IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Appeal No. S-101 of 2024
&
Criminal Jail Appeal No. S-123 of 2024

Appellant:	1.Rafiq, *through* Mr. Arif Ali Abbasi, Advocate. 2.Hakim Ali alias Hakoo *through* Mr. Rukhsar Ahmed Junejo, Advocate.
The State:	*Through* Mr. Muhammad Raza Katohar, Deputy Prosecutor General.
Date of Hearing:	16.06.2025.
Date of Short Order:	16.06.2025.
Date of Reason:	07.07.2025.

JUDGMENT

Ali Haider 'Ada',J;- By this single judgment, I propose to dispose of the above-captioned Criminal Appeals, as both arise out of the same crime and common trial proceedings. The appellants, namely Rafiq and Hakim Ali alias Hakoo, were booked in Crime No. 62 of 2022, registered at Police Station Naushahro Feroze, for offences punishable under sections 392 and 34, Pakistan Penal Code. Appellant Rafiq filed his Criminal Appeal through his learned counsel, whereas appellant Hakim Ali alias Hakoo initially preferred a Criminal Jail Appeal, and subsequently, his counsel filed vakalatnama on his behalf. Through the instant criminal appeals, the appellants have challenged the judgment dated 10.09.2024, passed by the learned Additional Sessions Judge-III, Naushahro Feroze (hereinafter referred to as the "Trial Court") in Sessions Case No. 75 of 2022, titled The State vs. Hakim Ali alias Hakoo and others. In the said judgment, the appellants were convicted for the offence punishable under section 392 read with Section 34 PPC, and sentenced to rigorous imprisonment for three years, along with a fine of Rs. 30,000/- (thirty thousand rupees) each. In case of default in payment of fine, they were directed to undergo simple imprisonment for a further period of three months. However, the benefit of Section 382-B, Cr.P.C. was extended to both appellants.

2. The case of the prosecution is that the First Information Report bearing Crime No. 62 of 2022, was registered at Police Station Naushahro Feroze on 04.03.2022 at 08:00 p.m., upon the complaint of PW-1 Akram, who runs a spare parts shop where CCTV cameras are installed. According to the complainant,

on 21.02.2022 at about 17:20 hours, while he was present at his shop along with his employee Shahzado and nephew Sain Bux, three unknown persons arrived on a motorcycle (Honda 125). Two of them were wearing face masks, and one had his face muffled. All three entered the shop and pointed pistols at the complainant and others present. One of the masked culprits forcibly took Rs. 250,000/- along with the original CNIC from the complainant's pocket, while the muffled accused looted Rs. 350,000/- from the shop's cash counter. During the robbery, Mukhtiar Ali (PW-3), a customer who had arrived in his car to purchase grease, entered the shop and was also threatened at gunpoint and robbed of Rs. 65,000/-. As the culprits exited the shop and the complainant's party began pursuing them, Mir Zafarullah, a business partner of the complainant, arrived at the scene and tried to resist. During this confrontation, the masks and muffled covering of the accused came off, and the complainant's party was able to clearly recognize and identify the assailants. The accused then assaulted them with the butts of their weapons and fled the scene on their motorcycle. Thereafter, the complainant and others reviewed the CCTV footage and attempted to trace the culprits, eventually leading to the registration of the FIR.

3. On 13.03.2022, the complainant's further statement was recorded, wherein he stated that he and his witnesses, Shahzado and Sain Bux, had again seen the accused persons while having tea at Bhorti shop, Tharushah. Upon being spotted, the accused fled. During local inquiries, the complainant came to know that the assailants were identified as Hakim Ali alias Hakoo, Rafiq, and Mujahid. During the investigation Accused Hakim Ali alias Hakoo was arrested on 16.03.2022 in possession of a TT pistol and a motorcycle. On 20.03.2022, during interrogation, he led the Investigating Officer to the recovery of Rs. 100,000/- from a location he pointed out and accused Rafiq was arrested on 29.03.2022, and on 05.04.2022, led the IO to the recovery of Rs. 20,000/- from the pointed-out location. The third accused, Mujahid, was shown as an absconder in the charge sheet. After the completion of the investigation, the challan was submitted before the trial Court against the arrested accused.

4. Copies of the requisite documents were supplied to the accused, and charge was framed on 19.07.2022, to which both accused pleaded not guilty and claimed trial. The prosecution was then directed to lead its evidence, and the witnesses were examined: PW-1 Akram (complainant): Deposed regarding the

incident and produced the FIR and his further statement. PW-2 Shahzado, Eyewitness and mashir of the site inspection memo; exhibited the relevant documents. PW-3 Mukhtiar Ali, Eyewitness and victim of robbery. PW-4 Aijaz Ali (Police official), author of FIR, mashir of arrest/recovery of accused Hakim Ali, mashir of arrest of accused Rafiq, and mashir of recovery of cash from Rafiq, exhibited relevant memos. PW-5 Muhammad Ishaque (Investigating Officer), produced roznamcha entries and the recovery memo of Rs. 100,000/- from accused Hakim Ali. PW-6 Muhammad Saleem (Police official), Mashir of the recovery memo regarding the cash recovered from accused Hakim Ali.

5. After completion of the examination of witnesses, the learned State Counsel closed the prosecution's evidence through a statement. Subsequently, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C., wherein the appellants denied the allegations, professed innocence and prayed for acquittal. They neither opted to examine themselves on oath under Section 340(2), Cr.P.C., nor produced any evidence in their defense. After hearing the arguments advanced by learned counsel for appellants, counsel for complainant and state counsel passed the impugned judgment, whereby the appellants were s convicted, while the case against absconder accused Mujahid alias Mujhoo was kept on dormant till his arrest. The appellants have now filed the present Criminal Appeals, challenging the legality and propriety of the said judgments.

6. Both the Learned counsel for the appellants argued that the entire case of the prosecution hinges on the identification of the accused through CCTV footage, yet the prosecution failed to produce or exhibit the CCTV recording during trial. The learned counsel further submitted that there was an unexplained delay of approximately ten (10) days in lodging the FIR, despite the complainant having prior access to the police and means of communication. It was pointed out that the complainant himself admitted during cross-examination that he did not approach the police station immediately after the incident, which suggests deliberation and afterthought. Additionally, the appellants' counsel challenged the credibility of the subsequent identification of the accused persons. It was argued that while the complainant claimed to have heard the names of the accused through an informer, neither the informer was cited as a witness, nor Investigation Officer record the statement of such informer. This, according to counsel, created serious doubt as to the source of

knowledge leading to the nomination of the appellants. In light of these submissions, the learned counsel prayed for the acquittal of the appellants on the ground that the prosecution had failed to prove its case beyond reasonable doubt.

7. On the other hand, the learned State Counsel opposed the appeals and supported the impugned judgment. He contended that recovery of robbed cash was affected from both appellants during the course of investigation, pursuant to disclosure and pointation by the accused persons themselves, which constitutes a strong piece of corroborative evidence. He emphasized that the appellants were subsequently nominated in the complainant's further statement, and the prosecution had no motive to falsely implicate them. The learned State Counsel further submitted that the prosecution successfully established the guilt of the accused through cogent oral and documentary evidence, and that the learned trial Court had rightly appreciated the evidence while convicting the appellants.

8. It is also worth noting that on 06.01.2025, the complainant Akram Dangraj appeared before this Court during the pendency of the appeals and submitted that he would not engage private counsel, as he had full confidence upon State Counsel to represent his interests.

9. Heard the arguments advanced by the learned counsel for the appellants as well as the learned State Counsel and also carefully perused the material available on the record and conducted a thorough and analytical appreciation of the evidence, both oral and documentary, placed before the Court.

10. The prosecution's case rests on the assertion that the incident took place on 21.02.2022, whereas the FIR was registered on 04.03.2022, after an unexplained delay of 10 days. The complainant, during his cross-examination, admitted that immediately after the incident, he had informed the police via mobile phone, and within 15 minutes, 5 to 8 police officials arrived at the scene. Yet, despite such swift police response and the presence of CCTV footage, which, according to the FIR itself, was reviewed by the complainant, the FIR was not registered promptly. The complainant further admitted that from the date of the incident till the registration of the FIR, he did not visit the police station, nor he provided any material such as CCTV footage to aid in the investigation or identification of the culprits. No explanation, let alone a

plausible justification**,** was offered for this inordinate delay. This conduct casts serious doubt on the authenticity of the FIR, and suggests deliberation and consultation before nominating the accused persons. It is a well-established principle of law that prompt registration of FIR is of great significance in criminal cases, as it rules out fabrication, manipulation, or false implication. In the present case, the delayed FIR, despite early police arrival and availability of electronic evidence**,** raises serious concerns regarding the reliability of the prosecution story. The Hon'ble Supreme Court has time and again held that delayed registration of FIR without justification adversely affects the prosecution's case and creates doubt regarding the truthfulness of the allegations. In this regard, reliance is placed on the judgments: ***Zafar Ali Abbasi and another vs. Zafar Ali Abbasi and others*** **(2024 SCMR 1773),** ***Muhammad Jahangir and another vs. The State and others*** **(2024 SCMR 1741)** ***Khial Muhammad vs. The State*** **(2024 SCMR 1490).**

11. Another important aspect that casts doubt on the credibility of the prosecution's version is the delayed recording of statements under Section 161, Cr.P.C. The record reflects that the witnesses recorded their statement on 05.03.2022, i.e., one day after the registration of the FIR. No plausible explanation was offered by the Investigating Officer as to why their statements were not recorded on the same day, particularly when the incident had already occurred ten days earlier, and the FIR was lodged after considerable delay. Furthermore, prosecution witness Mukhtiar (PW-3) deposed that his earlier version was recorded by the police via mobile call, which is neither reflected in the prosecution record nor substantiated by any official entry or acknowledgment. This vague and uncorroborated assertion weakens the evidentiary value of his testimony and casts doubt on whether his statement was ever formally recorded before the investigation took a definitive direction. In this Context reliance is placed upon the case of ***Khial Muhammad vs The State*** **(2024 SCMR 1490),** wherein it was held that :

> *This court has time and again ruled that recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts serious doubts on the version of prosecution. Reference may be made to the case of Muhammad Khan v. Maula Baksh and another [1998 SCMR 570] wherein it has been held that:-*
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> > *"It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C. is recorded with delay without offering any plausible explanation*

12. This legal view is further fortified by the judgment reported as ***Muhammad Asif vs The State*** **(2017 SCMR 486),** wherein it was held that:

> *There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon.*

13. It is further observed that the complainant recorded his further statement on 13.03.2022**,** wherein he nominated the accused persons by name and parentage, claiming that he, along with his witnesses, saw them at a tea hotel and identified them as the culprits involved in the robbery. However, in the statement or in examination-in-chief, neither the complainant nor any of the eyewitnesses disclose from whom they obtained the names and particulars of the accused persons**.** The prosecution failed to explain how the complainant came to know the identity, names, or parentage of accused who were initially described as previously unknown**.** It is noteworthy that the so-called source of this knowledge, the informer or third party was neither cited as a witness nor produced before the Court. The Investigating Officer also did not record any statement under Section 161, Cr.P.C. from such person, nor was any documentary or oral evidence brought on record to corroborate the complainant's claim of having recognized and named the accused at a later stage. In this context, support is drawn from the case of ***Liaquat Ali alias Liaquat and 4 others vs The State*** **(2024 MLD 670).**

14. The prosecution examined PW-3 Mukhtiar**,** who deposed that at the relevant time he arrived at the complainant's shop to purchase grease and was also robbed by the accused. He claimed to have seen the culprits during the commission of the offence. However, a crucial fact emerges upon closer scrutiny is that PW-3 was not present at the tea hotel**,** where the complainant and other witnesses later allegedly saw and identified the accused persons, as narrated in the complainant's further statement dated 13.03.2022**.** PW-3, during his deposition, made no reference to having seen the accused persons after the incident or ever identifying them at any other place or occasion prior to trial. He also did not mention having heard their names or parentage, and his statement under Section 161, Cr.P.C. was not shown to contain any such claim. In these circumstances, it was incumbent upon the Investigation Officer to have arranged a proper Test of Identification Parade before a Magistrate after the arrest of the accused, so that PW-3 could identify the accused persons through a

neutral, fair, and legally admissible procedure. This step was all the more essential since the accused were previously unknown**.** The failure to conduct Identification parade in respect of PW-3, and instead relying solely on a dock identification during trial, renders his testimony unsafe and untrustworthy**.** For ready reference, it is pertinent to cite ***Rule 26.32 of the Police Rules, 1934***, which provide mandatory guidelines regarding the conduct of identification parades by the police during investigation. The Rule reads as follows:

> ***26.32 Identification of suspects*** *– (1) The following rules shall be strictly observed in confronting arrested suspects with witnesses who claim to be able to identify them.*
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> *(a) The suspects, who are to be subjected to an identification parade, shall be informed about it at the time of their arrest to enable them to take necessary precautions by way of keeping their faces covered and a request shall be made to the Magistrate to record a note in the remand papers regarding such precautions having been taken by them so as to eliminate any subsequent objection by the suspects that they had been shown to the witnesses before the identification parade was held. The proceedings shall be conducted by a Magistrate or, if no Magistrate is available and the case is of great urgency then, by Sarpanch who may summon one or two independent and literate, if possible, persons of reliable character, not interested in the case to assist him and to certify that the identification has been conducted under conditions precluding collusion. Such proceedings shall not be conducted by a Police Officer. The Police Officer concerned before inviting a Sarpanch to conduct the proceedings must ensure that the Sarpanch is not biased or intrested in or against the accused or suspect and that he understands the rules of the proceedings. Every effort should be made to secure the presence of a Magistrate and services of Sarpanch only secured when absolutely necessary. In the absence of a Sarpanch, a Lambardar may be invited to do the needful.*
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> *(b) Arrangements shall be made, whether the proceedings are being held inside a jail or elsewhere, to ensure that the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification as shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called up to make their identification.*
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> *(c) Identification shall be carried out as soon as possible after the arrest of the suspects.*
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> *(d) The suspects shall be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such persons to one suspect. Each witness shall then be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communications to pass between witnesses who have been called up and those who have not. It is desired, through fear of revenge or for other adequate reasons, that witnesses shall not be seen by the suspects, arrangements shall be made for the former, when called up to stand behind a screen or be otherwise placed so that they can see clearly without being seen.*

> *The results of the tests shall be recorded by the Magistrate or other persons conducting the test in Form 26.32(1)(c) as each witness views the suspect. On conclusion, the Magistrate or the Sarpanch or the Lambardar and the witnesses, if any, shall sign the form and certify that the test has been carried out correctly and that no collusion between the police and witnesses or among the witnesses themselves was possible. It is advisable that, whenever possible, an independent and reliable person, un-connected with the Police, should be present throughout the proceedings at he place where the witnesses are kept, and should be required to devote his attention to the prevention of collusion. It is important that once the arrangements for the proceedings have been undertaken, no police officer whatsoever shall have shall have access whatever either to the suspects or to the witnesses.*
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> *(2) Proceedings of the nature described above are extra-judicial. It is not the duty of the officer conducting them or of the independent witnesses to record statements or cross-examine either suspects or identifying witnesses, but they should be requested to question the latter as to the circumstances in which they saw the suspects whom they claim to identify, and to record the answer in column 4 of the form. While every precaution shall be taken to prevent collusion, the identifying witnesses must be given a fair chance, and conditions must not be imposed, which would make it impossible for a person honestly capable of making an identification to do so. In this connection attention is invited to paragraph 814 of the Punjab Jail Mail, which strictly prohibits the alternation in any way to he personal appearance of unconvicted prisoners, so as to make it difficult to recognise.*

15. This legal principle finds full support in the judgment of the Hon'ble Supreme Court in case of ***Syed Fida Hussain Shah vs The State and another*** **(2024 SCMR 1622),** Likewise, in case of ***Muhammad Riaz vs Khurram Shehzad and another*** **(2024 SCMR 51),** the Apex Court had held that:

> *No identification parade was conducted for determining the involvement of the accused persons and the evidentiary value of identification at a belated stage had little value in the eyes of the law, more particularly when the lineaments and physiognomy of the accused were not mentioned anywhere by the complainant or the eye-witnesses*

16. A vital aspect in the prosecution's case is the presence and collaboration of independent witnesses to support the complainant's version. The prosecution's own evidence reveals that immediately after the incident, the complainant narrated the occurrence to other shopkeepers and neighbors in the vicinity, who were attracted to the place of occurrence. Their testimony could have greatly aided in corroborating the material facts of the case. More significantly, the prosecution's challan mentions a crucial witness named Mir Zafar**,** the business partner of the complainant, who is alleged to have made resistance during the robbery and caused the accused persons' masks and mufflers to be removed, enabling identification by the complainant party.

Despite the evident importance of this witness, the prosecution withheld Mir Zafar's testimony, failing to produce him before the trial Court without any justification or explanation. The non-production of such a vital and independent witness, who was present during the incident and who could independently identify the accused, casts serious doubts on the reality of the prosecution's case. This omission amounts to an adverse inference against the prosecution, Reliance in this regard is placed upon the cases of ***Ghulam Hussain vs The State*** **(2024 YLR 197-DB),** ***Noorullah vs The State and another*** **(2023 YLR 1039-DB),** ***Samiullah vs The State*** **(2022 YLR 1439-DB),** ***Muhammad Imran vs The State*** **(2021 PCRLJ 804-DB),** ***Shahzado Khan vs The State*** **(2020 YLR 1048-DB).** Further dependence upon the cases of ***Muhammad Ramzan vs The State*** **(2025 SCMR 762),** as it was held that:

> *At the trial, the prosecution has not produced Matloob Hussain, the owner of the house as witness. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above witness been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of "Mst Saima Noreen v. The State" (2024 SCMR 1310).*

17. Further reliance is placed upon the case of ***Muhammad Nasir Butt and 2 others vs The State and others*** **(2025 SCM R 662),** wherein it was held that:

> *10. At the trial, the prosecution has not produced the injured passerby Shehbaz and Abdul Jabbar who was mentioned to be an eye-witness of the occurrence by the complainant. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above two witnesses been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of "Mst. Saima Noreen v. The State".*

18. An important aspect of the prosecution's case is the claim that the robbery was captured on CCTV cameras installed at the complainant's shop, which was explicitly mentioned in the FIR as well as in the complaint's version. According to the prosecution's narrative, the complainant and his party viewed the CCTV footage following the incident to identify the accused persons. However, neither the prosecution produce the CCTV footage as evidence during the trial, nor the recording collected or preserved by the Investigating Officer. This glaring omission raises serious doubts about the truthfulness and completeness of the prosecution's case. In criminal trials, the failure to produce material evidence, which is under the exclusive control of the prosecution, is a

significant lapse that may indicate suppression of evidence or afterthought. Support in this regard is drawn from precedents, ***Tereze Hluskova and others vs The State and others*** **(2022 PCr.L.J 1846-DB),** ***Hafiz Imran alias Abbas alias Hamza vs The State*** **(2020 MLD 850-DB).**

19. The complainant and his witnesses testified before the learned trial Court that the accused persons caused butt blows with their weapons during the incident. Such allegations of physical assault, if true, would ordinarily result in visible injuries requiring medical examination and treatment. However, the record is conspicuously devoid of any medical evidence, no injury reports, medical examination certificates, or hospital records were produced to substantiate the claim of bodily harm inflicted by the accused. Neither the complainant nor any other witness gave evidence regarding obtaining or seeking medical treatment for injuries sustained during the robbery. Therefore, the non-production of any medical evidence to corroborate the alleged butt blows strikes at the root of the prosecution's case and weighs in favour of the accused.

20, The meticulous perusal of the evidence reveals serious discrepancies, major inconsistencies and contradictions that cast a shadow over the prosecution's case. The complainant deposed that the accused persons broke the lock of the cash counter and took the amount lying inside. However, PW-2 Shahzado, the servant of the complainant working at the shop, contradicted this version categorically**,** stating that there was no lock on the cash counter and anyone could easily open the cash drawer without any hindrance. Further contradictions arise concerning the presence of Mukhtiar and his vehicle. The complainant stated that Mukhtiar came to the shop in a car along with his driver**,** who stood outside the shop during the incident. Conversely, Shahzado testified that Mukhtiar came alone, without any vehicle or driver accompanying him, directly negating the complainant's version. Additionally, the complainant asserted that after the incident, the accused locked the shop**,** a fact not supported by Shahzado who explicitly denied that the accused locked them inside the shop. Another significant contradiction concerns the registration of the FIR**.** The complainant admitted that he did not approach the police station immediately after the incident to register the FIR. Contrarily, Shahzado testified that the complainant, along with another person, went to the police station promptly after the incident**.** Such material contradictions and inconsistencies

between the testimony of the complainant and that of his own servant, who is an eyewitness as per prosecution, seriously undermines the case. It is a well-established principle that where the prosecution's evidence suffers from contradictions which go to the root of the case, it casts serious doubts about the guilt of the accused. Reliance in this regard is placed upon the judgments of the Hon'ble Supreme Court as titled ***Muhammad Riaz vs The State*** **(2024 SCMR 1839),** ***Muhammad Jahangir vs The State*** **(2024 SCMR 1741),** and ***Muhammad Ijaz alias Bila vs The State*** **(2024 SCMR 1507).**

21. The prosecution case also relies heavily on the recovery of the robbed amount from the accused. However, it is noteworthy that the complainant did not provide any specific details or description of the looted currency notes, either at the time of the incident or during the investigation. Furthermore, the recovery was made solely on the pointation of the accused themselves during interrogation, without independent corroboration or proper safeguards. Thus, the evidence on recovery in this case fails to inspire confidence and adds to the cumulative doubt surrounding the prosecution's case. In the present case, the prosecution has failed to establish that the accused made a specific and voluntary disclosure while in police custody that distinctly led to the recovery of the alleged robbed amount. There is no statement of disclosure on record which confirms the accused's information preceding the recovery. The legal position is further fortified by the judgment laid down by the Honourable Supreme Court in the case titled ***Zafar Ali Abbasi and another vs Zafar Ali Abbasi and others*** reported as **2024 SCMR 1773**, wherein it was categorically held that:

> *5.In order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police. Such information or statement should be in writing and in presence of witnesses. In absence of information or statement from a person, accused of an offence in custody of police officer, discovery of fact alone, would not bring the case of the prosecution under the said Article. According to the prosecution, a dagger used in the commission of the offence was recovered on the disclosure and pointation of the appellant. Surprisingly, the I.O. did not record the information received from the appellant in writing, in presence of a witness, while he was in police custody. The prosecution has failed to establish any disclosure from the appellant, therefore, recovery of the dagger, in the circumstances was immaterial. Even otherwise, the I.O. stated that the recovery of the dagger was effected*

> *on the pointation of the appellant, in presence of PW-5, who is also a nephew of the deceased. According to the said witness, the dagger was wrapped in a black colour shopper, but when it was presented before the Trial Court, it was unsealed and was wrapped in a white colour plastic. None of the recovery witness put any identification mark upon it in order to exclude any possibility of foisting false recovery or substituting the recovered one. The manner in which the dagger was taken into possession and produced in the Court, creates doubt regarding its recovery, therefore, the High Court has rightly disbelieved it.*

22. In additional strengthened through the dictum laid down in cases of ***Yasir Parvez and others vs The State and others*** **(2023 YLR 2164),** as it was held that:

> *18. Coming now to evidence of recovery of allegedly robbed amount, it may be observed that recoveries so effected are clearly in contravention of section 103 of Cr.P.C, therefore no reliance can be placed upon the same at all. Even otherwise, no specific denomination of looted amount was mentioned in Ex.PU, so, recovery of currency notes from the accused persons hardly lend any support to the prosecution case. It is an established principle of law that where prosecution case was mainly based on the evidence of ocular account and the moment truthfulness and intrinsic worth of evidence of ocular account has come under the clouds of doubts and is disbelieved, no other evidence even that of a high degree and value would be sufficient for recording conviction for a crime entailing capital punishment. Reliance in this regard may safely be placed on case "Zafar v. The State and others" (2018 SCMR 326).*

> ***Muhammad Ibraheem vs The State and another,*** **(2020 YLR 1662-DB)**
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> *Furthermore, the recoveries on 07.09.2015 from Muhammad Ibrahim, (appellant) of Rs.45,000/- (Exh.P6/1-45) and from Muhammad Safdar, (appellant) of Rs.45,000/- (Exh.P7/1-45) also do not offer any corroboration to the prosecution case as the said recoveries were again not witnessed by any person of the locality and were made in violation of the provisions of section 103 of Cr.P.C., rendering the same inadmissible in evidence. Moreover, the prosecution witnesses did not mention any specific numbers or markings on the currency notes in their statements before the police as well as the learned trial court so as to relate the recovered currency notes with the currency notes allegedly robbed by the appellants at the time of occurrence*

23. One of the most crucial shortcoming in the present case relates to the failure to put material questions to the accused during their examination under Section 342 Cr.P.C., particularly with regard to the allegedly recovered robbed amount In the instant case, the accused were not confronted with any specific question about the recovery of the robbed amount**,** which the prosecution

heavily relied upon as corroborative evidence. This legal position finds affirmation in the judgment of the Hon'ble Supreme Court in case of ***Abdul Hayee and Abdullah alias Ghazali and another vs The State and others*** **(2025 SCMR 281),** wherein it was held:

> *14. Insofar as the recoveries of weapons of offence from the petitioners in another case bearing FIR No. 121 dated 26.05.2009 under Sections 324/353/186/148/149 P.P.C., read with Section 13 of the Arms Ordinance, 1965 and Section 7 of the Anti Terrorism Act, 1997, at Police Station Mochh, District Mianwali, which recoveries were also relied upon by the prosecution in the instant case and positive reports of Forensic Science Laboratory are concerned, we have noted that the said recoveries were not put to the petitioners in their statements recorded under Section 342 Cr.P.C., therefore, the above-mentioned pieces of prosecution evidence cannot be considered against the petitioners and the same have rightly been discarded by the learned High Court in paragraph No. 15 of the impugned judgment. Reference in this context may also be made to the cases of, Fida Hussain Shah v. The State (2024 SCMR 1622), Haji Nawaz v. The State (2020 SCMR 687) and Mst. Anwar Begum v. Akhtar Hussain (2017 SCMR 1710).*

24. For the foregoing reasons, and in view of the detailed discussion made hereinabove, it is manifest that the prosecution has miserably failed to establish the guilt of the accused/appellants beyond the shadow of reasonable doubt. It is a settled principle of criminal jurisprudence that when circumstances creating doubt arise in a case, the benefit thereof must always be extended to the accused. This legal doctrine finds clear endorsement in the judgment of the Hon'ble Supreme Court in the case of ***Sajjad Hussain v. The State*** **(2022 SCMR 1540).** In view of the above legal position and the facts on record, the appeals were allowed by this Court vide short order dated 16.06.2025, whereby the appellants were acquitted of the charges, and the impugned judgment of conviction and sentence passed by the learned trial Court was set aside, and they were ordered to be released forthwith, unless required to be detained in any other case**.** Accordingly, the same is the detailed reasoning of the short order dated 16.06.2025.

JUDGE