IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal Nos.476 of 2025

Appellant : Muhammad Ajmal son of Ghulam Fareed
Through Mr. Raja Abdul Malik, Advocate.

Criminal Appeal Nos.535 of 2025

Appellant : Muhammad Javed son of Khadim Hussain
Through Mr. M. Immad Qamar, Advocate.

Criminal Jail Appeal Nos.624 of 2025

Appellant : Muhammad Shamshad son of M. Allaudin
Through M/s. Raja Abdul Malik, M. Immad Qamar Advocates.

Respondents : The State.
Through Mr. Qamaruddin Nohri, Assistant Prosecutor General.

Date of hearing : 28.10.2026.

Date of judgment : 04.11.2026.

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. –These three appeals emanate from the common judgment dated 30.06.2025, whereby the learned IV Additional Sessions Judge, Karachi East, in Sessions Case No.37/2023, arising out of FIR No.777/2022, Police Station Gulshan-e-Iqbal, convicted appellants Muhammad Javed, Muhammad Shamshad and Muhammad Ajmal under Section 397 read with Section 34 PPC and sentenced each to undergo rigorous imprisonment for seven years, with the benefit of Section 382-B Cr.P.C., while acquitting co-accused Hafeez Khan alias Goonga.

2. Briefly, the prosecution alleged that on 18.09.2022, at about 12:15 p.m., four unidentified persons, travelling on two motorcycles, entered the medical and general store of complainant Darshan Kumar at Gulshan-e-Iqbal, Karachi, and, by displaying a firearm, deprived him and his employees of Rs.70,000, two mobile telephones and certain other articles. The FIR was lodged against four unknown offenders without furnishing their physical descriptions or attributing any individualized role. On

20.09.2022, appellants Muhammad Ajmal and Muhammad Javed were apprehended in separate Arms Act cases and subsequently implicated in the present occurrence upon their alleged custodial disclosures and identification by the complainant at the police station. Muhammad Shamshad was thereafter arrested upon the purported indication of the arrested accused, whereas Hafeez Khan was apprehended subsequently. On completion of investigation, all four accused were sent up for trial.

3. The prosecution initially examined Inspector Muhammad Ramzan, who registered the FIR, and SIP Muhammad Sarfaraz, the investigating officer. Upon the complainant and other private witnesses being reported untraceable, the prosecution evidence was closed and statements of the accused under Section 342 Cr.P.C. were recorded. Subsequently, the prosecution was permitted, under Section 540 Cr.P.C., to reopen its case, whereafter complainant Darshan Kumar and PC Zulfiqar Ali were examined. The accused were again confronted with the incriminating circumstances under Section 342 Cr.P.C. They denied the allegations and asserted false implication. The learned trial Court, placing predominant reliance upon the complainant's identification and the investigating officer's testimony, convicted the three appellants but acquitted Hafeez Khan for want of satisfactory identification.

4. Learned counsel for the appellants have assailed the convictions principally on the grounds that the FIR was registered against unidentified offenders; no identification parade was conducted before a Magistrate; the alleged identification occurred after the accused had been exposed to the complainant in police custody; the purported confessional disclosures were inadmissible; no robbed property was recovered; material eyewitnesses remained unexamined; and the chronology of arrest suffered from discrepancies. Objection has also been raised regarding the subsequent alteration of exhibit numbers after pronouncement of judgment through proceedings under Section 369 Cr.P.C. The record, the impugned judgment and the rival positions have been considered in the exercise of appellate jurisdiction.

5. The determinative question is whether the prosecution established the identity and participation of these appellants beyond reasonable doubt. That a robbery was reported at the complainant's establishment is one matter; whether the persons arraigned were its perpetrators is quite another. The distinction assumes significance because the FIR contained neither the names nor the distinguishing features of the offenders.

Although omission of physical descriptions is not invariably destructive of the prosecution case, subsequent identification of previously unknown persons must possess such intrinsic reliability as to exclude a reasonable possibility of mistaken attribution.

6. In the present case, the identification of Muhammad Ajmal and Muhammad Javed originated in the investigation room of the police station, where they were already detained in unrelated Arms Act cases. Exh.13 itself records that the complainant and Nandi Ram identified them in police custody. No identification parade under judicial supervision was conducted, nor was any safeguard demonstrated against prior exposure or suggestive identification. Their subsequent identification before the trial Court could not, without dependable independent corroboration, obliterate the infirmity attaching to the original process. The learned trial Court's reasoning that the investigating officer could have arranged a judicial identification parade had he entertained any improper motive is manifestly conjectural. Evidentiary reliability is determined by the safeguards actually observed, not by speculative assumptions concerning an investigator's intentions.

7. Equally unsustainable is any reliance upon the alleged confessional disclosures of Muhammad Ajmal and Muhammad Javed recorded in Exh.13. Admissions of criminal guilt made to police officers while in custody are excluded by Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, subject to the limited exception embodied in Article 40 concerning information distinctly related to a fact discovered. The alleged disclosures neither resulted in recovery of the robbed cash or articles nor yielded any independently incriminating discovery establishing the appellants' participation. Their incorporation in a police memorandum, or repetition by prosecution witnesses, cannot transform inadmissible confessional material into substantive proof.

8. The complainant, examined at Exh.24, undoubtedly supported the occurrence and identified three of the accused. His status as an aggrieved witness does not render his evidence inherently suspect; equally, it does not confer upon its immunity from critical scrutiny. In cross-examination he acknowledged that the FIR contained no particulars of the SIM cards or denominations of the currency notes and, more significantly, that none of the robbed articles had been recovered from any accused. He further admitted that the memorandum of arrest and identification, Exh.13, was prepared at the police station. These circumstances assume cumulative

significance when the identification itself suffers from the deficiencies already noticed. The complainant's inability to identify Hafeez Khan might demonstrate restraint in accusation, but it cannot, by a process of automatic inference, authenticate his identification of the remaining accused.

9. The non-examination of Nandi Ram and Kamlesh further deprived the prosecution case of potentially material corroboration. Both were cited as eyewitnesses in the FIR; Nandi Ram was additionally alleged to have been deprived of his mobile telephone, to have pursued the offenders and to have participated in material investigative proceedings. Although conviction may rest upon a solitary trustworthy witness, the rule concerns the quality rather than the numerical strength of evidence. Where the solitary account is affected by substantial doubts concerning identification, the absence of other natural witnesses cannot be regarded as wholly inconsequential. The testimony of the investigating officer, being principally an account of investigative steps, does not independently establish that the appellants committed the robbery.

10. The case against Muhammad Shamshad is no stronger. His implication rests substantially upon the alleged custodial disclosure of co-accused, his subsequent apprehension and the purported connection of a motorcycle with the occurrence. Exh.12 records his arrest in the Orangi Town area and recovery of Rs.150 and his CNIC, neither of which possesses any demonstrated nexus with the robbed property. Even assuming ownership of the motorcycle, that circumstance alone does not prove its use in the occurrence or the appellant's participation therein. The prosecution did not establish an unbroken evidentiary chain connecting the motorcycle, the actual perpetrators and Muhammad Shamshad. His explanation under Section 342 Cr.P.C. concerning the alleged earlier snatching of his motorcycle may or may not be persuasive; its rejection, however, cannot discharge the prosecution's independent burden of proof.

11. The chronology of arrest also remained insufficiently reconciled. Exh.16 places the initial apprehension of Muhammad Ajmal and Muhammad Javed at about 1:00 a.m. on 20.09.2022, whereas Exh.13 records their re-arrest and identification at 4:20 p.m. that day; the investigating officer's deposition contains a reference to identification at about 1:00 a.m. Such discrepancies cannot be treated as merely peripheral where the precise sequence of apprehension and identification constitutes the essential link between previously unidentified offenders and the accused ultimately

convicted. The prosecution was required to establish this connection through coherent and reliable evidence, which is conspicuously lacking.

12. The objection concerning the statements under Section 342 Cr.P.C. and subsequent alteration of exhibit numbers has also received consideration. The recording of fresh statements after reopening of the prosecution evidence was not, in itself, objectionable, since additional incriminating circumstances were required to be put to the accused. However, Section 369 Cr.P.C. does not permit substantive modification of a signed judgment or retrospective alteration of evidence under the guise of correcting clerical errors. A distinction must nevertheless be maintained between impermissible interference with substantive evidence and correction of erroneous exhibit references. The latter does not automatically vitiate a trial in the absence of demonstrated prejudice. The present convictions, however, cannot derive support from subsequent corrections to the record; their legality must stand or fall upon the evidence lawfully brought on record.

13. The learned trial Court also failed to undertake the necessary examination of the ingredients of Section 397 PPC in relation to each convicted appellant. The prosecution alleged that one of four unidentified offenders displayed a firearm, without specifying his identity or establishing through independently reliable evidence the particular participation attributable to each appellant. The alleged recovery of firearms in separate Arms Act cases, absent a demonstrable connection with the occurrence, could not conclusively supply that deficiency. Invoking Section 34 PPC does not dispense with proof of the facts necessary to establish liability for the aggravated offence.

14. What is particularly disquieting is the approach adopted by the learned trial Court in rejecting the defence explanations while overlooking material deficiencies in the prosecution case. A defence plea may be improbable, uncorroborated or even demonstrably false; nevertheless, the resulting weakness does not constitute substantive evidence of guilt. The burden remains upon the prosecution throughout and cannot be shifted by requiring the accused to establish innocence. Equally, absence of previous animosity between the complainant and the accused may diminish the likelihood of deliberate fabrication, but it cannot eliminate the possibility of mistaken identification. The learned trial Court conflated these distinct considerations and consequently accorded the prosecution evidence a degree of certainty which it did not possess.

15. The acquittal of Hafeez Khan does not *ipso facto* entitle the appellants to identical treatment, because criminal responsibility must be determined individually. Nevertheless, the same standard of proof necessarily governs all accused. The learned trial Court discounted the custodial disclosures and deficient identification in Hafeez Khan's case, yet treated substantially similar investigative material, supplemented by an identification of questionable reliability, as sufficient to sustain the convictions of the present appellants. Such differential treatment required cogent evidentiary justification. The impugned judgment furnishes no satisfactory answer to the foundational infirmities identified above.

16. The governing principle admits of no ambiguity. In 1995 SCMR 1345[1] and 2009 SCMR 230[2], the Supreme Court reiterated that the existence of even a single circumstance generating reasonable doubt in the mind of a prudent person entitles the accused to its benefit as a matter of right, not indulgence. The prosecution must establish guilt beyond reasonable doubt; suspicion, however compelling, cannot be elevated into proof.

17. On an independent reappraisal of the record, the prosecution case is beset by material infirmities affecting the very identity and participation of the appellants. The absence of reliable identification safeguards, inadmissibility of custodial disclosures, non-recovery of robbed property, failure to examine material eyewitnesses, inconsistencies in the chronology of arrest and lack of independently established connecting circumstances collectively create reasonable doubt. These are not inconsequential procedural imperfections but deficiencies striking at the evidentiary foundation of the convictions. The learned trial Court's contrary assessment suffers from misreading and inadequate appreciation of material evidence and is, therefore, legally unsustainable.

18. Consequently, all three appeals are allowed. The impugned judgment dated 30.06.2025, passed by the learned IV Additional Sessions Judge, Karachi East, in Sessions Case No.37/2023, arising out of FIR No.777/2022, Police Station Gulshan-e-Iqbal, is set aside to the extent of the convictions and sentences awarded to appellants Muhammad Javed, Muhammad Shamshad and Muhammad Ajmal. They are acquitted of the charge under Sections 397/34 PPC by extending to them the benefit of doubt. They shall be released forthwith, if not required in any other case.

---

[1] Tariq Pervez v. The State
[2] Muhammad Akram v. The State

Their bail bonds, if any, stand cancelled and sureties discharged. The acquittal of co-accused Hafeez Khan remains undisturbed. Office shall communicate this judgment to the learned trial Court and the Superintendent, Central Prison, Karachi, for immediate compliance.

J U D G E

Shahbaz