



## THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.110 of 2024  
Crl. Jail Appeal No.123 of 2024

Appellant : Sikandar  
through M/s. Riaz Ahmed Bhatti &  
Allah Ditta, advocates in Crl. Appeal  
No.110 of 2024

Appellant : Muhammad Bux  
through Mr. Muneeb Ahmed  
Qureshi, advocate in Crl.J. Appeal  
No.123 of 2024

Complainant : Akhtar Ali  
through Mr. Zeeshan Ajmal,  
advocate

Respondent : The State  
through Mr. Mumtaz Ali Shah,  
Assistant Prosecutor General

Date of hearing : 06-03-2025  
Date of Judgment : 06-03-2025



### JUDGMENT

Jan Ali Junejo, J.-- This consolidated judgment disposes of Criminal Appeal No.110 of 2024, preferred by Sikandar s/o Adal (hereinafter referred to as Appellant Sikandar), and Jail Appeal No.123 of 2024, filed by Muhammad Bux s/o Ahmed (hereinafter referred to as Appellant Muhammad Bux), challenging the Judgment dated 18.01.2024 (hereinafter termed as "Impugned Judgment") passed by the Court of learned IInd Additional Sessions Judge, Thatta (hereinafter referred to as the Trial Court), in Sessions Case No.347 of 2021. By the Impugned Judgment, both appellants were convicted under Sections 324 (voluntarily causing hurt by dangerous weapons), 392 (robbery), 394 (voluntarily causing hurt in



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committing robbery), and 34 (common intention) of the Pakistan Penal Code (PPC). The Trial Court sentenced them to ten years of rigorous imprisonment on each count, along with fines of Rs.50,000/- per charge, and ordered the sentences to run concurrently. Additionally, the appellants were directed to undergo three months of simple imprisonment in case of default on fines. The appellants, aggrieved by their conviction and sentence, have approached this Court seeking acquittal on grounds of alleged legal infirmities, inconsistencies in evidence, and violations of due process in the Trial Court's proceedings. This judgment shall address the merits of both appeals, the arguments advanced by the appellants, and the State's defense of the Impugned Judgment.

2. The prosecution case, as delineated in the Trial Court's record, originates from an incident dated 13.11.2020 at approximately 22:35 hours near Quetta Hotel, Dhabeji, District Thatta. The complainant, Akhtar Ali Arain (PW-1), proprietor of a mobile shop and Easy Paisa business, alleged that while returning home after closing his shop, he was accosted by two individuals on a red 125cc motorcycle, later identified as the appellants Muhammad Bux and Sikandar, accompanied by absconding co-accused Anwar and Sultan. Armed with TT pistols, the accused allegedly robbed him of Rs.12,50,000/- (intended for weekend transactions) and a mobile phone. Upon resistance, the accused opened fire, inflicting gunshot injuries on the complainant's left leg and injuring two bystanders, Muhammad Arif (PW-2) and Muhammad Asim (PW-3), who intervened. The injured were subsequently shifted to Trauma Center Karachi for treatment. The FIR No.86/2020 under Sections 324, 392, 394, and 34 PPC was registered on 16.11.2020—three days post-incident—against "unknown persons". The prosecution's case pivoted on:





1. **Testimonies of Injured Witnesses:** PW-1, PW-2, and PW-3 consistently narrated the robbery and injuries but admitted in cross-examination that they could not identify the appellants during the incident due to darkness and first saw them in court/police custody.
2. **Medical Evidence:** Dr. Muhammad Sabbar (PW-4) corroborated the injuries through medical summaries (Exh.14/A-C), confirming gunshot wounds requiring vascular surgery and ICU treatment.
3. **Recovery of Partial Robbed Cash:** On 11.12.2020, SIP Imdad Hussain (PW-5) recovered Rs.4,00,000/- from Muhammad Bux's possession, allegedly hidden near ZBST College, pursuant to a confession made during police interrogation. The recovery memo (Exh.15/I) was attested by police officials, not independent witnesses.
4. **Confessional Statements:** The appellants purportedly admitted their involvement during police custody, though no judicial confession was recorded.

The Trial Court convicted the appellants primarily on **circumstantial evidence**, deeming the chain of events – robbery, injuries, delayed FIR, recovery of partial robbed money, and confessions – sufficient to establish guilt beyond reasonable doubt under Sections 324, 392, 394, and 34 PPC.



3. The learned counsel for the Appellant *Sikandar* contends that the impugned judgment is legally unsustainable, arguing that the appellant was unlawfully arrested and falsely implicated through a staged encounter, with no identification parade conducted despite the FIR's reference to "unknown culprits" (1992 SCMR 196). He further asserts that the Trial Court relied on an inadmissible extrajudicial confession made to police (violating



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Articles 38-39, Qanoon-e-Shahadat Order 1984), failed to comply with Section 342 Cr.P.C. by not confronting the appellant with recovery evidence, and permitted a biased investigation by SIP/SHO Imdad Hussain, who authored the FIR and led the probe. He highlights the absence of ballistic corroboration for seized bullets, the conviction under uncharged sections (324, 392, 394 PPC) without defense opportunity, and the Trial Court's erroneous reliance on pending FIRs despite witnesses' failure to identify the appellant (Exh. 11-13). He emphasizes procedural non-compliance (e.g., no confession under Section 164 Cr.P.C.), inconsistencies in prosecution evidence, and the judgment's miscarriage of justice due to non-application of judicial mind. It is prayed that this Honourable Court set aside the impugned judgment dated 18.01.2024, acquit the appellant, and grant the benefit of doubt in light of these cumulative legal and factual infirmities.



4. The learned counsel for the Appellant *Muhammad Bukhsh* contends that the impugned judgment is **contrary to law and facts**, as the prosecution failed to prove the case beyond doubt, with key witnesses contradicting each other on material points and no recovery of the alleged robbery amount. He argues that the trial court **misapprehended the evidence**, ignored the appellants' innocence, and overlooked their false implication by police, who inflicted injuries at an unrelated location while fabricating a non-existent encounter. Counsel asserts that the nighttime incident rendered identification impossible, entitling the appellants to the **benefit of doubt** under settled principles of criminal justice (*State v. Muhammad Aslam*), yet the trial court stretched inferences in favor of the prosecution, causing a **miscarriage of justice**. He emphasizes that the judgment violates Articles 13, 199, and 209 of the Constitution, as it disregards procedural fairness and the appellants' right to a free,



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fair, and speedy trial. It is respectfully prayed that this Honourable Court set aside the conviction and sentence dated 18-01-2024, acquit the appellants,

5. Learned counsel for the respondent submits that the appellants were not identified by the respondent, and he first time saw the appellants at police station Dhabeji. Finally he raised no objection if the appeals are allowed.

6. Per contra, the learned Additional Prosecutor General (APG) has argued that the prosecution conclusively established the appellants' guilt through credible evidence, including their lawful arrest at the crime scene with incriminating recoveries (pistol, cash), corroborated by eyewitness testimonies and medical reports. The trial court rightly dispensed with an identification parade, as the appellants were apprehended red-handed, and their voluntary confession—recorded in accordance with procedural safeguards—remains admissible and consistent with the evidence. The investigation was impartial, with no proven malice or procedural lapses, and the trial court meticulously confronted the appellants with all evidence under Section 342 Cr.P.C., disregarding minor contradictions in witness accounts as inconsequential. The conviction under relevant penal provisions is justified by the appellants' direct involvement, and the absence of ballistic analysis does not weaken the case, given the overwhelming circumstantial and testimonial proof. The trial court's appraisal of evidence aligns with the "safe administration of justice," and the appellants' criminal antecedents validly rebut claims of false implication. No miscarriage of justice occurred, as the prosecution discharged its burden beyond doubt, rendering the appeals meritless. The learned APG prays for dismissal of the appeals and affirmation of the impugned judgment, upholding the conviction and sentence as lawful and just.





7. Upon a detailed examination of the submissions presented by the appellants' counsel and the State's Additional Prosecutor General (APG), coupled with a rigorous scrutiny of the case record, the following critical findings and rational conclusions emerge: The prosecution alleged that on 13.11.2020, the appellants, along with accomplices, robbed the complainant Akhtar Ali of Rs. 12,50,000/- at gunpoint. The appellants were arrested on 18.11.2020, and Rs. 4,00,000/- was purportedly recovered from Muhammad Bukhsh. During trial, the complainant (PW-1), Muhammad Arif (PW-2), and Asim (PW-3) testified but failed to identify the appellants as perpetrators. The prosecution witnesses (PWs) explicitly stated that they were unable to identify the appellants as the perpetrators of the robbery due to the darkness of the night. Furthermore, it is a matter of record that the appellants were not named in the First Information Report (FIR). Despite the FIR being lodged against *unknown culprits*, the Investigating Officer (IO) failed to conduct an identification parade, which is a mandatory legal requirement in such cases. Additionally, the alleged recovery of Rs. 4,00,000/- from the possession of appellant Muhammad Bukhsh lacks independent corroboration and, therefore, cannot be considered reliable evidence. The alleged recovery was not witnessed by independent persons, nor in presence of the Complainant. The prosecution did not record the denomination, serial numbers, or distinguishing marks of the recovered cash, making it impossible to link the money to the robbery. The complainant was never asked to identify the currency during trial, further eroding the prosecution's claim. The appellant Muhammad Bukhsh was already in police custody at the time of recovery, raising suspicion of planted evidence. It is a well-established principle of law that, in the absence of identification of the allegedly robbed currency notes by the complainant, the recovery cannot be considered reliable. This legal position has





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been affirmed by the Honourable Supreme Court of Pakistan in the case of *Daniel Boyd (Muslim Name Saifullah) and another v. The State* (1992 SCMR 196). Furthermore, the prosecution failed to present any direct or circumstantial evidence linking the appellants to the alleged robbery. Given these circumstances, the prosecution has not been able to prove the charges against the appellants beyond a reasonable doubt. Consequently, the appellants are entitled to acquittal on the grounds of the *benefit of doubt*.



8. It is a fundamental tenet of criminal law that the prosecution bears the burden of proving guilt beyond a reasonable doubt, and any uncertainty must be resolved in favor of the accused. It is also an established legal principle that the *benefit of doubt* does not require the presence of multiple suspicious circumstances; even a single circumstance casting doubt on the prosecution's case is sufficient to justify acquittal. If the Court finds reason to suspect that the prosecution has failed to present credible evidence for securing a conviction, it is duty-bound to grant relief to the accused. This principle has been reaffirmed by the Honourable Supreme Court of Pakistan in the case of *Muhammad Riaz and others v. The State and others* (2024 SCMR 1839).

9. For the foregoing reasons, the Impugned Judgment dated 18-01-2024, rendered by the Trial Court, is deemed legally untenable and is hereby set-aside. Consequently, the appeals are allowed and the conviction and sentence imposed on the appellants, Sikandar and Muhammad Bukhsh, under Sections 324, 392, 394 & 34, P.P.C. are overturned. Both the Appellants are acquitted of the charges and shall be released immediately, unless lawfully detained in connection with any other pending case.

  
JUDGE