

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal Nos.269 & 392 of 2023

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Khalid Hussain Shahani

Appellant in : Faisal Abdul Rasheed S/o Abdul Rasheed Karim
CrI. Appeal 269/2023 Through Mr. Naseer Nehal Hashmi Advocate.

Appellant in : Muhammad Sharif S/o Muhammad Ismile
CrI. Appeal 392/2023 Through Mr. Naseer Nehal Hashmi Advocate.

Respondent : The State
Through Mr. Khaleeq Ahmed, DAG a/w Mr.
Irshad Ali, Asst. Attorney General.

Date of hearing : 10.09.2026

Date of judgment : 18.09.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – By this consolidated judgment, Criminal Appeal No.269 of 2023 preferred by Faisal Abdul Rasheed and Criminal Appeal No.392 of 2023 preferred by Muhammad Sharif are being decided together. Both appeals arise from the judgment dated 06.05.2023 passed by the learned Judge, Special Court (Offences in Banks), Sindh at Karachi, in Case No.22 of 2014, emanating from FIR No.16 of 2014 registered at Police Station FIA (Crime Cell), Karachi, for offence under sections 420, 468, 471, 109 and 34, PPC.

2. Through the impugned judgment, each appellant was convicted under Section 420 read with Section 34, PPC and sentenced to rigorous imprisonment for five years with fine of Rs.5,000,000, or, in default, further rigorous imprisonment for two years; under Section 468 read with Section 34, PPC to rigorous imprisonment for five years with fine of Rs.500,000, or, in default, further rigorous imprisonment for two years; under Section 471 read with Section 34, PPC to rigorous imprisonment for two years with fine of Rs.200,000, or, in default, further rigorous imprisonment for one year; and under Section 109, PPC to rigorous imprisonment for five years with fine of Rs.200,000, or, in default, further rigorous imprisonment for one year. The substantive sentences were directed to run concurrently and benefit under Section 382-B, Cr.P.C. was extended.

3. The prosecution case originated in a report lodged on 08.03.2014 by Syed Muhammad Raza Abbas Zaidi, an officer associated with the Investigation/Fraud Risk Management Unit of Standard Chartered Bank. In substance, the report alleged that persons engaged in skimming or card fraud were preparing or manipulating debit/credit cards by using data belonging to customers of local and foreign banks; that such cards were used at point-of-sale terminals of merchant outlets with the connivance of merchants; and that the activity had caused loss to banks or their customers. During the bank's inquiry, Faisal Abdul Rasheed was treated as a suspect. The alleged activity was stated to have occurred between 2011 and 2014 and the total loss was put at about Rs.4.3 million.
4. The immediate episode relied upon by the prosecution concerned four transactions said to have been carried out in February 2014 against the Standard Chartered Bank debit-card account of Bilal Tariq at AAZ Superstore, Bombay Lighthouse and Gasoline Petroleum. It was alleged that a physical card issued by another bank bore the name of Faisal Abdul Rasheed but, when presented at a merchant terminal, generated data belonging to Bilal Tariq. Another account of the episode was that the last four digits visibly written or covered on a card had been changed from 1837 to 0362. CCTV footage, charge slips, cards, purchased articles and bank material were thereafter collected. Faisal Abdul Rasheed and Muhammad Sharif were arrested and sent up for trial.
5. Upon submission of the final report on 22.12.2014, the learned trial Court took cognizance. Charge was framed on 12.01.2016. The appellants pleaded not guilty and claimed trial. Of the sixteen witnesses cited in the final report, twelve were examined. The prosecution relied upon the complainant and fraud-management officials of the concerned banks, employees of the merchant outlets, witnesses to arrest and recovery, the investigating officer, CCTV recordings, charge slips, seized cards and articles, and related bank papers. On closure of the prosecution case, the appellants were examined under Section 342, Cr.P.C.; they denied the allegations and maintained that they had been falsely implicated. The record does not show that they assumed any burden to disprove the prosecution case. The learned trial Court, however, found the charges proved and convicted and sentenced them in the terms stated above.
6. Learned counsel for the appellants assailed the judgment as a product of non-reading and misreading of evidence. He submitted that the FIR was omnibus and did not specify the date, time, amount, customer or outlet in respect of each alleged transaction; that the asserted loss of Rs.4.3 million

was unsupported by an account statement, debit entry, settlement record, charge-back record or testimony of an officer competent to prove such loss; and that Bilal Tariq, the customer whose card data was allegedly misused, was neither examined nor was his original complaint produced.

7. Counsel further contended that neither the seized cards nor their magnetic stripes or EMV chips were forensically examined; the prosecution did not prove cloning, alteration of encoded data or authorship of any alteration; most recovered cards were admitted to be genuine or expired; and the card singled out by one bank had already been blocked. He argued that CCTV footage, even if viewed at its highest, established only the appellants' presence or shopping at certain outlets and did not depict encoded card data, the account charged, or a fraudulent transaction. Its provenance, extraction, continuity and integrity were not established through competent technical evidence.
8. Regarding identification and recovery, counsel submitted that the merchant witnesses had been exposed to the appellants at the FIA office or police station before identifying them in Court; no test-identification parade was conducted; no independent person was associated with the searches despite the localities being populated; and the evidence concerning arrest, search and seizure contained material inconsistencies, including documents bearing 07.03.2014 although the FIR was lodged on 08.03.2014. With particular reference to Muhammad Sharif, it was urged that no card transaction was attributed to him and that recovery of consumer articles, without proof of their purchase through a forged card, could not establish cheating, forgery, use of a forged document, abetment or common intention.
9. Learned counsel lastly submitted that the learned trial Court reproduced substantial parts of the examination-in-chief but did not compare them with the admissions elicited in cross-examination, identify the maker of a false document, or return distinct findings on the ingredients of each offence. Conviction under Section 109, PPC was said to be legally incoherent because no particular act of abetment, principal offence abetted, or mode of instigation, conspiracy or intentional aid had been identified. Acquittal of both appellants was accordingly sought.
10. Conversely, learned Deputy Attorney General supported the impugned judgment. He submitted that the bank witnesses described a consistent modus operandi: replacement or masking of the visible digits on debit cards while using encoded information belonging to another cardholder.

He relied upon the evidence concerning Bilal Tariq's disputed transactions, the charge slip bearing the name of Faisal Abdul Rasheed, and CCTV footage at the relevant outlets. According to him, PW-6 and PW-7 of Bombay Lighthouse identified the appellants; PW-8 of Hyperstar identified Faisal Abdul Rasheed; PW-9 supplied footage showing the appellants; PW-10 proved recovery of articles from Muhammad Sharif's house; PW-11 proved arrest and search; and PW-12 recovered a number of debit/credit cards, some of which were reported to be fake or altered.

11. The learned DAG argued that the material pieces were mutually corroborative; relevant portions of the witnesses' testimony were not effectively challenged; and formal defects or absence of private mashirs did not efface otherwise confidence-inspiring official evidence. He maintained that the acts were offences connected with banking business and, therefore, within the competence of the Special Court. He prayed that both appeals be dismissed.
12. We have heard the learned counsel, examined the impugned judgment, and reappraised the oral and documentary evidence with the care demanded of a first appellate Court. An appeal against conviction is not disposed of by asking whether the prosecution narrative is possible. The Court must independently determine whether every essential element of every conviction is proved beyond reasonable doubt by legally admissible and reliable evidence. Equally, an appellate Court should not manufacture doubt from immaterial discrepancies or discard trustworthy evidence merely because investigation could have been better.
13. The following questions arise for determination: (i) whether the prosecution proved identified fraudulent transactions and resultant deception, delivery, wrongful loss or gain so as to constitute cheating under Section 420, PPC; (ii) whether a false document or electronic record was proved, together with its making by either appellant and the purpose required by Section 468, PPC; (iii) whether either appellant used a proved forged document as genuine with the knowledge or reason to believe required by Section 471, PPC; (iv) whether the evidence established abetment under Section 109 or common intention under Section 34, PPC against each appellant; (v) what evidentiary value could safely be attached to the CCTV footage, charge slips, identification and recoveries; and (vi) whether the impugned convictions and sentences can be sustained.
14. At the outset, the jurisdictional objection requires separation from the question of guilt. Transactions through bank-issued cards and point-of-

sale networks are plainly capable of constituting offences connected with banking business. Failure ultimately to prove an actual quantified loss does not retrospectively deprive the Special Court of seisin where the accusation, on its face, concerns misuse of banking instruments and customer data. Jurisdiction is determined by the legal character of the accusation and the statutory schedule, whereas conviction depends upon proof. The plea that absence of established loss by itself nullified the entire proceedings is therefore not accepted. It does, however, have material bearing upon proof of cheating and sentence.

- 15.** Section 420, PPC is not a general punishment for suspicious or dishonest conduct. The prosecution must prove deception; fraudulent or dishonest inducement; delivery of property, alteration or destruction of valuable security, or the prescribed resulting act or omission; and the dishonest intention at the relevant inception. In a card transaction, these components may ordinarily be shown through the cardholder's testimony, authenticated account entries, the merchant's transaction record, acquiring/issuing bank settlement data, charge slips, terminal logs, proof of delivery, and evidence connecting the accused with the deceptive presentation. Not every case requires every species of proof, but the evidence actually produced must complete the chain.
- 16.** The prosecution attributed the triggering complaint to Bilal Tariq. Yet he was not examined. His written complaint, account statement reflecting the four disputed debits, dispute form, reversal or charge-back record and evidence of settlement between the acquiring and issuing banks were not proved. The complainant and fraud-management officers could narrate what their inquiry disclosed, but their assertion that Bilal Tariq denied the transactions was, in the absence of the declarant and the underlying authenticated record, not substantive proof of his non-authorization. Nor did it prove who sustained the alleged Rs.4.3 million losses or how that aggregate was computed.
- 17.** This omission is not a ritual objection about multiplicity of witnesses. Article 17 of the Qanun-e-Shahadat Order, 1984 permits proof by a legally sufficient witness, and a conviction does not depend upon a particular numerical count. The difficulty is qualitative: Bilal Tariq was the source of the assertion that the transactions were unauthorized, while the banking entries and settlement trail were the best objective evidence of what account was charged, for what amount, at which terminal, on what date and with what ultimate financial consequence. Neither source was placed

before the Court in an admissible and complete form. The withheld evidence went to the factum of deception and loss itself.

- 18.** The allegation of an aggregate loss of about Rs.4.3 million was wider than the four February transactions. Yet no transaction-wise schedule was proved connecting a date, terminal, cardholder, amount, article and appellant. Evidence that an internal review revealed earlier similar transactions was an investigative lead; it could not become proof of numerous independent offences without production of their primary records and witnesses. Character or suspected modus operandi cannot be used to bridge missing proof of the offence charged.
- 19.** The charge slip said to bear Faisal Abdul Rasheed's name requires careful treatment. A name printed by a point-of-sale system may be relevant circumstantial evidence, but the complainant is recorded as admitting that a POS receipt prints the cardholder name contained in chip data rather than surface writing. The prosecution theory was simultaneously that Bilal Tariq's encoded data were used and that the slip displayed Faisal Abdul Rasheed's name. That apparent technical tension required explanation through terminal data or an expert familiar with the relevant card architecture. The Court could not simply assume which data field produced the name, or infer from the name alone that Faisal authored or knowingly used a forged instrument.
- 20.** Sections 468 and 471, PPC address distinct wrongs. For Section 468, the prosecution must first prove a 'false document' within the statutory concept of forgery, its making by the accused, and the intention that it be used for cheating. For Section 471, it must prove a forged document, its use as genuine by the accused, and his knowledge or reason to believe that it was forged. The existence of an unusual card is not self-proving evidence of who encoded, altered, possessed or used it, much less of the user's state of mind.
- 21.** The seized cards were the physical fulcrum of the forgery allegation. The record, as highlighted by both sides, shows that the magnetic stripe and EMV chip were not forensically examined. PW-12 is stated to have recovered sixteen or nineteen cards and to have acknowledged that only three were treated as fake or altered, on the strength of internal bank verification. PW-4's evidence was that UBL cards were genuine and valid, with some expired and no recorded complaint of misuse or wrongful issuance. PW-5 accepted that the relevant Dubai Islamic Bank card had

been blocked, that his bank sustained no monetary loss, and that no forensic examination was conducted.

- 22.** The numerical variation in the descriptions of the recovered cards is not by itself decisive. What is decisive is the absence of a proved forensic or technical report identifying the exact card, the genuine data originally encoded, the data allegedly substituted, the method and time of alteration, and any nexus of either appellant with making that alteration. Surface tape or overwritten digits may arouse grave suspicion, but surface appearance does not establish alteration of magnetic-stripe or chip data. Conversely, if the encoded data were altered, that alteration was capable of objective examination. The prosecution did not supply that link.
- 23.** Electronic evidence is neither inherently weak nor inherently conclusive. Article 164 of the Qanun-e-Shahadat Order permits evidence made available through modern devices, while ordinary principles of relevance, authenticity and fair opportunity remain applicable. CCTV footage may be proved by a person who operated, maintained, extracted or lawfully received it, or by other evidence establishing its source and integrity. A formal forensic report is not an inflexible condition in every case. But where the recording is relied upon to prove a technically disputed transaction and the defence challenges extraction, continuity and interpretation, the prosecution must establish a dependable foundation and explain what the images actually prove.
- 24.** PW-2 was said by the prosecution to have collected CCTV footage from merchant outlets and produced it. PW-9, who was not present at the transaction, stated in substance that he delivered footage from AAZ Superstore. The defence correctly points out that the footage at its highest depicted the appellants present or shopping. It did not display the data encoded in a card, identify Bilal Tariq's account, prove authorization or non-authorization, show the amount settled, or demonstrate who altered a card. Presence at an outlet is a neutral fact unless connected by reliable transaction evidence to the criminal act. The trial Court treated the footage as if it visually proved the whole technical allegation; that was an impermissible enlargement of its contents.
- 25.** The merchant evidence also contained features calling for caution. PW-6 acknowledged that no POS slip supporting the alleged Bombay Lighthouse transaction was produced and that the bill reflected cash payment. The identification was made after the witness had seen an appellant in FIA custody. PW-8's account concerning the interval between

the alleged Hyperstar transactions varied materially. No test-identification parade was held. Dock identification is admissible evidence, but when the witness had no prior acquaintance and was exposed to the suspect during investigation, it ordinarily requires strong independent assurance. Here, the passage of years between the incident and trial, combined with prior exposure and missing transaction records, materially reduced its safe probative value.

26. The failure to conduct a parade is not an automatic ground of acquittal where identity is otherwise established. Nor does every discrepancy in recollection destroy a witness. The present difficulty is cumulative and evidentially focused: identification was asked to connect a shopper to an intricate card fraud, yet the objective data that could have fixed the card, terminal, time, amount and account were not proved. Identification of a person present in a shop could not substitute for proof that the person executed the charged deceptive transaction.
27. The recoveries require the same calibrated approach. Testimony of FIA or police officials is not to be discarded merely because of official status, and non-association of a private witness does not by itself make a search illegal or its product inadmissible. Nevertheless, where a search is conducted in a populated locality, unexplained failure to associate an available independent witness is a circumstance affecting weight, particularly when the defence alleges prior detention and fabrication and the recovered objects are commonplace or legally possessed.
28. PW-10 supported recovery, at Muhammad Sharif's pointation, of articles said to have been purchased from Bombay Lighthouse. But the prosecution did not prove the corresponding card slip, transaction entry, debit from Bilal Tariq's account, serialized invoice, or another reliable marker linking those articles to an unauthorized card transaction. Consumer goods do not carry an inference of criminal origin merely because an accused possesses them. PW-11 proved arrest/search documentation relating to Faisal Abdul Rasheed, while the seized articles were later returned under orders of the trial Court. Return does not erase a valid recovery, but it underscores the need for the prosecution to prove the evidentiary link before drawing an incriminating inference.
29. More serious is the chronology. The defence confronted the official witnesses with arrest or seizure documents dated 07.03.2014, whereas the FIR was registered on 08.03.2014. The prosecution did not satisfactorily reconcile how formal recovery papers preceded the criminal

case upon which the search was purportedly based. A mistaken date can occur, and the Court does not acquit on clerical slips. But where the defence case is prior detention and planted recovery, a pre-FIR date on foundational documents is material; it required a cogent explanation from the investigating officer and corroboration from contemporaneous records. None appears.

- 30.** The investigating officer's denial of the suggestion that he cited Faisal Abdul Rasheed without supporting evidence does not itself furnish the missing evidence. Suggestions and their denials test testimony; they are not a substitute for affirmative proof. Likewise, the fact that a proposition in examination-in-chief was not challenged word for word does not relieve the prosecution from proving legal ingredients. Failure to cross-examine may amount to acceptance of a fact within the witness's competence, but it cannot convert hearsay into direct evidence, authenticate an unproved electronic record, or establish a technical conclusion beyond the witness's expertise.
- 31.** The evidence against Faisal Abdul Rasheed is undoubtedly stronger in suspicion than that against Muhammad Sharif. His name was associated with a card and charge slip; witnesses placed him at outlets; and the bank inquiry focused upon him. Yet the prosecution was required to advance from association to proof. It did not prove the disputed account debit through Bilal Tariq or authenticated records; it did not prove the technical mismatch through expert evidence; it did not identify a particular forged card used in a particular proved transaction; and it did not prove that Faisal made the false instrument or knowingly used it as genuine. Each missing link concerned an ingredient, not a peripheral formality.
- 32.** Against Muhammad Sharif, the gap is wider. The evidence principally comprised association with Faisal, identification at a merchant outlet, and recovery of articles from his residence. No specific forged card or charge slip was proved to have been used by him; no account was shown to have been charged by his act; and no communication, preparation, sharing of proceeds, or conduct demonstrating a pre-arranged plan was established. His presence and companionship, even if accepted, could not alone prove either participation under Section 34 or intentional aid under Section 109, PPC.
- 33.** Section 34, PPC does not create an independent offence. It embodies joint liability where a criminal act is done by several persons in furtherance of the common intention of all. Common intention may be formed on the

spot and proved circumstantially, but it requires evidence of a shared design coupled with participation in the criminal act. It cannot be presumed merely from association, simultaneous presence, or a broad allegation of connivance. Where the underlying criminal act and the appellant's participation remain unproved, Section 34 cannot cure the deficiency.

34. Abetment is likewise a defined concept, embracing instigation, conspiracy accompanied by an act or illegal omission, or intentional aid. Section 109 supplies punishment where the act abetted is committed in consequence and no express punishment is otherwise provided. The impugned judgment did not identify who abetted whom, which offence was abetted, the proven act of instigation or aid, or why each appellant, already convicted as a principal with Section 34, also attracted a separately quantified five-year sentence under Section 109. A conviction cannot rest upon the label 'connivance' without findings on the statutory mode and evidence supporting it.
35. The learned trial Court was entitled to consider the evidence cumulatively, but cumulative appraisal does not mean that several inconclusive circumstances automatically become conclusive. Each circumstance must first be proved; the proved circumstances must be consistent with guilt; and, in a case resting substantially on circumstantial and technical evidence, the chain must exclude reasonable hypotheses consistent with innocence. An unproved loss, unauthenticated transaction, unexplained technical inconsistency, equivocal footage and unlinked recovery cannot reinforce one another into proof merely by being listed together.
36. The impugned judgment reproduced the prosecution account at length but did not perform the necessary ingredient-by-ingredient adjudication. It did not reconcile the absence of Bilal Tariq and his account records, distinguish genuine and expired cards from allegedly forged cards, identify the false document and its maker, determine the evidentiary reach of the CCTV footage, deal with the pre-FIR recovery chronology, or separately assess Muhammad Sharif's participation. Its conclusion that the case stood proved 'without shadow of doubt' preceded, rather than followed, a reasoned demonstration of the links. Such treatment is insufficient for sustaining a criminal conviction.
37. Certain defence propositions, taken in isolation, were overstated. Delay in lodging the FIR or submitting the challan is not invariably fatal; non-production of every cited witness does not invite an adverse inference where the evidence produced is sufficient; absence of private mashirs is

not a rule of exclusion; and electronic evidence does not always require forensic certification. Nevertheless, after stripping away those overstatements, the central deficiencies remain: the primary victim and transaction trail were absent; the alleged forged data were not objectively proved; the electronic material did not depict the decisive facts; the recoveries were not transaction-linked and had an unexplained chronology; and individual culpability was not established.

38. The presumption of innocence accompanies an accused throughout the trial and is reinforced when an appellate Court finds that essential links were supplied by assumption. The prosecution must stand on the strength of its own evidence and cannot derive support from the weakness of the defence or from an accused's bare denial under Section 342, Cr.P.C. A reasonable doubt is not an abstract or fanciful possibility; it is a doubt arising from reason and the record. Once such doubt appears in respect of an essential ingredient, its benefit is a right, not a concession.
39. Here, more than one reasonable doubt arises. There is no proved transaction-wise loss; no testimony or original complaint of Bilal Tariq; no authenticated statement identifying the impugned debits; no reliable technical proof that a specified seized card carried cloned data; no proof of authorship of alteration; no complete foundation linking the CCTV to the charged transaction; no safe identification independent of prior exposure and objective records; no satisfactory explanation of the pre-FIR recovery documents; and no distinct evidence of Muhammad Sharif's common intention or abetment. These are not minor irregularities at the margins. They go to the identity of the criminal act, the instrument, the actor and the requisite guilty mind.
40. It follows that the prosecution did not prove beyond reasonable doubt the ingredients of sections 420, 468 or 471, PPC against either appellant. For the same reasons, resort to sections 34 and 109, PPC cannot sustain liability. Questions (i) to (iv) are answered in the negative; question (v) is answered by holding that the footage, identifications and recoveries possessed limited corroborative potential but, on this record, lacked the primary and technical links necessary to carry the burden of proof; and question (vi) is answered against the sustainability of the impugned judgment.
41. Consequently, Criminal Appeal No.269 of 2023 and Criminal Appeal No.392 of 2023 are allowed. The judgment dated 06.05.2023 passed by the learned Judge, Special Court (Offences in Banks), Sindh at Karachi, in

Case No.22 of 2014 is set aside. Faisal Abdul Rasheed and Muhammad Sharif are acquitted of the charges under Sections 420, 468 and 471 read with Section 34, and Section 109, PPC, by extending to them the benefit of doubt. Their convictions, substantive sentences, fines and default sentences stand annulled.

42. The appellants are present on bail. Their bail bonds stand cancelled and sureties discharged. Any property still retained in the case shall be dealt with by the trial Court strictly in accordance with law after notice to all persons claiming an interest therein and subject to the expiry of the period prescribed for further proceedings.
43. Before parting, it is observed for guidance that prosecution of technology-assisted banking offences must be built around the transaction, not merely the suspect. Investigators should preserve the cardholder's complaint; obtain certified issuing and acquiring-bank records, terminal and settlement logs, charge slips and delivery documents; forensically examine the questioned card or device where encoded manipulation is alleged; secure CCTV through a documented chain; prepare a transaction-wise chart; and identify the act and *mens-rea* attributable to each accused. Courts, in turn, must match that proof separately to deception, false-document making, knowing use, common intention and abetment. Technological complexity may explain the form of evidence required; it does not dilute the criminal standard of proof.
44. The office shall place a copy of this judgment in the connected appeal.

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