

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

Criminal Appeal No. S-11 of 2026

Appellant : Muhammad Rashid Nawaz s/o Muhammad Aslam Arain
Through Mr. Muhammad Sultan, Advocate.
Complainant : Darshan son of Puchhan (*present in person*)

Criminal Appeal No. S-12 of 2026

Appellant : Muhammad Rashid Nawaz s/o Muhammad Aslam Arain
Through Mr. Muhammad Sultan, Advocate.
Complainant : Abdul Ghaffar s/o Muhammad Hashim
(*present in person*)
The State : Through Mr. Ghulam Abbas Dalwani, D.P.G.
Date of hearing : **13.07.2026**
Date of judgment : **31.07.2026**

J U D G M E N T

KHALID HUSSAIN SHAHANI, J—Since both these appeals arise out of companion sessions cases, were decided by the same learned Additional Sessions Judge-I, Mirpurkhas, through separate judgments dated 18.03.2026, concern the same appellant, involve the same Investigating Officer, and raise overlapping questions of fact and law, they are conveniently disposed of through this common judgment.

2. Through these appeals preferred under Section 410 Cr.P.C., the appellant has called in question the legality and propriety of the judgments dated 18.03.2026 passed by the learned Additional Sessions Judge-I, Mirpurkhas, whereby he was convicted under Section 397 PPC in Sessions Case No.180 of 2025 arising out of FIR No.58 of 2025 and in Sessions Case No.181 of 2025 arising out of FIR No.59 of 2025, and was sentenced in each case to suffer seven years' rigorous imprisonment with benefit of Section 382-B Cr.P.C.

3. The prosecution case in Sessions Case No.180 of 2025, arising out of FIR No.58 of 2025, in substance is that on 11.05.2025 at about 1200 hours complainant Darshan, along with Madan Lal,

was proceeding on motorcycle for selling spare parts when, near the scrap shop of Ashraf situated on Digri-Mirwah road, two persons riding one motorcycle intercepted them; one was stated to be open-faced and armed with a pistol, while the other was muffled-faced. It was alleged that cash amounting to Rs.130,000/-, one mobile phone and two containers of engine oil were taken away. The FIR, however, was lodged much later on 30.05.2025 at 1530 hours, after the complainant allegedly approached the elders of the accused through his proprietor Asad Arain and, according to the prosecution, remained on false hopes. The appellant was subsequently shown arrested on 05.06.2025, and a mobile phone was allegedly recovered on 07.06.2025 near Masha Allah Pump, Mirwah, on his pointing.

4. The prosecution case in Sessions Case No.181 of 2025, arising out of FIR No.59 of 2025, is that on 27.03.2025 at about 1130 hours complainant Abdul Ghaffar, a primary school teacher, after allegedly withdrawing his salary from HBL Bank, was returning home on motorcycle when near Bandi Shakh on Digri-Mirwah road two persons on a motorcycle intercepted him, one allegedly being the present appellant armed with pistol and the other having muffled face, and robbed him of cash Rs.124,000/-. This FIR too was lodged on 30.05.2025 at 1730 hours, i.e., after extraordinary delay, on the plea that the matter was first taken to the elders of the accused. The appellant was later shown arrested on 05.06.2025 at Police Station Denghan. No robbed property or weapon was recovered in this case.

5. In both matters, after submission of challans, copies of police papers were supplied to the accused; formal charges for offence under Sections 397/34 PPC were framed, to which he pleaded not guilty and claimed trial. In Sessions Case No.180 of 2025 the prosecution examined complainant Darshan, Madan Lal as eye-witness/mashir, Inspector Muhammad Hassan as Investigating Officer, and WHC Uttam Chand as Malkhana in-charge. In Sessions Case No.181 of 2025 the prosecution examined complainant Abdul Ghaffar, mashirs Mansoor Ahmed and Ghulam Rasool, and Inspector Muhammad Hassan as Investigating Officer. The appellant in his statements under Section 342 Cr.P.C. denied the allegations, asserted false implication, and pleaded that one Aijaz Arain, with whom he had a land dispute, had maneuvered these cases against him.

6. Learned counsel for the appellant, while assailing the impugned convictions, argued with vehemence that both cases are the outcome of manipulation rather than truthful reporting of crime. He submitted that in FIR No.58 of 2025 the incident was alleged to have occurred on 11.05.2025, yet the FIR was recorded on 30.05.2025 at 1530 hours; that though the FIR alleged that one muffled-faced culprit and appellant Rashid committed robbery, the complainant admitted in cross-examination that on the date of FIR the police had shown him a person and only thereafter disclosed the name of Rashid; that prior to the FIR the appellant was not known to him; that the complainant further admitted his proprietor Asad Arain told him to lodge the FIR and that Asad Arain had relations with Aijaz Arain; that Madan Lal, from whom amount was said to have been robbed, admitted infirmities in the recovery; that the mobile phone was recovered without seal, no reliable proof regarding its identity was produced, no IMEI or SIM linkage was properly proved, and the Malkhana in-charge admitted that he had not maintained entry of taking out the property from Malkhana. It was further argued that the alleged case property was not properly put to the accused in his statement under Section 342 Cr.P.C.; rather, question No.1 referred only to robbery of Rs.103,000/-, betraying serious disconnect between charge, evidence and examination of the accused.

7. Learned counsel continued that in FIR No.59 of 2025 the alleged incident took place on 27.03.2025 but the FIR was again lodged only on 30.05.2025 at 1730 hours, without any lawful or persuasive explanation. He pointed out that complainant Abdul Ghaffar stated that he was robbed of Rs.124,000/-, though the charge mentions Rs.126,000/-; that he claimed the date of incident was a school holiday, while the Investigating Officer categorically admitted that the day had not been declared a holiday; that no bank statement or documentary proof of withdrawal was produced, and the Investigating Officer expressly conceded he neither received nor collected any such bank statement; that the place of incident was admitted by prosecution witnesses themselves to be a main busy connecting road used by heavy vehicles, yet no independent witness was associated; that there are contradictions about how long the occurrence and subsequent police proceedings lasted, where signatures were obtained, and whether papers were signed at police

station Digri or at the place of incident; that no Test Identification Parade was ever held despite the prosecution version resting upon belated claim of identification; and that both FIRs having been lodged on the same day with about two hours' difference fortify the defense plea of a managed prosecution. Learned counsel finally submitted that the trial court fell into grave misreading and non-reading of the evidence and ignored not only material contradictions but also the admitted defense background emerging from the gift deed and civil litigation placed on record.

8. Conversely, learned D.P.G. supported the convictions and contended that mere delay in lodging FIR is not always fatal where the complainants explain that they first approached the elders of the accused for return of property; that both complainants had no prior enmity with the appellant and thus no reason to falsely substitute him; that defects in investigation cannot by themselves demolish the prosecution case where direct evidence inspires confidence; and that the defense plea resting upon dispute with Aijaz Arain remained unproved because the appellant did not lead defense evidence at trial.

9. This Court heard learned counsel for the parties and have gone through the entire record with anxious consideration. Since both appeals arise out of convictions in criminal cases, the evidence is required to be appraised not casually but with the degree of circumspection that the criminal law imperatively demands, for conviction cannot rest upon conjecture, moral suspicion, or a general impression of culpability. The prosecution was bound to prove its case against the appellant beyond reasonable doubt through trustworthy, confidence-inspiring and legally admissible evidence. If from the record there arises a single circumstance which creates a reasonable dent in the prosecution version, the accused becomes entitled to the benefit of doubt as a matter of right and not of concession.

10. The first and most striking feature common to both cases is the extraordinary delay in setting the criminal law into motion. In FIR No.58 of 2025 the alleged occurrence is of 11.05.2025, whereas the report came to be lodged on 30.05.2025. In FIR No.59 of 2025 the occurrence is of 27.03.2025, yet the FIR was registered only on 30.05.2025. Such delays are not of a few hours or even a day or two;

they are of a magnitude that naturally invites judicial caution. True it is that delay may stand explained in an appropriate case, but the explanation must emerge from evidence in a coherent, convincing and confidence-inspiring manner. Here, the explanation of approaching the elders of the accused or remaining on false hopes was not only inherently fragile, but in the attending circumstances also insufficient to dispel the possibility of deliberation, consultation and procurement. In cases hinging primarily on subsequent identification and oral account, unexplained or inadequately explained delay assumes enhanced significance, because it affords time for reflection, tutoring and substitution.

11. This concern becomes much deeper in FIR No.58 of 2025 when the complainant Darshan himself disclosed in cross-examination that on the date of lodging of FIR the police had shown him a person and after such identification disclosed the name of accused Rashid, and that prior thereto the accused was not known to him. This admission strikes at the root of the prosecution case. Once a witness admits that the suspect was first shown to him by police before the name found place in FIR, the evidentiary value of his dock identification stands gravely eroded, for identification in court, when preceded by police exposure and unsupported by a Test Identification Parade, is by its nature weak and unsafe. The law has consistently looked with suspicion upon such post-investigation identification, especially where the witness had no prior acquaintance with the accused and the occurrence itself was short-lived and stressful.

12. The prosecution made no attempt in either case to secure a Test Identification Parade before a Magistrate. That omission is not a trivial lapse here; rather, it goes to the very heart of the matter. In FIR No.58 of 2025 the complainant admitted that the accused was not previously known to him and was shown by police. In FIR No.59 of 2025, although complainant Abdul Ghaffar asserted that the accused belonged to his village and was therefore identifiable, the report was still lodged after a long delay, no prompt naming supported by contemporaneous complaint was brought on record, and the prosecution version remained unsupported by any independent circumstance. In such setting, failure to hold a Test

Identification Parade deprived the prosecution of the best available assurance against mistaken or contrived identification.

13. The ocular account in FIR No.58 of 2025 is itself afflicted with material inconsistencies and suspicious features. The complainant attributed the armed role to appellant Rashid and stated that the other rider was masked; yet the defense has rightly highlighted variance between the FIR narrative and the subsequent oral embellishments concerning who actually robbed what. More importantly, the complainant admitted that his proprietor Asad Arain directed him to lodge the FIR and that said proprietor had relation with Aijaz Arain. This admission, seen together with the appellant's plea of land dispute with Aijaz Arain and the supporting civil litigation documents annexed with the appeal record, may not by itself prove false implication, but it certainly furnishes a backdrop which the court cannot brush aside, particularly when the prosecution case is already laboring under delay, suggestive identification and infirm recovery.

14. The so-called recovery in FIR No.58 of 2025, instead of lending assurance to the prosecution, further weakens it. The alleged recovery of mobile phone was made on 07.06.2025 from a public place near Masha Allah Pump on pointing of the accused. The *mashir* Madan Lal admitted that the mobile phone was not sealed. The Investigating Officer conceded that he did not check the SIM slide and did not seal the mobile phone. The case property produced before court was without seal. The *Malkhana* in-charge WHC Uttam Chand admitted that he did not maintain any entry regarding taking out the property from *Malkhana*, and also conceded that it would be correct to suggest that the phone had not been kept in a sealed shopper. Once chain of custody is ruptured and the property is neither properly sealed nor linked through any dependable forensic or documentary means, such recovery becomes wholly unsafe to rely upon.

15. It is equally important that the FIR and evidence do not furnish any clear description of the mobile phone capable of excluding substitution. No satisfactory documentary proof regarding maker, model, serial particulars or cogent IMEI verification was brought into evidence in the manner known to law. The Investigating

Officer claimed to have checked IMEI, yet no dependable evidentiary foundation establishing identity of the handset as the robbed property was demonstrated. In these circumstances, the alleged recovery from an open/public place, unsupported by trustworthy custody and identification of the article, loses all incriminating force.

16. Another serious legal defect appears from the examination of the appellant under Section 342 Cr.P.C. It has been specifically pointed out, and the record bears out, that the incriminating circumstance relating to the mobile phone/property was not properly and specifically put to the accused. Even with regard to the robbed amount, question No.1 in one of the statements refers to an amount inconsistent with the prosecution case. Examination under Section 342 Cr.P.C. is not an empty formality; every material circumstance intended to be used against the accused must be put to him fairly and specifically. Any circumstance not so put cannot lawfully be employed as basis of conviction. Therefore, the already doubtful recovery and property aspect stood further disabled from consideration.

17. Turning to FIR No.59 of 2025, the prosecution case is no less infirm. The complainant Abdul Ghaffar claimed that after withdrawing salary he was robbed on 27.03.2025, yet the FIR was lodged on 30.05.2025. He stated in cross-examination that the day of incident was a school holiday, whereas the Investigating Officer admitted that the day was not declared a holiday. This is not a minor discrepancy concerning an incidental detail. The complainant projected his movement from school/bank setting in a manner intended to lend naturalness to his presence and possession of a large sum. When the prosecution itself becomes self-contradictory on whether that date was a holiday, the credibility of the surrounding narrative is materially shaken. The trial court erred in trivializing this inconsistency.

18. The prosecution also failed to substantiate the very source and possession of the robbed amount in FIR No.59 of 2025. The complainant claimed that he had withdrawn his salary, but the Investigating Officer expressly admitted in cross-examination that the complainant had not submitted any bank statement and that he himself did not collect any statement from the bank. Thus, the prosecution withheld the most natural and readily available

documentary corroboration. Where the alleged robbed amount constitutes the central subject of the occurrence and its immediate prior withdrawal from a bank is asserted, non-production of the bank record without plausible reason creates an adverse gap in the prosecution case.

19. The site and attendant circumstances in FIR No.59 of 2025 also do not inspire confidence. The complainant first stated that no one passed through the place at the time of incident, yet admitted that the place was the main connecting road from Digri towards Mirwah and that heavy vehicles used that road. Both *mashirs*, Mansoor Ahmed and Ghulam Rasool, also admitted that it was a busy road and vehicles were passing when the place memo was prepared. Despite this, no independent witness from the locality or among passersby was associated either with the inspection of place or with later proceedings. While non-association of private witnesses may not invariably be fatal, in the present cases, replete with delay, identification doubts, and managed-seeming police formalities, the omission assumes considerable importance.

20. The evidence of *mashirs* in FIR No.59 of 2025 does not provide ocular corroboration of the robbery at all. They are merely post-occurrence *mashirs* of place and arrest. Even within that narrow role, their testimonies reveal discordance as to duration of proceedings, number of signatures obtained, the exact place of signing, and the sequence of movements. Mansoor Ahmed stated that police got his signature at police station Digri, though he immediately attempted to retract; Ghulam Rasool stated otherwise. Such wavering on official formalities is not by itself decisive, yet in the present matrix it strengthens the defense contention that police papers were prepared in a managed fashion.

21. The cumulative picture becomes still more disquieting when one notices that both FIRs were lodged on the same day, i.e., 30.05.2025, with roughly two hours' difference, concerning separate earlier occurrences, against the same appellant, investigated by the same officer, and in both matters the prosecution relied on virtually identical explanations of delay and similar police formalities. This pattern, when viewed alongside the defense plea involving Aijaz Arain, the admitted connection of Asad Arain with Aijaz Arain, and the civil

dispute documents brought on record, does not permit the court to approach the prosecution story with unquestioning acceptance. Criminal courts are duty bound to evaluate not each infirmity in isolation, but the cumulative effect of all circumstances.

22. The learned trial court, with respect, fell into serious error in treating material infirmities as merely minor discrepancies. The distinction between trivial inconsistency and material contradiction is not semantic; it is substantive. A contradiction goes to the root when it touches identity of the offender, spontaneity of accusation, authenticity of recovery, the source of robbed property, or fairness of investigation. In the present cases, the infirmities pertain to all these areas. The trial court also appears to have been influenced by the accused's alleged involvement in other crimes. Such circumstance, absent proof of conviction and absent lawful relevance to the facts in issue, could never have been used to reinforce guilt in the present matters.

23. It is indeed true that defects in investigation alone do not necessarily entitle an accused to acquittal. But where the prosecution case is otherwise fragile, defective investigation may assume decisive importance. Here, the prosecution does not stand on firm independent footing so as to permit the court to ignore the defects as harmless. Rather, the delay in FIRs, suggestive police-mediated identification, absence of Test Identification Parade, doubtful recovery, broken chain of custody, non-production of bank record, contradiction regarding holiday, non-association of independent witnesses from admittedly public/busy places, and defective examination under Section 342 Cr.P.C. jointly create not a fanciful doubt but a reasonable and substantial doubt about the truth of the prosecution case.

24. The principle is too deeply rooted in our criminal jurisprudence to admit of any departure that benefit of doubt must be extended to the accused, not as a matter of grace but as a matter of right, if there exists a circumstance creating reasonable doubt in a prudent mind about his guilt. The record before the court contains not one but many such circumstances. To maintain conviction on such evidence would be to substitute suspicion for proof, and that the law does not permit.

25. For what has been discussed above, both these appeals are/were allowed. The judgments dated 18.03.2026 passed by the learned Additional Sessions Judge-I, Mirpurkhas, in Sessions Case No.180 of 2025 arising out of FIR No.58 of 2025 and in Sessions Case No.181 of 2025 arising out of FIR No.59 of 2025 are set aside. The appellant Muhammad Rashid Nawaz is/was acquitted of the charge in both the cases by extending to him the benefit of doubt, with directions to be released forthwith, if not required in other custody case.

These are the reasons of my short order dated 13.07.2026.

JUDGE

Adnan Ashraf Nizamani