

**8IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Revision Application No. 277 of 2022

Applicant : Nadeem Baloch through  
Mr. Ghulam Fareed Baloch, Advocate.

Respondent : The State through Mr. Qamaruddin Nohri,  
Deputy Prosecutor General Sindh.

Date of hearing : 22.4.2026.

Date of order : 22.4.2026.

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

**TASNEEM SULTANA, J** :- Through this Criminal Revision Application under Sections 435 and 439 Cr. P.C., the appellant Nadeem Baloch has called in question the Judgment dated 27.10.2022 passed by the learned Civil Judge & Judicial Magistrate-XVII (South), Karachi in Criminal Case No.7192 of 2021, "The State v. Nadeem Baloch", arising out of Crime No.132 of 2021, registered under Section 223/224 PPC at Police Station City Court, Karachi, whereby he was convicted under Section 223 PPC and sentenced to simple imprisonment for one year with the benefit of Section 382-B Cr. P.C. Being aggrieved, the appellant preferred Criminal Appeal No.60 of 2022, which was dismissed by the learned Additional Sessions Judge-V, Karachi South, vide Judgment dated 22.11.2022, hence the instant Criminal Revision Application has been filed for setting aside the impugned Judgments and for acquittal of the appellant of the charge.

2. Brief facts of the prosecution case are that on 06.10.2021, two accused, namely Zafar and Fahad, were arrested in Crime No.488/2021 under Section 381-A PPC by Chakiwara Police Station, and a stolen motorcycle was recovered from their possession. On 07.10.2021, the Investigating Officer, the present appellant SIP Nadeem Baloch, obtained their custody from Sher Shah Police Station and brought them to City Courts, Karachi, for production before the learned Judicial Magistrate, Consumer Protection Court, District South, Karachi. During such custody, both accused were taken to a washroom near the Bar Room, while the appellant remained outside, and in the meantime, accused Zafar removed his handcuffs and escaped. Despite efforts, the absconder could not be

traced, whereafter an FIR was lodged against him at Police Station City Court, Karachi, alleging negligence on his part.

3. After completion of usual investigation, the report under Section 173 Cr. P.C. was submitted against the appellant, and he was sent up to face trial before the competent Court of law.

4. A formal charge was framed against the appellant at Exh:2, to which he pleaded not guilty and claimed trial, his plea was recorded at Exh:2/A.

5. In order to substantiate the charge, prosecution examined P.W-1 SIP Ali Asghar at Exh.3, P.W-2 SIP Mukhtiar Ahmed at Exh.4, P.W-3 ASI Raja Sagheer at Exh.5, PW-4 S.I Shaikh Muhammad Arif at Exh.6. P.W-5 S.I Taj Nabi at Exh.7. Thereafter, the prosecution gave up P.C Muhammad Saleem at Exh.8 and closed its side vide statement at Exh.9.

6. The statement of the accused under Section 342 Cr. P.C was recorded at Exh.10, wherein he denied the allegations leveled against him. He did not opt to record his statement on oath under Section 340(2) Cr. P.C, nor did he lead any evidence in his defence. He specifically denied that the escape of accused Zafar occurred due to his negligence and asserted that entry No.49 is false. Lastly, he claimed innocence and prayed for his acquittal.

7. On conclusion of trial, learned trial Court convicted and sentenced the appellant, which was maintained in appeal, hence the same has been assailed before this Court through the instant Criminal Revision Application.

8. Learned counsel for the appellant contends that the appellant is innocent and has been falsely implicated with malafide and ulterior motives; that the prosecution has failed to prove negligence on his part; that no police constable or supporting staff was actually provided to him for production of the accused before the Court, as admitted during investigation; that no effective arrangements were made by the department for safe custody and production of the accused, and any responsibility, lies upon superior officers; that Entry No.24, under which custody of the accused was handed over to the appellant, does not bear his signature; that the alleged escape occurred due to lack of proper arrangement and not due to any negligence on his part; that the said accused was re-arrested on the following day; that all prosecution witnesses are police officials and no independent witness has been examined; that the appellant has no previous criminal record; and

that the impugned judgments are against law and facts, arbitrary and liable to be set-aside.

9. Conversely, learned D.P.G. supported the impugned judgments and contends that the appellant being responsible for the custody of the under-trial prisoner failed to exercise due care, thus his negligence stands established on record.

10. Heard. Record perused.

11. A careful appraisal of the prosecution evidence shows that the case rests primarily upon two material witnesses, namely PW-2 complainant Mukhtiar Ahmed and PW-5 Investigating Officer Taj Nabi Khan. PW-2 Mukhtiar Ahmed deposed that on 07.10.2021, through entry No.24, he handed over a police mobile along with SI Muhammad Arif, PC Saleem and PC Abdul Rasheed, who vide entry No.49 took custody of both accused from P.S Sher Shah for their production before the concerned Court; however, according to him, the appellant proceeded alone on a motorcycle with the accused and did not respond to calls made by PW 2, P.C. Saleem and P.C. Abdul Rasheed. He further stated that appellant later brought the accused to City Court where one accused, Zafar, escaped from his custody, and thereafter he returned with the co-accused and that thereafter, the appellant was arrested and booked in the instant case.

12. Perusal of the cross-examination of P.W-2 reveals material infirmities going to the root of the prosecution case. He admitted that the signatures of the appellant do not appear on entry No.24 as well as entry No.49, thereby rendering such documentary evidence doubtful. He further deposed that a police mobile along with police officials, namely P.C. Saleem, P.C. Abdul Rasheed and SI Shaikh Muhammad Arif, had been provided to the appellant; however, he failed to substantiate this assertion through any independent record. Rather, P.W. Shaikh Muhammad Arif did not support the prosecution case regarding the escape. P.W-2 also conceded that the CDR was not produce to support his assertion that he, PC Saleem and PC Abdul Rasheed contacted appellant but he did not respond to their calls when he proceeded alone on motorcycle accompanying accused to city courts for remand. He further admitted that neither of said officials was produced as witness the buckle numbers of the constables allegedly deputed were not mentioned, and the record does not reflect his presence on duty at the relevant time. He further admitted that the handcuffs allegedly used were not produced before the Court and that the escape occurred due to "loose handcuffs," which creates

doubt as to the manner of escape. His admission regarding overwriting in the relevant entries further casts doubt upon the authenticity of the record. Additionally, he acknowledged that although two constables were stated to be on duty, one reported later, thereby creating a contradiction as to whether any effective assistance was actually available to the appellant

13. The testimony of P.W-5, the Investigating Officer, also does not materially advance the case of the prosecution. He admitted during cross-examination that he did not associate any independent witness at any stage of the investigation, nor did he produce any documentary material to show that a police mobile or supporting staff was provided to the appellant. He further conceded that the record does not show that the appellant had been supplied with handcuffs in proper working condition or that any standard operating procedure was followed for safe custody of the accused. The Investigating Officer also did not explain the overwriting in the relevant entries, nor did he secure or produce the handcuffs allegedly used at the time of the incident. He further admitted that no independent corroboration was available in support of the prosecution case and that the roznamcha entries No.24 and 49 suffer from discrepancies. These omissions, coupled with the admissions of P.W-2, create serious doubt regarding the manner in which the alleged escape occurred and the role attributed to the appellant. The contradictions regarding provision of police assistance and lack of supporting record further weaken the prosecution case. In such circumstances, the prosecution evidence does not sufficiently establish negligence on the part of the appellant with the degree of certainty required in criminal cases.

14. The governing legal provision forming the basis of the prosecution case, i.e., Section 223, P.P.C., reads as under:

“223. Escape from confinement or custody negligently suffered by public servant: Whoever, being a public servant, legally bound as such to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

The expression “negligently” is the cornerstone of this provision. The prosecution is required to establish, through cogent and reliable evidence, that the escape was the direct consequence of negligence attributable to the accused public servant. Negligence, as a term of art, denotes failure to exercise the degree of care, skill and diligence required in the

circumstances. Where the escape is caused or materially contributed to by the default of other functionaries, the prosecution cannot shift the entire blame upon the accused without proving his individual culpable omission. The burden lies upon the prosecution to prove its case beyond reasonable doubt, and every doubt must be resolved in favour of the accused. Reliance is placed on *Muhammad Yaqoob v. The State (PLD 2001 SC 378)*, wherein it has been held that negligence in criminal proceedings must be proved through definite and concrete evidence and cannot be presumed.

15. I am conscious of the fact that two Courts have decided the case against the appellant and that the scope of revisional jurisdiction in such circumstances is limited. However, where the findings of fact affecting the decision are not based on the evidence or are the result of misreading or non-reading of the evidence on record, such jurisdiction is to be exercised for correction of manifest illegality or prevention of miscarriage of justice. In such circumstances, it is not merely a power but a duty of this Court to examine the record to satisfy itself as to the correctness, legality and propriety of the findings recorded by the Courts below.

16. Applying the above principles to the facts of the present case, it becomes evident that the prosecution has not been able to establish that the escape of the accused was the direct consequence of negligence attributable to the appellant. The evidence brought on record suffers from material contradictions and lacks independent corroboration, while the documentary entries relied upon by the prosecution remain doubtful. In these circumstances, the element of "negligence," which forms the foundation of the offence under Section 223, P.P.C., is not made out with the degree of certainty required in criminal cases.

17. The record reflects multiple material infirmities which have not been properly appreciated by the Courts below. The prosecution has failed to establish that a police mobile or adequate staff was in fact provided to the appellant, while the roznamcha entries relied upon remain uncorroborated and do not by themselves constitute proof. Although one of the officials, namely SIP Muhammad Arif, was examined, his testimony does not lend support to the prosecution version on material aspects, while the remaining alleged accompanying constables were not examined nor was their absence explained, thereby warranting an adverse inference against the prosecution. No custody receipt or handing-over memo was produced, and the evidence regarding the use of handcuffs and adherence to standard operating procedures is lacking. Despite the occurrence having taken place

at a public place, no independent witness was associated. These omissions and contradictions, when considered cumulatively, create serious doubt regarding the manner of occurrence and the role attributed to the appellant.

18. It is further noted that no departmental or criminal action was initiated against other officials allegedly responsible for assisting in the custody of the accused, which raises doubt as to whether the responsibility could be attributed exclusively to the appellant. Moreover, the delay in lodging the FIR has not been satisfactorily explained, which, in the facts of the present case, adds to the doubt. Both Courts below appear to have proceeded on the assumption that mere presence of the appellant at the time of escape was sufficient to establish negligence; however, such an approach is legally flawed, as Section 223, P.P.C. requires proof that the escape occurred as a direct consequence of negligence attributable to the accused.

19. The principle of benefit of doubt is a fundamental rule of criminal jurisprudence, which applies whenever any reasonable doubt arises regarding a material aspect of the prosecution case; even a single circumstance creating doubt entitles the accused to acquittal. In the present case, the cumulative effect of the deficiencies discussed above creates reasonable doubt; reliance is placed on ***Tariq Pervez v. The State (1995 SCMR 1345)***, ***Muhammad Mansha v. The State (2018 SCMR 772)***, ***Ghulam Qadir v. The State (2008 SCMR 1221)***, and ***Muhammad Akram v. The State (2009 SCMR 230)***.

20. In view of the foregoing discussion, this Court is of the considered opinion that the prosecution has not been able to establish the guilt of the appellant beyond reasonable doubt; consequently, the concurrent judgments dated 27.10.2022 passed by the learned Civil Judge & Judicial Magistrate-XVII (South), Karachi, and upheld vide judgment dated 22.11.2022 by the learned Additional Sessions Judge-V, Karachi South, are set aside; the conviction and sentence recorded under Section 223, P.P.C. are also set aside; the appellant is acquitted of the charge on the benefit of doubt. He is present on bail; his bail bond stands cancelled and surety is discharged. Record and proceedings be transmitted to trial Court.

**JUDGE**