IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No.S-159 of 2024 (Mirpurkhas)
Criminal Appeal No.S-61 of 2023 (Hyderabad)

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Appellant	Pervez Ali son of Anwar Ali Jafferi through Mr. Mian Taj Muhammad Keerio, Advocate.
Complainant	Javaid son of Muhammad Hassan through Mr. Aziz Ahmed Leghari, Advocate.
Respondent	The State through Mr. Shahzado Saleem, Additional Prosecutor General (Sindh).

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Dates of hearing	**27.11.2025**
Date of Judgment	**10.12.2025**

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JUDGMENT

Shamsuddin Abbasi, J.- Pervez Ali son of Anwar Ali Jafferi, appellant, has assailed the judgment dated 17.03.2023, penned down by the learned Additional Sessions Judge-I / Model Criminal Trial Court, Mirpurkhas in Sessions Case No.215 of 2021, arising out of FIR No.16 of 2021 registered at Police Station Mirpur Old, District Mirpurkhas, for offences under Sections 395 and 342, PPC through which he was convicted under Sections 395 and 342 read with Section 159, PPC, and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.25,00,000/- and in default thereof to suffer simple imprisonment for two years more. He was further sentenced to rigorous imprisonment for one year and to pay a fine of Rs.3,000/- and in default thereof to suffer simple imprisonment for a further period of two months.

2. FIR in this case has been lodged on 18.02.2021 at 5:30 pm whereas the incident is shown to have taken place on 19.01.2021 at about 8:30 pm. Complainant Javaid son of Muhammad Hassan has stated that he is the owner of a white Toyota Corolla bearing Registration No. BPC-371, which he uses as a taxi and at the relevant time was being driven by his driver, Pathu Ram. On the day of incident, his driver Pathu Ram informed him by phone that while he was standing at the Taxi Stand, Bus Terminal Mirpurkhas and waiting for passengers when three persons came and hired the car for going towards Bair Mori and during the journey those persons detained him in the car at gun point, blindfolded him, forcibly shifted him into another car and later left him at Khesana Mori while they escaped with the car. Upon

receiving this information, the complainant proceeded to the police station and lodged FIR under Sections 395 and 342, PPC on behalf of the State.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial whereas four other accused, namely Irfan Ali, Sajid, Razzaque @ Roz and one unknown person were shown as absconders and after initiation of appropriate proceedings they were declared proclaimed offenders whereas accused Irfan Ali had expired and the proceedings against him stood abated.

4. A charge in respect of offences under Sections 395, 342 and 34, PPC, was framed against appellant. He pleaded not guilty to the charged offence and claimed trial.

5. At trial, the prosecution has examined as many as four witnesses. The gist of evidence, adduced by the prosecution, in support of its case, is as under:-

6. Complainant Javaid appeared as witness No.1 Ex.6, Pathu Ram (driver/eye-witness) as witness No.2 Ex.7, Jummo Bheel as witness No.3 Ex.8 and Inspector Fateh Muhammad (investigating officer) as witness No.4 Ex.9. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.10.

7. Statement of appellant under Section 342, Cr.P.C. was recorded at Ex.11, wherein he has denied the allegations levelled against him by the prosecution, professed his innocence and claimed that he has been falsely implicated by the complainant at the behest of the police. He further stated that the police has involved him in about 30 false cases and has also murdered his friend Irfan. He, however, opted not to make a statement on oath under Section 340(2), Cr.P.C. nor did he produce any witness in his defence.

8. Upon culmination of the trial, the learned Trial Court found the appellant guilty of the offences charged with and, thus, convicted and sentenced him as detailed in para-1 (supra), which necessitated the filing of the instant appeal.

9. It is contented on behalf of the appellant that he has been falsely implicated in this case by the complainant as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances; that the complainant is not an eye-witness of the incident and the driver who allegedly made victim of dacoity has not come forward to became a complainant; that the FIR has been lodged after one day of the incident; that no independent witness has been produced by the prosecution in support of its case and the witnesses who have been examined are the drivers of complainant, hence in absence of any independent corroboration, their testimony cannot be termed as trustworthy and confidence inspiring; that the witness examined by the prosecution are inconsistent with each other rather contradicted on crucial points; that nothing incriminating has been recovered from the possession of the appellant so as to substantiate his involvement in the commission of crime; that the learned trial Court did not appreciate the evidence adduced by the prosecution and defence taken by the appellant in line with the applicable law and surrounding circumstances and convicted the appellant relying on the evidence of interested witnesses; that the learned trial Court based its findings on misreading and non-reading of evidence and awarded conviction without application of a conscious judicial mind, hence the conviction and sentence awarded to the appellant, based on such findings, are not sustainable in law and liable to be set-aside and the appellant deserves to be acquitted of the charge and prayed accordingly. In support of his submissions, the learned counsel for the appellant has placed reliance on the case of *Muhammad Afzal and another v The State* (1982 SCMR 129).

10. The learned Additional Prosecutor General (Sindh) while rebutting the submissions advanced by learned counsel for the appellant has supported the impugned judgment contending that it is founded upon a fair and proper appraisal of the evidence and material placed on record. He further contended that the prosecution witnesses while appearing before the learned trial Court remained consistent on all material aspects and despite being subjected to lengthy cross-examination nothing favourable to the defence or detrimental to the prosecution's version could be extracted, hence in presence of direct evidence, the delay in lodgment of FIR could safely be ignored. According to him, the prosecution has produced reliable ocular evidence duly supported by the other witnesses, all of which has been rightly relied upon by the learned trial Court. He argued that the prosecution has successfully proved its case against the appellant beyond the shadow of reasonable doubt, thus the appeal merits dismissal and the conviction and

sentence awarded to the appellant by the learned trial Court are liable to be maintained.

11. I have heard the learned counsel for both the sides, given my anxious consideration to their submissions and also scanned the entire record carefully with their able assistance.

12. The entire prosecution case rests upon the testimony of the sole eye-witness, Pathu Ram, who appeared as PW-2 at Ex.7 and firmly established his presence at the place of occurrence, which remained unshaken during cross-examination. He reiterated in all material particulars the facts earlier narrated by him in his statement recorded by the Investigating Officer during investigation and fully supported the version set-forth in the FIR and furnished a detailed account of the incident and categorically implicated the appellant in the commission of the offence charged with. He convincingly explained his presence at the crime scene by deposing that that he is complainant's driver and was running his Corolla car bearing Registration No.BPC-371. On 19.01.2021 he was present at the Bus Terminal, Mirpurkhas and waiting for passengers. At about 7:45 pm three persons hired his car for travelling towards Bair Mori. During the journey when they reached Jarwari Shakh, one of the passengers asked him to stop the vehicle on the pretext of vomiting and as soon as he stopped the car near a garden, a white Toyota Corolla bearing Registration No.722 came from back side and stopped nearby. He further deposed that at that moment the person sitting in the front seat, namely Pervaiz, took out a pistol and placed it on his chest while the two persons sitting in the back seat grabbed him by the collar and introduced themselves as officials of the NAB Department. Meanwhile, Pervaiz struck him on the head, forehead and hand with the butt of the pistol and then dragged him onto the back seat of the car. Owing to his injuries, the blood stared oozing and eventually he became unconscious and upon regaining consciousness accused Pervaiz again pointed the pistol at his head and ordered him to recite the "Kalma," which he did. This witness has further deposed that one of the accused persons then asked Pervaiz to kill him, who threatened him to remain silent and subsequently threw him near Kisana. He managed to untie his hands and remove the cloth from his eyes, reached the road, raised hakals and used the phone of a passerby to call Javaid, the owner of the car, who immediately arrived at the spot, accompanied by Jummo Bheel, shifted him to Mirpurkhas for medical treatment and thereafter lodged FIR on

18.02.2023. He further deposed that on the same day police inspected the place of incident and prepared the site inspection, accompanied by Javaid and Jummo. He also stated that on 23.02.2021, police arrested accused Pervaiz near the National Bank, Baldia Shopping Centre, Mirpurkhas, in his presence as well as in the presence of Jummo. He correctly identified the appellant/accused as the same person. who along with his companions, committed dacoity with him, robbed the car at gun point and inflicted injuries upon him with the butt of the pistol.

13. The testimony of eye-witness Pathu Ram stands corroborated by the statements of the complainant Javaid (PW.1 at Ex.6) and PW.3 Jummo (Ex.8). Admittedly, they are not eye-witnesses of the incident and their evidence is hearsay, however, both consistently deposed that upon reaching the place of occurrence they found Pathu Ram in injured condition, who informed them that three persons had robbed the car at gunpoint and caused him injuries with pistol butt. They thereafter shifted Pathu Ram to Mirpurkhas for providing medical treatment. The complainant has further deposed that he remained in search of his car and eventually lodged FIR on 18.02.2023. PW.2 has supported the complainant with respect to the registration of FIR and testified that the Investigating Officer, Inspector Fateh Muhammad, inspected the place of incident, conducted site inspection and arrested the appellant in his presence as well as in the presence of co-mashir Pathu Ram. Both complainant and PW Jummo remained consistent on all material aspects despite lengthy cross-examination and fully supported the narrative set forth in the FIR. Nothing favourable to the defence could be extracted from their testimony and their evidence in no manner weakens or undermines the prosecution's case regarding the appellant's involvement in the commission of the offence charged.

14. As regards the contention that the conviction rests solely upon the testimony of a single eye-witness, who happens to be the complainant's driver and that in absence of independent corroboration the learned trial Court erred in relying upon the testimony of an interested witness, suffice it to say that such an argument carries no weight. No doubt PW Pathu Ram, the driver of the complainant, appeared as the solitary eye-witness, however, this fact alone does not advance the case of the defence. It is a matter of common experience that members of the general public are often reluctant to come forward and depose against offenders due to fear of earning enmity etc. It is a well-settled principle of law that the testimony of a

witness which is trustworthy and inspires confidence cannot be discarded merely on the ground of his relationship or connection of whatsoever nature with the complainant. A witness who is natural, present at the spot and has truthfully narrated the incident cannot be branded as an "interested witness" solely because of his relation or connection with the complainant. The testimony of such a witness may only be discarded if it is shown that he was motivated by malice, enmity, or any other ulterior consideration. In the present case, no material has been brought on record to show any animosity, grudge or ill-will on the part of complainant and eye-witness against the appellant for his false implication. The law is now firmly established that a witness's mere relationship is not sufficient to shatter his credibility or diminish the legal sanctity of his evidence. The requirement of corroboration of an interested witness's testimony is a rule of prudence, not of law, and is not to be applied mechanically in every case particularly where the Court itself does not consider corroboration necessary. A witness may be termed "interested" only when he has a personal motive to falsely implicate the accused, is biased or partisan, or is otherwise inimical towards the accused. A witness who narrates the incident truthfully merely because he was a victim or was present at the scene cannot by any stretch of imagination be regarded as an interested witness. In cases like the present one implicit reliance can safely be placed upon such testimony, if it inspires the confidence of the Court. The eye witness has fully supported the prosecution version, given a complete account of the incident and directly implicated the appellant in the commission of the offence charged with. He has sufficiently explained the date, time, and place of occurrence as well as each event of the incident in a clear and coherent manner. During lengthy cross-examination, nothing favourable to the defence could be extracted and he remained consistent throughout firmly proving the identification of the appellant. Thus, the evidence discussed herein eliminates all other possibilities regarding the manner of the incident except the one narrated by the prosecution witnesses before the learned trial Court. It is a settled principle that the testimony of an eye-witness cannot be discarded merely because of his connection with the complainant. Reliance in this behalf may well be made to the case of *Amal Sherin and another v. The State through A.G.* (PLD 2004 Supreme Court 371) wherein the Hon'ble Supreme Court while dilating upon the evidentiary value of statement of related and interested witnesses has ruled as under:-

> *"The trial Court was not justified to reject eye-witness account furnished by complainant Khan Amir PW and Hakim Gul PW*

> *merely on the ground of being related and interested particularly when appellants had not been able to establish on record that the above mentioned witnesses had nourished any grudge or ill will against them and deposed with a specific motive".*

Guidance is also taken from the cases of *Muhammad Aslam v The State* (2012 SCMR 593) and *Khizar Hayat v. The State* (2011 SCMR 429). I am, thus, of the view that the testimony of an eye-witness cannot be discarded merely on account of his relation or connection with the complainant and a conviction can lawfully be sustained on such evidence, if it inspires confidence. The contention raised by learned counsel is, thus, misconceived and untenable.

15. Another intriguing aspect which is of immense importance is that the appellant is a habitual offender and is reportedly involved in several other cases of like nature registered at various police stations across the Sindh Province. The prosecution has placed on record the "CRO" of the appellant, available at Ex.9/A, which shows that besides the present case, the appellant is also involved in eight other cases of a similar nature registered at different police stations of Sindh Province, which suggested that he is a habitual offender. It is worth mentioning here that if incidents of like nature are not curbed with an iron hand, it would not only pose a threat to individuals but also to the very survival of the State by creating an atmosphere of fear and panic, hence culprits involved in like cases do not deserve any leniency. The Hon'ble Apex Court in a number of judgments has held that the lives and properties of citizens have become unsafe due to the activities in which offenders like the appellant are involved, which have created a pervasive sense of fear, panic and terror directed against society at large. It is well settled that a habitual offender does not deserve any leniency. If such criminals are set free, the consequences would be drastic and the impact far-reaching. It is high time that the Courts apply strict standards and adopt a zero tolerance approach towards offenders involved in cases of this nature, otherwise the entire system would collapse and every citizen would be left at the mercy of robbers and dacoits. Survival of society vests in the fair administration of justice, which can only be achieved when offenders involved in like cases are met with exemplary punishment. It is also noteworthy that victims of such incidents often avoid coming forward or giving evidence against culprits involved in dacoity, robbery and street crimes etc., however, in the present case, the victim PW Pathu Ram demonstrated courage, appeared before the trial Court and unequivocally

implicated the appellant in the commission of the offence. In such circumstances, I have no hesitation in holding that the learned trial Court has rightly appreciated the nature of the offence and correctly convicted the appellant.

16. The argument advanced by the learned counsel for the appellant that the non-recovery of the crime weapon and the robbed car renders the prosecution case extremely doubtful, benefit whereof must go to the appellant, is devoid of force. No doubt, the Investigating Officer has failed to recover the weapon used in the commission of the offence as well as the robbed car, however, such failure does not shake the prosecution case, which otherwise stands firmly established through the ocular account furnished by the eye witness, duly supported by the other witnesses. The victim has specifically implicated the appellant by deposing that he was one of the three persons who hired the car/taxi, placed a pistol on his chest, inflicted pistol blows, forcibly dragged him into another vehicle and kept him confined therein. I am, therefore, of the considered view that the non-recovery of the crime weapon and the robbed property is not sufficient to demolish the prosecution case particularly when the witnesses remained consistent and persistent in their testimony. Reliance in this behalf may well be made to the case of *Abbas Ali and another v The State* (2021 SCMR 349).

17. Insofar as the contention of the learned defence counsel for the appellant that various defects in the investigation and discrepancies in the prosecution witnesses, coupled with the delay of one day in lodging FIR entitled the appellant to the benefit of doubt, suffice it to say that the contradictions, discrepancies, minor shortfalls in the investigation or in the statements of witnesses are of no significance and cannot be insisted upon at the cost of the completion of an offence. If an accused is otherwise found duly connected with the crime, then mere procedural omissions, minor discrepancies or even allegations of improper or defective investigation do not render the prosecution case doubtful nor do they automatically result in acquittal of an accused because the Courts are expected to be dynamic and pragmatic in ascertaining the true facts and in drawing correct and rational inferences from the record and peculiar facts and circumstances of the case. Guidance is taken from the case of *State/ ANF v. Muhammad Arshad* (2017 SCMR 283), wherein the Hon'ble Supreme Court of Pakistan held that "We may mention here that even where no proper investigation is conducted, but where the material that

comes before the Court is sufficient to connect the accused with the commission of a crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case."

18. It is by now well settled that prosecution witnesses are not to be expected to provide statements with mathematical precision, but to provide truthful testimony to the best of their recollection. Minor discrepancies or inconsistencies in testimony should be disregarded as long as the core facts remain consistent. It follows that parrot like narration of facts with mathematical precision is not required, nor necessarily trustworthy. As held by the Hon'ble apex Court in the case of *Aqil v. The State* (2023 SCMR 831), parrot like statements are discredited by the Courts. It is a normal course of human conduct that minor discrepancies may occur while narrating a particular incident. In appreciating the effect of minor discrepancies and contradictions in the prosecution case, the Hon'ble apex Court in the case of *Shamsher Ahmed & another v. The State & others* (2022 SCMR 1931) unequivocally held that undue importance should not be attached to such discrepancies that do not shake the salient features of the prosecution case, rather they should be ignored. The accused cannot claim a premium for such minor discrepancies and attaching too much importance to such insignificant inconsistencies would destabilize the purpose of criminal administration of justice, which is not solely intended for acquittal based on minor discrepancies. Likewise, the delay occasioned in the lodgment of the FIR is also not fatal to the prosecution case particularly in view of the fact that crimes of such nature are on the rise and extending the benefit of such delay to an accused who is a habitual offender and involved in several other cases would defeat the very purpose of curbing such criminal activities. Even otherwise, the complainant in his deposition has explained that he initially searched for his car and having failed to trace it went to the police station and lodged the FIR. This explanation appears to be a valid and plausible ground as people are often hesitant to report such matters at the outset in order to avoid becoming entangled in litigation due to fear of the dacoits. When his efforts to recover the vehicle proved fruitless he finally approached the police station and lodged the FIR. The contention of the learned counsel is, thus, irrelevant and unsafe to be relied upon particularly in a case involving conviction based on direct evidence.

19. I am convinced that the learned trial Court has appreciated the evidence and scrutinized the material available on record in complete adherence to the principles laid down by the Hon'ble Superior Courts in

various pronouncements and has rightly reached a just conclusion on the basis of direct evidence, adduced by PW.2 Pathu Ram, duly supported by the other witnesses. There is no denial of the fact that the learned trial Court has taken into account all aspects of the matter including the submissions advanced by the learned counsel for the appellant and upon a minute examination has found the appellant guilty of the offence with which he has been charged. No mala fides, ill-will, previous enmity or personal grudge has been established to suggest that the evidence furnished by the prosecution is tainted by any malice or motivated by ulterior considerations. I am mindful of the fact that the appellant along with his accomplices, duly armed with deadly weapons, not only robbed the car but also struck the eye-witness with the butt of pistol during the commission of the offence. In these circumstances, the appellant does not deserve any leniency particularly when the record reveals multiple criminal cases registered against him at various police stations across the Sindh Province. Such material unmistakably demonstrates that he is a habitual offender with criminal activities extending throughout the Province. The foregoing circumstances, when examined collectively, exclude every reasonable hypothesis of the appellant's innocence. I am, therefore, of the considered view that the learned trial Court has rightly relied upon the evidence adduced by the prosecution and justifiably found no basis to extend any presumption of innocence in favour of the appellant.

20. It is a well settled that onus to prove its case always rests on the shoulder of the prosecution and once the prosecution succeeded in discharging such burden with cogent evidence then the accused become heavily burdened to disprove the allegations levelled against him and prove his innocence through cogent and reliable evidence. The appellant during cross-examination of the prosecution witnesses and in his statement recorded under Section 342, Cr.P.C. set up a defence that he has been falsely implicated by the complainant and that the eye-witness being the complainant's driver has deposed falsely against him. However, in support of this plea, he has neither examined any witness nor placed on record any other material to substantiate his plea of innocence or to demonstrate his alleged false implication at the hands of the prosecution witnesses. The question arises why the complainant and eye-witnesses would involve an innocent person in a crime instead of actual culprits. In such circumstances, the plea advanced by the appellant in his defence is not confidence inspiring and the learned trial Court has rightly discarded the same as untrustworthy. The appellant also chose not to appear on oath under Section 340(2), Cr.P.C.

nor did he examine any witness in his defence, which gives rise to a presumption that the plea taken by him was not the gospel truth and that he deliberately avoided deposing on oath. When both versions one advanced by the appellant and the other presented by the prosecution are examined in juxta position, the prosecution's account appears more plausible, convincing, and closer to the truth whereas the appellant's version seems to be after though and doubtful. As to the case law cited by the learned counsel for the appellant, in support of his submissions, in my humble view, the facts and circumstances of the said case are distinct and different from the present case, therefore, the precedent cited by the learned counsel is not helpful to the appellant.

21. In view of the foregoing analysis and upon a comprehensive reappraisal of the entire evidence with due care and caution, I am of the considered view that the prosecution has successfully proved its case against the appellant beyond the shadow of reasonable doubt. The learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in my humble view is based on a fair evaluation of the evidence and the documents brought on record and, therefore, calls for no interference by this Court. Accordingly, the conviction and sentence awarded to the appellant through judgment dated 17.03.2023, impugned herein, warrants no interference. Consequently, this Criminal Appeal No.S-159 of 2024 is bereft of merit stands dismissed.

JUDGE