

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN SIBI BENCH
AT QUETTA

Criminal Jail Appeal No(s).07 of 2025

(CC#100207800350)

Shah Murad
Vs.
The State

Date of hearing: 26.11.2025 Announced on: 08.12.2025

Pauper Appellant by: Mr. Elahi Bakhsh Lehri, Advocate

State by: Mr. Jameel Akhtar Gajani, Additional Advocate General.

JUDGMENT

SARDAR AHMAD HALEEMI, J. The appellant through Superintendent, District Jail Dera Murad Jamali has transmitted this Criminal Jail Appeal, which is directed against the judgment dated 29th May, 2025 (hereinafter the "impugned judgment") passed by the learned Sessions Judge Naseerabad at Dera Murad Jamali (hereinafter the "trial Court"), whereby the appellant was convicted under section 396 PPC and sentenced to life imprisonment with fine of Rs.500,000/- (Rupees Five Hundred thousand only), in default whereof, to suffer S.I for six (06) months with benefit of Section 382-B Cr.P.C.

2. As per the contents of crime report Ex.P/7-A, on 12.01.2024, the complainant Dostain reported the matter to the Police Station Manjhoo Shori, to the effect that he resides with his family near Goth Liaqat Ali Gola, Khuroos Wah, and earns his livelihood through agricultural labour (Bazgari). On the said date, he, along with his

brother Abdul Qadir Rind, had gone to Ali Abad's small market/shops to purchase household necessities. After making the purchases and while returning home at about 03:30 p.m., they reached near Bhutta Laro Bari Shakh Road, where they were stopped by their cousin Akhtar Ali, who informed them that three unknown persons, armed with TT pistols and a hunter, had just snatched his motorcycle (CD-70, model 2022) and escaped towards the south. The complainant alleged that he took his cousin on his bike and chased the culprits. Upon crossing the Ibrahim Gola Bridge, when they approached the alleged dacoits in an attempt to recover the snatched motorcycle, one of them fired a shot with a TT pistol, striking his brother Abdul Qadir on the abdomen and causing them to fall. The complainant further asserted that the faces of all the accused were visible and that he could identify them if they were produced before him. The accused person, however, managed to flee towards the south. After the registration of the FIR, Abdul Qadir succumbed to the firearm injury; therefore, Section 396 PPC was incorporated. Subsequently, the complainant, through an affidavit, nominated the accused persons, Shah Murad and Qambar, in the alleged occurrence.

3. After the usual investigation, the investigating officer submitted an interim challan of the case before the trial Court. The trial court framed the charge against the appellant, to which he pleaded not guilty. The prosecution examined seven (07) witnesses. At the conclusion of the evidence, the appellant was examined under section 342, Cr.P.C., wherein he denied the allegations leveled against him. He

did not examine himself on oath as envisaged under section 340(2), Cr.P.C., nor produced any witness in his defence.

4. The trial Court heard the arguments of learned counsel for the parties, convicted and sentenced the appellant vide impugned judgment, hence, this appeal.

5. On 25.08.2025, the appeal was admitted for regular hearing, and Mr. Elahi Bakhsh Lehri Advocate was appointed as counsel for the pauper appellant.

6. Learned counsel for the pauper appellant contended that the impugned judgment is not sustainable in the eyes of the law as the prosecution has miserably failed to establish the appellant's involvement in the alleged occurrence. He submitted that no specific role whatsoever has been assigned to the appellant in the entire prosecution case, and the complainant did not attribute any particular act, overt or covert, to him either in the FIR or during trial; that no distinguishing feature, mark, description, or characteristic of any of the alleged culprits was mentioned in the FIR, which makes the later identification of the appellant highly doubtful and legally inconsequential; no recovery whether of the snatched motorcycle, weapon of offence, or any incriminating article was ever effected from the appellant, thereby eliminating any corroborative link between him and the alleged crime; that the supplementary statement of the complainant was recorded after an unexplained delay of nearly two months, which casts serious doubt on its authenticity and severely diminishes its evidentiary value; that the prosecution case is riddled

with material defects, benefiting the appellant with the principle of doubt, and therefore the conviction recorded by the learned trial Court is liable to be set aside.

7. On the other hand, the learned Additional Prosecutor General contorted the contentions of learned counsel for the pauper appellant and contended that the prosecution has successfully proved its case beyond any shadow of doubt through reliable ocular testimony duly supported by medical evidence; the appellant is a member of an organized gang of dacoits allegedly involved in multiple incidents of robbery within the area, and his participation in the present occurrence cannot be doubted merely on technicalities; that a duly conducted identification parade before the learned Judicial Magistrate conclusively established the appellant's identity, as the complainant confidently identified him among the dummies without any hesitation; that the mere fact that no specific role was assigned in the FIR does not absolve the appellant, particularly when the offence was committed by several armed culprits acting with a common intention and shared objective, attracting the mischief of Section 396 PPC; that delay in recording the supplementary statement is not fatal in the circumstances of the case, especially when the eyewitness account remains consistent and confidence-inspiring and lastly prayed that the appeal, being devoid of merit, is liable to be dismissed.

8. We have considered the arguments of the learned counsel for the parties and gone through the record.

9. A perusal of record reveals that the trial court, while passing the impugned judgment, did not observe the material contradictions and improvements in the testimony of the prosecution witnesses. PW-1 Dostain (the complainant) tendered his written application Ex.P/1-A for registration of FIR and reiterated the facts narrated in the Ex.P/1-A. Initially, the complainant reported the incident against unknown persons. However, he submitted an affidavit Ex.P/1-B dated 28.03.2024 and nominated Shah Murad (the appellant) and Qambar in the occurrence. The contents of Ex.P/1-B reflect that, on his personal information, he came to know the culprits' names. Further, the complainant did not disclose the source of information in the crime report; as such, after due deliberation and consultation, the false implication of the appellant in the instant case cannot be ruled out. The complainant filed the affidavit Ex.P/1-B after a considerable delay of two and a half months, without any plausible justification. All these factors cast doubt on the credibility of the witness. The apex courts have repeatedly held that delay in a supplementary statement is a serious lapse unless and until it is plausibly explained. Delay, per se, is a valid ground for gauging the veracity of the prosecution witnesses. In the case of "Mehmood Ahmad Vs. The State" (1995 SCMR 127), there was a delay of two hours in lodging the FIR. The Hon'ble Supreme Court, while holding that the delay of two hours in lodging the FIR has assumed great significance, as the same can be attributed to consultation, taking instructions, and calculatedly preparing the report, keeping the names of the accused open for roping in such persons

whom ultimately the prosecution may wish to implicate, charge and put to trial.

10. Likewise, PW-2 Akhtar Ali, a victim/eye witness of the alleged incident, also did not disclose the physical features and role of the accused person. Subsequently, on 28.03.2024, he implicated the appellant and his accomplice based on the information of the complainant. However, he did not assign any role to the appellant. Further, PW-2 participated in the identification test parade conducted in the presence of the concerned Judicial Magistrate. PW-2 identified the appellant without attributing any role; thus the identification parade conducted before the concerned Judicial Magistrate cannot be accorded any significant evidentiary weight. The FIR is devoid of any description of the accused's physical features or distinguishing characteristics, and it fails to attribute any specific role or conduct to the appellant at the time of the alleged incident. In such circumstances, the reliability of the identification process is highly questionable. Without prior knowledge of the accused's salient features, any subsequent identification parade loses its probative value, as it cannot be reasonably expected to establish the appellant's presence or involvement with certainty. The trial court's reliance on such identification for the purpose of conviction would be legally unsound and unjustified.

11. Moreover, PW-3 Dr Saeed Ahmed, Medical Officer, DHQ Civil Hospital, Dera Murad Jamali, examined the deceased Abdul Qadir and issued the MLC Ex.P/3-A. As per contents of the MLC, the

deceased had an entry wound on the left lateral side of his abdomen with an exit wound on the right side of his abdomen laterally. While PW-4 Constable Mughal Khan/witness of the recovery memo produced the blood-stained cloths of the deceased, as Art.P/2 to Art.P/3. During the cross-examination, PW-4 replied Question Nos.1 and 2, answered as under:

1. یہ درست ہے کہ قمیض سامنے سے پٹھا ہوا ہے اور اس پر گولی کا نشان موجود نہیں ہے۔

2. یہ درست ہے کہ قمیض کے پچھلی سائیڈ سے جو سوراخ ہے وہ گول ہے اور قینچی سے کٹا ہوا ہے۔ یہ پہلے سوراخ نہیں تھا۔

12. A careful analysis of the deposition of the prosecution witnesses manifests that the ocular account contradicts the medical account, which features of the case make the prosecution's story doubtful. Apart from the above, the prosecution did not effect any recovery of the motorcycle, weapon, or any other incriminating material from the appellant, and the forensic examination of the empties failed to establish any connection between the appellant and the firearm used. The above discrepancy, coupled with the fact that the extrajudicial confession to the police did not disclose any new facts and that no statement under Section 164 Cr.P.C. was recorded, further weakens the prosecution's case.

13. The upshot of the aforementioned discussion and reappraisal of the entire evidence reveals that the chain of circumstantial evidence is missing, and the prosecution has failed to establish the allegations against the appellants through tangible and

trustworthy evidence. It is a cardinal principle in criminal jurisprudence that if a reasonable doubt arises in the prosecution's case, the benefit thereof must be extended to the accused not as a matter of grace or concession, but as a matter of right, as it is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted. Reliance in this respect may be made in the case of The State through PG Sindh and others v. Ahmed Omar Sheikh and others (2021 SCMR 873), wherein it has been held as under:

"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

For the above reasons, Criminal Appeal No(s).07 of 2025 is allowed; consequently, the judgment dated 29th May 2025, passed by the Sessions Judge Naseerabad at Dera Murad Jamali, is hereby set aside, while extending the benefit of doubt. The appellant, namely, Shah Murad, son of Naib Basham, is acquitted of the charges in FIR No.02/2024 under Section 396, 397 PPC at Police Station Manjhoo

Shori. The appellant, being in custody, shall be released forthwith, if not required/detained in any other case.

Announced in open Court:
Quetta, on 8th December, 2025

Judge

Judge.