IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Cr. Appeal No. S-15 of 2024

Appellant	:	Ilyas s/o Ghulam Hyder Gorar, Through Mr. Ahmed Bux Abro, advocate
Complainant	:	Through Mr. Syed Soofan Shah, Advocate
Respondent	:	The State Through Mr. Sardar Ali Solangi, DPG
Date of hearing & short order	:	24.07.2025
Date of reasons	:	30.07.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J— Appellant Illyas challenges the judgment dated 13.03.2024, passed by the learned IInd Additional Sessions Judge, Mehar, in sessions case No.725/2023, emanating from the FIR No.26/2023 of PS Thariri Muhabat, whereby he was convicted for offence under Section 394 read with Section 397 PPC and sentenced to undergo the rigours of imprisonment for seven years and to pay a substantial fine of Rs.50,000/-, in default thereof to further undergo S.I for 03 months, with benefit of section 382-B Cr.P.C.

2. The narrative that forms the bedrock of the prosecution's case is one of a violent roadside encounter. The complainant, Muhammad Ali, alleges that on the fateful evening of 16.04.2023, he and his family members were ambushed by three masked assailants. In the ensuing chaos, a robbery was allegedly committed, resistance was met with gunfire, and injuries were sustained. The appellant, Ilyas, was purportedly captured at the scene, while his two accomplices managed to escape into the darkness.

3. Following the registration of the FIR, the investigation was undertaken by ASI Roshan Ali. During the course of this

investigation, the co-accused Shoukat and Mujahid could not be apprehended and were eventually declared proclaimed offenders by the competent court. The challan (final report) was submitted against the present appellant to stand trial, while the case against the absconding accused was kept on a dormant file. After the completion of pre-trial formalities, a formal charge was framed against the appellant by the learned trial court, to which he pleaded not guilty and claimed the right to be tried.

4. To substantiate its charge, the prosecution examined a total of six witnesses. This included the complainant Muhammad Ali (PW-1) and his two injured sons, Ashique Hussain (PW-2) and Mashoque Ali (PW-3), who provided the ocular account. To corroborate their testimony, the prosecution examined Dr. Hadi Bux (PW-4), the Medico-Legal Officer who detailed the injuries; Sabir Hussain (PW-5), the Mashir to the alleged arrest and recovery; and ASI Roshan Ali (PW-6), the Investigating Officer who narrated the steps taken during the investigation. After the conclusion of the prosecution's evidence, the appellant's statement was recorded under the solemn provisions of Section 342, Cr.P.C., wherein he denied all incriminating circumstances, professed his innocence, but chose not to lead evidence in his defense. It was upon this evidentiary record that the learned trial court, after hearing arguments from both sides, arrived at its conclusion of guilt and passed the impugned judgment.

5. The learned counsel for the appellant has passionately argued that the trial court fell into grave error by failing to appreciate the deep-seated infirmities that plague the prosecution's case. On the other hand, the learned ADPP has argued with equal conviction that the fabric of evidence woven by the prosecution is strong enough to sustain the conviction.

6. Before embarking upon the intricate journey of re-appraising the evidence, it is imperative to pause and reflect upon the

foundational principles that serve as the bedrock of our criminal justice system. The "golden thread" that runs through the tapestry of our law is the presumption of innocence a sacred principle that holds every individual innocent until the prosecution proves their guilt. This burden of proof is immense and unwavering; it rests squarely upon the shoulders of the prosecution from the beginning to the very end. The standard required is not a mere preponderance of probability; it is proof beyond a reasonable doubt. The law does not demand that an accused person prove his innocence. Rather, if a single, significant doubt emerges from the tangle of evidence a doubt that would cause a prudent and reasonable person to hesitate in a matter of grave importance then its benefit must be extended to the accused, not as a matter of charity, but as a command of law and a dictate of justice. This sacred duty of the courts has been repeatedly emphasized by the Hon'ble Supreme Court in a long line of cases, including Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); and Muhammad Imran v. The State (2020 SCMR 857).

7. The first profound fracture in the prosecution's narrative appears at the crucial intersection of human testimony and objective science. The complainant and his sons, the eyewitnesses, have presented a clear and simple story: all three of them were struck by gunfire. However, medical jurisprudence, which provides an objective physical truth, tells a starkly different tale. Dr. Hadi Bux (PW-4) found that the complainant himself and his son Mashoque Ali bore injuries caused not by firearms, but by a "hard pointed object" and a "hard and blunt substance," respectively. This is not a minor inconsistency that can be brushed aside as a product of faulty memory in a traumatic moment. It is a direct, fundamental contradiction regarding the very weapon of offence used against two of the three victims. As has been

rightly held in 2024 PCrLJ 1421, when the ocular account is so violently at odds with the medical evidence, it loses its credibility.

8. The wisdom of our apex courts has consistently guided that such a conflict is not to be taken lightly. As observed by the Hon'ble Supreme Court in its recent pronouncement in CHETAN v. THE STATE (2025 SCMR 944), the primary claim to credibility of an eyewitness is their assertion of sensory perception that they saw what they claim to have seen. When this assertion is disproven by the unimpeachable findings of a medical expert, their very presence at the scene of the crime is thrown into the arena of doubt. It has been held time and again by Honorable Apex Court that a medico-ocular conflict regarding the number, manners, seat, type of injuries sustained by the injured or deceased is fatal to the prosecution case. Reference in this regard may be made to the case reported as 'Usman alias Kaloo v. The State' (2017 SCMR 622) wherein it was held that:

> *"... Some of the above mentioned eye-witnesses had maintained that the deceased had received only one injury at the hands of the appellant but the Post mortem Examination Report shows that the deceased had received as many as 8 injuries on different parts of his body ... the medical evidence had created many dents in the prosecution's case rather than providing support to it""*

Further reliance in this regard can be placed on the case reported as 'Muhammad Ali v. The State' (2015 SCMR 137) wherein it was observed:

> *"The medical evidence also does not support the ocular account qua the number of injuries as according to the Doctor P.W.6 the deceased had received as many as 8 injuries. Injuries Nos. 6 and 8 were incised wounds, injuries Nos. 1, 2 and 7 were caused by blunt weapon while injuries Nos. 3, 4 and 5 were caused by firearms. Only one injury on thigh has been attributed to the appellant ... In such circumstances, the presence of the eye-witnesses at the spot is doubtful. Had they been present at the*

> *spot and had witnessed the occurrence, they could have ascribed the correct role to the accused and explained all the injuries on the person of the deceased."*

Reliance can also be placed in this respect on the case of 'Muhammad Shafi alias Kuddoo v. The State' (2019 SCMR 1045) wherein it was observed as under:

> *"Ocular account is in conflict with medical evidence inasmuch as according to the crime report both the appellant, as well as, Abdul Razzaq, co-accused, are assigned one blow each to the deceased, whereas according to the initial medical examination, Medical Officer noted solitary injury on the head, its impact on the eye has been utilized by the witnesses to array the latter in the crime."*

9. It compels the Court to ask the unavoidable question that were the witnesses truly there to observe the event in its entirety, or is their testimony an embellished or reconstructed version of events? In this case, the medical evidence, instead of acting as a pillar of support for the ocular account, has acted as a wrecking ball, creating irreparable fissures in its foundation. This cloud of doubt grows darker when this Court turn to the matter of identification. Human perception, especially in moments of high stress and terror, is fallible. The setting for this alleged identification was a rural road, late at night, *a canvas of darkness*. The assailants' faces were initially concealed. In such a scenario, the law requires that the "fog of uncertainty" be pierced by a clear, unambiguous light of proof that there was a genuine opportunity for correct identification. Yet, the prosecution's case is shrouded in a deafening silence on this crucial point. No witness mentions any source of light be it the moon, a vehicle's headlamp, or a simple torch that would have made a fleeting glimpse of an unmasked face a reliable basis for identification.

10. If the ocular account is fractured and the identification is clouded, the prosecution must rely on the strength of its independent

corroborative evidence. It is here that the case does not merely falter; it collapses in its entirety. The Mashir in our legal system is intended to be the "eyes and ears" of the public within a police proceeding, a citizen guarantor of transparency and a safeguard against fabrication. When this very guarantor declares the process a sham, he pulls the rug out from under the entire investigative claim. The testimony of PW-5 Sabir Hussain is nothing short of devastating for the prosecution. His candid admission that the appellant was not arrested in his presence and that he was made to affix his thumb impression on a blank mashirnama is a death knell for the credibility of the arrest and the subsequent recovery of the mobile phones.

11. This testimony does more than just nullify the recovery; it casts a pall of suspicion over the integrity of the entire investigation. The mobile phones, which were meant to be the crucial link connecting the appellant to the crime, are thus rendered fruits of a poisoned tree. This is compounded by the glaring omissions of any description of the phones in the FIR and the failure of the complainant to identify them in court, making the recovery evidence legally and factually worthless.

12. It is in the light of this contradicted testimony and collapsed corroboration that we must, with great care, revisit the evidence of the interested eyewitnesses. The law, with its deep understanding of human nature, approaches the testimony of relatives with caution not from a suspicion of deliberate falsehood, but from an awareness of unconscious bias, the emotional desire for retribution, and the natural human tendency to fill gaps in memory with conjecture. Therefore, the law demands that their testimony either be of such an exceptionally high, sterling quality that it inspires confidence on its own, or that it be firmly supported by trustworthy, independent evidence. In the present case, neither of these conditions is fulfilled. The testimony is riddled with a major scientific

contradiction, and the independent corroboration, in the form of the recovery, has been discredited from the mouth of the prosecution's own witness.

13. To summarize the journey of this case through the evidence: we began with an ocular account that stands in stark contradiction to the findings of medical science; we proceeded to an identification that allegedly took place in unlit and dubious circumstances; and we ended with an official story of arrest and recovery that was bravely and publicly disavowed by the very citizen witness called to verify it. The chain of evidence forged by the prosecution is not merely a chain with a weak link; it is a chain with several links that are fundamentally broken. A conviction cannot be built upon a foundation of contradictions, doubts, and discredited procedures. To do so would be to sacrifice the certainty required by law at the altar of conjecture.

14. For the foregoing reasons, which have been weighed with the utmost care and consideration for the principles of justice, it is my firm conclusion that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt. The conviction recorded against him is, therefore, unsafe and unsustainable. Consequently, this criminal appeal is allowed. The impugned judgment dated 13.03.2024, passed by the learned IInd Additional Sessions Judge, Mehar, is hereby set aside. The appellant, Ilyas s/o Ghulam Hyder Gorar, is honourably acquitted of the charges. He shall be released from prison forthwith, if not lawfully required in connection with any other case. These are the reasons of short order dated 24.07.2025.

J U D G E

Asghar Altaf/P.A