

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Appeal No. S-79 of 2025

Appellant : 1. Qamar Shahzad son of Muhammad Ramzan
2. Muhammad Zeeshan son of M. Shahid, Rajput
3. Zubair Asghar son of Asghar Ali Rajput
Through Mr. Amanullah G. Malik, Advocate

Complainant : *Through* Mr. Asadullah Rajper, Asst: A.G

Date of hearing : 14.11.2025
Date of Judgment : 21.11.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.- The appellants Qamar Shahzad, Muhammad Zeeshan and Zubair Asghar filed the instant criminal appeal, whereby challenged the impugned Judgment dated 07.08.2025 passed by learned Additional Sessions Judge-I/MCTC-I, Sukkur in Special Case No.354/2025, emanating from FIR No.30/2023 registered at Police Station FIA Crime and AHT Circle Sukkur, whereby each appellant convicted to five years rigorous imprisonment and fine of Rs.1,000,000 with six months simple imprisonment in default, under Section 23 FERA (Amendment) 2020 read with Section 109 PPC, with benefit of Section 382-B Cr.P.C.

2. The facts, as unfolded in the charge and prosecution narrative, are that on 3rd December, 2023, following receipt of credible information about illegal foreign exchange activity, a team of FIA officials had been constituted and proceeded, with the sanction of competent authority, to Rohri Ali Wahan Toll Plaza. There, RAAVI Coach bearing Registration TK-037 was intercepted at around 0730 hours. The appellants, identified at seats 41 and 42, were searched and found with a black school bag containing substantial sums \$20,700 USD, 147,900 Saudi Riyals, and Rs.26,000 PKR along with mobile phones and sim cards. It was asserted that, upon inquiry, the accused disclosed engagement in illegal business of purchase and sale of foreign currency, *Hawala/Hundi*, and remittance, stating such activity had been ongoing for years without licensure from the State Bank of Pakistan. Seizure memos were drawn,

and the accused brought to police station, where FIR No. 30/2023 was registered. Following investigation, a charge sheet was submitted, showing Qamar Shahzad and Muhammad Zeeshan in custody, and adding Zubair Asghar in column 2 as absconding; later, his interim bail was recalled and he was arrested and joined as co-accused.

3. After supply of police papers, a formal charge was framed, to which all accused pleaded not guilty. The prosecution examined multiple witnesses, including the complainant Sub Inspector Nadir Ali Simair, who produced relevant departure entries, seizure memo, arrival entries, FIR, and source report. In addition, Mashir HC Sohail Ahmed presented the arrest and personal search memos. Sub Inspector Sadam Hussain, the Investigation Officer, exhibited various bank records, sanction letters, forensic reports, and documents from the State Bank evidencing lack of authorization. USB voice recordings, allegedly containing incriminating conversations, were also produced. Inspector Shahzeb, supervising the operations, testified to surveillance and recovery. At the close of prosecution evidence, statements of each accused under Section 342 Cr.P.C. were recorded, wherein all denied guilt, asserted implication owing to official enmity, and challenged the authenticity of recovery.

4. The prosecution built its case fundamentally on the live testimony and documentation generated by FIA officials. It advanced three central arguments: *first*, that the raid was meticulously authorized and the recovery of currency and devices uncontested; *second*, that both Qamar Shahzad and Muhammad Zeeshan admitted, in presence of official mashirs, operating illegal foreign exchange business, and failed to provide any state authorization; and *third*, that appellant Zubair Asghar, though not arrested at the scene, was directly implicated by the digital and banking trail and by voice samples and forensic reports, which showed ongoing illicit transactions.

5. The defense, represented by Mr. Amanullah G. Malik, Advocate, rebutted the prosecution case as being speculative, fabricated, and lacking in

independent corroboration. He highlighted several fatal flaws. The recovery occurred in a public place, yet no independent mashir was joined; neither coach passengers, toll plaza, nor petrol station employees were summoned. The prosecution failed to produce the bus driver, Abdul Majeed, an independent witness whose statement contradicted the prosecution narrative on critical points. It was emphasized that the FIR bore no signature of the complainant as required under Section 154 Cr.P.C, with only the IO attesting, an irregularity of substance. Counsel noted that no bus tickets were recovered from the accused, and the actual connection of Zubair Asghar was nowhere made out in evidence or Section 161 statements of witnesses. Delay in recording Section 161 statements, failure to seal seized property, and lack of video recording of the recovery were cited as procedural lapses with serious consequences. The defense further contended that the so-called confession or implication relied on voice recordings not forensically authenticated, and that documentary trails either linked regular banking transactions or were ambiguous. Finally, enmity with FIA officials, specifically Abid Ali of Multan, was pleaded as the real cause for false implication.

6. The learned Assistant Attorney General, representing the State, advanced comprehensive and forceful arguments in support of the prosecution case. The AAG commenced by emphasizing the gravity and significance of the offence under investigation, which concerns unauthorized foreign exchange transactions and illegal Hawala/Hundi operations in violation of Section 23 of the Foreign Exchange Regulation Amendment Act, 2020. The AAG stressed that such crimes constitute serious threats to the national economy, causing substantial loss to the government exchequer, destabilizing the foreign exchange reserves, and undermining the regulatory framework established by the State Bank of Pakistan. The learned AAG began his substantive arguments by asserting that the prosecution had successfully established the charge beyond any reasonable doubt through credible, consistent, and corroborated evidence.

He contended that the entire raid and recovery proceedings were neither casual nor arbitrary but were meticulously authorized and executed in accordance with law. The AAG placed considerable emphasis on the legal sanctioning of the operation, producing official letters of sanction issued by the Deputy Director FIA Sukkur and the Acting Deputy Director Crime, thereby negating any suggestion of malice or impropriety. He argued that these official authorizations, documented in Exhibits 5A to 5C, provided unimpeachable evidence of the legality of the raid and established that the operation was undertaken in discharge of official duties. The AAG highlighted the contemporaneous documentation maintained by the FIA team, particularly the Departmental Diary Entries numbered 07 and 02, recorded on the date of the incident at 0530 hours and 0915 hours respectively. These entries, according to the AAG, were not subject to afterthought fabrication and lent authenticity to the entire process. The AAG argued that such official records could not have been prepared retrospectively with malafide intent and that their production in open court demonstrated transparent adherence to procedural formalities. The timing entries, personnel details, and logistical information recorded in these documents corroborated the prosecution narrative and established the factual sequence of events with credibility. With respect to the recovery of currency, the AAG maintained that the seizure of a substantial quantity of foreign and local currency comprising USD 20,700, SAR 147,900, and Pakistani Rupees 26,000 stood firmly proved through the seizure memo prepared by SI Sadam Hussain and the unimpeached testimony of the FIA raiding officials. The AAG submitted that the prosecution witnesses, namely Sub-Inspector Nadir Ali Simair, Head Constable Sohail Ahmed, Inspector Shahzeb, and Sub-Inspector Sadam Hussain, remained consistent throughout their depositions and successfully withstood the rigors of cross-examination without their credibility being dented or shattered. The AAG contended that their evidence was further corroborated by documentary exhibits and case property produced in court. The

AAG argued that the accused persons offered no plausible explanation regarding their possession of such huge sums of foreign and local currency. He emphasized that neither accused Qamar Shahzad nor accused Muhammad Zeeshan produced any license, authorization letter, or document issued by the State Bank of Pakistan or any competent authority permitting them to carry on foreign exchange transactions or Hawala/Hundi business. The failure to produce such authorization, the AAG submitted, was fatal to the defense and conclusively established that the accused were engaged in unauthorized and illegal foreign exchange dealings in clear violation of the statutory requirements under the Foreign Exchange Regulation Act, 1947, as amended in 2020. The AAG placed particular stress on the voluntary admissions made by the accused persons at the spot during the raid proceedings. According to the AAG, both accused Qamar Shahzad and Muhammad Zeeshan voluntarily admitted that they had been engaged in the illegal business of foreign currency exchange, Hawala/Hundi transactions, and cash remittance for over three years without any authorization from the State Bank of Pakistan. The AAG argued that these admissions, recorded in the presence of official mashirs and FIA officials, constituted powerful circumstantial evidence of guilt and demonstrated consciousness of criminality. The fact that the accused did not deny their involvement at the spot but instead attempted to justify it or make excuses only reinforced the inculpatory nature of their admissions.

7. The AAG advanced arguments regarding the nature and scale of the unlawful activity. He submitted that the recovery of such substantial foreign currency and the admission by the accused that they had been engaged in this illegal business for three years indicated an organized pattern of criminal conduct rather than an isolated or inadvertent violation. The AAG argued that the systematic nature of the alleged *Hawala/Hundi* operations, coupled with the substantial sums recovered, demonstrated that this was not a minor or technical breach but a serious and continuing criminal enterprise designed to circumvent

the formal banking channels and evade regulatory supervision. The learned AAG then addressed the issue of independent witnesses and the non-association of private mashirs. He contended that while it would have been ideal to associate independent private witnesses, the law did not mandate their participation when they voluntarily refused to cooperate. The AAG argued that the record demonstrated that the raiding team had indeed made genuine efforts to persuade private citizens present at the toll plaza and petrol pump to act as mashirs, but these individuals had declined. The AAG submitted that in such circumstances, the law recognized that the testimony of official witnesses, if found trustworthy and reliable, sufficed to prove the prosecution case. He argued that the principle of law applicable in such situations was that public officials, absent proven malice or improper motive, were presumed to act in the discharge of their duties faithfully and honestly.

8. With respect to the third accused, Zubair Asghar, the AAG submitted that although he was not physically present at the spot during the recovery, sufficient material had been collected during investigation to conclusively establish his culpability and criminal participation. The AAG argued that the prosecution had presented voluminous documentary evidence demonstrating the nexus between Zubair Asghar and the recovered foreign currency. He emphasized that the admissions recorded during police interrogation, in which accused Qamar Shahzad and Muhammad Zeeshan disclosed that Zubair Asghar was the actual owner of the recovered currency and that they were acting as his agents or servants in executing his instructions, constituted powerful evidence of conspiracy and common intention. The AAG placed considerable reliance on the documentary and financial evidence adduced against Zubair Asghar. He argued that the bank transaction records produced from multiple independent banking institutions including Bank Al-Habib, Meezan Bank, and Habib Bank Limited demonstrated a pattern of financial transfers and interconnected credits and debits between the accounts

of Zubair Asghar and his co-accused. The AAG submitted that these financial trails could not plausibly have been fabricated or manipulated to falsely incriminate Zubair Asghar and that they established his financial participation in and control over the illegal foreign exchange operations. The AAG further argued that the forensic reports examining the data retrieved from the mobile phones and digital devices recovered from the accused persons provided independent verification of their involvement in illegal *Hawala/Hundi* activities. He emphasized that the digital evidence was not subject to human manipulation in the manner that witnesses might be and that the forensic conclusions were reached through scientific analysis and technical examination. The AAG submitted that these technical reports corroborated the allegations against all three accused and demonstrated ongoing communication and coordination regarding illegal foreign exchange and cash remittance operations. The AAG also placed reliance on the voice recordings contained in the USB drive produced as evidence. He argued that the conversations recorded therein demonstrated that all the accused persons were discussing, planning, and executing illegal *Hawala/Hundi* and cash remittance operations. The AAG submitted that these recordings provided contemporaneous evidence of the criminal conspiracy and the division of roles among the accused, with Zubair Asghar appearing to be the orchestrator and financial controller, while Qamar Shahzad and Muhammad Zeeshan were the operatives responsible for the physical transportation and distribution of currency. The AAG addressed the allegation raised by Zubair Asghar regarding false implication arising from alleged enmity with one Abid Ali, an FIA official at Multan. The AAG argued that this allegation was entirely unsupported by any credible evidence and was nothing more than an afterthought aimed at casting aspersions on the integrity of the investigation. He submitted that the accused had failed to produce any documentary evidence, witness testimony, or material whatsoever to substantiate the claim of enmity or to demonstrate that such enmity had

motivated the FIA officials to fabricate evidence or falsely implicate him. The AAG argued that the defense had not even bothered to summon the alleged person concerned, Abid Ali, to testify regarding the purported enmity, thereby rendering the allegation completely devoid of evidentiary foundation. The AAG emphasized that the prosecution case was not founded merely on the oral assertions and testimony of FIA personnel but was substantially supported by comprehensive documentary trails, meticulous financial records obtained from independent banking institutions, forensic reports, and formal correspondence from the State Bank of Pakistan. He argued that such documentary evidence could not plausibly have been fabricated collectively to falsely implicate the accused and that their production in court demonstrated the robustness and reliability of the prosecution case. The learned AAG also addressed the legal implications and consequences of the offences charged. He submitted that Section 23 of the Foreign Exchange Regulation Amendment Act, 2020 was enacted by the legislature with full cognizance of the serious threats posed by unauthorized foreign exchange transactions and Hawala/Hundi operations to the national economy. The AAG argued that such illicit financial activities bypass the formal banking system and the regulatory supervision of the State Bank of Pakistan, thereby depriving the state of legitimate revenues in the form of taxes, duties, and transaction levies. He contended that unauthorized foreign exchange dealings undermine the strength and stability of the national currency, distort the balance of payments, and facilitate the unchecked flow of illicit funds which may further be laundered or utilized for unlawful purposes including terrorism financing. The AAG stressed that the unregulated inflow and outflow of foreign currency through informal networks directly impacts the country's foreign exchange reserves, cripples the ability of regulatory institutions to monitor legitimate economic activity, and in the long run destabilizes the monetary system, contributing to inflationary pressures and currency depreciation. He submitted that the legislature, by prescribing substantial

punishment for violations of Section 23 of FERA, had clearly signaled the gravity with which such activities must be treated and the deterrent effect that conviction and imprisonment must have. The learned AAG submitted that FIA officials who conducted the raid had no enmity or motive to falsely implicate the accused persons and that their testimony remained consistent, coherent, and trustworthy. He argued that the professional conduct of the raid, the production of official authorization letters, the maintenance of contemporaneous records, and the collection of diverse forms of evidence all demonstrated the bona fides of the prosecution and the absence of any ulterior motive to fabricate a case against innocent persons. The AAG concluded his arguments by submitting that all essential ingredients of the offence under Section 23 of the Foreign Exchange Regulation Amendment Act, 2020, read with Section 109 Pakistan Penal Code, stood conclusively proved. He argued that the evidence collectively and cumulatively established that the accused, acting jointly and with common intention, were engaged in unauthorized foreign exchange trading and illegal remittance Hawala/Hundi operations, thereby causing substantial loss to the national exchequer and undermining the regulatory framework of the State Bank of Pakistan. The roles were, according to the AAG, clearly delineated, with Qamar Shahzad and Muhammad Zeeshan serving as operatives responsible for the physical transportation and handling of illicit funds, while Zubair Asghar functioned as the principal who orchestrated and financed the entire criminal enterprise. The AAG submitted that the conviction of all three accused was not only legally justified but was also necessary in the interests of national economy and public welfare, and that exemplary punishment was warranted to serve as a deterrent against the proliferation of such clandestine and pernicious financial operations.

9. Having heard arguments of both counsel in detail and after judicial examination of the entire record, including deposition of each witness, cross-examination, exhibits, recovery memos, and forensic reports, this appellate

court pointed out glaring contradictions, omissions, improvements, irregularities and other aspects of the case which favored to the accused for recording their acquittal.

10. The charge under Section 23 of the Foreign Exchange Regulation (Amendment) Act, 2020 read with Section 109 of the Pakistan Penal Code was framed against all three appellants on the allegation that they were engaged in unauthorized foreign exchange business, *Hawala/Hundi* operations, and cash remittance without using legal banking channels, thereby causing loss to the government exchequer. However, upon meticulous analysis of the evidence produced at trial, the prosecution case reveals insurmountable defects and contradictions that strike at its very foundation.

11. The complainant SI Nadir Ali, who appeared as the principal witness, failed to perform fundamental duties incumbent upon an officer conducting such a sensitive raid and recovery. Perusal of the record shows that the complainant did not make a denomination-wise record of the recovered United States Dollars, Saudi Riyals, and Pakistani Rupees, nor did he note down the serial numbers of the currency notes in the seizure memo. This omission is not a mere formality but goes to the heart of establishing the identity and integrity of the recovered property. Without serial numbers and denomination-wise details, there is no mechanism to verify whether the currency produced in court is the same currency allegedly recovered from the accused. The mashir Sohail Ahmed admitted during cross-examination that serial numbers of recovered currency notes were not written on the memo, and the complainant similarly acknowledged that the memo of seizure does not show detail of denomination of US Dollars, Saudi Riyals, and Pakistani rupees. The investigation officer confirmed this serious deficiency by stating that serial number of recovered foreign currency and Pakistani currency were not mentioned in said memos. This failure renders the entire recovery suspect and undermines the evidentiary value of the case property.

12. Equally disturbing is the complete absence of video recording of the raid, arrest, and recovery proceedings. In this modern age where mobile phones equipped with cameras are ubiquitous and readily available to investigating officers, the failure to make video recording creates serious doubt about the genuineness of the prosecution version. The complainant candidly admitted during cross-examination that he had a touch mobile phone at the time of incident and recovery but did not make video recording of the incident. The investigation officer similarly admitted that he had a keypad mobile set at the time of incident and that the complainant or other staff members did not make video recording of alleged incident, arrest, and recovery. Inspector Shahzeb, the supervising officer, also conceded that no video recording was made of recovery proceedings. The Hon'ble Supreme Court of Pakistan in *Muhammad Abid Hussain v. The State* (2025 SCMR 721) has categorically held that photography and videography of recovery process in cases involving contraband or illicit materials is not optional but mandatory, and failure to preserve proceedings through video recording renders the prosecution case highly suspicious and casts serious doubt upon its credibility. Similarly, in *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), the Supreme Court emphasized the imperative of utilizing modern devices and techniques in evidence collection, particularly in cases carrying severe punishments, and observed that police personnel should use their mobile phone cameras to record searches, seizures, and arrests to establish credible evidence and prevent false allegations. In the present case, no plausible explanation has been offered for this deliberate omission, which creates an adverse inference against the prosecution.

13. The vehicle driver, Abdul Majeed, who was an independent witness to the entire transaction and whose name appears in the challan as witness number six, was deliberately not produced at trial. This non-production amounts to withholding of best available evidence, which attracts a strong adverse

inference under Article 129(g) of the *Qanun-e-Shahadat* Order, 1984. More damningly, the investigation officer admitted during cross-examination that he recorded the statement of driver Abdul Majeed under Section 161 Cr.P.C on 26th April, 2024, but his statement does not support the prosecution narrative. The I.O confessed that the statement of driver Abdul Majeed shows that "we took two men along with their bags from the said coach," using the plural "bags" instead of one bag as claimed in the FIR and seizure memo, and that seat numbers 41 and 42 are not mentioned in his statement, nor does his statement mention that from said bag foreign currency and Pakistani notes were recovered, and his statement does not show regarding memos prepared by the raiding party. This deliberate suppression of crucial evidence is fatal to the prosecution case. In *Lal Khan v. The State* (2006 SCMR 1846) and the case reported in 2019 P.Cr.L.J Note 138 (Sindh), the Superior Courts have consistently held that non-production of the most natural and material witness of occurrence strongly leads to an inference of prosecutorial misconduct and creates reasonable doubt regarding the correctness of the incident set up by the prosecution. The Hon'ble Supreme Court in *Muhammad Asif v. The State* (2017 SCMR 486) held that withholding of best available independent evidence without satisfactory explanation gives rise to presumption that if produced, such evidence would be unfavorable to the prosecution.

14. The seized property was neither sealed at the spot nor at any subsequent stage, thereby breaking the chain of custody and creating opportunity for tampering, substitution, or manipulation. The mashir Sohail Ahmed admitted that recovered currency and amount was seized but same was not sealed, and the investigation officer similarly conceded that they did not seal the recovered property. This failure to maintain the integrity of case property is a serious lapse that vitiates the entire recovery process. In prosecutions involving recovery of currency or contraband, sealing of the property is

essential to ensure that what is produced in court is what was allegedly recovered from the accused.

15. The memo of seizure was not prepared at the spot of the alleged recovery. Though the prosecution claims that the seizure memo was prepared on the spot, the evidence reveals otherwise. No time is mentioned in the seizure memo indicating when it was prepared, no specific location is noted, and the circumstances surrounding its preparation are shrouded in ambiguity. The failure to prepare the seizure memo immediately at the place of occurrence and in the presence of independent witnesses renders it an afterthought document prepared to suit the prosecution narrative. The articles recovered from the accused persons, particularly the two mobile phones and sim cards, were not subjected to forensic science laboratory examination at the time of their recovery or immediately thereafter. Although the prosecution subsequently produced forensic reports, the I.O admitted that he did not send voice recordings of accused persons to the forensic laboratory for verification, thereby undermining the authenticity and evidentiary value of the USB containing alleged conversations. Without forensic authentication, the voice recordings cannot be relied upon to establish the identity of the speakers or the genuineness of the conversations.

16. The bus driver Abdul Majeed, who was the only independent person present throughout the incident and who could have corroborated or contradicted the prosecution version, was not examined at trial despite his statement having been recorded. His deliberate non-production, coupled with the admission by the I.O that his statement contradicts the prosecution case on material particulars, creates a fatal gap in the evidence. The articles allegedly recovered, including the specific amounts of foreign and Pakistani currency, two mobile phones, and the black school bag, were neither fully described in the memo nor produced before the court in their entirety. The I.O and complainant admitted that during body search some amount was recovered from

the pockets of both accused, yet this recovery is not mentioned in the memo of personal search or in the FIR. The complainant admitted that at the time of arrest of accused persons, tickets of the coach were not recovered, and the I.O similarly admitted that tickets of coach were not recovered from the possession of both accused. This absence of bus tickets from passengers allegedly traveling in a commercial coach seriously undermines the prosecution claim that the accused were passengers in the vehicle.

17. The FIR does not bear any signature of the complainant SI Nadir Ali, which is a mandatory requirement under Section 154 Cr.P.C. The complainant admitted during cross-examination that FIR does not show my signature and voluntarily stated that it was registered on behalf of state and same is duly signed by investigation officer SI Sadam Hussain. The I.O attempted to justify this irregularity by stating that since this FIR is related to State matter and is registered on behalf of the State, hence signature of complainant is not necessary while his signature is available on the FIR. However, this explanation is legally untenable, as Section 154 Cr.P.C mandates that every information shall be signed by the person giving it. This procedural violation goes to the root of the case and casts serious doubt on whether the complainant actually gave the information or whether it was fabricated later. The FIR does not mention the time of occurrence with any specificity, nor does it provide clear details about when the raiding party reached the spot, when the recovery was made, and when the accused were arrested. Material contradictions exist between the FIR and the testimony of witnesses regarding the time of arrival at the place of incident, with the complainant stating 0730 hours while the I.O stated 0720 hours. This discrepancy on a crucial aspect undermines the credibility of the prosecution witnesses.

18. The statements of prosecution witnesses under Section 161 Cr.P.C were recorded on 6th December, 2023, after a delay of three days from the date of incident on 3rd December, 2023, without any plausible explanation. The I.O admitted during cross-examination that on the date of incident he had not recorded the statements of PWs under Section 161 Cr.P.C while he recorded

their statements on 06.12.2023, and that delay was due to non-availability of some witnesses and other reasons, but this reason of delay is not explained in the statements of PWs. In *Rahat Ali v. The State* (2010 SCMR 584), the Hon'ble Supreme Court held that when statements of witnesses under Section 161 Cr.P.C are not recorded at proper time, it is fatal to the prosecution, and unexplained delay in recording statements provides opportunity for witnesses to improve upon their testimony and renders their evidence unreliable. Similarly, in the case of *Muhammad Akram v. The State* (2009 SCMR 230), it was held that material contradictions in prosecution evidence on essential features of the case create doubt which must be resolved in favor of the accused.

19. Applying the settled principles of criminal jurisprudence to the facts of this case, it becomes abundantly clear that the prosecution has failed to discharge its burden of proving the charge beyond reasonable doubt. The Hon'ble Supreme Court in *Muhammad Abid Hussain v. The State* (2025 SCMR 721) has categorically held that given the gravity of penalties prescribed under special statutes, the standard of proof required to establish guilt must be correspondingly high, and prosecution must demonstrate beyond reasonable doubt that accused was in possession of illicit material and that modern devices and techniques must be used in collection of evidence. In *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), the Supreme Court granted bail observing that where prosecution case hinges entirely on police testimony uncorroborated by independent witnesses or modern technological evidence such as video recordings, the benefit of doubt must be extended to the accused even at the bail stage. In *Muhammad Asif v. The State* (2017 SCMR 486), the Apex Court held that once prosecution witnesses contradict each other on material aspects, and best evidence is withheld without explanation, the conviction cannot be sustained.

20. In *Abdul Wahid v. The State* (2022 SCMR 1954), the Hon'ble Supreme Court observed that where accused is not nominated in the crime

report and evidence against him is based on subsequent disclosure statements not recorded under Section 164 Cr.P.C, coupled with absence of recovery from his possession, the case cannot be proved beyond doubt. This principle applies with full force to the case of appellant Zubair Asghar, who was not named in the FIR, was not present at the spot, was not mentioned in the Section 161 statements of eye witnesses, and from whose possession no recovery was made.

21. In the case reported as *Muhammad Naeem v. The State* (2012 YLR 1228), it has been held that material contradictions between prosecution witnesses on essential aspects of the case, coupled with procedural irregularities and non-compliance with mandatory legal requirements, entitle the accused to acquittal. Similarly, in case of *Tarique alias Kaloo v. The State* (2020 MLD 1883), it was observed that failure to seal recovered property and maintain chain of custody creates reasonable doubt about the authenticity of case property and prosecution version. The cumulative effect of all these deficiencies, omissions, contradictions, and procedural violations is that the prosecution has failed to establish the charge against the appellants beyond reasonable doubt. Each infirmity standing alone is sufficient to create doubt, and when viewed cumulatively, they render the prosecution case entirely untrustworthy and unworthy of credence. The benefit of doubt, which is not a matter of grace or concession but a matter of legal right, must be extended to all three appellants. The impugned judgment of the learned trial court, being based on defective evidence and suffering from non-application of correct legal principles, cannot be sustained and is liable to be set aside.

22. The prosecution witnesses provided materially inconsistent timings regarding when the raiding party reached the place of incident. The complainant PW-1 SI Ndir Ali deposed in his examination-in-chief that they reached at the aforesaid premises at 0730 hours, which is also mentioned in the FIR. However, the Investigation Officer PW-3 SI Sadam Hussain stated in his examination-in-chief that they reached at pointed place at about 0720 hours and saw that the

coach namely Ravi bearing Registration number was coming from Bahawalpur Punjab side at 0720 am. When confronted with this contradiction during cross-examination, the IO admitted that “it is correct to suggest that contents of the FIR shows that we reached at the place of incident at 7.30 am”. Material contradiction exists regarding which accused person was holding the recovered black school bag. PW-1 Complainant SI Nadir Ali stated in his examination-in-chief that we found small school bag of black colour was in possession of both accused persons, suggesting joint or shared possession. However, PW-2 Mashir HC Sohail Ahmed stated categorically in his examination-in-chief that recovered bag was in hands of accused Qamar Shahzad, indicating exclusive possession by one accused. When the Investigation Officer was cross-examined on this point, he stated that the recovered bag was in joint possession of both arrested accused. These varying accounts create serious doubt about the actual circumstances of recovery.

23. A fundamental irregularity exists in that the FIR does not bear the signature of the complainant SI Nadir Ali Simair, which is mandatory under Section 154 Cr.P.C. The complainant himself admitted during cross-examination that “it is correct to suggest FIR does not show my signature and voluntarily says that it was registered on behalf of state and same is duly signed by investigation officer SI Sadam Hussain”. The IO attempted to justify this by stating during cross-examination that since this FIR is related to State matter and is registered on behalf of the State hence signature of complainant is not necessary while my signature is available on the FIR. However, this explanation has no legal basis as Section 154 Cr.P.C mandates that every information shall be signed by the person giving it. The prosecution case is that accused Qamar Shahzad and Muhammad Zeeshan were traveling as passengers in Raavi Coach from Bahawalpur to Sukkur. However, no bus tickets were recovered from either accused. The complainant admitted during cross-examination that at the time of arrest of accused persons’ tickets of couch were not recovered. The I.O

similarly admitted that tickets of couch were not recovered from the possession of both accused and voluntarily stated that said couch was local. This absence of tickets seriously undermines the prosecution narrative that the accused were passengers in the coach.

24. The evidence regarding the third accused Zubair Asghar contains serious contradictions. The I.O admitted during cross-examination that “it is correct to suggest that PWs in their statements us 161 Cr.P.C have not deposed against third accused namely Zubair Asghar”. Inspector Shahzeb admitted during cross-examination that at the spot, arrested accused persons did not disclose the name of third co-accused Zubair Asghar. The I.O further admitted “I did not produce the PWs before the Court of law for recording their 164 Cr.P.C statements in respect of accused Zubair Asghar.” Most significantly, the I.O admitted “during investigation I did not found joint bank account of arrested accused and accused Zubair Asghar”. The I.O also admitted “it is correct to suggest that I have not sent voice record of accused person to forensic lab”, thereby undermining the evidentiary value of the voice recordings. The I.O admitted during cross-examination that “since I have obtained forensic report of recovered mobile phone from cyber crime Sukkur in which recovered information was received hence there was no need to collect CDR of arrested accused”. This explanation is unsatisfactory because Call Detail Records would reveal communications with other persons involved in the alleged illegal business, which forensic examination of mobile phone data alone cannot establish.

25. The trial court, in the impugned judgment, has devoted considerable discussion to the economic impact of Hawala/Hundi operations on the national exchequer and foreign reserves, stating that "such acts not only deprive the State of lawful revenues in the form of taxes, duties, and transaction levies, but also undermine the strength and value of the local currency, distort the balance of payments, and facilitate the unchecked flow of illicit funds".

While the legislature has rightly criminalized unauthorized foreign exchange transactions, the trial court has erred in treating this case as involving large-scale organized Hawala/Hundi operations without any evidence of actual remittances being made. The mere possession of foreign currency, even in substantial quantity, without proof of its illegal source or intended illegal use, does not ipso facto establish commission of offense under Section 23 FERA.

26. The trial court has failed to appreciate that the recovered amounts (USD 20,700 and SAR 147,900) are not of such magnitude as would indicate an organized money laundering or *Hawala* operation. Many legitimate traders and travelers routinely carry such amounts for business purposes. The cardinal principle of criminal jurisprudence is that the prosecution must prove its case beyond reasonable doubt. The burden never shifts to the accused to prove his innocence. In the instant case, the prosecution has failed to prove even the basic ingredients of the offense, namely: That the accused were engaged in unauthorized foreign exchange business; that the recovered currency was meant for illegal Hawala/Hundi operations; that the accused lacked authorization from the State Bank of Pakistan; that the recovered currency was actually recovered from the exclusive possession of the accused.

27. The Hon'ble Supreme Court of Pakistan in *Muhammad Mansha v. The State* (2018 SCMR 772) has held:

"It is by now well-settled that even if a single circumstance creating doubt in the prosecution story remains un-explained, the accused is entitled to the benefit of doubt, not as a matter of grace or concession, but as a matter of right."

28. In the present case, multiple circumstances create doubt, each one sufficient to entitle the appellants to acquittal. It is settled principle of law that where the prosecution deliberately withholds best evidence available to it and produces inferior or secondary evidence, adverse inference is to be drawn against the prosecution. The non-production of bus driver Abdul Majeed in particular and other passengers who were the independent witnesses, constitutes deliberate withholding of best evidence.

29. The Hon'ble Supreme Court in *Muhammad Akram v. The State* (2009 SCMR 230) held:

"Material contradictions in prosecution evidence on essential features of the case create doubt which must be resolved in favor of the accused."

30. After careful analysis of the entire record, it is apparent that prosecution case is based entirely on interested official witnesses without independent corroboration, is riddled with contradictions and material omissions, suffers from deliberate suppression of best evidence, and fails to establish the charge beyond reasonable doubt. Therefore, it is opined that the impugned judgment warrants setting aside, and the appellants are entitled to acquittal as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, the impugned judgment is hereby set-aside. Appellants shall be released forthwith if not required in any other custody matter. The case property viz \$20,700 USD, 147,900 Saudi Riyals, and Rs.26,000 PKR being not claimed by the appellants has already been confiscated by the learned Trial Court in the impugned judgment, with directions to the complainant and I.O to submit such proof of deposit of currency in Government exchequer. However, no such proof has been submitted, as pointed out by learned Assistant Attorney General. Learned trial Court to ensure deposit thereof, in proper head within 15 days on receipt of this judgment; such deposit slip be acknowledged to the Additional Registrar of this Court. The copy of this judgment be sent to learned trial court for information/compliance.

J U D G E