

IN THE HIGH COURT OF SINDH KARACHI

Criminal Appeal No. S-504 of 2024

Appellant	:	Muhammad Rashid, through Mr. Khalid Hussian Advocate
Respondent No.1	:	Asif Mehmood, through Mr. Mujahid Ali Awan, Advocate
Respondent No.2	:	The State Through Mr. Muhammad Mohsin Mangi, Assistant Prosecutor General.
Date of hearing	:	20.11.2025
Date of short order	:	20.11.2025
Date of reasons	:	18.12.2025

JUDGMENT

ALI HAIDER 'ADA', I.- Through this Criminal Acquittal Appeal, the appellant Muhammad Rashid has assailed the judgment dated 13.07.2024, passed by the learned Additional Sessions Judge-II, Karachi West, in Sessions Case No. 26 of 2019 titled "*The State versus Muhammad Rashid*." Vide the impugned judgment, the appellant was convicted and sentence to pay Arsh in the sum of Rs. 3,378,951/- and Diyat in the amount of Rs. 6,757,902/- to the injured. In addition, he was ordered to pay compensation of Rs. 1,200,000/- under Section 544-A, Cr.P.C., and in case of default, to undergo simple imprisonment for six months, with the amount recoverable as arrears of land revenue.

2. Briefly, the prosecution case is that the complainant received information at Civil Hospital, Karachi, that his brother, Shahbaz, had been injured in a road accident involving a vehicle allegedly belonging to Dalda Company. The information was provided by Chhipa Ambulance personnel. The injured was subsequently operated upon, and one of his legs was amputated. The complainant

thereafter lodged the FIR on 23.11.2018 against unknown persons, though the incident was stated to have occurred on 22.11.2018.

3. Following registration of the FIR, the present appellant was nominated, arrested, and challaned. The learned trial Court, after supplying requisite documents, framed charge against him on 15.01.2019, to which he pleaded not guilty and claimed trial.

4. During the course of evidence, the complainant appeared as PW-1 and produced the FIR and site inspection memo. PW-2 Muhammad Shahbaz, the injured, was examined and narrated the incident. PW-3 Javed Iqbal, posted as Duty Officer, was examined to prove formal aspects of investigation. PW-4 Abdul Jabbar produced the memo of arrest, seizure of the vehicle and motorcycle, as well as documents pertaining to the vehicle. PW-5 Jahangir Ahmed, a police official, produced the reports of vehicles and medico-legal papers. PW-6 Muhammad Naseer, the Motor Vehicle Examiner, tendered his technical report. PW-7 Dr. Abdul Aleem Memon was examined and produced medical records relating to the amputation and treatment of the injured. With that, the prosecution closed its side.

5. The learned trial Court thereafter recorded the statement of the accused under Section 342, Cr.P.C., wherein he professed innocence, denied the allegations, and sought acquittal. The trial Court, however, proceeded to convict him through the impugned judgment, now under challenge through the present appeal.

6. Learned counsel for the appellant contends that the FIR does not mention the name of the appellant, nor does it contain any description linking him with the alleged incident. It is submitted that the entire record is silent as to how and on what basis the appellant was subsequently implicated. Counsel argues that the prosecution has failed to establish any nexus between the appellant and the alleged road accident. It is further argued that the Motor Vehicle Examiner's report is doubtful and does not conclusively support the prosecution version. On these premises, counsel submits

that the appellant is entitled to the benefit of doubt and consequent acquittal.

7. Conversely, learned State Counsel supports the impugned judgment, submitting that the prosecution successfully established its case, and that the evidence on record sufficiently connects the appellant with the commission of the offence. He contends that the medical evidence corroborates the ocular account, demonstrating the severity of injuries suffered by the victim due to the alleged negligence of the appellant. It is argued that no leniency is warranted and that the learned trial Court has already taken a considerate view while imposing sentence. Learned counsel for Respondent No. 1/Complainant adopts the State's arguments and submits that both direct and circumstantial evidence sufficiently establish the appellant's culpability. He emphasized that the victim's leg was amputated due to the alleged act of the appellant, and therefore, no concession of acquittal should be extended. Accordingly, he seeks dismissal of the appeal.

8. Heard and perused the record with due care.

9. At the outset, the incident is alleged to have taken place on 22.11.2018 at about 4:30 p.m., yet the FIR came to be recorded on 23.11.2018 12:45 p.m, with an unexplained delay of nearly twenty hours. In cases of road-side accidents where the identity of the alleged offender is known or where an accused is apprehended on the spot, prompt reporting is ordinarily expected. The prosecution has attempted to build its case on the assertion that persons present at the time of the occurrence apprehended the present appellant and handed him over to the police; however, this assertion has not been proved through any independent source or witness. No individual from the alleged crowd has been examined, nor has any memo of arrest reflecting such apprehension been produced. On the contrary, the documentary record reveals that the arrest of the appellant was shown at 2125 hours on 23.11.2018, i.e., only after the FIR had been lodged, which materially erodes the prosecution narrative of

apprehension at the spot and subsequent immediate handing-over. The delay in the FIR, coupled with the absence of any contemporaneous record establishing the identity of the accused at the scene, raises a legitimate doubt regarding the manner in which the appellant came to be nominated and subsequently arrested. It is settled that when the prosecution withholds the best possible evidence or fails to explain material omissions, the benefit must accrue to the accused. Reference may confidently be made to the principle restated in *Muhammad Asghar v. The State* (2025 SCMR 1616), wherein it was held that unexplained delay in the FIR and subsequent investigative lapses diminish the probative value of the prosecution's case and entitle the accused to the benefit of doubt. In these circumstances, the prosecution has failed to establish through reliable and confidence-inspiring evidence the manner in which the appellant was linked with the alleged occurrence, thereby rendering the case doubtful within the recognized parameters of criminal jurisprudence.

10. The position of the vehicle, as reflected in the chart placed on record, together with the Motor Vehicle Examiner's report, does not disclose any evidence of impact or damage to the motorcycle allegedly driven by the injured Shahbaz. Even superficial scratches or dents, which would ordinarily be expected in a collision of the magnitude alleged, are conspicuously absent.

11. Moreover, the prosecution has failed to examine the very person who purportedly informed the Chhipa Ambulance Service and activated the chain of events. Neither the ambulance personnel nor any such source of information was produced before the Court, nor were their statements incorporated into the investigation record. This omission deprives the Court of primary and direct evidence regarding the time, place, and manner in which the injured was discovered. In terms of **Article 129(g) of the Qanun-e-Shahadat Order, 1984**, an adverse inference may lawfully be drawn against the prosecution for withholding the best available evidence.

12. Further still, during the course of medical scrutiny, no documentation from Civil Hospital, Karachi, was produced to establish that the injured was initially admitted there following the alleged accident. The prosecution, therefore, failed to lay any foundational medical trail demonstrating immediate treatment, admission, or medico-legal examination at the place where the complainant claims to have received information. Such evidentiary gaps demonstrate that no independent witness or medical custodian came forward to provide a reliable account of the actual occurrence.

13. The non-examination of marginal and material witnesses strikes at the root of the prosecution case and constitutes a serious infirmity, as reinforced by the principles laid down in *Abid v. The State* (2025 SCMR 1710) and *Fateh Khan v. The State* (2025 SCMR 1408), wherein it was held that withholding independent witnesses without plausible explanation creates doubt, and such doubt must operate in favour of the accused.

14. It is rather surprising that on 22.11.2018, a statement was recorded on plain paper and was subsequently treated as the FIR, despite the fact that every Police Station maintains a prescribed format for lodging an FIR. A statement recorded without compliance with the mandatory format cannot be construed as a formal FIR, particularly when the record itself shows that the said statement was allegedly recorded on 22.11.2018.

15. Furthermore, during his examination, the injured categorically deposed that on the date of incident till yet, the motorcycle was in running condition, and that due to the vehicle being driven on the wrong side, the Datsun struck him. He also stated that the Datsun in question was produced by one Traffic Police official. However, such Traffic Police official was never examined as a prosecution witness so as to establish the chain of evidence.

16. Similarly, PW-5 Jahangir Tanoli, Police Officer, deposed that on 23.11.2018 he received information that one vehicle and an unknown person were available at the Police Station. He inspected

the vehicle and questioned the said person, who disclosed his name and allegedly admitted his guilt. This narration is wholly inconsistent with the prosecution's own chain of events and creates a serious dent in the case. The prevailing circumstance reflects that the alleged person was present at the Police Station along with the vehicle until 23.11.2018, whereas the incident took place on 22.11.2018. Such inconsistency renders the prosecution story inherently doubtful.

17. It is a settled and golden principle of criminal jurisprudence that the benefit of every doubt must go to the accused. Reliance is placed on *Farman Ali v. The State* (2025 SCMR 1730) and case of *Khitab Ullah and others v. The State* (2025 MLD 1803).

18. Moreover, the prosecution has miserably failed to establish any nexus between the offending vehicle and the present Appellant. No investigation was carried out to determine the ownership of the vehicle, nor was any evidence brought regarding the employment, control, or domain of the Appellant in relation to the said vehicle. The law is equally settled that it is preferable to err on the side of acquittal rather than convict on presumptive grounds; ten guilty persons may escape, but not a single innocent individual should be convicted.

In these circumstances, multiple doubts have legitimately arisen in the prosecution's case. Accordingly, by extending the benefit of doubt, the present Appellant stands acquitted of the charge. The Appellant, who is present on bail, is released, and his bail bond stands discharged. These are the reasons of the short order dated 20.11.2025 whereby the instant Criminal Appeal was allowed.

JUDGE