

# IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal No. 132 of 2024

a/w

Cr. Jail Appeal No. 133 of 2024

## **BEFORE:**

Mr. Justice Khalid Hussain Shahani

Appellants : Adil Ali son of Babar Ali and;  
Muhammad Kamran son of M. Shafi  
Through Mr. Habib ur Rehman Jaskani, Advocate

Respondent : The State  
Through Muhammad Mohsin Mangi, Asst. P.G

Date of hearing : 11.04.2025

Date of Judgment : 28.04.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.** – Appellants Adil Ali and Muhammad Kamran were convicted by learned Additional Sessions Judge-IV Karachi East, in Sessions Case No.2354 of 2023, stemming out of FIR No. 177 of 2023, offence under section 392/397/34 PPC of PS Model Colony. Additionally, appellant Adil Ali was convicted for offence u/s 23-1(a) Sindh Arms Act,2013, P.S Model Colony in Sessions Case No. 2355 of 2023, and sentenced as under: -

*For offence under section 397 PPC to suffer R. I. for 7 years each with benefit of section 382-B Cr.P.C.*

*For offence under section 23-1(a) Sindh Arms Act to suffer R.I for 07 years with benefits of section 382-B Cr.P.C.*

2. As per prosecution theory on 31-05-2023 at about 12:15 a.m. complainant Intizar Ahmed along with P.Ws while returning to home when reached near House No. 13, Soorti Society, Gulshan-e-Jami Road, Model Colony, Karachi, two unknown assailants riding a motorcycle intercepted and on gun point robbed mobile phones and cash amount Rs.2000/- from complainant and his brothers Iftikhar and Usman. Meanwhile, a police mobile arrived there. Upon complainant's narration apprehended both the culprits along with robbed articles and a pistol. Consequent upon; cases referred hereinabove were registered on inter-alia above facts.

3. Formal charges were framed, to which appellants pleaded not guilty. To substantiate its case, prosecution examined Intizar Ahmed (complainant), Iftikhar Ahmed (eye witness), SIP Aslam Pervez (author of FIR) and SIP Roidad Khan (investigation officer). The appellants in their statements under section 342 Cr.P.C denied wrong doings.

4. At the very outset, learned counsel for the appellants contended that the impugned judgments are the result of a misreading and non-reading of material evidence on record. It is argued that the entire prosecution case is riddled with serious contradictions, material omissions, and procedural irregularities which go to the root of the matter. It is next contended that the FIR itself states that the appellants committed robbery and fled away from scene, whereafter the complainant and his companion informed a nearby police party, who then chased and apprehended them. However, during trial, the complainant and his brothers (eye witnesses) made a marked improvement by stating that when the police party intercepted, the appellants opened fire with intent to commit murder of police, which is a material deviation from the original version. Learned counsel emphasized that no such assertion of firing finds mention in the FIR, memo of arrest & seizure or in the testimonies of police witnesses, suggesting that the improvement is an afterthought and a dishonest embellishment not discussed by the learned trial Court. The learned counsel further argued that the appellant was denied his fundamental right to fair trial, as guaranteed under Article 10-A of the Constitution, inasmuch as he was not afforded the opportunity to cross-examine the prosecution witnesses through a counsel of his choice, despite the case involving a punishment of rigorous imprisonment up to seven years. It was submitted that cross-examination through a legal pleader is not a mere formality, but an essential safeguard to test the veracity and credibility of the prosecution evidence. In support of this, reliance was placed on judicial pronouncements that underscore the mandatory nature of representation by counsel in criminal trials involving serious consequences. The learned counsel also drew the Court's attention to another critical flaw in the proceedings viz. playing of a video recording during trial by a prosecution witness (P.W Iftikhar) without adherence to the legal protocol. The video, it was argued, was never made part of the investigation, was neither referred in the challan nor in the site inspection memos, and was never supplied to the defense in advance. It was contended

that the learned trial Court did not formally article or exhibit the video in accordance with law, and denied the accused the right to confront or rebut the contents of the same. Such serious violation, according to the learned counsel, not only undermines the credibility of the evidence but also amounts to a breach of fair trial rights, warranting outright acquittal of the appellants.

5. Conversely, learned DPG for the State supported the impugned judgments and argued that the prosecution has successfully proved its case against the appellants beyond reasonable doubt. It was submitted that appellants were duly nominated in FIR and were apprehended shortly after the incident by the police during hot pursuit and incriminating articles were recovered from their possession. It was contended that the statements of the complainant and other prosecution witnesses were consistent on material aspects and supported the prosecution version regarding the occurrence of robbery and apprehension of appellants. Learned DPG acknowledged that there may be minor contradictions in the prosecution evidence, but submitted that these are natural and do not affect the core of the prosecution's case. It was argued that improvements, if any, are not sufficient to discard otherwise reliable ocular evidence. The learned DPG also submitted that even if the accused was not represented by counsel at every stage of the trial, there is no specific prejudice shown to have been caused to the accused, particularly when the trial was otherwise conducted in accordance with law and concluded within a reasonable time. As regards the objection on the video footage shown by a prosecution witness, the learned DPG submitted that such evidence was only a supplementary piece of corroboration and the main reliance of the prosecution was on the direct testimonies of the eyewitnesses and the arrest of the accused with recoveries. It was asserted that the absence of formal exhibition or supply of the video to the accused did not materially affect the merits of the case, and at best, the video may be excluded from consideration but the remaining evidence is sufficient to uphold conviction. The learned DPG, therefore, prayed for dismissal of the appeal and maintained that the impugned judgments are well-reasoned and requires no interference by this Court.

6. Record reflects soon after the incident, when the appellants after committing robbery were fleeing were apprehended by the PC Zaheer, PC Junaid Anwar, PC Zeeshan Ali and PC Bilal, but none of them has come forward to depose against the appellants. Such alone fact has made the entire story very doubtful. Besides the memo of arrest and seizure produced as Ex.04 is suggestive of the fact that it was prepared by the SIP Aslam Parvaiz at police station. During course of trial, he has even not named those police constables to be witnesses of the alleged occurrence. It is also evident from the record that prosecution failed to examine not only the Malkhana In charge of the Police Station but also career to prove safe custody of the weapons at PS and its subsequent safe transmission to forensic Lab. Glance on the entire evidence, prima facie is a suggestive of the fact that the appellants remained un-represented by a counsel, therefore the right to fair trial has not been accorded.

7. The private witnesses also exaggerated while recording their evidence before the Court by suggesting that after an encounter appellants were arrested, therefore they could not be termed as truthful and trustworthy witnesses. The learned trial court while passing impugned judgment also relied upon a video recording alleged to be played in the open court produced by P.W-03 Iftikhar Ahmed. It is matter of the fact that neither such piece of evidence remained part of the investigation, nor copy thereof was supplied to the appellants in pursuance of section 265-C Cr.P.C, nor it was sent for the forensic examination to ascertain its genuineness. The important aspect of the case is also that according to prosecution theory, recovery of robbed articles was affected from the appellants, but same has not been produced by the witnesses to corroborate the ocular testimony, as such recovery, if any, has lost its sanctity. Another aspect of the case is also that such property was not produced in the statements of accused to confront the same. Moreover, there is omissions in the testimonies of the witnesses, as such, the complainant in his evidence did not state about the injuries to anyone, however, the Challan suggests that accused Adil Khan and one police official got injuries. Above all, shows that prosecution case is fraught with serious inconsistencies and unexplained improvements, which strike at the root of its credibility. Learned trial court, however, failed to consider the contradictions, omissions and improvements and no determination upon the same is

written. Such omission from the trial court's judgment reflects a non-application of judicial mind to material aspects of the case, which results in miscarriage of justice. It is the duty of the prosecution to prove the charge against the accused. However, the prosecution has failed to establish its case. The accused has pleaded innocence, and it is not his obligation to prove his innocence.

8. Additionally, the record reveals that the accused persons were not provided the effective opportunity to cross-examine the prosecution witnesses through a counsel of their choice. The right to cross-examine is not merely a procedural formality, it is an essential safeguard of justice, the importance of which is accentuated when the accused is facing a possible sentence of seven years' rigorous imprisonment. Cross-examination is the very heart of a fair trial, for it is through this mechanism that the defense tests the credibility, veracity, and reliability of the prosecution's evidence. Without this crucial check, the testimony of a witness goes unchallenged and untested, and the trial ceases to be adversarial in its truest sense. The constitutional guarantee under Article 10-A of the Constitution of the Islamic Republic of Pakistan ensures not just a trial, but a fair trial, encompassing the right to adequate legal representation. When a person is tried for an offence carrying serious penal consequences, the availability of a trained legal practitioner during cross-examination becomes indispensable. A layman in custody, untrained in legal advocacy, cannot reasonably be expected to challenge contradictions, highlight inconsistencies, or discredit hostile testimony. The denial of cross-examination through counsel therefore effectively paralyzes the defense and renders the process one-sided. In the present case, it is evident from the record that the accused persons, being in custody and unrepresented, were unable to effectively challenge the prosecution's version at critical junctures of the trial. This is in line with the cardinal principle of "*Audi alteram partem*", and the broader guarantee of a fair trial under Article 10A of the Constitution of the Islamic Republic of Pakistan. The right to be informed of the evidence being led against a person, and to be granted an effective chance to challenge it, is not a luxury but a fundamental constitutional safeguard.

9. These cumulative irregularities, unexplained improvements by the complainant, denial of cross-examination through counsel, and the irregular, unauthenticated presentation of digital material without procedural safeguards, coupled with other defects like signatures of mashir on each & papers on the right-side bottom of the page with differences, create serious doubts as to the legality and fairness of the entire trial. It is a settled principle that where doubt arises in the mind of the court regarding the credibility of evidence and the integrity of the procedure, the benefit must always go to the accused, however grave the charge may be. The prosecution must stand on its own legs and prove its case beyond reasonable doubt, which it has demonstrably failed to do in the present case.

10. Resultantly, the convictions and sentences recorded by the learned trial Court against the appellants are not sustainable in the eyes of law. Consequently, instant both appeals are allowed. The convictions and sentences awarded to the appellants by the learned trial Court vide judgments dated: 20.01.2024 are hereby set aside. The appellants are acquitted of the charges. They shall be released forthwith if not required in any other custody case. No alteration is made to the order pertaining to the case property, which shall continue to hold the field.

**J U D G E**