

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT
MIRPURKHAS**

Criminal Appeal No. S-21 of 2026

Appellant : Meeral son of Ali Nawaz @ Ayo Mari,
Through Mr. Abdul Hafeez Mari, Advocate.

Complainant : Naveed Khan son of Muhammad Uris.
(Called absent).

The State : *Through Mr. Neel Parkash, D.P.G*

Date of hearing : 21.07.2026
Date of judgment : 27.07.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.— This criminal appeal, brought in exercise of the right conferred under section 410 of the Code of Criminal Procedure, 1898, challenges the judgment dated 07.05.2026 rendered by the learned Additional Sessions Judge, Khipro, in Sessions Case No.456 of 2025, whereunder the appellant, having been proceeded against under section 265-H(2) Cr.P.C., was found guilty of the offence punishable under section 395 P.P.C. and condemned to rigorous imprisonment for a term of seven years, coupled with a fine of Rs.40,000/-, in default whereof to undergo a further term of simple imprisonment for three months, with the benefit of section 382-B Cr.P.C. extended to him.

2. The prosecution's narrative, as it emerges from the FIR, is that the complainant Naveed Khan maintained an otaq/inn in Deh Kadh Kandari for the shelter of his cattle and the residence of his laborers. It is alleged that on the intervening night of 24.08.2025, at about 12:30 a.m., while the complainant and his laborers Punhal and Sadiq kept vigil under the illumination of a battery-powered LED light, with the complainant's licensed DBBL gun resting upon a cot and two buffaloes together with a male calf tethered nearby, three motorcycles bearing three riders each descended upon the otaq. The intruders, brandishing pistols, dismounted and trained their weapons upon the complainant and his companions,

coercing silence through naked intimidation. Overborne by fear, the victims offered no resistance. The complainant asserts that the assailants' faces remained uncovered and identifiable. It is alleged that the marauders divested the complainant of his licensed gun, a sum of Rs.40,000/-, and an OPPO handset, while an unidentified accomplice relieved the laborer Punhal Chandio of his VigoTel mobile phone. A Datsun bearing registration WAA-693, driven by a person unknown, thereafter arrived, into which the complainant's CD-70 motorcycle, the two buffaloes, and the male calf were loaded, whereupon the culprits dispersed, some upon motorcycles, others within the Datsun – vanishing westward. Owing to the distance separating his residence from the scene, the complainant first alerted his relatives, engaged villagers and a foot-tracker to trace the footprints, and only thereafter repaired to the police station to set the law in motion.

3. The investigation yielded the recovery of two buffaloes, a male calf, a motorcycle, and the Datsun vehicle purportedly linked to the offence. The Investigating Officer secured the license of the complainant's gun and the motorcycle's registration documents, inspected the locus in quo, prepared the requisite mashirnamas of arrest and inspection, and recorded the statements of prosecution witnesses under section 161 Cr.P.C., together with the complainant's supplementary statement under section 162 Cr.P.C. Upon the appellant's arrest and the recovery of case property, the report under section 173 Cr.P.C. was submitted before the learned Judicial Magistrate, Khipro, depicting the appellant as the sole accused in custody while his co-accused were shown as absconders, subsequently declared Proclaimed Offenders. The matter was thereafter committed to trial, whereupon charge was framed, to which the appellant returned a plea of denial and claimed trial.

4. To substantiate its case, the prosecution arrayed five witnesses. The complainant Naveed Khan, examined as PW-1, produced the F.I.R. and his section 162 statement. Punhal appeared as PW-2. Jamshed, the mashir of the recovery and investigative proceedings, testified as PW-3, proving the memoranda pertaining to the recovery of the buffaloes, calf, and

motorcycle, the license and registration documents, the inspection of the crime scene, the formal arrest, and the recovery of the robbed gun. SIP Anwar Ali, PW-4, tendered the roznamcha entries and correspondence addressed to the Senior Superintendent of Police, the Excise and Taxation Officer, and the Deputy Commissioner, Sanghar, alongside the appellant's criminal antecedents. Ali Sher, PW-5, corroborated the mashirnamas as an attesting witness. Upon the closure of prosecution evidence, the appellant's statement was recorded under section 342 Cr.P.C., wherein he repudiated the allegations, branded the prosecution witnesses as interested, declined to depose on oath under section 340(2) Cr.P.C., and forwent the leading of defense evidence.

5. Learned counsel for the appellant argued, with considerable cogency, that the impugned judgment betrays a manifest non-application of judicial mind, born of a non-reading and misreading of the evidentiary record. He emphasized that the appellant's name is conspicuously absent from the F.I.R., surfacing for the first time only in the complainant's supplementary statement of 30.08.2025, a full six days after registration of the F.I.R., unaccompanied by any identification parade, thereby casting grave suspicion upon the appellant's belated nomination. He further submitted that no incriminating or robbed article was ever recovered from the appellant's possession, the entirety of the plundered property having already been retrieved on 24.08.2025, well before the appellant's arrest or identification, rendering any subsequent recovery evidentially barren. He contended, moreover, that the prosecution has failed to delineate which accused committed which act, leaving the appellant bereft of any specific role. Given these infirmities, he urged that the prosecution evidence falls short of the threshold requisite to sustain a conviction, and prayed for the appeal's allowance, placing reliance upon *Munawar alias Munni and others v. The State and others* (2025 P Cr. L J 1062).

6. On 14.07.2026, the complainant appeared in person and expressed his confidence in the learned Deputy Prosecutor General to represent his interest in the proceedings.

7. The learned Deputy Prosecutor General, resisting the appeal with vigor, submitted that the appellant stood correctly identified by the complainant, that no enmity or mala fide had been attributed to the complainant or the prosecution witnesses, and that the prosecution evidence ought not to be jettisoned merely on account of trivial discrepancies that do not penetrate to the case's core. He accordingly prayed for dismissal of the appeal and affirmance of the impugned judgment.

8. I have heard learned counsel for the appellant and the learned Deputy Prosecutor General at length, and have subjected the record to close scrutiny with their valuable assistance.

9. It is an axiom of criminal jurisprudence, firmly entrenched, that the prosecution bears an unrelenting onus to establish its case beyond reasonable doubt, a burden that never migrates to the accused. A solitary circumstance engendering reasonable doubt suffices to entitle the accused to acquittal as a matter of right, not as an act of judicial benevolence.

10. In the present case, it stands undisputed that the appellant was not named in the F.I.R., notwithstanding the complainant's explicit assertion that the culprits' faces were uncovered and identifiable. The appellant emerged for the first time in the complainant's supplementary statement of 30.08.2025, six days after the F.I.R.'s registration, and the prosecution offers no credible explanation for this delay. Compounding this infirmity is the conspicuous absence of any test identification parade. Where an accused is omitted from the F.I.R. and implicated only after considerable delay, the conduct of an identification parade assumes heightened evidentiary weight; its omission strips the belated nomination of corroborative value and breeds serious doubt as to the appellant's identity and complicity.

11. A further circumstance eroding the prosecution's edifice is the absence of any recovery of robbed or incriminating articles from the appellant. Indeed, the prosecution's own case reveals that the buffaloes, calf, motorcycle, and Datsun had already been recovered on 24.08.2025,

well before the appellant's arrest and identification, leaving no recovery to forge a nexus between the appellant and the offence. The alleged recovery, therefore, offers no corroborative sustenance to the prosecution's version qua the appellant.

12. Equally telling is the prosecution's failure to attribute any specific overt act to the appellant. The witnesses speak only in generalized terms of a marauding band, without particularizing which assailant committed which act. Such omnibus allegations, particularly where multiple accused are implicated, cannot alone anchor a conviction, more so where the identity of the accused remains itself shrouded in doubt.

13. The conviction rests, in essence, upon the testimony of the complainant and his witnesses, unaided by independent corroboration linking the appellant to the occurrence. The delayed nomination, the absence of a test identification parade, the want of recovery, and the failure to assign a specific role are not trivial blemishes but material infirmities striking at the very foundation of the prosecution's case, cumulatively engendering reasonable doubt as to the appellant's involvement.

14. It is a settled canon that the prosecution must prove its case beyond reasonable doubt, and the Superior Courts have consistently held that conviction must rest upon unimpeachable evidence and moral certainty of guilt, with any doubt inuring to the accused's benefit. In the instant matter, the prosecution has not discharged this burden through unimpeachable evidence, and doubt pervades its version. In *Wazir Mohammad v. The State* (1992 SCMR 1134), the Honorable Supreme Court held that in the criminal trial, it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution. In *Shamoon alias Shamma v. The State* (1995 SCMR 1377), the Honorable Supreme Court further held that the prosecution must prove its case against the accused beyond reasonable doubts irrespective

of any plea raised by the accused in his defense. Failure of prosecution to prove the case against the accused entitles the accused to an acquittal.

15. In light of the foregoing, this appeal is allowed, and the judgment dated 07.05.2026 passed by the learned Additional Sessions Judge, Khipro, in Sessions Case No.456 of 2025, is hereby set aside. The appellant, Meeral son of Ali Nawaz @ Ayo Mari, is acquitted of the charge under section 395 P.P.C., the benefit of reasonable doubt being extended to him. He shall be released forthwith, unless wanted in connection with any other case. Any fine realized shall stand refunded to the appellant. A copy of this judgment shall be transmitted to the Superintendent, Central Prison, Mirpurkhas, for compliance.

J U D G E

Adnan Ashraf Nizamani