning Umed Ali: an unused pistol attributed to him, prior animosity supported by earlier records, and the investigation's initial acceptance of material placing him elsewhere. The hospital paper was not conclusively proved as an alibi, and release under section 169, Cr.P.C. did not bind the trial Court. Yet those limitations do not turn the trial Court's cautious conclusion into a perverse or impossible view. *Sughra Begum v Qaiser Pervez 2015 SCMR 1142* is relevant to the quality of a common accusation; it does not require a reviewing court to substitute its own possible view for every reasoned acquittal. Here the circumstances supporting reasonable doubt are substantive and survive even if the hospital paper is given little weight.

56. The complainant's principal submission that conviction of Imdad Ali and Naeem necessarily entails conviction of Umed Ali is unsound. Criminal responsibility is individual, even where common intention is alleged; one participant may be proved and another not. Conversely, I have found that the convictions of the other two cannot stand upon the actual record. There is consequently no factual or legal premise for upsetting Umed Ali's acquittal. The second point is answered against the complainant, and Criminal Acquittal Appeal No. S-29 of 2024 fails.

57. In particular, the fact that Umed Ali allegedly possessed a pistol does not produce a separate, corroborated act of robbery or hurt. A firearm need not be fired to facilitate a robbery; a credible account that it was used to threaten the victim could be relevant even without a gunshot wound. The impugned judgment relied on the fact that no use of the pistol was alleged in the account before it, while treating the hospital document and pre-existing quarrel as additional sources of doubt. Even if another judge might give the absence of a fired shot less weight, the other evidential weaknesses remain and the trial Court's result is within a permissible range. Nothing in the evidence requires a finding that Umed Ali was

innocent as a historical fact; the law requires proof of guilt before his acquittal may be displaced.

58. The revision for enhancement also fails. Its premise is that because section 394, P.P.C. permits a more severe punishment, the trial Court was legally bound to award the maximum. A provision prescribing a range does not impose its highest term in every proven case; sentencing calls for lawful judicial discretion and a consideration of the facts. More decisively, the underlying convictions cannot be maintained. There is no sentence left to enhance and the order for compensation under section 544-A, Cr.P.C. falls with those convictions. It is unnecessary to decide whether youth alone would have justified the original four-year term had guilt been established. The third point is answered accordingly.

59. Enhancement would in any event require more than a general assertion that the term imposed was short. The complainant would have to identify a legal sentencing error or circumstances establishing that the discretion exercised was plainly improper, with the convicted persons afforded the opportunity to meet the proposed increase under the revisional jurisdiction. Section 394 provides a serious sentencing range, but the mere existence of an upper limit does not make that limit a compulsory punishment. The trial Court expressly referred to youth; whether that would have been a sufficiently reasoned mitigating factor is an issue which would arise only if conviction survived appellate scrutiny. It does not survive. For that reason the revision is dismissed upon the decisive ground that there is no subsisting conviction or sentence to enhance, without issuing an unnecessary hypothetical ruling on the term which would otherwise be just.

60. There is an additional procedural safeguard in section 439(2), Cr.P.C.: an order prejudicial to an accused in revision requires an opportunity of hearing. Section 439 also recognises that a convicted person facing an enhancement proposal may challenge the conviction itself. The conviction appeal heard with this revision has already raised and succeeded on precisely that foundational issue. Thus

the complainant's proposed increase cannot be considered as though liability under section 394 had been finally settled. The original fine, default imprisonment and section 544-A compensation were consequences of the same convictions and cannot survive after those convictions are set aside. No determination of a civil claim for loss, if any exists, follows from disposing of these criminal proceedings.

61. For these reasons, Criminal Appeal No. S-20 of 2024 is **ALLOWED**. The judgment dated 04-05-2017 of the learned First Additional Sessions Judge, Mirpurkhas, insofar as it convicts Imdad Ali and Naeem under section 394 read with section 34, P.P.C., is set aside. Both appellants are acquitted of the charge by extending the benefit of doubt. Their sentences of imprisonment and fine and the related default terms are set aside, as are the directions requiring each to pay Rs. 50,000 compensation under section 544-A, Cr.P.C. Their bail bonds stand cancelled and their sureties are discharged. If any fine or compensation has been deposited under the impugned judgment, the trial Court shall arrange its return to the person lawfully entitled to it after verification, subject to any subsisting lawful claim.

62. Criminal Acquittal Appeal No. S-29 of 2024 and Criminal Revision Application No. S-34 of 2024 are **DISMISSED**. The acquittal of Umed Ali is maintained. Any pending applications in these connected matters stand disposed of. A copy of this judgment shall be placed in each connected file and transmitted to the learned trial Court for information and compliance. These are the reasons for disposal of all three matters heard and reserved on 08-09-2026.

JUDGE

APPROVED FOR REPORTING
FAISAL