

PRESENTED ON

06-01-2025

Deputy Registrar

IN THE HIGH COURT OF SINDH AT
KARACHI

Cr. Appeal No. 22, /2024

Anwar Zaib Khan
S/o Taj Muhammad Jameel
Muslim, adult, resident of
House No.1493, Area Bilal Colony,
Landhi, Karachi, presently confined in
District Prison, Landhi, Malir,
Karachi.-----APPELLANT

VERSUS

The State-----RESPONDENT

FIR # 264/2024
U/S: 397/34 PPC
P.S: Saudabad.

APPEAL AGAINST CONVICTION UNDER SECTION
410 CRIMINAL PROCEDURE CODE.



9
103

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.22 of 2025

Present: Mr. Justice Jan Ali Junejo


For Appellant: Mr. Amanullah, Advocate

For State: Mr, Syed Mumtaz Ali Shah, APG a/w with
Complainant

Date of hearing: 18-03-2025

Date of Judgment: 18-03-2025

JUDGMENT



Jan Ali Junejo, J.— Through this Criminal Appeal, the appellant, Anwar Zaib Khan S/o, Taj Muhammad Jameel, has impugned the judgment dated 31.12.2024 (hereinafter referred to as the "Impugned Judgment"), passed by the learned IVth Additional Sessions Judge, Karachi East (hereinafter referred to as the "Trial Court"), in Sessions Case No.2532/2024, arising out of FIR No.264/2024 registered at P.S. Saudabad, Karachi, whereby he was convicted under Section 397 of the Pakistan Penal Code (PPC) and sentenced to seven years of rigorous imprisonment with benefit of Section 382-B, Cr.P.C.

2. The prosecution case, in brief, is that on 14.06.2024, at around 2200 hours, the complainant, Muhammad Ali Khan, along with his friend Awais Ur Rehman, was sitting outside House No. A-349, Ghousia Market, Malir Karachi, when three unknown persons arrived on a motorcycle. One of them, allegedly the appellant, Anwar Zaib Khan, pointed a 30-bore pistol at the

complainant and snatched his mobile phone (E-4 model) and cash amounting to Rs. 2,500/-. Similarly, his friend was also deprived of his mobile phone (Motorola 5G-1). As the accused attempted to flee, the complainant and his companion raised hue and cry, attracting members of the general public. Two of the co-accused managed to escape on the motorcycle, whereas the appellant was overpowered and apprehended by the public. During the struggle, the appellant was subjected to physical assault by the public, and some individuals also sustained minor injuries in the process.

3. The police party, led by ASI Mumtaz Ahmed, arrived at the scene and took the appellant into custody. A 30-bore pistol loaded with three live rounds, along with the robbed articles, was recovered from the possession of the appellant. The arrest and recovery were attested by private witnesses, including the complainant himself. The recovered weapon was sent for forensic examination, and the Forensic Science Laboratory (FSL) report confirmed that the weapon was in working condition.



4. At trial, the prosecution examined the following witnesses:

- **PW-1 Muhammad Ali Khan (Complainant):** He deposed about the incident and identified the accused. He also attested the **memo of arrest and recovery (Exhibit 3/A)** and the **site inspection memo (Exhibit 3/B)**. He further testified that the appellant, **Anwar Zaib Khan**, was the one who pointed the pistol at him and snatched his mobile phone and cash. He also identified the recovered items, including the pistol and the mobile phone, during the trial.
- **PW-2 Awais-Ur-Rehman (Eyewitness):** He corroborated the complainant's version and confirmed the presence of the appellant at the crime scene. He testified that the appellant was the one who robbed him of his mobile phone and also participated in the robbery of the complainant.
- **PW-3 ASI Mumtaz Ahmed (Arresting Officer):** He narrated the details of the arrest, the recovery of the weapon and robbed articles, and the preparation of documents, including the **FIR (Exhibit**

5/B), memo of arrest and recovery (Exhibit 3/A), and site inspection memo (Exhibit 3/B). He also testified that the appellant sustained minor injuries during the public assault and was taken to the hospital for medical treatment.

- **PW-4 ASI Abdul Latif (Investigating Officer):** He produced the relevant police entries (Exhibits 6/B and 6/C), the letter for depositing the weapon at the forensic lab (Exhibit 6/E), and the FSL report (Exhibit 6/F). He also testified that the investigation was conducted fairly and that the appellant was identified by the complainant and the eyewitness.
- **PW-5 ASI Umar Daraz (Author of FIR):** He recorded the FIR and produced supporting documents (Exhibits 7/A and 7/B).

All the witnesses remained consistent in their depositions, supporting the prosecution case. The defense counsel cross-examined them at length but failed to bring any material contradictions that could discredit their testimony. In his statement recorded under Section 342 Cr.P.C, the appellant denied the allegations and claimed false implication. However, he neither opted to depose on oath under Section 340(2) Cr.P.C nor produced any defense witnesses.

5. The learned counsel for the appellant contended that the impugned judgment was flawed in law and liable to be set aside. He argued that the appellant was falsely implicated, as he had an altercation with the police at Malir Bridge due to a minor traffic incident, which led to police aggression. He further asserted that the appellant sustained gunshot injuries at the hands of the police, which were deliberately concealed during the trial. The medical report from the Jail Superintendent corroborated the appellant's injuries, yet the trial court ignored this crucial evidence. Additionally, the learned counsel highlighted contradictions in the prosecution's case, particularly regarding the alleged recovery of articles and the manner of arrest. He emphasized that the police's version was dubious,



108

as no independent witnesses were included, and the complainant's statements contained inconsistencies. He prayed for the appellant's acquittal by arguing that the prosecution had failed to establish guilt beyond a reasonable doubt.

6. Per contra, the learned Additional Prosecutor General (APG) argued that the prosecution had successfully proved its case beyond any reasonable doubt through the testimonies of eyewitnesses and supporting documentary evidence. He maintained that the appellant was caught red-handed while attempting to escape, and the recovery of the robbed items and the weapon was duly attested by independent witnesses. The forensic report confirmed that the weapon was in working condition, further strengthening the prosecution's case. He submitted that minor contradictions in witness statements were immaterial and did not affect the core prosecution story. He asserted that the appellant's claim of police maltreatment was an afterthought designed to escape liability and, therefore, prayed for the dismissal of the appeal.



7. I have carefully reviewed the arguments presented by the Appellant's counsel and the learned Additional Prosecutor General (APG) for the State, as well as the evidence on record. The examination of the record reveals that the appellant was apprehended at the crime scene while attempting to flee. The recovery of robbed items and the weapon from his possession, supported by the testimony of independent witnesses and a forensic report confirming the functionality of the pistol, unequivocally establishes his involvement in the crime. The appellant's presence at the scene is further substantiated by the injuries he sustained, as well as those suffered by members of the public during his arrest. The prosecution has thoroughly examined all witnesses,

107

including the private complainant, none of whom demonstrated any ill-will or enmity toward the appellant. The evidence presented by the prosecution is clear, reliable, and credible. Despite extensive cross-examination, no evidence emerged to favor the appellant. In this case, the prosecution has convincingly proven its case beyond a reasonable doubt, supported by direct evidence as well as medical and forensic corroboration. Courts have consistently emphasized that the substance and reliability of evidence outweigh minor inconsistencies, as long as the core aspects of the testimony remain consistent and truthful. The decisive test is whether the witness's account, when evaluated in its entirety, inspires confidence. Only discrepancies that fundamentally undermine the prosecution's case or relate to critical facts warrant judicial intervention in favor of the defense. Courts must adopt a holistic approach in assessing evidence, ensuring that immaterial variances—such as minor descriptive inconsistencies or non-critical procedural irregularities—do not lead to the rejection of otherwise credible evidence. This principle is reinforced in *Nazir Ahmed v. The State* (2023 SCMR 1299), which affirms that inconsequential discrepancies do not invalidate a prosecution case if the evidence remains persuasive and consistent with the charges. The impugned judgment passed by the learned trial court is well-reasoned and cannot be interfered with, as no illegality, material irregularity, misreading, or non-reading of evidence has been established against the learned trial Court. The appellant was caught red-handed at the crime scene while attempting to escape. The recovery of the robbed articles and the weapon from his possession, coupled with the presence of independent witnesses and the forensic report confirming the



working condition of the pistol, leaves no room for doubt regarding his involvement in the crime.

8. In view of the foregoing, we find no merit in the appeal. The learned trial Court has correctly appreciated the evidence and law while convicting the appellant. Consequently, the present appeal stands dismissed, and the conviction and sentence awarded by the learned trial Court are upheld.



[Signature]
JUDGE

THE HIGH COURT OF SINDH, KARACHI
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