

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 851 of 2024

Appellant : Muhammad Waseem son of Muhammad Hayat,
Through M/s. Riaz Ahmed Bhatti & Allah Ditta,
Advocates.

Complainant : Bilal Hussain (present in person)

Respondent : The State
Through Mr. Muhammad Mohsin Mangi, APG

Date of hearing : 22.05.2025

Date of Judgment : 30.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This criminal appeal, filed under Section 410 Cr.P.C., challenges the impugned Judgment dated 30.11.2024, passed by the learned VIth Additional Sessions Judge, Malir, Karachi, in Sessions Case No.648/2024. By virtue of the said judgment, the appellant, Muhammad Waseem, was convicted for the offense punishable under Section 397 PPC and sentenced to Rigorous Imprisonment for seven years. Crucially, the co-accused, Muhammad Saleem, was acquitted on the same set of evidence.

2. The prosecution's case, as encapsulated in FIR No. 1099/2023, is that on 22.09.2023, at about 12:00 p.m, complainant Bilal Hussain was riding his motorcycle to visit a friend to make a payment for iron bars (Sarya). Upon reaching near Al-Khair Hospital, two unknown individuals on a motorcycle intercepted him, brandished weapons, and robbed him of Rs. 240,000/- in cash and a Techno mobile phone before fleeing. The FIR was lodged six days later, on September 28, 2023.

3. Subsequent to the lodging of the FIR, ASI Masood Ali, the Investigating Officer (IO), took up the investigation. The appellant, Muhammad Waseem, was arrested on September 28, 2023, from Abul-Aspahani Road. The alleged robbed mobile phone was subsequently recovered on October 2, 2023, from bushes near Sikandar Goth, based on the pointation of the appellant.

4. During the trial, the prosecution examined four witnesses: PW-1 Bilal Hussain (Complainant), PW-2 ASI Masood Ali (IO), PW-3 Saeed Ahmed

Saqib (Mashir/Witness to site inspection and arrest), and PW-4 ASI Abdul Wajid (Author of FIR). The learned trial court, relying primarily on the identification by the complainant and the recovery of the mobile phone, convicted the appellant, while acquitting the co-accused, Muhammad Saleem, for lack of evidence.

5. Learned counsel for the appellant, vehemently contended that the impugned judgment is contrary to law and facts, riddled with contradictions, and based on flimsy grounds. His primary arguments, supported by specific legal precedents, can be summarized as: The incident allegedly occurred on September 22, 2023, but the FIR was lodged on September 28, 2023, after an inordinate and unexplained delay of six days. This delay, he argued, is fatal to the prosecution's case, suggesting concoction and deliberation, a point highlighted in *Muhammad Ahmed v. The State* (1995 SCMR 127). The complainant's vague explanation that police "kept him on hopes" is insufficient. The FIR was lodged against "two unknown individuals" without any description of their features. In such cases, holding an identification parade is mandatory to establish the identity of the culprits and prevent false implication. No identification parade was conducted for the appellant. The complainant's identification in court, without a prior test identification, loses its probative value, especially given his admission that he spotted the accused on Abu-Al-Isphani Road only after being called by the IO. Reliance was placed on *Farman Ali v. The State* (1997 SCMR 979) and *PLD 1956 India 327*. The complainant (PW-1) stated he identified and informed police about the accused who "try to escape" on Abu-Al-Isphani Road. PW-3 Saeed Ahmed Saqib stated the arrest was made at "Big Buy Store situated at Abu Asfani Road," creating a material contradiction regarding the exact location of arrest. No recovery of the alleged robbed cash (Rs. 240,000/-) or any weapon was made from the appellant at the time of his arrest. The recovery of the mobile phone was effected on October 2, 2023, several days after the incident and arrest, from bushes, making it highly suspicious and susceptible to being foisted. The FIR or recovery memo did not mention the description, color, model, or IMEI number of the alleged robbed mobile phone. No purchase receipt was produced by the complainant during the investigation, rendering the recovery doubtful and easily fabricated by the police. It was argued that the memo of arrest (Exh.3/C), memo of site inspection (Exh.3/B), and memo of pointation of place of incident-cum-recovery (Exh.3/D), along with roznamcha entries, were forged, fictitious, and manipulated. These were prepared in "odd hours night" (03:00 a.m for site inspection, 04:00 a.m for arrest, 03:40 a.m for

recovery) in the presence of police and the complainant, raising doubts about their authenticity and suggesting an attempt to avoid private witnesses. The statements of prosecution witnesses, including the complainant, under Section 161 Cr.P.C. were recorded after an unexplained delay of six days, which, as per *Abdul Khalilque v. The State* (1996 SCMR 1553), reduces their value to nil. The most incriminating piece of evidence, the recovered mobile phone, was not put to the appellant during the recording of his statement under Section 342 Cr.P.C. This is a mandatory legal requirement, and its omission vitiates the prosecution's reliance on the recovery. Reference was made to *Abdul Ghaffar v. The State* (2011 MLD 239) and *Shiral Ali v. The State* (1999 SCMR 697). The complainant's claim of his "shalwar torn" was not mentioned in the FIR, suggesting an exaggeration of facts during later testimony. The co-accused, Muhammad Saleem (brother of the appellant), was acquitted on the same set of evidence. This parity of reasoning dictates that the appellant is also entitled to the same benefit and acquittal. Beyond the complainant's self-serving testimony, there is no independent eye-witness to the actual robbery incident, weakening the prosecution's case significantly. While police officials are competent witnesses, their testimony cannot be accepted blindly, especially when riddled with contradictions and casting doubts on their impartiality. The defense argued no animosity against the police was established, but the contradictions within their own statements undermine their credibility. He draw the attention of this Court towards the discrepancies in the testimonies of Witnesses viz. IO (PW-2) initially stated a private witness named "Ashaque" was present during the site inspection, but later named "Saeed" in his cross-examination and the memo. This contradiction casts doubt on the presence of genuine independent witnesses. PW-3 Saeed Ahmed Saqib stated the incident occurred on "28-09-2023" in his cross-examination, whereas the FIR and complainant state 22-09-2023, another glaring inconsistency. The fact that the complainant and accused allegedly reside in the same area and were claimed to be relatives by the defense counsel (though denied by the IO) could suggest a possibility of false implication. The learned counsel emphasized that mere recovery of an alleged robbed cell phone, without strong corroborative evidence and in the face of numerous doubts, is insufficient for conviction. The learned counsel concluded by asserting that if a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused is entitled to such benefit as a matter of right, not grace, as held in *Tariq Parveez v. The State & Others* (1955 SCMR 1945). The learned counsel also relied on a series of judgments including 2023 MLD 1938, 2020 MLD 290, 2024 SCMR 1782, 2017 SCMR 564, 2024 YLR 1974, 2022 SCMR 1577 to

reinforce his arguments regarding the principles of safe administration of criminal justice, the value of prosecution evidence, and the benefit of doubt.

6. Learned APG For the State is present along with the complainant in person and he argued that the role of the accused persons is specifically mentioned in the FIR and that sufficient material, including recovery and documentary evidence, connects the accused to the offense. He contended that the evidence brought on record is reliable, and all PWs supported the prosecution's case. He downplayed any contradictions as minor, asserting they do not affect the prosecution's case. He further stressed that no animosity was attributed to the eye-witnesses to falsely implicate the accused.

7. I have heard the learned counsel for the appellant and the learned APG for the State at length and meticulously perused the material available on record, including the impugned judgment, the FIR, and the depositions of the prosecution witnesses.

8. Upon a comprehensive re-evaluation of the evidence, I find substantial force in the arguments advanced by the learned counsel for the appellant. The prosecution's case, when subjected to close scrutiny, reveals numerous contradictions, inconsistencies, and legal infirmities that cumulatively cast a shadow of serious doubt on the guilt of the appellant.

9. The incident allegedly occurred on September 22, 2023, at 12:00 p.m, but the FIR was lodged on September 28, 2023, at 10:00 a.m, a delay of six days. The complainant's explanation that police "kept him on hopes" is vague and uncorroborated. Such an inordinate and unexplained delay in lodging an FIR is a critical factor, as it opens the door for deliberation, consultation, and the possibility of false implication. The fact that the FIR does not mention the names or features of the culprits further amplifies this concern, as it provided ample opportunity for fabricating a story and falsely implicating innocent individuals. This delay, in itself, is sufficient to create a serious doubt in the prosecution story, as consistently held by superior courts. The FIR clearly states the culprits were "unknown individuals." In such scenarios, an identification parade becomes a crucial safeguard to ensure that the accused was indeed the perpetrator. No identification parade was conducted in this case. The complainant's in-court identification of the appellant, made for the first time, without any prior reliable identification process, is of little evidentiary value. It is settled law that where the names of culprits are not given in the FIR, holding of a test identification parade is mandatory as a

check against false implication. The absence of such a crucial piece of evidence significantly weakens the prosecution's case regarding the appellant's identity. The complainant's testimony that he spotted the accused on Abu-Al-Isphani Road upon being called by the IO, without having known the accused previously, raises serious questions about the credibility of his identification.

10. The prosecution's evidence is marred by significant contradictions that go to the root of the matter. The complainant (PW-1) stated the appellant was apprehended at "Abu-Al-Isphani Road" as he tried to escape. However, PW-03 Saeed Ahmed Saqib, a prosecution witness to the arrest, stated the appellant was arrested from "Big Buy Store situated at Abu Asfani Road." This is a material contradiction regarding the crucial event of arrest. The Investigating Officer (PW-2) initially mentioned a private witness named "Ashaque" being present during the site inspection, but later named "Saeed" in his cross-examination. This inconsistency regarding the presence of mashir raises doubts about the genuineness of the site inspection and arrest memos. PW-03 Saeed Ahmed Saqib, during his cross-examination, stated that the incident "was taken place" on "28-09-2023," which directly contradicts the complainant's statement and FIR, which places the incident on "22-09-2023." Such a fundamental contradiction from a prosecution witness undermines the entire narrative. The complainant's statement in court that his "shalwar torn" was not mentioned in the FIR, indicating an embellishment of facts. The IO himself admitted that the 161 Cr.P.C. statements were prepared with the help of "street light as well as torch of cell phone" and that the memo of recovery was prepared "inside police mobile," raising concerns about the veracity and authenticity of these documents prepared in "odd hours night."

11. The recovery of the mobile phone from "bushes" on the pointation of the appellant, several days after the incident and arrest, is inherently suspicious. Furthermore, the absence of any specific details like IMEI, model, or color in the FIR or recovery memo, coupled with the lack of a purchase receipt, makes the recovery highly questionable and susceptible to being foisted. More importantly, the recovered mobile phone, which was the most incriminating piece of evidence, was not put to the appellant while recording his statement under Section 342 Cr.P.C. This is a mandatory legal requirement under Section 342 Cr.P.C., as it ensures that the accused is confronted with all incriminating circumstances appearing in the evidence against him. The omission of this crucial step renders the recovery inadmissible against the appellant. This legal infirmity, as correctly highlighted by the learned counsel

for the appellant, is fatal to the prosecution's case. No cash or weapons were recovered from the appellant, which further weakens the link to the alleged robbery. The prosecution's case against the appellant rests almost entirely on the complainant's identification and the questionable recovery of the mobile phone. Significantly, the co-accused, Muhammad Saleem (stated to be the brother of the appellant), was acquitted by the same learned trial court on the identical set of evidence. The principle of consistency dictates that if the evidence was insufficient to secure a conviction against one accused, it should generally be insufficient against another accused facing the same charges on the same evidence, unless there are distinct, compelling pieces of evidence against the convicted individual. The absence of such distinguishing evidence in this case lends strong support to the appellant's claim of parity.

12. The cumulative effect of the unexplained delay in FIR, the lack of an identification parade, the material contradictions in the testimonies of prosecution witnesses, the suspicious nature of the recovery, and the fundamental legal flaw of non-confrontation of the incriminating material in the 342 Cr.P.C. statement, all combine to create a reasonable and insurmountable doubt regarding the appellant's guilt. It is a well-settled principle of criminal jurisprudence that if even a single reasonable doubt arises from the evidence, the benefit of that doubt must go to the accused, not as a matter of grace or concession, but as a matter of right.

13. In light of the foregoing detailed analysis, prima facie the prosecution has failed to prove its case against the appellant, Muhammad Waseem, beyond a reasonable doubt. The evidence presented is riddled with contradictions, legal flaws, and lacks the necessary corroboration to sustain a conviction. The learned trial court erred in appreciating the evidence and in applying the established principles of criminal law, particularly concerning the benefit of doubt and the mandatory requirements of Section 342 Cr.P.C. The conviction of the appellant under these circumstances would amount to a miscarriage of justice. For the reasons stated above, the Criminal Appeal is allowed. The impugned Judgment dated 30.11.2024, passed by the learned VIth Additional Sessions Judge, Malir, Karachi, in Sessions Case No. 648/2024, convicting the appellant Muhammad Waseem, is hereby set aside. The appellant, Muhammad Waseem Son of Muhammad Hayat, is hereby acquitted of the charges leveled against him. He shall be released from custody forthwith, if not required in any other case.

J U D G E