

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 667 OF 2024

Appellant : Haq Nawaz son of Mumtaz (In custody)
Appeal preferred in person through Jail Superintendent

Respondent : The State through the Addl. PG Sindh

Date of hearing : 20.05.2025

Date of Judgment : 23.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This Criminal Jail Appeal, preferred by the appellant in person through the Jail Superintendent, assails the judgment dated 12.03.2024, passed by the learned IVth Additional Sessions Judge, Karachi East, in Sessions Case No.3525/2022 arising out of FIR No. 322/2022 registered at P.S. KIA, K.E, Karachi, offence under Sections 397/34 PPC. By the impugned judgment, the learned trial court convicted the appellant for an offence under Section 397 PPC and sentenced him to suffer rigorous imprisonment (R.I.) for seven (07) years, along with a fine of Rs. 50,000/-, and in default of payment of fine, to further undergo simple imprisonment (S.I.) for four (04) months. The benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. The prosecution's case, as per FIR No. 322/2022, is that on 07.03.2022 at about 02:15 p.m., two unknown persons, at gunpoint, snatched a mobile phone (Techno Spark 7) from the complainant, Ahsan Ali, and an Oppo mobile phone and cash of Rs. 1100/- from his friend, Firdous. After the arrest of the accused, the matter was sent up for trial. The prosecution examined three witnesses: PW-1 Ahsan Ali Siddiqui (Complainant), PW-2 SIP Muhammad Shiraz (Investigating Officer), and PW-3 Firdous Ahmed.

3. In the appeal preferred in person, the appellant contends that the impugned judgment dated 12.03.2023 is unsustainable both in law and on facts. He argues that the trial court failed to apply judicial mind, overlooked material contradictions in the prosecution case, and did not properly appreciate the evidence on record. The conviction is primarily based on a

confessional statement allegedly made in police custody, which was neither recorded before a Magistrate under Section 164 Cr.P.C. nor admissible under Article 38 of the Qanun-e-Shahadat Order, 1984. The appellant further submits that no independent witnesses were examined despite the incident allegedly occurring in a densely populated area, and the mandatory procedure under Sections 103 and 160 Cr.P.C. was not followed, rendering the investigation doubtful. He also points out that in two connected cases decided on the same day, the trial court did not clarify whether the sentences would run concurrently, granting only the benefit of Section 382-B Cr.P.C. According to the appellant, the judgment lacks proper reasoning and does not qualify as a speaking order under Section 24-A of the General Clauses Act, 1897. He maintains that there was no reliable or confidence-inspiring evidence to support his conviction, and that the trial court conducted only a cursory evaluation of the prosecution's evidence.

4. The learned Assistant Prosecutor General (APG) for the State opposed the appeal and supported the impugned judgment, arguing that the prosecution had successfully proved its case beyond reasonable doubt before the trial court.

5. I have meticulously examined the record of the case, including the impugned judgment, the evidence of the prosecution witnesses, and the grounds raised by the appellant.

6. Upon a careful appraisal of the evidence, several serious infirmities and contradictions in the prosecution's case come to light, which cumulatively cast a reasonable doubt on the appellant's guilt.

7. Firstly, the procedure adopted for the identification test parade is fundamentally flawed. The admission by PW-1 Ahsan Ali Siddiqui that the accused was shown to him at the police station prior to the identification parade test renders the entire exercise inadmissible. It is a well-settled principle of criminal jurisprudence that for an identification parade to be credible, the accused must not have been seen by the identifying witnesses before the parade. Any prior exposure vitiates the evidentiary value of the identification. The unexplained delay of three days in conducting the parade further weakens its credibility. Secondly, the articlization and recovery of the case property are highly questionable. The trial court's failure to

properly describe the condition of the mobile phone (sealed/unsealed) and its lack of proper inscription, as per the established guidelines of the Superior Courts, raises concerns about the integrity of the evidence. More critically, the appellant's contention that the mobile phone was already secured in another FIR (Crime No. 261/2022) and yet a fresh memo of recovery (Ex.3/C) was prepared on 13.03.2022 for the same item is a serious anomaly. This "double recovery" or prior custody issue, if substantiated, strikes at the very root of the prosecution's claim of recovery in the instant case. The absence of any mention of sealing the mobile phone on the spot in the recovery memo further adds to the doubt.

8. Thirdly, the admissions made by the Investigating Officer (PW-2) during cross-examination are highly damaging to the prosecution's case. His inability to produce crucial police station entries, the actual memo of arrest in the connected crime, and the non-recording of Section 161 Cr.P.C. statements of the arresting officials, coupled with the contradiction regarding the presence of Firdous and Moin with Ahsan, collectively undermine the thoroughness and veracity of the investigation. The non-conducting of a judicial confession before a Magistrate, despite the alleged recovery, is also a point of concern. Fourthly, the glaring contradiction regarding the place of incident between the statements of the two complainants (PW-1 Ahsan Ali Siddiqui and PW-3 Firdous Ahmed) is a material discrepancy. Such a fundamental difference in the locus of the crime creates a serious doubt about the prosecution's narrative, as the exact scene of occurrence is a crucial aspect of establishing the facts. Fifthly, the non-examination of the arresting officer is a significant gap. The prosecution's case relies heavily on the arrest and subsequent recovery, and the absence of the direct evidence of the arresting officer leaves a crucial link in the chain of events unproven. Sixthly, the alleged confessional statement obtained by the police is inadmissible under Article 38 of the Qanun-e-Shahadat Order, 1984, as it was not recorded before a Magistrate under Section 164 Cr.P.C. Therefore, it cannot be used to connect the appellant with the offence. Seventhly, the non-association of private witnesses from a thickly populated area during the alleged recovery, in violation of Section 103 Cr.P.C., further weakens the prosecution's case. While police officials' testimony can be relied upon, the absence of independent corroboration in such circumstances, without plausible

explanation, renders the recovery doubtful. Finally, the procedural irregularities noted in the statement of the accused under Section 342 Cr.P.C., particularly the lack of proper questioning and the computerized certificate instead of a handwritten one by the Judge, though not fatal on their own, contribute to the overall impression of a trial that may not have strictly adhered to all procedural safeguards, especially for an unrepresented accused. The appellant's contention regarding the lack of proper opportunity to engage counsel also raises concerns about the fairness of the trial proceedings.

9. It is a well-established principle of criminal law that the prosecution must prove its case beyond reasonable doubt. If any reasonable doubt arises from the evidence, its benefit must always go to the accused, not as a matter of grace or concession, but as a matter of right. In the present case, the cumulative effect of the serious contradictions, procedural irregularities, and lacunas highlighted above creates a reasonable doubt that the prosecution has failed to discharge its burden.

10. For the reasons stated above, this Court finds that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt. The material infirmities in the evidence and procedural flaws in the trial are sufficient to entitle the appellant to the benefit of doubt.

11. Accordingly, this Criminal Jail Appeal is allowed. The impugned judgment dated 12.03.2024, passed by the learned IVth Additional Sessions Judge Karachi East, in Sessions Case No. 3525/2022, is hereby set aside. The appellant, Haq Nawaz S/o Mumtaz, is acquitted of the charged offence and shall be released from judicial custody forthwith, if not required in any other case.

J U D G E