

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal Nos. 79 to 81 of 2023.

Appellants : 1. Muhammad Raheem of Syed Karim,
2. Muhammad Yameen son of Muhammad Farosh,
Through M/s. Muhammad Iqbal Baloch &
Salahuddin Khan Gandapur Advocates.

Respondent : The State
Through Mr. Qamaruddin Nohri, Asst; P.G. Sindh

Date of hearing : 29.05.2025

Date of Judgment : 29.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – These three criminal appeals arise from judgments delivered by the learned IInd Additional Sessions Judge, Karachi Central, on 12.01.2023, in three separate cases against the appellants, Muhammad Raheem and Muhammad Yameen. The appellants seek to set aside the impugned judgments and be acquitted of the charges.

2. Facts of FIR No. 183/2019, offence u/s 392/397/34 PPC are that on 12.06.2019, at about 3:00 PM, complainant Shamimullah was robbed of Rs. 42,000/- at gunpoint by two unknown individuals on a motorcycle near Mashallah AC fridge Wala, Nazimabad No.4, Karachi, after he withdrew money from HBL Rizvia branch. The FIR (No. 183/2019) was lodged on June 24, 2019, at 9:00 PM.

3. Initially, the case was tried before a Judicial Magistrate. Upon finding that Section 397 PPC was attracted, the case was transferred to the Sessions Court. Charge: Framed under Sections 392/397/34 PPC (Exh.5), to which accused pleaded not guilty. PW-1 Shamimullah (Complainant) (Exh.6): Identified the accused in court and reiterated the robbery incident of June 12, 2019. Stated that on June 24, 2019, he received a call from the police station that accused were arrested and he identified them at the PS. He also mentioned that the owner of Naveed Estate Agency (Naveed) saw the incident and was fired upon, sustaining injury to his left leg. He stated police prepared memo at police station. PW-2 Abdul Talib (Exh.7): Deposed that on June 12, 2019, he was at Naveed Estate Agency, heard noise, and saw two accused committing robbery. He specifically identified Muhammad Yameen (wearing glasses) as the one who fired upon Naveed, causing a bullet injury to his leg. He stated he

took Naveed to Abbasi Shaheed Hospital. PW-3 I.O. SIP Muhammad Sarfaraz Hussain (Exh.9): Deposed that on 24.06.2019, he re-arrested the accused (already arrested in another crime) based on complainant's identification. He prepared the memo of re-arrest Exh.9/B) and inspected the place of incident, preparing a memo and sketch. He produced various entries and CROs. In cross-examination, he admitted not associating any other private witness except Talib and Shamim, and stated shopkeepers refused to be witnesses. PW-4 Muhammad Naveed Idrees (Exh.10) Identified the accused and corroborated the robbery incident. Stated that the accused fired upon him, hitting his right knee. He was taken to Abbasi Shaheed Hospital by Abdul Talib and others. Statement of Accused (U/S 342 Cr.P.C.) (Exh.12 & Exh.13): Accused denied the prosecution case and claimed innocence, choosing not to lead any defense. Trial Court convicted both accused in pursuance of Section 265-H(ii) Cr.P.C. for committing an offense under Section 392 PPC, sentencing them to 3 years R.I. and a fine of Rs. 15,000/- each, with concurrent sentences for other convictions (Crime Nos.183/2019, No. 181/2019, and No. 182/2019). The court found that no deadly weapon was used in the present case.

4. Facts of FIR No. 182/2019, offence u/s 23(1)(a) SAA, 2013, are that on June 24, 2019, at about 4:00 PM, ASI Subhan Ali (complainant) apprehended Muhammad Yameen and Muhammad Raheem during patrolling at Service Road, Orangabad, Nazimabad No. 3. Upon personal search of Muhammad Yameen, a .30 bore pistol without a number, loaded with 3 live bullets, was recovered. He failed to produce a valid license, leading to his arrest and the lodging of a separate FIR. Charge: Framed under Section 23(1)(a) of the Sindh Arms Act, 2013 (Exh.2), to which accused pleaded not guilty. PW-1 HC Akbar Ali (Mashir) (Exh.3): Corroborated the arrest of both accused and the recovery of the .30 bore pistol with 3 live bullets from Muhammad Yameen. He identified the memo of arrest and recovery (Exh.3/A) and memo of inspection (Exh.3/B). PW-2 ASI Subhan Ali (Complainant) (Exh.5): Identified the accused and case property. Deposed about the apprehension of both accused and the recovery of the .30 bore pistol with 3 live bullets from Muhammad Yameen during personal search. He prepared the memo of arrest and recovery and sealed the weapons. PW-3 I.O. ASI Rana Nadeem (Exh.6): Deposed that he received the case property and custody of accused. He inspected the place of incident on pointation of complainant and mashir, prepared memo, and later submitted the weapon for FSL. FSL report confirmed the pistol was in working order. Statement of Accused (U/S 342

Cr.P.C.) (Exh.8): Accused denied the prosecution case and claimed innocence. Trial Court convicted Muhammad Yameen in pursuance of Section 265-H(ii) Cr.P.C. for committing an offense under Section 23(1)(a) of the Sindh Arms Act, 2013, sentencing him to 3 years R.I. and a fine of Rs. 10,000/-, with concurrent sentences for other convictions (Crimes No. 169/2019 and No. 183/2019).

5. Facts of FIR No. 181/2019, offence u/s 23(1)(a) SAA, 2013, are that on June 24, 2019, at about 4:00 PM, ASI Subhan Ali (complainant) apprehended Muhammad Raheem and Muhammad Yameen. Upon personal search of Muhammad Raheem, one .30 bore pistol without a number, loaded with 2 live bullets, was recovered. He failed to produce a valid license, leading to his arrest and the lodging of a separate FIR. Charge was framed under Section 23(1)(a) of the Sindh Arms Act, 2013 (Exh.2), to which accused pleaded not guilty. PW-1 HC Akbar Ali (Mashir) (Exh.3): Corroborated the arrest of both accused and the recovery of the .30 bore pistol with 2 live bullets from Muhammad Raheem. He identified the memo of arrest and recovery (Exh.3/A) and memo of inspection (Exh.3/B). PW-2 ASI Subhan Ali (Complainant) (Exh.5): Identified the accused and case property. Deposed about the apprehension of both accused and the recovery of the .30 bore pistol with 2 live bullets from Muhammad Raheem during personal search. He prepared the memo of arrest and recovery and sealed the weapons. PW-3 I.O. ASI Rana Nadeem (Exh.6): Deposed that he received the case property and custody of accused. He inspected the place of incident on pointation of complainant and mashir, prepared memo, and later submitted the weapon for FSL. FSL report confirmed the pistol was in working order. Statement of Accused (U/S 342 Cr.P.C.) (Exh.8): Accused denied the prosecution case and claimed innocence. Trial Court convicted Muhammad Raheem in pursuance of Section 265-H(ii) Cr.P.C. for committing an offense under Section 23(1)(a) of the Sindh Arms Act, 2013, sentencing him to 3 years R.I. and a fine of Rs. 10,000/-, with concurrent sentences for other convictions (Crimes No. 169/2019 and No. 183/2019).

6. The learned counsel for the appellants argued that the impugned judgments are liable to be set aside due to several inconsistencies and infirmities in the prosecution's case. He presented the following arguments, relying on the facts and grounds detailed in the appeal memos and the trial court judgments: The appellants are innocent and have been falsely implicated in this case by the complainant with malafide intention and ulterior motive.

The learned Trial Court erred in law as well as on facts in convicting the Appellants, and the impugned judgment was passed without applying judicial mind. The prosecution has miserably failed to make out a case against the appellants. The evidence produced is not confidence inspiring and is based on surmises and conjecture. A mandatory provision of law was violated in the Arms Act cases, as no independent or natural witnesses were associated during the recovery of weapons. The I.O. himself admitted in cross-examination that he only associated Talib and Shamim, and that other shopkeepers confirmed the incident but refused to become witnesses, highlighting the lack of independent corroboration. There is not an iota of evidence against the Appellants to connect them with the commission of the alleged offense. The complainant, PW-1 Shamimullah, stated that the robbery occurred on June 12, 2019. However, the FIR was lodged on June 24, 2019, at 9:00 PM. This significant and unexplained delay of twelve days in reporting a serious incident like armed robbery, especially when the complainant claimed to have moved an application to the police station immediately (which was never exhibited), is highly suspicious. More critically, the FIR was lodged against "two unknown persons" at 9:00 PM on June 24, 2019. This is in direct contradiction with the fact that the appellants, Muhammad Raheem and Muhammad Yameen, were allegedly arrested at 4:00 PM on the same day (June 24, 2019) in connection with the Sindh Arms Act cases (FIR Nos. 181/2019 and 182/2019). The complainant further stated in his examination-in-chief that he received a call from the police station informing him that they had apprehended the accused in his crime, and only then did he go to the police station to identify them. The question arises: if the accused persons were already apprehended and identified by the police by 4:00 PM and the complainant was informed, how could the FIR lodged at 9:00 PM still describe the culprits as "unknown". This glaring discrepancy strongly suggests a pre-planned and manipulated chain of events to implicate the appellants, rather than a genuine investigation. The complainant claimed that the memo of arrest and recovery was prepared at the police station, and that police visited the place of incident and prepared the memo of site inspection on the same day. However, the memo of arrest and recovery is recorded at 11:00 PM, and the memo of site inspection at 11:40 PM at the place of incident. Such conflicting statements about crucial procedural steps further undermine the reliability of the prosecution's narrative. PW-1 Shamimullah, in his initial statement, mentioned that Naveed was fired upon and sustained an injury. However, when his evidence was re-adduced after the case was remanded to the Sessions Court, he conspicuously omitted this detail, creating a material contradiction.

Inconsistencies of PW-2 Abdul Talib: PW-2 Abdul Talib claimed that the complainant sustained a bullet injury and that he took the complainant to Abbasi Shaheed Hospital. He further stated that on the next day (June 13, 2019), the police inspected the place of incident. This is a severe inconsistency, as FIR No. 183/2019 was not registered until June 24, 2019. It is unfathomable how the police could have inspected an incident site on June 13, 2019, when the alleged crime had not even been officially reported. This directly implies that either the incident did not occur as alleged, or it occurred but was not reported to the police promptly, or the witnesses are intentionally deposing falsely to fit a narrative. The learned advocate for the appellants also produced a copy of Criminal Appeal No. 74/2023 in Crime No. 169/2019 (offence u/s 324/34 PPC), where the accused were acquitted. This demonstrates a pattern of the prosecution's inability to establish its case in interconnected matters arising from the same series of events, lending credence to the defense's argument of false implication. The learned counsel relied upon the reported case law 2011 SCMR 1142: This precedent underscores the principle that if there is any doubt in the prosecution's case, however slight, the benefit of that doubt must invariably go to the accused. This is a fundamental tenet of criminal jurisprudence. 2023 MLD 1938, this citation likely pertains to the importance of prompt lodging of the First Information Report and the adverse implications of an unexplained delay in reporting a crime, which can be fatal to the prosecution's case. 2018 MLD 1495, this judgment is pertinent to the mandatory nature of Section 103 Cr.P.C., which requires the association of independent and respectable witnesses during recoveries. The non-compliance with this provision, especially when private witnesses were available but not associated, can render the recovery doubtful.

7. The learned APG for the State opposed the appeals, contending that the prosecution had successfully proved its case beyond a reasonable doubt before the trial court and that the impugned judgments were based on credible and consistent evidence.

8. Having meticulously considered the detailed arguments presented by both sides, and having undertaken a thorough and careful re-appraisal of the entire evidence on record, including the trial court judgments, the FIRs, the statements of the witnesses, and the grounds of appeal, this Court is inexorably led to the conclusion that significant and irremediable doubts pervade the prosecution's case across all three interconnected matters.

9. Specifically, in Sessions Case No. 195 of 2020 (FIR No. 183/2019, offence u/s 392/397/34 PPC), the very foundation of the prosecution's narrative is riddled with glaring inconsistencies and improbabilities, the fact that the complainant, PW-1 Shamimullah, allegedly suffered a robbery on June 12, 2019, but the FIR was only lodged on June 24, 2019, at 9:00 PM, a full twelve days later, is highly suspect. The complainant's assertion that he "moved an application" but then failed to exhibit it, and the substantial and unexplained delay in formal reporting, casts serious doubt on the spontaneity and genuineness of the FIR. As held in numerous precedents, including the principles espoused in 2023 MLD 1938, an inordinate and unexplained delay in lodging the FIR, particularly in cases of such gravity, often points towards deliberation, consultation, and the possibility of false implication, thereby eroding the credibility of the entire prosecution story. The most perplexing and damaging aspect for the prosecution is that the FIR, lodged at 9:00 PM on June 24, 2019, unequivocally states that the robbery was committed by "two unknown individuals." This stands in stark and irreconcilable contrast to the undisputed fact that the appellants, Muhammad Raheem and Muhammad Yameen, were allegedly apprehended by the police and taken into custody at 4:00 PM on the very same day, June 24, 2019, in connection with the Sindh Arms Act cases (FIR Nos. 181/2019 and 182/2019). The complainant, PW-1, himself admitted that he received a call from the police informing him that they had arrested the accused in his crime, and only then did he proceed to the police station for identification. The logical absurdity is undeniable: if the police already had the culprits in custody and had even informed the complainant about their apprehension five hours prior, how could the complainant still be lodging an FIR against "unknown" individuals? This contradiction is not merely a minor lapse but strikes at the very heart of the prosecution's case, suggesting a manufactured scenario to falsely implicate the appellants.

10. The complainant's testimony regarding the preparation of the memo of arrest and recovery and the memo of site inspection is contradictory. He stated that these memos were prepared at the police station, yet the documents themselves indicate different times (11:00 PM for arrest/recovery and 11:40 PM for site inspection) and suggest the site inspection took place at the scene of the crime, not the police station. Such fundamental inconsistencies concerning critical procedural steps severely undermine the credibility of the police investigation and the documents produced. The testimony of PW-2

Abdul Talib, stating that the police inspected the place of incident on June 13, 2019, is a glaring inconsistency that cannot be overlooked. As established, FIR No. 183/2019 was not registered until June 24, 2019. It defies all logic and standard police procedure for an investigation, including a site inspection, to commence eleven days before the crime is officially reported. This monumental discrepancy casts grave doubts on whether the incident actually occurred as alleged, or if the witness is intentionally fabricating facts, thereby rendering his entire testimony unreliable. The admission by the I.O. (PW-3) in his cross-examination that he did not associate any other private witness except Talib and Shamim, and that shopkeepers in the vicinity confirmed the incident but "refused to become witness," is a significant weakness. In criminal cases, especially those involving robbery and serious allegations, independent corroboration from neutral sources is crucial. The absence of such corroboration, coupled with the I.O.'s inability to secure it, raises an adverse inference against the prosecution. The production of the judgment in Criminal Appeal No. 74/2023, resulting in the acquittal of the accused in Crime No. 169/2019 (offence u/s 324/34 PPC), which is directly linked to the same series of events as the present robbery case, further supports the defense's contention of a flawed and unproven prosecution narrative. The consistent failure of the prosecution to establish guilt in interconnected matters points towards a systemic weakness in the evidence.

11. In Sessions Case No. 911 of 2019, FIR No. 182/2019, offence u/s 23(1)(a) SAA, 2013, against Muhammad Yameen, and Sessions Case No. 910 of 2019, FIR No. 181/2019, U/S 23(1)(a) SAA, 2013, against Muhammad Raheem, while the recoveries of firearms were attested by police officials, the credibility of these arrests and recoveries cannot be viewed in isolation. They are intrinsically linked to the highly questionable circumstances surrounding the robbery case. The learned counsel's argument regarding the violation of Section 103 Cr.P.C., mandating the presence of independent and respectable witnesses during recoveries, assumes heightened importance in this context. While police officials' testimony can be relied upon, when their credibility is already tainted by significant inconsistencies in a related and foundational case, the lack of independent corroboration becomes a critical lacuna. The principles enunciated in 2018 MLD 1495, highlighting the importance of strict compliance with Section 103 Cr.P.C., further strengthen the defense's position, especially given the I.O.'s admission about the reluctance of private individuals to act as witnesses.

12. The cumulative effect of these grave infirmities, contradictions, and unexplained delays creates not just a doubt, but a profound and reasonable doubt about the guilt of the appellants. The fundamental principle of criminal law, as enshrined in 2011 SCMR 1142, dictates that where a reasonable doubt exists, the benefit of that doubt must invariably be extended to the accused. The prosecution bears the onus of proving its case beyond a shadow of reasonable doubt, and in the present appeals, it has manifestly failed to discharge this heavy burden. The evidence presented, rather than inspiring confidence, generates suspicion and points towards a dubious and unproven sequence of events.

13. Therefore, for the foregoing comprehensive reasons, all three appeals are allowed. The impugned judgments dated January 12, 2023, passed by the learned IInd Additional Sessions Judge, Karachi Central, in Sessions Case No. 195 of 2020 (FIR No. 183/2019), Sessions Case No. 911 of 2019 (FIR No. 182/2019), and Sessions Case No. 910 of 2019 (FIR No. 181/2019) are hereby set aside. The appellants, Muhammad Raheem and Muhammad Yameen, are acquitted of the charges in all three cases. They shall be released from custody forthwith, if not required in any other case. Their bail bonds are cancelled, and sureties discharged.

J U D G E