IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Criminal Accountability Appeal No.03 of 2022

Appellants	:	1. Ahmed Jamil Ansari son of Zilur Rehman, 2. Muhammad Ajmal Ansari son of Zilur Rehman *Through* Mr. Faisal Siddiqui, Advocate
Respondent	:	The State *Through* M/s. Syed Khurram Kamal and Saeeda Khurshid, Special Prosecutor NAB.

Criminal Accountability Appeal No.10 of 2022

Appellant	:	NAB through its Chairman *Through* M/s. Syed Khurram Kamal and Saeeda Khurshid, Special Prosecutor NAB.
Respondents	:	1. Ahmed Jamil Ansari son of Zilur Rehman, 2. Muhammad Ajmal Ansari son of Zilur Rehman *Through* Mr. Faisal Siddiqui, Advocate

Criminal Accountability Acquittal Appeal No.11 of 2022

Appellant	:	NAB through its Chairman *Through* M/s. Syed Khurram Kamal and Saeeda Khurshid, Special Prosecutor NAB.
Respondent	:	Hassan Jamil Ansari son of Ahmed Jamil Ansari *Through* Mr. Faisal Siddiqui, Advocate.
Date of hearing	:	02.09.2026
Date of judgment	:	07.09.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. **-** By this common judgment we propose to decide the above three connected appeals, all arising from the judgment dated 27 January 2022 delivered by the learned Judge, Accountability Court No. IV, Sindh at Karachi, in Reference No. 03 of 2012, Re- (The State v. Ahmed Jamil Ansari and others). Criminal Accountability Appeal No. 03 of 2022 has been preferred by Ahmed Jamil Ansari and Muhammad Ajmal Ansari against their conviction and sentence. Criminal Accountability Appeal No. 10 of 2022 has been preferred by the National Accountability Bureau for enhancement of their sentences. Criminal Accountability Acquittal Appeal No. 11 of 2022 calls in question the acquittal of Hassan Jamil Ansari. As the appeals arise from one reference, one evidentiary record and one judgment, they are susceptible to a common determination; the separate juridical character of a conviction appeal, an enhancement appeal and an appeal against acquittal shall, however, be maintained throughout.

2. The learned Accountability Court convicted Ahmed Jamil Ansari and Muhammad Ajmal Ansari under section 9(a)(iii), (x) and (xii), read with section 10 of the National Accountability Ordinance, 1999, and section 265-H(2), Cr.P.C., and sentenced each of them to rigorous imprisonment for seven years. A total fine of Rs.1,776,550,000 was imposed, apportioned at Rs.888,275,000 upon each convict, with six months' further rigorous imprisonment in default; recovery was directed under section 33-E of the Ordinance and the consequential disqualification was also recorded. Hassan Jamil Ansari was acquitted under section 265-H(1), Cr.P.C. by extension of benefit of doubt.

3. The prosecution case originated in a complaint dated 26 November 2007 made by Shujaat Ali Qarni, who had assumed the chairmanship of Callmate Telips Telecom Limited (CTTL), against members of the preceding management. The reference alleged, in substance, five heads of wrongdoing: loss of about Rs.3,340,750,931 to PTCL, PTA and FBR; extension of receivables of Rs.1,776,550,000 without adequate protection; criminal breach of trust in the purchase of the Karachi and Lahore properties, quantified at Rs.399,299,667; cheating members of the public through inactive calling cards amounting to Rs.127,932,366; and non-repatriation of US$4,369,000 said to concern the State Bank of Pakistan. The reference aggregated those heterogeneous claims as a loss of about Rs.5.64 billion.

4. CTTL came into existence following a court-sanctioned merger and was converted into a public company. Ahmed Jamil Ansari served as its Chairman until 8 November 2007 and resigned from its directorship on 14 November 2007. Muhammad Ajmal Ansari served as its Chief Executive Officer and likewise resigned from its directorship on 14 November 2007. Hassan Jamil Ansari was one of the directors. Imran Mahmood, Irfan Mahmood, Nadeem Ahmed Khan and Syed Mahmood-ul-Hassan were also implicated in the reference; proceedings against absconding accused were bifurcated, one accused was earlier acquitted, and proceedings against Syed Mahmood-ul-Hassan abated upon his death.

5. The property allegation concerned, first, property No.133, Survey No.26, Phase-I, DHA, Karachi. The prosecution relied on a conveyance by

which M/s Agfa transferred the property to Syed Mahmood-ul-Hassan for Rs.68.2 million and upon a subsequent conveyance dated 29 June 2006 by which the property stood transferred to CTTL for Rs.149 million. It was alleged that payments aggregating Rs.300 million, inclusive of construction or related expenditure, had been advanced before Syed Mahmood-ul-Hassan acquired title. The second transaction concerned property No.29-L, Gulberg-II, Lahore, said to have been acquired by Syed Mahmood-ul-Hassan or his concern and transferred to CTTL for Rs.180 million, besides construction or renovation advances. The prosecution treated the differences between the stated considerations, the timing of advances, and the relationship of Syed Mahmood-ul-Hassan with CTTL's Chief Financial Officer as proof of dishonest misuse of company funds.

6. The remaining material related to the interconnection arrangement between CTTL and PTCL dated 4 August 2004; regulatory demands, notices, determinations, appeals and recovery proceedings involving PTA; tax claims presented by FBR before the Official Assignee in the winding-up proceedings; certain foreign-exchange repatriation proceedings; receivables from associated or foreign concerns; and the claims of calling-card holders. During trial the prosecution examined thirty-nine witnesses, including corporate-record witnesses, officials of PTCL, PTA, FBR and banks, persons connected with the two properties, calling-card claimants, and two investigating officers. No defence evidence was led; the accused denied the incriminating allegations in their statements under section 342, Cr.P.C. and relied upon the documents tendered with those statements.

7. The trial court itself rejected substantial components of the reference. It found that the receivables of Rs.1,776,550,000, if recovered, would belong to the company and could not on that account be characterized as loss to the public exchequer. It held the foreign-exchange amount to be governed by a separate statutory adjudicatory mechanism. It also held that cheating the public at large had not been proved, inter alia, because the requisite complexion of 'public at large' was absent and the seized calling cards were not produced. Yet, while rejecting these major heads, it convicted the two appellants by joining the property transactions with the PTCL/PTA/FBR liabilities and treating both as criminal breach of trust.

8. Learned counsel for the convicted appellants argued that the conviction rests upon a charge never properly framed and upon circumstances never distinctly put under section 342, Cr.P.C.; that PW-1

Shujaat Ali Qarni died before completion of cross-examination and PW-4 Jalal Hyder Bhatti neither completed his examination-in-chief nor submitted to cross-examination; that their oral and documentary evidence was legally unusable; that seizure by the investigating officer could not authenticate the contents or cure the denial of cross-examination; that the properties remained assets of CTTL and were never converted to the personal use of either appellant; that no independent contemporaneous valuation, kickback, personal enrichment or diversion to their accounts was proved; and that corporate debt or payment for telecommunication services was not entrustment.

9. It was further argued that PTCL, PTA and FBR pursued civil, regulatory, revenue and liquidation remedies; that the amounts were disputed or awaiting adjudication; that the post-dated cheques under the PTCL settlement were not dishonoured during the appellants' management and were later stopped or affected by change of signatories; that the Islamabad High Court decree dated 22 November 2016 was against CTTL rather than the appellants personally; that this Court, by judgment dated 23 April 2019 in C.P. No.D-2762 of 2011, had set aside coercive recovery against the former directors merely on account of their office; and that the trial court could neither convert an allegation of wilful default into criminal breach of trust nor infer criminal intent from the corporate designations of Chairman and CEO.

10. Learned Special Prosecutor NAB supported the conviction and submitted that the annual reports, board minutes, conveyances, banking documents, interconnection agreement, notices, regulatory material and testimony of the investigating officer formed a continuous chain. According to him, company funds were available but were directed towards properties purchased from the father of the Chief Financial Officer and towards unsecured receivables while public-sector liabilities remained unpaid. This, it was contended, established dishonest preference, wilful default and loss to the exchequer. In the enhancement appeal, NAB sought the maximum term of fourteen years and a fine commensurate with the reference amount. In the acquittal appeal it was urged that Hassan Jamil Ansari, as a director, knew of and participated in the questioned affairs and that the trial court had accorded him an unwarranted benefit.

11. We have heard the learned counsel at considerable length, examined the impugned judgment, the charge, statements under section 342, Cr.P.C., the oral and documentary evidence, the written submissions

and the authorities placed before us. An appeal against conviction obliges this Court to undertake an independent and searching reappraisal of the whole evidence. That obligation is not discharged by counting witnesses or reproducing documents. The Court must identify each statutory ingredient, the evidence legally admissible to prove it, the person against whom it operates, and the rational link between the proved fact and the inference of guilt.

12. The following questions arise for determination: (i) whether Criminal Accountability Appeals Nos.10 and 11 of 2022 were filed within the limitation prescribed by section 32 of the National Accountability Ordinance, 1999, and, if not, whether they are maintainable in the absence of an application disclosing sufficient cause; (ii) whether the testimony and documents introduced through PW-1 and PW-4 could lawfully be used when the accused had no effective opportunity of cross-examination; (iii) whether the charge and examination under section 342, Cr.P.C. fairly conveyed the precise case ultimately employed for conviction; (iv) whether the two property transactions proved entrustment or dominion, dishonest misappropriation or conversion, violation of a direction of law or contract, *mens rea* and the individual participation required for criminal breach of trust or any offence under section 9(a)(iii), (x) or (xii); (v) whether the PTCL, PTA and FBR material proved wilful default within sections 5(r) and 9(a)(viii), or could instead be transmuted into criminal breach of trust; (vi) whether the conviction of Ahmed Jamil Ansari and Muhammad Ajmal Ansari is sustainable beyond reasonable doubt; (vii) whether any ground exists to enhance their sentences; and (viii) whether Hassan Jamil Ansari's acquittal is arbitrary, perverse or the product of material misreading or non-reading warranting appellate interference.

13. The certified copy of the impugned judgment was obtained by NAB on 14 February 2022, whereas Appeals Nos.10 and 11 of 2022 were instituted on 15 August 2022. No application for condonation of delay accompanied either appeal. Even upon the thirty-day period invoked by NAB with reference to the temporary amendment then relied upon, the appeals were presented several months out of time. Limitation in a criminal appeal is not an ornamental procedural preference. Once the statutory period expires, a valuable right accrues to the opposite party and a court cannot, without lawful explanation and an enabling application, ignore the bar merely because the appellant is a public institution.

14. The unreported judgments supplied by learned counsel in State through Chairman NAB v. Mehreen Zafar, Criminal Accountability Acquittal Appeal No.63 of 2018, and State through Chairman NAB v. Dr. Asghar Abbas Sheikh and others, Criminal Accountability Acquittal Appeal No.04 of 2017, both decided on 22 October 2025, reiterate that a subsequent enlargement of limitation does not, absent clear legislative command, revive an appeal already barred or disturb a past and closed transaction. On the admitted dates, Appeals Nos.10 and 11 of 2022 are barred. Nevertheless, since the entire record has been argued and the matters concern conviction and acquittal on a common record, we shall determine their merits as well. This course makes the result complete and avoids resting questions of criminal liability upon limitation alone.

15. PW-1 Shujaat Ali Qarni was the complainant and a central author of the prosecution narrative. His cross-examination remained incomplete because of his death, and the prosecution evidence to his extent was closed by order dated 23 November 2016. PW-4 Jalal Hyder Bhatti was the PTCL witness through whom notices and settlement material were introduced. He repeatedly failed to appear, did not complete his examination-in-chief, and was never offered for cross-examination; the prosecution evidence to his extent was closed on 14 December 2016. These are not minor defects affecting weight alone. They touch the legal admissibility and fairness of the very evidence employed against the accused.

16. In PLD 1983 SC 291[1], the Supreme Court declared the right to cross-examine a prosecution witness to be an important, vested and indefeasible right, and held that testimony untested because the accused was denied that opportunity could not be admitted against him. The same principle appears in PLD 2005 SC 63[2], 2020 YLR 619[3], and 2005 MLD 246[4]. Cross-examination is not a ceremonial appendage to examination-in-chief; it is the process by which perception, authorship, custody, completeness, bias, context and truth are tested. Article 10-A of the Constitution reinforces, rather than diminishes, that protection.

17. The trial court recognized that the oral testimony of PW-1 and PW-4 was inadmissible, yet used the documents introduced by them on the reasoning that the investigating officer had seized those documents and

[1] *Yahya Bakhtiar, Advocate v. The State*
[2] *Pir Mazhar-ul-Haq v. The State*
[3] *Muhammad Rashid Hussain and another v. The State and another*
[4] *Madad Ali and another v. The State*

was cross-examined. This division is legally untenable. Seizure proves, at most, that the investigating officer obtained a document from a stated source. It does not prove the truth of its contents, the authority of its maker, the completeness of the correspondence, the accuracy of a disputed calculation, service upon an accused, or the legal effect of a settlement. Nor can cross-examination of the seizing officer substitute for cross-examination of the witness possessing personal knowledge. To hold otherwise would permit every unproved assertion to become substantive evidence merely by passing through an investigating officer's hands.

18. The prejudice was real. The board material and annual reports were used to infer admissions, the PTCL documents to establish default and the settlement history, and the complainant's papers to connect multiple corporate transactions. Yet the defence could not test whether all minutes and replies were produced, whether the records were complete, whether later management altered payment instructions, whether the stated figures were reconciled, or whether the complainant's allegations arose from a struggle for corporate control. The conviction, insofar as it materially rests upon those untested sources, is unsafe.

19. A criminal charge must inform an accused, with reasonable precision, of the act, legal character and material particulars he must answer. Section 342, Cr.P.C. serves a related but distinct constitutional purpose: every material circumstance proposed to be used for conviction must be put to the accused so that silence or an unexplained circumstance is not manufactured by surprise. A circumstance not put cannot be used to fill a prosecutorial gap. The principle is reflected in the authority supplied at 2002 YLR 1811[5], where failure to put the decisive circumstance under section 342 was treated as fatal to its use for conviction.

20. Paragraph 5 of the charge alleged default in payment of PTCL, PTA and FBR dues and consequent loss to the exchequer. The reference and investigation separately described the property purchases as criminal breach of trust. The trial court, however, linked these distinct heads and concluded that failure to pay PTCL/PTA/FBR, coupled with expenditure on properties, constituted criminal breach of trust. That precise case that telecommunication services or sums payable for them constituted entrusted property, later diverted into the two properties was neither

[5] *Air Marshal (Rtd.) Waqar Azim & 3 others v. The State*

clearly charged nor distinctly put to the appellants. Indeed, the settlement quantifying PTCL liability was executed in July 2007, whereas the property purchases were made in 2006. The altered theory was not merely a different legal label on identical facts; it introduced a new factual bridge that the prosecution had never proved.

21. A court may correct an inapt statutory label where the proved facts, charge and opportunity of defence remain the same. It may not assemble one failed allegation with another, supply a missing element by conjecture, and convict upon a composite case the accused was never called upon to meet. Such a course offends sections 221 to 225 and 342, Cr.P.C., and the guarantee of a fair trial. The defect here occasioned actual prejudice because the defence to corporate default differs fundamentally from the defence to entrustment and dishonest conversion.

22. Criminal breach of trust is an offence of defined architecture. Whether examined under section 9(a)(x) of the Ordinance or the principles embodied in sections 405 and 406, P.P.C., the prosecution must prove: first, entrustment of identified property or dominion over it; second, a fiduciary obligation to retain, apply or dispose of that property in a particular manner; third, dishonest misappropriation, conversion, use or disposal in breach of that obligation; and fourth, the accused's conscious participation and dishonest intention. Entrustment is the jurisdictional fact of the offence. Without it, even wrongful retention, non-payment, breach of contract, imprudent investment or civil conversion does not become criminal breach of trust.

23. 2019 SCMR 1730[6] is directly instructive. The Supreme Court distinguished investment or payment from entrustment: money invested in a business is meant to be employed for the venture, whereas entrusted property is delivered subject to an obligation of preservation or application and return in accordance with the trust. The Court required independent proof of dishonest conversion and initial criminal intent and refused to criminalize business failure. 2011 SCMR 1614[7] and 2015 SCMR 1575[8] apply the same distinction. A promise to use money for an agreed commercial purpose may generate enforceable civil obligations, but it is not, without the fiduciary element and dishonest diversion, synonymous with entrustment.

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[6] *Hashmat Ullah v. The State and others*
[7] *Shahid Imran v. The State and another*
[8] *Rafiq Haji Usman v. Chairman NAB and another*

24. Corporate funds belong to the company as a separate juridical person. Directors may exercise dominion over them in a functional sense, but criminal liability does not follow from office alone. The prosecution must identify the transaction, the accused's authority and act, the dishonest object, and the personal or third-party gain knowingly procured. PLD 2021 Islamabad 350[9] emphasizes the necessary nexus between corrupt conduct and a guilty mind. PLD 2019 SC 250[10] permits the corporate veil to be lifted to reach real actors, but it does not abolish the requirement to prove who acted, what he did and with what criminal intent.

25. Likewise, the unreported decision in Amin Qasim v. The State, Criminal Accountability Appeal No.69 of 2018, supplied by the defence, correctly states that an error of judgment or negligent collective decision of a board cannot automatically impute criminal liability to each director. Corporate governance may demand vigilance and may expose a director to civil, regulatory or company-law consequences. Penal conviction, however, requires the coincidence of *actus reus* and *mens rea*. The criminal court cannot treat a board seat as a substitute for both.

26. The conveyance deeds establish that the two properties changed hands and that the considerations stated in successive instruments differed. They do not, by themselves, establish the fair market value at the relevant date, the total cost of land plus completed construction and fixtures, or dishonest overpayment. Price is a fact requiring proof appropriate to the property, locality, condition and time. The investigating officer candidly admitted that he did not examine a local estate agent, did not obtain an independent contemporaneous valuation, did not collect other independent evidence of market price, and did not examine the valuer whose certificate appeared in the company's annual report.

27. The trial court treated the previous conveyance considerations as conclusive valuation. That was a material error. A registered instrument proves the transaction and the consideration stated between its parties; it is not a judicial valuation certificate establishing that no commercial value was added or that the later consideration was necessarily fictitious. The Karachi property included construction and later remained a CTTL asset before being transferred by the succeeding management to MyBank. The record also indicated that the subsequent transfer was for a figure

[9] *Muhammad Masood Chishti v. Chairman NAB and others*
[10] *State through NAB v. Murad Arshad and others*

exceeding the purchase amount. The Lahore property was mutated in CTTL's name and likewise remained under corporate control. No evidence showed that either convicted appellant appropriated either property, placed it in his personal name, received its resale proceeds, or deprived CTTL of title.

28. The prosecution emphasized that advances preceded the vendor's acquisition of title. That circumstance called for commercial explanation and scrutiny, but it did not prove guilt beyond reasonable doubt. Agreements to procure and transfer property, advances for construction, and back-to-back acquisitions are not unknown to commerce. Their wisdom is not for a criminal court to endorse; their criminality depends upon proof of a sham, dishonest diversion or unlawful gain. The prosecution did not examine the relevant independent valuer, the original owner or a competent market witness to prove the asserted excess. It produced no evidence of a kickback, secret commission, flow of money into the appellants' personal accounts, or beneficial ownership retained by them.

29. The investigating officer expressly admitted that he had not collected oral or documentary evidence of kickbacks; no amount reflecting an underhand transaction appeared in the personal accounts of Ahmed Jamil Ansari or Muhammad Ajmal Ansari; and personal benefit was not shown. The theory was instead that, because Syed Mahmood-ul-Hassan was the father of the Chief Financial Officer, the difference in stated prices must represent criminal loss. Relationship may arouse suspicion and justify investigation, but suspicion, however grave, cannot replace proof of entrustment, dishonest conversion and individual complicity.

30. PW-8, the former auditor, raised audit concerns and was subsequently removed. An audit qualification may be important corporate evidence, but it does not determine criminal intent. His removal was attributed by the defence to disagreement over revenue recognition and was itself disputed. PW-36 Haris Anwar did not attribute to the appellants any instruction to manipulate the Lahore transaction. Banking witnesses proved movement of corporate funds and instruments, but not a criminal purpose. The annual reports recorded the properties as company assets and also referred to valuation by Asif Associates. The prosecution could not rely on the annual reports to prove advances and corporate control while disregarding their exculpatory or qualifying contents without calling the maker or valuer.

31. The trial court also linked unsecured receivables to the property purchases and called both 'dishonest acts'. Yet it had separately held that receivables were company assets, not loss to the exchequer. Extending credit without security may be negligent, commercially reckless, related-party misconduct or breach of directors' duties. It is not an offence under the Ordinance merely because it later proves uncollectible. No distinct finding, supported by admissible evidence, identified which appellant authorized which credit, the state of knowledge at that time, the benefit personally obtained, or the dishonest design. A finding rejected as a substantive head of loss could not be revived as character evidence to prove *mens rea* for another offence.

32. We therefore hold that the property evidence established transactions requiring corporate and civil explanation but did not prove the indispensable criminal ingredients. There was no legally proved entrustment by shareholders or PTCL of identified money for preservation and return; no dishonest conversion of company property to either appellant's use; no proved unlawful disposal; no reliable valuation demonstrating the quantified loss; and no evidence of kickback or personal gain. The conclusions under section 9(a)(iii), (x) and (xii) were reached by reversing the burden of proof and treating the appellants' inability to satisfy the trial court's questions as substantive proof. A conviction cannot be erected upon unanswered suspicion where the prosecution's own foundational proof is absent.

33. Section 5(r), read with section 9(a)(viii), creates a specific and carefully confined concept of wilful default. There must be an amount lawfully due from the accused to an institution within the statutory description, an obligation to pay, return or repay, expiry of the prescribed notice period, and, above all, a deliberate and calculated refusal despite ability and legal liability. The word 'wilful' imports consciousness and choice. It excludes mere inability, bona fide dispute, unresolved accounts, business collapse, insolvency, default caused by succeeding management, or failure of an entity whose liability has not lawfully been attributed to the individual accused.

34. In PLD 2016 SC 620[11], the Supreme Court held that, beyond subsistence of default, the prosecution must prove a conscious, intentional

[11] *The State through Chairman NAB and others v. Muhammad Asif Saigol and others*

and calculated refusal to pay; mere inability is not wilful default. The Court emphasized that the complaints before it did not state how or why the facilities were wilfully unpaid, whether money was misused or diverted, or whether the accused possessed the means but deliberately withheld payment. 2004 P.Cr.L.J. 2012[12] further holds that unsettled accounts and dues awaiting adjudication cannot sustain the label of wilful default and that determination of the amount due is a condition preceding penal recovery. The authority at 2002 YLR 1811[13] likewise recognizes that mere non-payment, without *mens rea* and deliberate refusal, is insufficient.

35. PLD 2021 Sindh 152[14], relied upon by NAB, does not dilute those safeguards. It distinguishes simple default from wilful default and sustained liability on a record independently investigated, supported by consistent witnesses and documentary corroboration, where the borrowers offered no plausible reason and the prosecution evidence remained undented. Its principle assists the Court only after the foundational facts, legally determined dues, statutory coverage, personal attribution, ability and deliberate refusal are proved. Those conditions are absent here.

36. PTCL supplied interconnection services to CTTL. Charges payable for services are debts arising from contract; the services were consumed and were never property entrusted for preservation or return. The trial court's statement that CTTL was 'entrusted services' collapses the settled distinction between entrustment and payment. A provider of services does not, by rendering them on credit, entrust property to the customer within section 405, P.P.C. or section 9(a)(x). At most, the customer incurs a contractual debt. The decision supplied in PLD 2016 Lahore 207[15] also illustrates that governmental shareholding or nomination of directors does not, without the requisite sovereign control and statutory character, automatically transform a public limited company into a Government department.

37. The evidentiary foundation for the PTCL claim was itself impaired because PW-4 never completed his testimony or submitted to cross-examination. The investigating officer admitted that PTCL had not lodged the complaint before NAB and had pursued a civil suit and a claim before the Official Assignee. The decree dated 22 November 2016 was against

[12] *Mian Munir Ahmed v. The State*
[13] *Air Marshal (Rtd.) Waqar Azim & 3 others v. The State*
[14] *Junaid Asad Khan and another v. The State*
[15] *M.S. Ghani Gases Limited v. Federation of Pakistan*

CTTL, not the appellants personally. The record showed that a settlement was executed on 12 July 2007 and post-dated cheques were issued; three cheques amounting to Rs.120 million were honoured. The remaining cheques were dishonoured after the appellants' resignation, with the record indicating stoppage of payment or change of authorized signatories under the succeeding management. That sequence is incompatible with the trial court's unqualified inference that the appellants deliberately refused to pay while at the helm.

38. The PTA evidence consisted of extensive correspondence, demand notes, show-cause and hearing notices, determinations, appeals, recovery petitions and liquidation claims. Its volume cannot substitute for its legal effect. PW-5 admitted that replies by CTTL had initially not been collected and were later produced by court direction; that appeals and proceedings were pending; that recovery mechanisms under the regulatory statute had been invoked; and that material correspondence and liabilities continued after change of management. The decision of 3 April 2008 itself acknowledged that the former management had resigned and the new management had taken over. A termination notice of 18 March 2009 related to non-compliance by the later management. The recovery claim before the Official Assignee remained subject to adjudication.

39. Most significantly, this Court's judgment dated 23 April 2019 in C.P. No.D-2762 of 2011, produced as Ex.58/2, set aside coercive recovery notices against the former directors and held that their prior offices did not, by themselves, make them personally liable for CTTL's financial obligations. The prosecution did not prove a subsequent adjudication imposing those dues personally upon either convicted appellant. The trial court neither determined the actual PTA amount against them nor explained how a corporate regulatory liability became their personal criminal default.

40. PW-11 Anwar Ali Sheikh, the FBR witness, did not attribute a specific culpable act to either appellant. He admitted that he had not passed an assessment order against CTTL, had issued no demand notice to the appellants, had not produced certified copies of the assessment orders listed in the departmental chart, did not know whether those orders had been served, and that FBR's claim before the Official Assignee remained pending. Correspondence between FBR and the liquidator proved assertion of a tax claim against the company; it did not prove an

adjudicated personal debt, service of statutory notice, ability to pay, or deliberate refusal by the appellants.

41. The trial court compounded these deficiencies by conflating PTCL charges with PTA and FBR liabilities, stating that payments to PTCL were subsequently to reach PTA and FBR as taxes. The reference itself quantified the claims separately, the witnesses described distinct regulatory and tax mechanisms, and no competent evidence established that payment of a single PTCL sum legally discharged all three. The impugned finding thus rests not upon adjudicated dues but upon a generalized assumption.

42. Nor was the alleged figure rationally handled. The trial court held that Rs.1,776,550,000 in receivables was not loss to the exchequer, yet paragraph 71 described the same figure as loss caused by non-payment of PTCL/PTA/FBR. The PTCL decree in Civil Suit No.118 of 2009 passed by the Islamabad High Court, Islamabad Judicial Department dated 22.11.2016 was about Rs.1,631,523,003; other figures appeared in PTA recovery material and FBR's liquidation claim. No reconciliation showed how the amount of conviction was derived, what component was legally due, from whom, on what date, after what notice, and under whose management. A penal judgment cannot select a convenient aggregate from mutually distinct claims and call it proof beyond reasonable doubt.

43. The prosecution was further required to prove ability coupled with deliberate refusal. Its argument was inferential: because money was spent on properties and credit was extended, money must have been available for PTCL, PTA and FBR and was wilfully withheld. This reasoning disregards chronology, distinct corporate purposes, the 2007 settlement, part payments, later dishonour under succeeding management, pending adjudications and liquidation. It proves neither available funds at the precise due dates nor a calculated decision by either appellant to refuse an established personal obligation. Simple or disputed corporate default was impermissibly converted first into wilful default and then into criminal breach of trust.

44. Ahmed Jamil Ansari and Muhammad Ajmal Ansari occupied senior offices and could not disclaim scrutiny of decisions taken during their tenure. But scrutiny is not conviction. The prosecution had to particularize and prove each appellant's act and intent. The record proved corporate signatures and offices, participation in business affairs and explanations in

board meetings. It did not prove personal receipt of funds, beneficial ownership of the properties, falsification of a valuation, a secret payment, or deliberate withholding of adjudicated dues after statutory notice. The impugned judgment repeatedly used their designations as the bridge from corporate act to criminal intent. That is vicarious criminal liability without statutory warrant.

45. Their choice not to testify on oath did not relieve the prosecution of its burden. Statements under section 342 are not defence evidence in the technical sense, but they must be considered with the prosecution case, particularly where supported by prosecution admissions or exhibited documents. The trial court erred in treating failure to produce a satisfactory explanation, or failure to call the independent valuer, as affirmative proof of guilt before the prosecution had itself established an admissible valuation, entrustment, conversion and *mens rea.*

46. The presumption under section 14 of the Ordinance is not a substitute for foundational proof. Before any evidentiary burden shifts, the prosecution must establish facts bringing the transaction within the charged offence and connecting the accused to it. A presumption cannot create entrustment where the transaction is investment or payment; cannot create an adjudicated debt from a pending claim; cannot authenticate untested documents; and cannot convert official status into dishonest intention.

47. Criminal proof is not a comparison of which narrative appears commercially more attractive. The prosecution must exclude every reasonable hypothesis consistent with innocence. Here the doubts are neither fanciful nor isolated: central witnesses were not cross-examined; the trial court used their documents through an impermissible evidentiary shortcut; the conviction proceeded on a materially altered theory; no independent contemporaneous valuation was proved; corporate properties remained company assets; no kickback or personal benefit was traced; receivables rejected as exchequer loss were used to infer dishonesty; PTCL, PTA and FBR claims were distinct, disputed or pending; the decisive events extended into succeeding management; and individual *mens rea* was inferred from designation.

48. Even one reasonable doubt entitles an accused to acquittal as of right, not grace. This record contains multiple doubts affecting every essential ingredient. The trial court's conclusion was produced by

cumulative suspicion, but several suspicions cannot be stacked to create proof. We therefore answer questions (ii) to (vi) by holding that the prosecution failed to prove any offence under section 9(a)(iii), (x), (xii) or, insofar as argued, section 9(a)(viii), read with section 10 of the National Accountability Ordinance, 1999, against Ahmed Jamil Ansari and Muhammad Ajmal Ansari beyond reasonable doubt.

49. So far appeal for enhancement of conviction is concerned, enhancement presupposes a lawful conviction. Once the conviction is found unsustainable, no sentence survives for enhancement. Even independently, NAB's memorandum proceeded principally on the scale of the aggregated reference amount and the assertion that the trial court had taken a lenient view. Sentencing is not an arithmetical response to an unproved allegation. The enhancement appeal neither cured the defects in charge and proof nor identified a lawful basis for treating rejected heads of claim as aggravating loss. Criminal Accountability Appeal No.10 of 2022 therefore fails both on limitation and merits.

50. An appeal against Hassan Jamil Ansari’s acquittal operates under a more exacting restraint. An acquitted person enjoys the initial presumption of innocence reinforced by the judgment of acquittal. Interference is warranted only where the conclusion is arbitrary, perverse, artificial, capricious or demonstrably founded upon material misreading or non-reading, resulting in grave miscarriage of justice. If two views are reasonably possible, the view sustaining acquittal must prevail.

51. The investigating officer admitted that the cheques and conveyances relied upon did not bear Hassan Jamil Ansari's signatures. No specific authorization by him for the impugned payments was proved. The investigating officer could not identify the board meeting by which he had allegedly authorized the PTCL settlement or interconnection agreement and relied generally upon annual reports and corporate membership. No evidence established that he received a benefit, operated the relevant transaction, directed a signatory, controlled the vendor, or deliberately caused default. The trial court therefore found that no specific role had been assigned or proved.

52. NAB's argument reduces to the proposition that knowledge and participation should be presumed because Hassan Jamil Ansari was a director. That is precisely the vicarious theory the criminal law rejects absent an express statutory basis and proved responsibility for the

business at the material time. The authorities relied upon concerning persons in charge of corporate affairs require proof of actual responsibility and culpable participation; they do not authorize conviction of every director. The acquittal was a possible, indeed compelling, view of the evidence. No perversity or material non-reading has been demonstrated. Criminal Accountability Acquittal Appeal No.11 of 2022 therefore fails both on limitation and merits.

53. For the foregoing reasons, Criminal Accountability Appeal No.03 of 2022 is allowed. The conviction and sentences of Ahmed Jamil Ansari and Muhammad Ajmal Ansari recorded by the learned Judge, Accountability Court No.IV, Sindh at Karachi, through judgment dated 27 January 2022 in Reference No.03 of 2012 are set aside. They are acquitted of the charges by extending the benefit of doubt. The fine, default sentence, disqualification and all consequential orders founded upon the conviction shall cease to operate. The appellants are on bail; their bail bonds stand canceled and surety discharged.

54. Criminal Accountability Appeal No.10 of 2022, seeking enhancement of sentence, and Criminal Accountability Acquittal Appeal No.11 of 2022, challenging Hassan Jamil Ansari's acquittal, are dismissed as barred by limitation and, independently, as devoid of merit. Hassan Jamil Ansari's acquittal is maintained and his bail bond and surety, if still subsisting in relation to the acquittal appeal, shall stand discharged.

55. The office shall place a signed copy in each connected file and transmit a copy to the learned Accountability Court for information and compliance.

JUDGE

JUDGE