

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.286 of 2023

Appellant : Rasool Khan through Mr. Sohail Qurban,
Advocate.
Respondent : The State, through Mr. Qamaruddin Nohri,
D.P.G Sindh.
Date of Hearing : 06.3.2026.
Date of announcement of Judgment : 29.04.2026

J U D G M E N T

TASNEEM SULTANA, J :- Through this Criminal Jail Appeal, appellant Rasool Khan has assailed Judgment dated 19.04.2023 passed by the learned IV Additional Sessions Judge, Karachi West, in Sessions Case No.2216/2020, arising out of FIR No.522/2020 registered under Sections 393/394/397/34 PPC at PS Gulshan-e-Maymar, whereby the appellant was convicted for the offence under Section 397 PPC and sentenced to Rigorous Imprisonment for seven (07) years with fine of Rs.25,000/- and in default thereof to undergo Simple Imprisonment for two (02) months, and further convicted under Section 394 PPC and sentenced to Rigorous Imprisonment for ten (10) years with fine of Rs.25,000/- and in default thereof to undergo Simple Imprisonment for two (02) months. Both sentences were ordered to run concurrently, the benefit of Section 382-B Cr.P.C., was also extended.

2. Brief facts of the prosecution case are that on 07.11.2020, at about 12:45 p.m., the complainant, Badiuzaman, was present at his shop situated at Haji Mullah Hussain Goth, Karachi, while his son, Muhammad Faheem, had gone to a nearby hotel to get tea. At about 1:45 p.m., two armed persons allegedly entered the shop; one of them came to the counter, placed a pistol on the complainant's temple and demanded cash, while the other remained standing at the gate. It is alleged that one of the accused took cash from the drawer and put it into his pocket, whereupon the complainant apprehended him and raised cries of "chor chor." On hearing the commotion, Muhammad Faheem rushed back to the shop. In the meantime, firing was allegedly made upon Muhammad Faheem, as a result of which he sustained a firearm injury, while the accused standing at the

gate also sustained a gunshot injury. According to the prosecution, two other accused were present outside the shop on motorcycles, providing backup and resorting to firing. It is further alleged that two culprits managed to escape on motorcycles, whereas the present appellant was apprehended at the spot by members of the public, who also beat him and snatched his weapon. The police thereafter arrived and shifted the injured Muhammad Faheem as well as the injured accused, namely Ejaz, to Abbasi Shaheed Hospital, where the said co-accused subsequently succumbed to his injuries. Thereafter, the FIR was lodged to the above effect.

3. After usual investigation, police submitted the charge-sheet under Section 173, Cr.P.C., against the appellant. Having been supplied requisite documents as provided under Section 265-C, Cr.P.C., the trial court framed formal charge against the appellant on 07.10.2021 to which he pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution examined seven witnesses. PW-1 complainant Badiuzaman at Ex.3 produced memo of arrest and recovery, FIR and memo of inspection of site at Ex.3/A to 3/C; PW-2 Muhammad Faheem at Ex.4; PW-3 Nawab Ali at Ex.5; PW-4 PC Fateh at Ex.6; PW-5 Dr. Kamran, MLO, at Ex.9 produced police letter, MLC, discharge slip and final medical report at Ex.9/A to 9/D; PW-6 ASI Azeem Solangi at Ex.10 produced Roznamcha entries at Ex.10/A and 10/B; and PW-7 SIP Muneer Ali, Investigating Officer, at Ex.11 produced Roznamcha entries, sketch of site, photographs and other documents at Ex.11/A to 11/G. PW Abdul Haq and PW PC Saeed were given up vide statements at Exh.7 and 8, and thereafter the prosecution side was closed vide statement at Exh.12.

5. Statement of the appellant under Section 342, Cr.P.C., was recorded at Exh13 wherein he denied the allegations levelled against him and claimed to be innocent. He deposed that he has been falsely implicated in this case and nothing incriminating was recovered from his possession. He, however, neither examined himself on oath under Section 340 (2) Cr.P.C to disprove the prosecution's allegation nor did he produce any witness in his defence. The trial court after hearing the learned counsel for the appellant as well as ADPP for the state convicted the appellant and sentenced him vide impugned judgment dated 19.4.2026.

6. Learned counsel for the appellant contended that the impugned judgment suffers from legal infirmities; that the learned trial Court failed to properly apply the settled principles governing appreciation of evidence;

that the conviction is based on insufficient material; that there are material contradictions and inconsistencies in the prosecution evidence; that the site plan, the alleged recovery of weapon, and the medical evidence do not align with the prosecution version; that, despite the admitted presence of CCTV cameras at the place of occurrence, the footage was neither collected nor produced; that no robbed cash was recovered from the appellant, notwithstanding the allegation that he had taken the same from the drawer; that the appellant's presence at the spot has not been independently corroborated; and that, in the circumstances, even the FIR is doubtful; he, therefore, submitted that the appellant is entitled to the benefit of doubt.

7. Conversely, learned D.P.G. Sindh supported the impugned judgment and contended that the prosecution has proved its case against the appellant beyond reasonable doubt; that the complainant and other eyewitnesses have fully supported the prosecution case; that their testimony finds corroboration from the medical evidence as well as the alleged recovery of weapon; and that no material contradiction exists so as to discredit the prosecution version; he, therefore, prayed for dismissal of the instant appeal.

8. Heard. Record perused.

9. The prosecution case primarily rests upon the ocular account furnished by PW-1 Badiuzaman and PW-2 Muhammad Faheem. A careful perusal of their testimony, however, reflects material inconsistencies on several important particulars. PW-1 Badiuzaman deposed that two accused entered the shop; one remained at the gate, while the other approached the complainant, placed a pistol on his temple, demanded cash, and allegedly removed the same from the drawer and placed it in his pocket, whereupon the complainant caught hold of him from behind and raised cries of "chor chor." This allegation regarding removal of cash also found mention in the FIR; however, in cross-examination, the complainant departed from that version by stating that the accused did not take any cash. It is also noted that, according to the memo of arrest and recovery, no robbed amount was recovered from the possession of the accused/appellant during his personal search by the police.

10. The testimony of PW-2 Muhammad Faheem does not materially align with the above version. PW-1 stated that only he and his son were present at the shop, whereas PW-2 stated that one Saifullah, a rickshaw driver, was also present there at the relevant time, though the said person

was not examined by the prosecution. PW-2 further deposed that, prior to entering the shop, he had seen four accused arriving on two motorcycles, one wearing a helmet and the others being masked, and that two of them thereafter entered the shop. This aspect is not supported by the testimony of PW-1.

11. Moreover, the prosecution evidence reflects contradictions with regard to the firing. PW-2 stated that, after hearing a fire shot and the voice of his father quarrelling with someone, he rushed into the shop, whereas PW-1 stated that no firing had taken place before PW-2 entered and attempted to apprehend one of the accused. PW-2 further deposed that the accused whom he tried to apprehend fired at him, while PW-1 attributed that act to another accused. The two witnesses also materially differ as to the manner in which the injured accused sustained firearm injury: according to PW-2, one accused was hit by shots fired by the same accused who had fired at him, whereas PW-1 stated that the injured accused was struck by firing made by the other two accused. Thus, the sequence of firing and the roles attributed to the accused remain uncertain.

12. The above inconsistencies become more significant when considered in the context of the surrounding circumstances. PW-2 stated that he and the injured accused were shifted to the hospital in two separate ambulances, whereas PW-6 ASI Azeem Solangi stated that the injured accused was shifted in a Cheepa ambulance and did not state anything regarding the shifting of PW-2 Muhammad Faheem. The prosecution evidence, therefore, does not present a consistent account regarding the sequence of events or the immediate aftermath of the incident. These are not minor discrepancies; rather, they go to the root of the prosecution case and affect the reliability of the ocular version.

13. Perusal of the testimony of PW-3 Nawab Ali shows that he did not witness the actual commission of the robbery or the firearm injuries allegedly sustained by Muhammad Faheem and accused Ejaz. His testimony relates mainly to the subsequent part of the occurrence, including arrest and recovery, and even in that regard it is limited to the assertion that members of the public apprehended the accused and recovered pistols from them. This part of the prosecution case is not free from doubt, as PW-6 admitted in his cross-examination that the pistols were handed over to him by the complainant. PW-3 also did not specify which pistol was recovered from the possession of the present appellant. His evidence,

therefore, does not provide independent corroboration on the material aspects of the occurrence.

14. The alleged recovery of the weapon also does not advance the prosecution case. The prosecution has not established that the weapon allegedly recovered from the appellant was the one used in the commission of the offence, nor is there independent evidence linking the appellant with such recovery.

15. The circumstances relating to co-accused Ejaz also create doubt in the prosecution case. PW-1 Badiuzaman and PW-2 Muhammad Faheem stated that Ejaz sustained firearm injuries during the occurrence and later died at the hospital. In contrast, PW-4 Fateh Khan stated that the injured persons had been beaten by the public and that one had already died at the spot. This inconsistency creates uncertainty as to whether Ejaz died as a result of firearm injury or due to public assault, which affects the overall reliability of the prosecution version.

16. The non-recovery of the alleged robbed cash further weakens the prosecution case. Despite the specific allegation in the FIR and in the examination-in-chief of the complainant that the appellant had taken cash from the drawer and placed it in his pocket, no such amount was recovered from him during his personal search at the spot. In a case of robbery, recovery of the stolen property, particularly cash, or at least a plausible explanation for its absence, constitutes an important circumstance. Its absence, therefore, lends support to the doubt already arising from the ocular account.

17. It has also come on record that CCTV cameras were installed at the shop. The Investigating Officer neither produced nor attempted to obtain the CCTV footage from inside or outside the shop. In a case involving disputed identity and conflicting versions, such footage could have provided important evidence regarding the identity and role of the accused. The failure to secure it is an unexplained lapse in the investigation and affects the credibility of the prosecution case.

18. The evidence of prosecution witnesses cannot be accepted merely on the ground that there is no enmity with the appellant. It is a cardinal principle of criminal jurisprudence that the intrinsic worth and probative value of evidence alone determine the guilt or innocence of an accused. Absence of enmity does not, by itself, render the evidence reliable. The

evidence must be assessed on its own merits, consistency, and credibility. Where the prosecution evidence fails to meet the required standard, the benefit of doubt must go to the accused.

19. Furthermore, the ocular account suffers from material contradictions and infirmities touching the core aspects of the occurrence. Such inconsistencies are not minor; rather, they go to the root of the prosecution case and undermine its credibility, thereby creating doubt regarding the involvement of the appellant. It is a settled principle of criminal jurisprudence that where the prosecution evidence does not inspire confidence, the accused is entitled to the benefit of doubt. In these circumstances, the prosecution has failed to prove its case against the appellant beyond reasonable doubt; consequently, the conviction recorded by the learned trial Court cannot be sustained. Reliance is placed on the case of ***Muhammad Mansha v. The State (2018 SCMR 772)***, wherein it was held that:–

“4. 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 ***Tarique Parvez v. The State (1995 SCMR 1345)***, ***Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)***, ***Muhammad Akram v. The State (2009 SCMR 230)*** and ***Muhammad Zaman v. The State (2014 SCMR 749)***.”

20. In view of the foregoing discussion and the principles referred to above, I am of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Consequently, this Criminal Jail Appeal is allowed. The impugned judgment dated 19.04.2023, passed by the learned IV Additional Sessions Judge, Karachi West, in Sessions Case No.2216/2020, is set aside. The appellant, Rasool Khan son of Akhter Khan, is acquitted of all charges by extending the benefit of doubt and shall be released forthwith, if not required in any other case.

JUDGE