

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 668 of 2024

Appellant : Haq Nawaz son of Mumtaz (In custody)
Appeal preferred in person through Jail Superintendent

Respondent : The State
through Ms. Rahat Ahsan, Addl. P.G Sindh

Date of hearing : 20.05.2025

Date of Judgment : 23.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This Criminal Jail Appeal, preferred by the appellant in person through the Jail Superintendent, assails the judgment dated 12.03.2024, passed by the learned IVth Additional Sessions Judge Karachi East, in Sessions Case No.3826/2022 arising out of FIR No. 323/2022 registered at P.S.KIA, K.E, Karachi, offence under Sections 397/34 PPC. By the impugned judgment, the learned trial court convicted the appellant for an offence under Section 397 PPC and sentenced him to suffer rigorous imprisonment (R.I.) for seven (07) years, along with a fine of Rs. 50,000/-, and in default of payment of fine, to further undergo simple imprisonment (S.I.) for four (04) months. The benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. The prosecution's case, as per FIR No.323/2022, is that on 07.03.2022 at about 01:30 p.m., two unknown persons, at gunpoint, snatched a mobile phone (Realme), purse containing cash of Rs.1100/-, document of motorcycle, copy of CNIC and visiting card from complainant Ahad Ahmed. After arrest of accused, trial was commenced and after framing of charge, the prosecution examined two witnesses: PW-01 Ahad (Complainant), PW-2 SIP Muhammad Shiraz (Investigating Officer).

3. In the appeal preferred in person, the appellant contends that the impugned judgment dated 12.03.2023 is unsustainable both in law and on facts. He argues that the trial court failed to apply judicial mind, overlooked material contradictions in the prosecution case, and did not properly appreciate the evidence on record. The conviction is primarily based on a confessional statement allegedly made in police custody, which was neither

recorded before a Magistrate under Section 164 Cr.P.C. nor admissible under Article 38 of the Qanun-e-Shahadat Order, 1984. The appellant further submits that no independent witnesses were examined despite the incident allegedly occurring in a densely populated area, and the mandatory procedure under Sections 103 and 160 Cr.P.C. was not followed, rendering the investigation doubtful. He also points out that in two connected cases decided on the same day, the trial court did not clarify whether the sentences would run concurrently, granting only the benefit of Section 382-B Cr.P.C. According to the appellant, the judgment lacks proper reasoning and does not qualify as a speaking order under Section 24-A of the General Clauses Act, 1897. He maintains that there was no reliable or confidence-inspiring evidence to support his conviction, and that the trial court conducted only a cursory evaluation of the prosecution's evidence. Additional grounds, he submits, will be raised at the time of hearing with the Court's permission.

4. The learned APG for the State opposed the appeal and supported the impugned judgment, arguing that the prosecution had successfully proved its case beyond reasonable doubt before the trial court.

5. I have meticulously examined the record of the case, including the impugned judgment, the evidence of the prosecution witnesses, and the grounds raised by the appellant.

6. Upon a careful appraisal of the evidence, several serious infirmities and contradictions in the prosecution's case come to light, which cumulatively cast a reasonable doubt on the appellant's guilt.

7. One of the cardinal principles of criminal jurisprudence is that every judgment must reflect an objective, impartial, and judicious evaluation of the evidence brought before the court. It must be evident from the record that the trial judge has applied his or her mind to the totality of facts and circumstances of the case, and has arrived at a conclusion free from bias, conjecture, or overreliance on isolated pieces of questionable evidence. Unfortunately, in the present case, the conviction appears to have been rendered without such a judicious application of mind, as evidenced by glaring contradictions and procedural lapses that have been overlooked, resulting in a miscarriage of justice.

8. A prime instance demonstrating this failure lies in the testimony of P.W-01 Abdul Ahad, the complainant. During his examination, he clearly stated that on 07.03.2022, he was directed by his employer to deposit a sample at Chase Value, Korangi. Upon exiting the store, he was intercepted on main KIA Road by two unknown assailants on a motorcycle. One of them allegedly brandished a weapon and forcibly snatched his mobile phone. As per his statement, he then returned to his workplace and narrated the incident to his superior, who informed him that the mobile phone was still switched on. Following this, they called the number, and to their surprise, it was answered by a Sub-Inspector of Police (SIP), indicating that the phone was already in police possession. This single yet significant detail fundamentally alters the prosecution's narrative. The fact that the mobile phone was answered by a police officer on **07.03.2022** means that the accused had already been arrested, or at the very least, was in police custody on that date. However, the prosecution's case, as reflected in the charge sheet and arrest memo, inconsistently shows the formal arrest of the accused to have taken place on **13.03.2022**, six days later. No explanation has been offered to reconcile this critical inconsistency.

9. The learned trial court, rather than scrutinizing this contradiction and appreciating its legal consequences, appears to have adopted a mechanical approach in accepting the prosecution's version. The failure to address this discrepancy amounts to non-application of judicial mind, a flaw that goes to the root of the conviction. In criminal trials, particularly where liberty and reputation are at stake, courts are duty-bound to scrutinize each aspect of the prosecution case with care and caution. Discrepancies that impinge upon the credibility of the prosecution's version cannot be glossed over, and their deliberate or inadvertent omission from judicial scrutiny indicates a miscarriage of the essential responsibility vested in the court. The credibility of the entire prosecution case stands on shaky ground once this timeline inconsistency is considered. The alleged recovery of the mobile phone and the subsequent arrest, both of which are pivotal to the prosecution's success, are rendered doubtful. If the accused was indeed in custody on 07.03.2022, the delay in formal arrest raises significant concerns regarding the legality of detention, violation of Article 10 of the Constitution of Pakistan, and potential fabrication of subsequent proceedings such as recoveries and confessional statements.

10. Furthermore, the manner in which the trial was conducted casts further doubt on the fairness of the process. The defense was not afforded a full and fair opportunity to cross-examine the key witnesses, a procedural lapse which severely prejudices the accused. The right of cross-examination is not a mere formality; it is a constitutionally protected facet of the right to a fair trial and due process, as guaranteed under Article 10-A of the Constitution of Pakistan, 1973. Denial of such a right, or its restriction in scope or time, renders the proceedings fundamentally flawed and susceptible to annulment.

11. A judicious application of mind requires that the court examine each piece of evidence not in isolation but in context, cross-checking it against the rest of the record and the surrounding circumstances. In this case, such a holistic view was not undertaken. The trial court's judgment lacks discussion on the delay in arrest, the anomalous recovery of the mobile phone, and the non-association of independent witnesses at the time of alleged arrest or recovery, each of which are vital omissions. The non-recording of the accused's confessional statement under Section 164 Cr.P.C. before a Magistrate further compounds the unreliability of the prosecution's case. Despite this, the court has accepted the confession allegedly made before the police in custody, evidence that is inadmissible under Article 38 of the Qanun-e-Shahadat Order, 1984. The theory of "non-application of judicial mind" in such circumstances implies that the court abdicated its duty to engage critically with the evidence. Instead, it seemingly adopted a one-sided approach, lending undue weight to the prosecution's claims without subjecting them to the scrutiny that is legally and morally required. Such judgments are not in accordance with the principles laid down by the superior courts, which have consistently emphasized the importance of speaking judgments, the judgments that disclose the process of reasoning, appreciation of evidence, and engagement with factual contradictions.

12. In various judgments of the Supreme Court held that a judgment which does not reflect application of mind and is devoid of reasons is liable to be set aside and it was reiterated that trial courts must not act as mouthpieces of the prosecution but must maintain neutrality and act as independent adjudicators. When courts rely on doubtful evidence, disregard

procedural violations, or overlook significant factual inconsistencies, they breach this obligation. In light of the above, the trial court's judgment appears to be the product of a superficial assessment of the facts and a mechanical reproduction of the prosecution's version, without meaningful consideration of defense objections, legal requirements, and evidentiary standards. This reflects a failure of judicial function, not merely a difference in appreciation of evidence. The outcome, therefore, stands vitiated on the foundational ground of non-application of judicial mind, a ground that renders the conviction unsustainable in law. In conclusion, where the timeline of arrest is dubious, recovery proceedings are unverified, confessional evidence is inadmissible, and cross-examination is curtailed, a conviction cannot be allowed to stand. The integrity of the criminal justice system depends on the courts serving as vigilant arbiters, not passive conduits of unexamined prosecution narratives. The present case thus warrants interference by the appellate court, and the impugned judgment is liable to be set aside.

13. For the reasons stated above, this Court finds that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt. The material infirmities in the evidence and procedural flaws in the trial are sufficient to entitle the appellant to the benefit of doubt.

14. Accordingly, this Criminal Jail Appeal is allowed. The impugned judgment dated 12.03.2024, passed by the learned Additional Sessions Judge IVth Karachi East, in Sessions Case No.3826/2022, is hereby set aside. The appellant, Haq Nawaz S/o Mumtaz, is acquitted of the charged offence and shall be released from judicial custody forthwith, if not required in any other case.

J U D G E