IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.06 of 2026

Appellants	:	1. Babar Ali son of Gulab Kalar 2. Asad Ali son of Imdad Ali 3. Imran Ali son of Gulzar Ali *Through* Mr. Shahnawaz Teevino, Advocate.
Respondent	:	The State *Through* Mr. Muhammad Mohsin Mangi, A.P.G.
Date of hearing	:	13.11.2026
Date of judgment	:	13.11.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. **-** Appellants Babar Ali, Asad Ali and Imran Ali, have challenged the judgment dated 02.12.2025, passed by the learned XI-Additional Sessions Judge, Karachi East, in Sessions Case No.1414/2025, emanating from FIR No.117/2025, PS Awami Colony, Karachi, whereby they were convicted under Sections 397/34 PPC and sentenced to undergo rigorous imprisonment for seven years each, with benefit of Section 382-B Cr.P.C.

2. The prosecution case, briefly stated, is that on 29.07.2024, at about 11:30 p.m., complainant Muhammad Feroz Khan, while proceeding home on his motorcycle, was intercepted near Ansar Football Ground, between Singer Chowrangi and Korangi No.5, Karachi, by three unidentified armed persons riding a motorcycle, who deprived him of his Samsung Galaxy A-71 mobile phone and escaped. The FIR was registered on 17.02.2025, after a lapse of about six months and nineteen days, against unknown persons. Subsequently, on 18.02.2025, the appellants were allegedly apprehended by a police party headed by SIP Hazir Rehman near Taj Petrol Pump, Korangi Industrial Area, where members of the public were purportedly assaulting them on suspicion of committing dacoity. During their personal search, a Samsung mobile phone allegedly connected with the present crime was recovered from appellant Babar Ali, besides arms and ammunition from the appellants. On 21.02.2025, the complainant allegedly identified them in the premises of City Courts, whereafter they were implicated in the present case.

3. At trial, the prosecution examined PW-1 Muhammad Feroz Khan (Ex.3), PW-2 SIP Hazir Rehman (Ex.5), PW-3 PC Abid Hussain (Ex.6) and PW-4 ASI Faizan Laeeq (Ex.7). The appellants, in their statements under

Section 342 Cr.P.C., denied the allegations, asserting that the police had intercepted them, demanded illegal gratification and, upon refusal, falsely implicated them by foisting the alleged recoveries. They did not lead defence evidence. The learned trial Court, principally relying upon the complainant's identification and alleged recovery of the mobile phone, recorded their conviction.

4. Learned counsel for the appellants contended that the impugned judgment suffers from material misreading and non-reading of evidence; the FIR was lodged after an unexplained delay; the appellants were strangers to the complainant; no identification parade was conducted under judicial supervision; the alleged recovery lacked independent corroboration; and the police witnesses contradicted one another on material particulars. He particularly referred to the judgments dated 17.12.2025, whereby the same trial Court acquitted all three appellants in their respective offshoot cases under the Sindh Arms Act, 2013, after disbelieving the identical arrest-and-recovery proceedings. Conversely, learned Additional Prosecutor General supported the conviction, maintaining that the complainant's identification, reinforced by recovery of the robbed handset, sufficiently established the prosecution case.

5. Having heard learned counsel and independently reappraised the evidence, I find that the conviction rests upon two principal incriminating circumstances: identification of the appellants by the complainant and recovery of the allegedly robbed mobile phone. The sustainability of the impugned judgment, therefore, depends upon whether these circumstances withstand scrutiny against the standard of proof beyond reasonable doubt.

6. The first disquieting feature is the extraordinary delay in registration of the FIR. Although the occurrence allegedly took place on 29.07.2024, the crime report was lodged on 17.02.2025. PW-1 attempted to explain that he had approached the police immediately after the occurrence but his report was not registered. However, during cross-examination, he candidly admitted, "It is correct that I have not moved any application for registration of FIR at PS between day of happening incident and lodging of FIR. It is correct that I have not informed the matter of incident immediately to 15 police." No contemporaneous complaint, police diary entry or other independent material was produced to substantiate his alleged earlier approach to the police. Delay is not invariably fatal, but where offenders were initially unknown and their subsequent identification

is disputed, such prolonged and inadequately explained silence materially impairs the assurance ordinarily attaching to a prompt accusation.

7. The identification evidence is equally precarious. Admittedly, none of the appellants was nominated in the FIR, nor were their individual roles or distinguishing features disclosed before their arrest. PW-1 conceded, "It is correct that I have lodged the FIR against unknown accused persons. It is correct that specific role of accused persons is not mentioned in my FIR and my statement U/s 161 Cr.P.C. It is correct that I had not disclosed the features of accused persons to police in between the date of incident and registration of FIR." More significantly, he admitted, "I was only shown pictures by IO on which I identified the accused persons, but I do not know their names." These admissions substantially undermine the independence of the subsequent identification. The memorandum (Ex.3/D) reveals that on 21.02.2025 the complainant identified the appellants outside the concerned Magistrate's Court, where they had been brought in police custody for remand. No test identification parade was held under judicial supervision, no persons of similar appearance were mixed with the suspects, and no safeguards against prior exposure were observed. Identification in such circumstances is inherently suggestive. The principles governing identification of previously unknown offenders, elucidated in PLD 2019 SC 488[1] and 2019 SCMR 956[2], require careful scrutiny of the fairness and reliability of the identification process. Although absence of a formal identification parade is not invariably fatal, identification following exposure to police-selected photographs, without previously recorded distinguishing features, furnishes no dependable assurance of identity. Subsequent identification during trial cannot, in the peculiar circumstances of this case, safely dispel that infirmity.

8. Turning to the alleged recovery, the prosecution asserted that the Samsung Galaxy A-71 mobile phone belonging to the complainant was recovered from appellant Babar Ali. However, the complainant's own admissions cast doubt upon the evidentiary foundation of that assertion. During cross-examination, PW-1 admitted, "It is correct that I have not mentioned sim number of mobile phone in my FIR. It is correct that description of mobile phone is not mentioned in my statement U/s 161 Cr.P.C. It is correct that I did not handover the box of mobile to IO during investigation. It is correct that sim was inserted in my mobile, but its number is not mentioned in my FIR and statement U/s 161 Cr.P.C."

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[1] *Kanwar Anwaar Ali, Special Judicial Magistrate,*
[2] *Mian Sohail Ahmed and others v. The State* and others

Although IMEI particulars appear in the translated FIR and the alleged recovery memorandum, their existence does not, by itself, establish the genuineness of the recovery or an unbroken evidentiary connection between the recovered handset and the complainant. No purchase receipt, original box, authenticated ownership record, subscriber verification or independent technical material was produced to substantiate that connection.

9. The infirmity becomes more pronounced upon examining PW-2 SIP Hazir Rehman, who admittedly affected the alleged recovery. He conceded, “It is correct that I have not produced any entry showing that such information was given to CPLC. It is correct that I have not mentioned model and IMEI number of mobile phone of FIR No:117/25. At the time of recovery of mobile phone of this crime I had not checked as to how many sims were inserted in it. At the time of sealing of mobile phone it was powered off. It is correct that I have not informed to complainant of FIR No:117/25 about arrest of his accused.” The alleged CPLC verification, upon which the prosecution substantially relied, remained unsupported by an authenticated record. The absence of contemporaneous verification and reliable documentation assumes particular importance when the very factum of recovery is disputed.

10. PW-4 ASI Faizan Laeeq, Investigating Officer, further admitted, “It is correct that I have not confirmed from CPLC regarding snatching of mobile phone in respect of FIR No:117/2025. It is correct that I have not collected any CDR of this mobile phone. It is correct that complainant did not provide me receipt and box of his mobile phone. It is correct that I have not produced entry regarding depositing of case properties in FSL.” Thus, the investigation furnished no independently verifiable trail establishing the ownership, recovery and subsequent custody of the handset. The first IMEI particulars appearing in the FIR and recovery record bear substantial correspondence; consequently, the deficiency is not merely one of numerical mismatch but of the failure to establish, through trustworthy evidence, the recovery itself and its nexus with the crime. An unsupported assertion of police verification cannot replace legally dependable proof.

11. The arrest and recovery proceedings suffer from further material infirmities. According to the prosecution, the appellants were apprehended at a busy public place where several persons had already gathered and were allegedly assaulting them. Yet no independent person was associated with the recovery. PW-3 PC Abid Hussain admitted, “15-20

peoples were gathered at the place of incident. It is correct that complainant did not ask any person of vicinity to act as witness or mashir." The testimony of police officials is not inherently unworthy of reliance merely because of their official status. Nevertheless, where independent persons were admittedly available and the official account is otherwise affected by material inconsistencies, their unexplained non-association becomes a relevant circumstance in evaluating the credibility of the recovery. The witnesses also differed regarding the time of arrival, particulars of recovered articles and the circumstances of apprehension. Significantly, the date of occurrence appearing in the statements under Section 161 Cr.P.C. was shown as 05.02.2025, whereas the alleged arrest occurred on 18.02.2025. These discrepancies concern the very transaction through which the appellants were connected with the present crime and cannot be dismissed as ordinary errors of recollection.

12. The most striking feature of the record, however, is that all three appellants stand acquitted in the offshoot arms cases arising from the same arrest-and-recovery proceedings. By separate judgments dated 17.12.2025, the learned XI-Additional Sessions Judge, Karachi East, acquitted Babar Ali in Sessions Case No.1415/2025 (FIR No.118/2025), Imran Ali in Sessions Case No.1416/2025 (FIR No.119/2025), and Asad Ali in Sessions Case No.1417/2025 (FIR No.120/2025), all registered under Section 23(1)(a) of the Sindh Arms Act, 2013. These prosecutions originated from the same alleged arrest on 18.02.2025, relied upon the same police party headed by SIP Hazir Rehman, the same mashir PC Abid Hussain and the same Investigating Officer ASI Faizan Laeeq. The arrest and alleged recoveries constituted a common transaction.

13. In those judgments, the learned trial Court, after examining substantially the same police evidence, expressly disbelieved the recovery proceedings on account of material discrepancies concerning police movement, timing, recovered articles, non-association of independent witnesses and delayed dispatch of weapons for forensic examination. The prosecution was consequently held to have failed to establish the alleged recoveries beyond reasonable doubt. The significance of these findings cannot be understated. Although an acquittal in a connected arms case does not *ipso facto* entail acquittal of the robbery charge, the discrediting of the same arrest-and-recovery proceedings materially weakens their corroborative value in the present case. The question is not one of automatic parity or the application of double jeopardy, but of consistent and rational appreciation of a common body of evidence.

14. It is equally important that the connected judgments were delivered subsequent to the impugned conviction; the learned trial Court, therefore, cannot be faulted for having omitted to consider findings not then in existence. Nonetheless, the contradictions identified therein are independently discernible from the evidence in the present record and fall squarely within the scope of appellate reappraisal. Once the same recovery proceedings have been found unreliable upon examination of substantially identical testimony, the alleged recovery of the mobile phone cannot be accepted mechanically as unimpeachable corroboration, particularly when its independent verification is itself deficient. The impugned conviction thus rests upon an unsafe identification supported by a seriously disputed recovery, neither of which supplies the requisite assurance of guilt.

15. Another aspect requiring consideration is the application of Section 397 PPC. The complainant attributed the display of firearms collectively to three unidentified assailants without specifying the individual act of each appellant. The alleged firearms were recovered more than six months after the occurrence in proceedings already afflicted by reasonable doubt. The prosecution was required to establish not only the identity and participation of each appellant in the robbery but also the ingredients attracting Section 397 PPC. The mere allegation that three persons were armed, without reliable identification and proof of the relevant individual conduct, could not justify an undifferentiated application of the aggravated provision to all three. Section 34 PPC does not dispense with proof of the essential ingredients of the offence attributed to each accused.

16. The learned trial Court also misdirected itself in assigning adverse significance to the appellants' failure to prove previous enmity, substantiate their plea of false implication or produce defence evidence. The burden of establishing guilt throughout rested upon the prosecution and could not be shifted to the accused. An accused is entitled to remain silent, to decline examination on oath and to rely upon deficiencies emerging from the prosecution's own evidence. Equally unsustainable is the trial Court's observation that the complainant's testimony remained unchallenged, notwithstanding the material admissions elicited during cross-examination. The conclusion that the prosecution witnesses fully corroborated one another is contrary to the record and betrays non-reading of material evidence.

17. The evidence, viewed cumulatively, reveals an inadequately explained delay of more than six months in lodging the FIR; absence of prior description of the unknown offenders; police-induced exposure before identification; failure to conduct a properly safeguarded identification parade; lack of dependable independent verification of the allegedly recovered handset; material contradictions in the arrest-and-recovery proceedings; and acquittal of all three appellants in connected prosecutions arising from the same transaction after the same police evidence was found unreliable. These are not merely procedural irregularities or inconsequential discrepancies. They strike at the essential links connecting the appellants with the alleged offence. The complainant's victimhood, even if accepted, does not establish the identity of the perpetrators. Suspicion, however compelling, cannot take the place of proof.

18. The governing principle is firmly settled that a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to entitle an accused to acquittal as a matter of right, not indulgence. Reference may be made to 1995 SCMR 1345[3], 2009 SCMR 230[4] and 2018 SCMR 772[5]. Here, the prosecution case is beset by multiple infirmities which, individually and collectively, render the conviction unsafe. The learned trial Court, having overlooked material admissions and assigned decisive weight to evidence lacking the requisite assurance of reliability, reached a conclusion that cannot withstand appellate scrutiny.

19. For the foregoing reasons, I am satisfied that the prosecution failed to establish the appellants' guilt beyond reasonable doubt. Consequently, this appeal is allowed. The impugned judgment dated 02.12.2025, passed by the learned XI-Additional Sessions Judge, Karachi East, in Sessions Case No.1414/2025, arising out of FIR No.117/2025 under Sections 397/34 PPC, Police Station Awami Colony, Karachi, is set aside. Appellants Babar Ali, Asad Ali and Imran Ali are acquitted of the charge by extending them the benefit of doubt. They shall be released forthwith, if not required in any other case. Their conviction warrants shall stand recalled. The case property shall be dealt with in accordance with law. Office shall communicate this judgment to the learned trial Court and concerned jail authorities for immediate compliance.

J U D G E

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[3] *Tariq Pervez v. The State*
[4] *Muhammad Akram v. The State*
[5] *Muhammad Mansha v. The State*