

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 470 of 2025.

Appellant : Zakir through Mr.Shakeel Ahmed, Advocate.
Respondent : The State, through Mr. Ali Raza, Assistant P.G Sindh
Date of Hearing : 27.01.2026.
Date of Judgment : 27.01.2026.

JUDGMENT

TASNEEM SULTANA, J.— Through the instant criminal appeal, appellant Zakir son of Sahib Dino has assailed judgment dated 07.07.2025, passed by the learned I-Additional Sessions Judge/Model Criminal Trial Court (MCTC), Karachi West, in Sessions Case No.1384 of 2022, arising out of Crime No.74 of 2022 registered at P.S. Docks, Karachi, under Sections 392, 397 and 34 of the Pakistan Penal Code, whereby he was convicted under Sections 392 and 397 read with Section 34, P.P.C. and sentenced to suffer rigorous imprisonment for life under Section 397, P.P.C. and rigorous imprisonment for seven (07) years under Section 392, P.P.C., with both sentences to run concurrently. He was also directed to pay fine of Rs.50,000/- and, in default thereof, to undergo simple imprisonment for six (06) months. Benefit of Section 382-B, Cr.P.C. was extended to him.

2. Brief facts of the prosecution case are that on 04.02.2022, at about 2100 hours, complainant Shah Jahan lodged the F.I.R., stating therein that earlier in the day, after returning from Juma prayers, he received a telephone call from his wife, who informed him that between 1330 and 1400 hours, four unknown armed persons entered their house situated at Muhammadi Colony, near Makan Hospital, UC-42, Machar Colony, Karachi. They kept his wife Mst. Zahroon Khatoon and his 13-year-old son Saeed Hussain at gunpoint and forced his wife to open the almirah and disclose the valuables. It was alleged that the culprits took away four mobile phones, comprising two Vivo handsets, one Tecno handset and one ITEL handset, along with their boxes; 14 tolas of gold ornaments; cash amounting to Rs.1,345,000/-; cheques valuing more than Rs.22,00,000/-; and one licensed 9mm pistol with its original licence. The looted articles were put in the school bag of the complainant's son, whereafter the culprits escaped. The complainant's wife thereafter contacted him through the mobile phone of a neighbour and narrated the incident, whereupon he reported the matter to police.

3. On 02.04.2022, about two months after the incident, the complainant received spy information that one of the robbers was present near the Fisheries area. The complainant, along with PW-3 Abdul Khalique, contacted the Investigating Officer and proceeded to the said place, where the informer identified accused Zakir Ahmed son of Sahib Dino as one of the culprits. The police apprehended him and, upon search, allegedly recovered one touch-screen mobile phone and cash amounting to Rs.1,100/- from his possession. Memo of arrest and recovery was prepared at the spot in the presence of the complainant and PW Abdul Khalique.

4. After arrest of the accused, test identification parade was conducted by Civil Judge and Judicial Magistrate-XVIII, Karachi West. During such proceedings, PWs Saeed Hussain and Zahroon Khatoon identified accused Zakir Ahmed and also described the role allegedly attributed to him in the commission of the offence. Thereafter, the police submitted final charge-sheet under Section 173, Cr.P.C. The requisite documents having been supplied to the accused in terms of Section 265-C, Cr.P.C., charge was framed against him at Ex.02, to which he pleaded not guilty and claimed trial.

5. To prove its case, the prosecution examined complainant Shah Jehan as PW-1 at Ex.03, who produced F.I.R., memo of site inspection and memo of arrest and recovery as Ex.03/A to Ex.03/C. PW-2 Saeed Hussain was examined at Ex.04, PW-3 Abdul Khalique at Ex.05 and PW-4 Zahroon Khatoon at Ex.06. PW-5 SIP Umer Hayat was examined at Ex.08, who produced letter addressed to A.I.G.P. Forensic Division, FSL report, letter addressed to SHO P.S. Docks and non-bailable warrant as Ex.08/A to Ex.08/D. PW-6 Civil Judge and Judicial Magistrate Zohaib Hussain was examined at Ex.09, who produced letters regarding identification parade and memo of identification parade as Ex.09/A to Ex.09/C. Thereafter, learned D.D.P.P. for the State closed the prosecution evidence through statement at Ex.10.

6. The statement of the accused under Section 342, Cr.P.C. was recorded at Ex.11, wherein he denied the allegations levelled against him, claimed innocence and pleaded false implication. He, however, did not examine himself on oath under Section 340(2), Cr.P.C. nor produced any evidence in his defence.

7. After hearing learned counsel for the appellant and learned A.D.P.P. for the State, the learned trial Court convicted and sentenced the appellant, as mentioned above, vide impugned judgment.

8. Learned counsel for the appellant contended that the impugned judgment is the result of misreading and non-reading of evidence; that the prosecution failed to prove its case against the appellant beyond reasonable doubt; that PW-2 and PW-4, being related witnesses, their evidence required careful scrutiny and independent corroboration; that the identification parade suffered from serious

defects and was unsafe to rely upon; that the original Investigating Officer SIP Muhammad Zaman was not produced before the trial Court; that PW-5 SIP Umer Hayat was not a handwriting or signature expert, therefore, his verification of documents prepared by the original I.O. could not be safely relied upon; that there were material contradictions and omissions in the prosecution evidence; that the allegedly robbed articles, particularly gold ornaments, licensed 9mm pistol, cheques and any of the four mobile phones belonging to the complainant, were not recovered from the appellant; and that the appellant is entitled to benefit of doubt. He, therefore, prayed that the impugned judgment be set aside and the appellant be acquitted.

9. Conversely, learned A.P.G. for the State supported the impugned judgment and contended that the prosecution had proved its case beyond reasonable doubt; that PW-2 and PW-4 were natural witnesses; that the identification parade was conducted in accordance with law; and that the learned trial Court rightly convicted and sentenced the appellant. She, therefore, prayed for dismissal of the appeal.

10. Heard. Record perused.

11. On reappraisal of the evidence, it appears that the prosecution has established the occurrence; however, the material question is whether it has proved beyond reasonable doubt that appellant Zakir was one of the culprits. The appellant was not nominated in the F.I.R., which was lodged against four unknown persons without mentioning any description or identifying particulars of the culprits. The appellant was allegedly arrested after about two months of the occurrence near the Fisheries area on spy information. The occurrence had taken place inside the house, whereas the informer was neither an eyewitness nor shown to be otherwise connected with the occurrence. It, therefore, remained unexplained as to how the informer identified the appellant as one of the robbers. In such circumstances, the prosecution case qua appellant mainly depended upon identification evidence, which required cautious appraisal.

12. The complainant Shah Jehan appeared as PW-1. He was admittedly not an eyewitness of the occurrence, as according to his own version, he had gone for Juma prayer and received information through his wife. His evidence may prove lodging of F.I.R. and subsequent proceedings, but it does not directly establish the identity of the persons who allegedly entered the house and committed robbery.

13. The prosecution mainly relied upon PW-2 Saeed Hussain and PW-4 Zahroon Khatoon. Both are natural witnesses of the occurrence, and their evidence may be accepted to the extent that robbery had taken place inside the house; however, their testimony qua identity and specific role of the appellant is not free from doubt. PW-2 stated before the trial Court that one person put pistol

on his head, took him to the first floor, took his mobile phone and made him sit facing the wall. He further stated that the said person and his companion took money and gold from the false ceiling and also took his father's pistol from the almirah. Significantly, he stated that the accused who had put pistol on his head was not available in Court, whereas appellant Zakir, who was present in Court, was described only as the companion of that accused inside the house. PW-4 gave a general account that four persons entered the house, put gun on her son, demanded valuables and took away mobile phones, cash and gold ornaments, but she did not assign any specific role to appellant Zakir by name in her examination-in-chief. She also admitted in cross-examination that after the incident she had seen accused Zakir for the first time in Court and had seen him inside the courtroom before the Judge. Thus, their testimony, to the extent of identity and specific role of the appellant, required independent corroboration.

14. In such circumstances, the test identification parade assumed material importance. The purpose of such parade is to test the memory and veracity of a witness who claims to have seen the culprit at the time of occurrence. Such proceedings are not substantive evidence by themselves; they are only corroborative of the evidence given by the witness before the Court. In **Re: Kanwar Anwaar Ali, Special Judicial Magistrate and another (PLD 2019 SC 488)**, the Hon'ble Supreme Court discussed the safeguards required for test identification proceedings so as to exclude the possibility of mistake or prior exposure. Although PW-6 Civil Judge and Judicial Magistrate Zohaib Hussain proved the identification proceedings and memo of identification parade, his evidence only establishes that such proceedings were conducted, but the evidentiary value of those proceedings still depends upon the substantive evidence of the identifying witnesses before the trial Court. In the present case, the identification memo shows that PW-4 identified appellant Zakir with the role that he pointed gun at her head, asked her to open the wardrobe and then took four mobile phones, one pistol and cash from the wardrobe. PW-2, being the second identifying witness, is shown to have identified appellant Zakir with the role that he, while armed with pistol, pointed pistol at his head, asked his mother about cash and then took cash from the false ceiling, besides four mobile phones and one pistol with its licence. Thus, the specific role recorded in the identification memo, particularly the role of pointing pistol at PW-2, is not supported by PW-2 in his substantive evidence before the trial Court, where he stated that the person who had put pistol on his head was not available in Court and appellant Zakir was only his companion.

15. The alleged recovery also does not connect the appellant with the offence. According to the F.I.R., the robbed articles were four mobile phones of Vivo, Tecno and Itel, gold ornaments weighing about 14 tolas, cash amounting to Rs.13,45,000/-, cheques valuing Rs.22,00,000/- and a licensed 9mm pistol. From

the appellant, only one touchscreen/Realme mobile phone and Rs.1,100/- were allegedly recovered. The prosecution did not produce any receipt, IMEI record, ownership document, box, identification memo or other reliable material to establish that the recovered mobile phone was one of the robbed articles. The gold ornaments, major cash amount, cheques and licensed pistol were not recovered from him. Such recovery, therefore, cannot be treated as corroboration of the appellant's participation in the robbery.

16. The forensic evidence is also of no assistance to the prosecution. Eleven latent impressions were lifted from the place of occurrence, but the FSL report did not connect the appellant with the crime scene. One impression was saved but did not match, while the remaining impressions were inconclusive. Thus, no scientific evidence supports the allegation that the appellant was present inside the house at the time of occurrence.

17. Another material infirmity is non-examination of the original Investigating Officer SIP Muhammad Zaman and the author of the F.I.R. SIP Jamshed Bangash. The prosecution examined PW-5 SIP Umer Hayat only as a witness conversant with the signatures of those officials. He admitted in cross-examination that he had merely verified their signatures, did not know the facts of the case and was neither handwriting expert nor signature expert. His evidence was formal in nature and could not prove material steps of investigation, including the circumstances of arrest, recovery, verification of the recovered mobile phone, collection of fingerprints and arrangements for identification parade.

18. It is settled law that, for extending benefit of doubt to an accused, it is not necessary that there should be numerous circumstances creating doubt. Even a single circumstance creating reasonable doubt in the mind of a prudent person regarding guilt of the accused is sufficient for granting such benefit. This benefit is not to be extended as a matter of grace or concession, but as a matter of right. In **Muhammad Mansha v. The State (2018 SCMR 772)**, the Honourable Supreme Court of Pakistan held as under:

“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, ‘it is better that ten guilty persons be acquitted rather than one innocent person be convicted’. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”

19. For the foregoing reasons, this appeal is allowed. The impugned judgment dated 07.07.2025 passed by the learned trial Court in Sessions Case No.1384 of 2022 is set aside. Appellant Zakir son of Sahib Dino is acquitted of the charge

under Sections 397 and 392, P.P.C., by extending him the benefit of doubt. He shall be released forthwith, if not required in any other custody case. These are the reasons for my short order dated 27.01.2026.

JUDGE