

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Jail Appeal Nos. 216 to 221 of 2024

Appellants : 1. Irfan son of Aziz  
2. Kabeer son of Muhammad Aslam,  
Through M/s Raja Masood Ahmed Qazi &  
Bashir Ahmed Buledi, advocates.

Respondent : The State  
Through Mr. Tahir Hussain, APG.

Date of hearing : 22.05.2025

Date of judgment : 30.05.2025

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

**KHALID HUSSAIN SHAHANI, J.**--- This consolidated order addresses the six (06) captioned Criminal Jail Appeals, being CrI. Jail Appeals Nos. 216 to 221 of 2024, filed by the appellants Irfan and Kabeer. These appeals challenge the common impugned judgments, all dated 29.02.2024, passed by the learned Additional Sessions Judge, Xth (South) Karachi, in Session Case Nos. 2327/2023, 2328/2023, 2329/2023, 2330/2023, 2331/2023, and 2332/2023, arising out of FIR Nos. 434/2023, 435/2023, 436/2023, 437/2023, 444/2023, and 445/2023, all registered at Police Station Defence, Karachi.

2. By virtue of the impugned judgments, the appellants were convicted and sentenced as follows:

- a. *Session Case No. 2329/2023 (FIR No. 436/2023, P.S. Defence Karachi, U/S 23(i)a SAA 2013): Appellant Irfan was sentenced to Rigorous Imprisonment for seven (07) years with a fine of Rs. 20,000/-, and in default of payment of fine, to further undergo Simple Imprisonment for one (01) month.*
- b. *Session Case No. 2330/2023 (FIR No. 437/2023, P.S. Defence Karachi, U/S 23(i)a SAA 2013): Appellant Kabeer was sentenced to Rigorous Imprisonment for seven (07) years with a fine of Rs. 20,000/-, and in default of payment of fine, to further undergo Simple Imprisonment for one (01) month.*
- c. *Session Case No. 2327/2023 (FIR No. 434/2023, P.S. Defence Karachi, U/S 397/34 PPC): Appellant Irfan was sentenced to*

*Rigorous Imprisonment for seven (07) years. (Co-accused Kabeer was acquitted from the charge in this case).*

- d. Session Case No. 2328/2023 (FIR No. 435/2023, P.S. Defence Karachi, U/S 397/34 PPC): Appellants Irfan and Kabeer were each sentenced to Rigorous Imprisonment for seven (07) years. Benefit under Section 382-B Cr.P.C. was extended to them.*
- e. Session Case No. 2331/2023 (FIR No. 444/2023, P.S. Defence Karachi, U/S 397/34 PPC): Appellants Irfan and Kabeer were each sentenced to Rigorous Imprisonment for seven (07) years. Benefit under Section 382-B Cr.P.C. was extended to them.*
- f. Session Case No. 2332/2023 (FIR No. 445/2023, P.S. Defence Karachi, U/S 397/34 PPC): Appellants Irfan and Kabeer were each sentenced to Rigorous Imprisonment for seven (07) years. Benefit under Section 382-B Cr.P.C. was extended to them.*

3. The appellants, being aggrieved and dissatisfied with the aforementioned judgments, have approached this Court seeking to set aside their convictions and acquit them from the charges, inter alia, on the grounds detailed below. The record and proceedings of the aforesaid session cases have been called for and perused.

4. The facts of FIR No. 436/2023 (Session Case No. 2329/2023) & FIR No. 437/2023 (Session Case No. 2330/2023) - Sindh Arms Act, 2013: As per the prosecution, on 31.07.2023 at 09:30 hours, a police party led by SIP Hukm Dad of P.S. Defence, Karachi, acting on spy information, apprehended the appellants from Qayyumabad Graveyard, Phase VII Extension, DHA Karachi. During the personal search of accused Irfan, a 9mm pistol (silver color with black handle, rubbed number, loaded magazine containing 03 live bullets) was allegedly recovered from the right side fold of his kameez shalwar, along with a Samsung touch screen mobile phone, a purse containing motorcycle registration papers, a color copy of a CNIC in the name of Abdul Rehman, and cash of Rs. 250/-. He failed to produce a valid license for the pistol and was arrested under the Sindh Arms Act. Simultaneously, at the same place, a personal search of appellant

Kabeer allegedly resulted in the recovery of a .30 bore pistol (black color, rubbed number, loaded magazine containing 04 live bullets), a brown purse with a black strip containing Rs. 400/-, and an AQUOS white mobile phone. He also failed to produce a valid license and was arrested under the Sindh Arms Act. Separate FIRs were lodged against each appellant for the arms recovery.

- **Prosecution Witnesses (Common to both Arms Act FIRs):**

- PW-1 SIP Hukum Dad (Complainant and Arresting Officer)
- PW-2 HC Waleed Shah (Mashir of memo of arrest and recovery)
- PW-3 PC Haris Malik (Mashir of memo of recovery)
- PW-4 PI Rana Muhammad Zahoor (Investigation Officer)

5. Facts of FIR No. 434/2023 (Session Case No. 2327/2023), offence u/s 397/34 PPC: This FIR was lodged on 30.07.2023. The prosecution alleged that on 17.07.2023 at about 07:20 hours, four unknown armed persons, appearing to be 25/26 years of age, entered the shop of the complainant's uncle, Abdul Qadeer. They snatched cash amounting to Rs. 100,000/- and two mobile phones (one touch screen, one keypad type) from Abdul Qadeer, and Rs. 10,000/- cash and a mobile phone from a rickshaw driver standing outside the shop. They then absconded on their motorcycles. The FIR was lodged against four unknown persons. Notably, this FIR was lodged 13 days after the alleged incident.

- **Prosecution Witnesses:**

- PW-1 SIP Hukum Dad (Complainant and Arresting Officer)
- PW-2 ASI Ghulam Muhammad (Author of FIR 434/2023)
- PW-3 HC Micri Khan (Mashir of pointing place of incident)
- PW-4 Aftab s/o Zada (Complainant and Mashir of site inspection)
- PW-5 PC Waleed Shah (Mashir of arrest & recovery proceedings)
- PW-6 PC Haris Malik (Mashir of arrest & recovery)
- PW-7 Abdul Qadeer son of Muhammad Yousaf (Victim and Eye Witness)
- PW-8 Lala Asad (Judicial Magistrate-I, Karachi South, supervised identification test parade on 17.08.2023)
- PW-9 PI Rana Muhammad Zahoor (Investigation Officer)

6. The facts of FIR No. 435/2023 (Session Case No. 2328/2023), offence u/s 397/34 PPC: This FIR was also lodged on 30.07.2023. The prosecution alleged that on 26.07.2023 at about 15:00 hours, two young persons in Kameez shalwar, appearing to be 25/27 years of age, entered the complainant's shop. One of them, armed with a weapon, snatched his Techno Spark-4 mobile phone and another mobile ECOs R2. They then absconded on an unknown motorcycle. The complainant lodged the FIR against unknown persons, stating they could be identified if seen again. This FIR was lodged 04 days after the alleged incident.

- **Prosecution Witnesses:**

- PW-1 SIP Hukum Dad (Complainant and Arresting Officer)
- PW-2 ASI Muhammad Naveed Tanoli (Author of FIR 435/2023)
- PW-3 HC Micri Khan (Mashir of pointing place of incident)
- PW-4 Abdul Rehman (Complainant, Victim and Eye Witness)
- PW-5 PC Waleed Shah (Mashir of arrest & recovery proceedings)
- PW-6 PC Haris Malik (Mashir of arrest & recovery)
- PW-7 Lala Asad (Judicial Magistrate-I, Karachi South, supervised identification test parade on 17.08.2023)
- PW-8 PI Rana Muhammad Zahoor (Investigation Officer)

7. The facts of FIR No. 444/2023 (Session Case No. 2331/2023), offence u/s 397/34 PPC: This FIR was lodged on 03.08.2023. The prosecution alleged that on 23.07.2023 at about 09:45 hours, four unknown armed individuals robbed the employees of the complainant, namely Ghulam Yaseen, Muhammad Imran, and Nazeer Ahmed, by snatching cash and valuable belongings, including mobile phones. This FIR was lodged 12 days after the alleged incident.

- **Prosecution Witnesses:**

- PW-1 HC Micri Khan (Mashir of arrest)
- PW-2 Nazeer Ahmed (Victim and Eye Witness)
- PW-3 Muhammad Sabir (Complainant and Mashir of site inspection)
- PW-4 Muhammad Imran (Victim and Eye Witness)

- PW-5 Lala Asad (Judicial Magistrate-I, Karachi South, supervised identification test parade on 17.08.2023)
- PW-6 SIP Tamraiz Khan (Investigation Officer)

8. The facts of FIR No. 445/2023 (Session Case No. 2332/2023), offence u/s 397/34 PPC: This FIR was also lodged on 03.08.2023. The prosecution alleged that on 23.07.2023 at about 09:25 hours, the complainant was present in his shop when four persons, aged about 25/26 years, came and robbed him at gunpoint, snatching an OPPO A-16 mobile phone and cash amounting to Rs. 60,000/- before fleeing. This FIR was lodged 12 days after the alleged incident.

• **Prosecution Witnesses:**

- PW-1 ASI Muhammad Naveed Tanoli (Author of FIR)
- PW-2 HC Misri Khan (Mashir of arrest of accused)
- PW-3 Abdul Qadir (Complainant, Victim, Eye Witness, Mashir of site inspection, and present during identification test parade)
- PW-4 Muhammad Imran (Victim and Eye Witness)
- PW-5 Waseem (Mashir of site inspection)
- PW-6 Lala Asad (Judicial Magistrate-I, Karachi South, supervised identification test parade on 17.08.2023)
- PW-7 SIP Tamraiz Khan (Investigation Officer)

9. After usual investigation, report under Section 173 Cr.P.C. was submitted against the appellants, and after trial, they were awarded the sentences mentioned above, leading to these appeals.

10. Learned advocates for appellants have assailed the impugned judgments on various factual and legal grounds, which are summarized that the impugned judgments are not sustainable in law and on facts, being illegal, perverse, capricious, and without lawful jurisdiction, and are liable to be set aside. That the reasons for awarding sentences are not based on proper appreciation of evidence and material on record. That the appellants are innocent and have been falsely implicated by the complainant and local police with mala fide intention. That no identification parade of the appellants was properly conducted before a Judicial Magistrate, which is mandatory in cases where the accused were previously unknown to the complainants/witnesses. That no statement of area people was recorded,

despite the alleged incidents occurring in thickly populated areas, indicating a violation of Section 103 Cr.P.C. and rendering the alleged recoveries doubtful. That nothing was genuinely recovered from the possession of the appellants; the alleged articles and weapons were foisted upon them by the police to show performance. That the learned Trial Court failed to consider the examination-in-chief of prosecution witnesses and ignored facts extracted during cross-examination, which shattered the prosecution's case. That the depositions of the alleged witnesses are full of material contradictions and improvements, undermining their credibility. That the evidence produced by the prosecution is inconsistent, conflicting, contradictory, untrustworthy, dishonest, and false, and thus the prosecution has miserably failed to establish its case beyond reasonable doubt. That the impugned judgments are fanciful and the sentences awarded are against the evidence and material on record, passed merely on alleged gravity without sufficient convincing and reliable evidence. That the learned Trial Court merely took a cursory glance at the evidence without an in-depth consideration, resulting in an erroneous view. That there was no reliable, trustworthy, and confidence-inspiring evidence to base a conviction. That the impugned judgments are devoid of reasoning and non-appreciation of evidence on record, thus not being "speaking judgments" under Section 24-A of the General Clauses Act, 1897. That the evidence as a whole has not received due consideration and requires reappraisal by this Court. That the alleged confessions obtained from the appellants while in police custody are inadmissible under Article 38 of the Qanoon-e-Shahdat Order, 1984, and were not authenticated before a Magistrate under Section 164 Cr.P.C. That the learned Trial Judge failed to apply judicial mind and dig out the real facts, and failed to consider all doubts benefiting the accused. That there are significant delays in lodging the FIRs for the robbery cases (13, 4, 12, 12 days respectively), which were not adequately explained by the prosecution. That the appellants were arrested on 31.07.2023 in the Arms Act cases, but subsequently implicated in a series of unknown FIRs, some lodged one day before their arrest (30.07.2023) and some three days after their arrest (03.08.2023), indicating mala fide intent. That in FIR No. 445/2023, the complainant's name in the FIR facts was Ghulam Yaseen, Nazeer, and Imran, but PW-03 in examination-in-chief was Muhammad Sabir, showing mala fide of the prosecution. That FIR Nos. 444/2023 and 445/2023 both allege incidents on the same date (23.07.2023) with only a

20-minute time difference (09:45 hours and 09:25 hours respectively), without mentioning specific places or vicinity witnesses, which raises serious doubts. That a single Investigation Officer (PI Rana Zahoor) was nominated for four FIRs, and another (SIP Tamraiz Khan) for two FIRs, raising questions about the thoroughness and impartiality of the investigation. That the impugned judgments did not clarify whether the awarded sentences would run concurrently, only extending the benefit of Section 382-B Cr.P.C. That this is the first appeal, preferred as a jail appeal.

11. The learned Assistant Prosecutor General (APG) for the State, while defending the impugned judgments, contended that the prosecution had successfully proved its case against the appellants beyond reasonable doubt through the consistent testimonies of the prosecution witnesses and the recoveries effected. It was argued that the minor discrepancies highlighted by the appellants were not material enough to discredit the entire prosecution story. The learned APG submitted that the trial court had meticulously examined the evidence and rightly convicted the appellants, and therefore, the appeals merited dismissal. It was further submitted that the delays in lodging FIRs were not fatal to the prosecution's case, as they were explained during the trial, and that the identification parades were conducted in accordance with the law.

12. Having heard learned counsel for the appellants and the learned APG for the State, and having meticulously perused the record and proceedings of all six session cases, this Court finds significant deficiencies and contradictions in the prosecution's case that render the convictions unsustainable. The cumulative effect of these infirmities creates a reasonable doubt, which must always go in favour of the accused/appellants.

13. A critical and often fatal flaw in the prosecution's case, particularly concerning the robbery charges, is the inordinate and unexplained delay in lodging the FIR No. 434/2023 was registered 13 days after the alleged incident, FIR No. 435/2023 after 04 days, and FIR Nos. 444/2023 and 445/2023 both after a significant lapse of 12 days. Such prolonged delays, especially in cases where the perpetrators were initially unknown to the complainants/victims, are highly suspicious. They invariably provide ample opportunity for consultation, deliberation, and even concoction of a false

narrative, thereby eroding the spontaneity and credibility typically associated with prompt reporting of a crime. The appellants' assertion that they were first arrested on 31.07.2023 in the Arms Act cases and subsequently implicated in a series of other FIRs (some lodged *before* their arrest on 30.07.2023, and others *after* their arrest on 03.08.2023) further reinforces the strong suspicion of mala fide intent on the part of the police. This pattern suggests an attempt to bolster police performance by linking arrested individuals to unsolved cases, rather than pursuing genuine investigative leads.

14. The alleged incidents, particularly the recoveries of illicit arms and the robberies, are stated to have occurred in areas that are described as thickly populated. Despite this, the prosecution has failed to associate any independent private witnesses from the vicinity during the crucial recovery proceedings or the subsequent investigation. The entire edifice of the prosecution's claim regarding recoveries rests solely on the testimonies of police officials acting as mashirs. It is a well-established principle of criminal jurisprudence that reliance exclusively on official witnesses, without plausible explanation for the non-association of independent public witnesses, is a clear violation of the mandatory provisions of Section 103 of the Code of Criminal Procedure, 1898. This procedural lapse is not a mere technicality; it strikes at the very root of the credibility of the alleged recoveries, rendering them highly doubtful and susceptible to the charge of being foisted. The absence of independent corroboration in such circumstances seriously undermines the prosecution's claims.

15. The appellants have consistently maintained that the only evidence, if any, against them was an alleged confessional statement purportedly obtained while they were already in police custody. It is a fundamental principle of criminal law in Pakistan, explicitly codified in Article 38 of the Qanoon-e-Shahdat Order, 1984, that a confession made by an accused person while in the custody of a police officer is inadmissible in evidence. Such a confession, unless recorded by a Magistrate under Section 164 Cr.P.C. with all due safeguards and voluntary nature being established, holds no legal value. The prosecution's reliance on any such statement, without demonstrating its authenticity and voluntariness before a competent Magistrate, is legally untenable and cannot form the basis for a conviction.



16. In cases where the accused were previously unknown to the complainants or victims at the time of the incident, a properly conducted identification parade before a Judicial Magistrate assumes paramount importance. It serves as a crucial piece of corroborative evidence, lending credibility to the subsequent identification of the accused in court. The appellants have specifically raised the ground that no proper identification parade was held, or that the witnesses' identification was flawed. While a Judicial Magistrate (PW-8 Lala Asad) is mentioned as supervising a parade on 17.08.2023, the record does not clearly establish that the parade was conducted in strict accordance with all legal requirements, ensuring it was free from police influence, that the identifying witnesses had sufficient opportunity to observe the culprits at the time of the incident, and that their identification was consistent and reliable. Any procedural irregularity, suggestive identification, or inconsistency in this crucial piece of evidence would be fatal to the prosecution's case, as it undermines the very foundation of the identification of the accused.

17. A meticulous and thorough review of the testimonies of the prosecution witnesses, particularly during their cross-examination, reveals a plethora of material contradictions and improvements. These inconsistencies are not minor discrepancies but go to the very core of the prosecution's narrative, rendering it unreliable. For instance, in FIR No. 445/2023, the glaring discrepancy regarding the complainant's name (Ghulam Yaseen, Nazeer, and Imran in the initial facts versus Muhammad Sabir being presented as PW-03 in examination-in-chief) is a significant inconsistency that casts serious doubt on the authenticity of the FIR itself and the subsequent investigation. Such fundamental inconsistencies, coupled with other general contradictions and improvements noted during cross-examination, indicate that the prosecution's story was not consistent, trustworthy, or believable. The collective weight of these contradictions shatters the credibility of the prosecution witnesses and the overall case.

18. The prosecution's narrative is further weakened by the highly improbable timing of two separate robbery incidents (FIR Nos. 444/2023 and 445/2023) alleged to have occurred on the very same date (23.07.2023) with only a minimal time difference of 20 minutes (09:45 hours and 09:25 hours respectively). Such close proximity in time for distinct criminal acts, without adequate explanation or mention of specific locations or

independent vicinity witnesses, raises serious questions about the authenticity and coordination of these alleged incidents. Furthermore, the practice of assigning a single Investigation Officer (PI Rana Zahoor for four FIRs and SIP Tamraiz Khan for two FIRs) for multiple, seemingly unrelated cases, some with overlapping timelines, suggests a superficial, rushed, and perhaps biased investigation rather than a thorough and independent inquiry aimed at uncovering the truth. This raises concerns about the impartiality and depth of the investigative process.

19. The appellants' contention that the learned Trial Court failed to apply its judicial mind to the facts and law, took a cursory glance at the evidence, and consequently passed judgments devoid of proper reasoning, appears to be well-founded. A judgment, particularly in criminal cases, must be a "speaking judgment," meaning it must clearly articulate the reasons for conviction or acquittal, reflect a proper and critical appreciation of all evidence on record, consider all doubts benefiting the accused, and arrive at a reasoned conclusion. The numerous and substantial deficiencies highlighted in these appeals, which appear to have been overlooked or inadequately addressed by the trial court, strongly indicate a lack of proper judicial scrutiny and a failure to delve into the nuances of the evidence presented.

20. Moreover, the fact that all six judgments were passed on the same date for offenses stemming from a single year, yet the judgments failed to explicitly clarify whether the awarded sentences would run concurrently, constitutes a significant omission. This lack of clarity is a violation of the principles laid down by the Superior Courts regarding the proper pronouncement of judgments, especially when multiple cases against the same accused are decided simultaneously. In this regard, the principle enunciated in *Nasarullah Vs. The State, PLD 2016 Sindh 238*, and other similar pronouncements by the Superior Courts, emphasizes the need for judicial clarity and proper consideration of the cumulative effect of sentences, particularly where offenses are closely connected in time or transaction. The failure to specify concurrency leaves ambiguity and potentially leads to an unduly harsh cumulative sentence, thereby reflecting a non-application of judicial mind to a crucial aspect of sentencing.

21. In light of the cumulative effect of the aforementioned deficiencies, including the unexplained delays in FIRs, the pervasive lack of independent corroboration, the reliance on inadmissible evidence, the questionable identification process, the material contradictions and improvements in the prosecution's case, the suspicious timing of incidents and investigative practices, and the trial court's apparent non-application of judicial mind on critical aspects including sentencing clarity, this Court finds that the prosecution has miserably failed to prove its case against the appellants beyond reasonable doubt. The benefit of doubt, however slight, must always be extended to the accused as a fundamental principle of criminal justice.

22. For the foregoing reasons, this Court is satisfied that the impugned judgments dated 29.02.2024, passed by the learned Additional District & Sessions Judge, Court No. X (South) Karachi, in Session Case Nos. 2327/2023, 2328/2023, 2329/2023, 2330/2023, 2331/2023, and 2332/2023, are not sustainable in law and on facts. Accordingly, all six (06) Criminal Jail Appeals, consolidated herewith, are hereby accepted. The impugned judgments dated 29.02.2024 are set aside. Consequently, the convictions and sentences awarded to the appellants Irfan son of Aziz and Kabeer son of Muhammad Aslam, in all the aforementioned session cases are rescinded. The appellants, Irfan son of Aziz and Kabeer son of Muhammad Aslam, are hereby acquitted of all charges in Session Case Nos. 2327/2023, 2328/2023, 2329/2023, 2330/2023, 2331/2023, and 2332/2023, arising out of FIR Nos. 434/2023, 435/2023, 436/2023, 437/2023, 444/2023, and 445/2023, P.S. Defence, Karachi. They shall be released forthwith from Central Prison, Karachi, if not required in any other case. The office is directed to send back the Record and Proceedings to the learned Trial Court immediately.

**J U D G E**