JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Revision No.206 of 2023

Javed Khan, etc.

Versus

The State, etc.

Petitioners by.	Petitioners No.1 & 3 in person. Petitioner No.1 in person (in connected Criminal Revision No.31 of 2024)
Respondents by:	Ms. Habiba Khalid, learned State Counsel Ch. Rabnawaz, Advocate, and Asad Ali, ASI/I.O Muhammad Ilyas (Complainant in person)
Date of Hearing:	**30.09.2025**

Khadim Hussain Soomro, J:- The petitioners, through the instant Criminal Revision along with connected Criminal Revision No.31/2024, have assailed the judgments dated 08.05.2023 and 26.07.2023 passed by the learned Judicial Magistrate (East) and the learned Additional Sessions Judge (West), Islamabad, respectively, whereby they were convicted and sentenced under Section 394, Pakistan Penal Code, 1860, in case FIR No.137/2020 under section 397, 337F(i) and 412 PPC, registered at Police Station Noon, Islamabad, and sentenced to five years' rigorous imprisonment each, along with a fine of Rs.20,000/-, and in default thereof, to further undergo simple imprisonment for one month.

2. The facts giving rise to the filing of the instant revision petition are that the complainant, Muhammad Ilyas, lodged FIR No.137/2020 alleging that on 25.06.2020, at about 8:45 p.m., four unknown armed

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persons entered his house, assaulted his son Khizer Hayat, and one of them stabbed the complainant. The accused persons allegedly decamped with cash amounting to Rs. 3,950,000/- and a gold ring weighing half a tola. Subsequently, the present petitioners were arrested on 19.05.2022, and a challan was submitted against them under Sections 394, 412, and 337-F(i), PPC. After a full-dress trial, the learned Judicial Magistrate (East), Islamabad, convicted the petitioners vide judgment dated 08.05.2023. Their appeal before the learned Additional Sessions Judge (West), Islamabad, was dismissed vide judgment dated 26.07.2023.

3. At the very outset, the complainant/respondent No.2, present in person, submitted a written application accompanied with his affidavit stating that he does not wish to pursue the matter any further and has no objection if the conviction and sentence awarded to the petitioners are set aside.

4. Petitioners No. 1 and 3 in Criminal Revision No.206/2023, and the petitioner in Criminal Revision No.31/2024, are on bail and present in person. However, petitioner No.2, namely *Daulat Khan s/o Said Muhammad*, who was also granted bail along with the other petitioners, has remained absent for several consecutive dates. Despite repeated efforts to secure his attendance through the police, it has been reported that he is a fugitive from the law and has absconded to Afghanistan.

5. Learned State counsel submitted that some of the offences are non-compoundable and, in such circumstances, requested that, in case the

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complainant does not wish to pursue the matter, even then the petitioners cannot be acquitted.

6. I have heard the learned State Counsel and gone through the record with due care.

7. The prosecution case, as emerging from the record, is that on 25.06.2020 at about 08:45 p.m., five unknown armed persons allegedly entered the house of the complainant Muhammad Ilyas, caused him injury with a sharp-edged weapon, and took away cash amounting to Rs.40,00,000/-, a gold ring, and five mobile phones. The case was registered against unknown culprits under Sections 337-F(i), 397, and 412 PPC. The delay in lodging the First Information Report (FIR) strikes at the very root of the prosecution case. Reliance is placed on 2016 PCrLJ Note 116 (Azmat Hayat, etc Vs. The State, etc) delay in lodging of FIR, benefit of doubt extended and appeal was allowed, relevant portions are reproduced as under:-

> ".....As per contents of the crime report the occurrence in the instant case had taken place on 27.09.2007, whereas, the FIR was lodged on 05.10.2007 with a delay of nine days of the occurrence.
> .....It is of much significance to note that in the case of Mehmood Ahmed and 2 others v. State (1995 SCMR 127), the Hon'ble Supreme Court of Pakistan took serious notice of delay in lodging the FIR.
> …..when the FIR was lodged with an inordinate delay of nine days"

8. The incident, as alleged, took place on 25.06.2020, yet the FIR was registered on the following day, 26.06.2020. No plausible or convincing explanation has been offered by the complainant for this delay, despite the fact that the police station was situated at a short distance from the place of occurrence. It is well-settled that prompt reporting of an offence lends

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assurance to its truth, while an unexplained delay provides room for deliberation, consultation, and fabrication. In the present case, the lapse of time between the alleged occurrence and the registration of the FIR creates a serious doubt as to the spontaneity and genuineness of the complaint. The complainant's own admission that he remained in contact with the police on the very night of the incident, but the report was lodged only on the next day, further reinforces the presumption that the FIR was registered after due deliberation. Such an unexplained delay, particularly in cases based solely on ocular account, is fatal to the prosecution and diminishes the evidentiary worth of its entire narrative.

9. The prosecution in order to establish its case, examined the complainant. PW-1 Muhammad Ilyas reiterated the contents of his written application (Ex. PA). However, during cross-examination, he made several admissions destructive to the prosecution's case. He admitted that the currency notes received on *superdari* were not the same as those stolen and that the currency notes were drawn from a bank. He further admitted that he had not produced any register or documentary proof regarding the existence of the alleged committee amount of Rs. 35,00,000/, nor was there a description regarding the Committee members, nor were their statements recorded during the course of investigation.

10. The complainant has not given a complete detail with regard to the description of the accused in the FIR. Neither the physical structure of each accused was given nor has specific role been assigned to the each accused in the commission of offence. The Complainant even failed to

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disclose the exact date on which the Identification Parade was carried. Moreover, it is a matter of fact and record that the petitioners/accused were arrested on 19.05.2022, whereas the Identification Parade was conducted on 26.06.2022 after the lapse of forty (40) days, which creates the possibility of showing the accused to the complainant and PWs prior to the Identification Parade. The PW-11/Executive Magistrate did not fulfil the formalities of the Identification Parade in light of the Honourable Supreme Court Judgment passed in the case of Kanwar Anwaar Ali, reported as PLD 2019 SC 488. He could not recall the exact date of the identification parade and conceded that it was conducted nearly two years after the incident, as per memo of arrest on 19.05.2022, whereas Identification Parade was conducted on 26.06.2022 after Forty (40) days of arrest. Reliance is placed on 2020 YLRN 98 (Saleem Khan alias Gul Vs. The State, etc) wherein it was held by Peshawar High Court that delay in identification parade proved to be fatal to the case and appeal was dismissed, relevant portion of the judgment is reproduced as under:-

> "The convict/appellant Sir Syed was arrested on 17.8.2015, whereas his identification parade was conducted on 04.9.2015.
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> "In case titled Muhammad Afzal alias Abdullah and others v. The State and another (2009 SCMR 436), it was held that:-
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> > "It is also explicit on record that prior to holding of the identification test accused persons had complained to P. W. 7, the Magistrate, who had supervised the identification test that they were shown to the identifying witnesses and the Magistrate in the course of his statement, at the trial, has in unequivocal terms admitted that he had received such complaint. Another fact which impairs evidentiary value to the identification test is that accused persons were produced before P.W. 7 initially on 3-11-2000 but the test was put off and was conducted on 7-

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> 11-2000 as a result of freshly made application dated 6-11-2000 and no reason whatsoever for the delay was shown. In the circumstances the possibility that the test was delayed purposely in order to show the accused persons to the identifying witnesses, could not have been ruled out. The evidence of identification, in the circumstances, was of no help to the prosecution."

11. PW-2 Abdul Basit, the son of the complainant, deposed that two armed boys demanded money from him and later locked him and others in the washroom. He also claimed to have identified the accused in jail. However, in cross-examination, he admitted that in his police statement under section 161 CrPC, he had not mentioned the theft of the gold ring, nor had he been present at the time of recovery. He further admitted that all persons in the identification parade had similar appearances and that the lines had already been arranged before their arrival. Such irregularities render the identification proceedings doubtful and of no evidentiary value. Reliance is placed on 2023 PCrLJ 977 (Muhammad Akram alias Akri Vs. The State), relevant portion of the judgment is reproduced as:-

> "Witnesses of said recovery were Police Officials and no independent witness was examined by the prosecution .....As far as recovery of churri at the instance of the other accused was concerned, the same was not helpful to the prosecution because the witnesses of said recovery were Police Officials and no independent witness was examined by the prosecution
> 19. I have noted that the witnesses of said recovery memo are police officials and no independent witness was examined by the prosecution.
> 21. As far as recovery of churri (P.7) at the instance of the appellant Zulfiqar Ahmad, vide recovery memo (Ex.PK) is concerned, the same is not helpful to the prosecution because the witnesses of said recovery memo are police officials and no independent witness was examined by the prosecution."

12. PW-3 Khizar Hayat, another son of the complainant, being about 16 years of age, also supported the version of his father, but his testimony is

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inconsistent on material particulars. He admitted that he neither attended the identification parade nor accompanied his father to the hospital. He also conceded that his brother Usama, who was admittedly present, was not produced as a witness. His version regarding the number of intruders and the sequence of events contradicted both PW-1 and PW-2. In the absence of corroboration, his evidence cannot be relied upon.

13. The medical evidence was furnished through PW-7 Dr. Farah Kamal of PIMS. She observed a superficial wound measuring 4 × 3 cm on the left buttock of the complainant and opined that it could have been caused by any sharp instrument, even by a nail. She categorically admitted that it was a minor wound and that she could not state with certainty that it had been caused by a dagger. Thus, the medical evidence fails to substantiate the allegation of grievous injury under Section 337-F(i) PPC.

14**.** The recovery witnesses, namely PW-6 Umar Arbab, PW-9 Imran Shafiq, and PW-10 Sudhir Abbasi, were all police officials. No independent or public witness was associated in any recovery proceedings, which is a direct violation of Section 103 Cr.P.C. PW-6 admitted that he made no diary entries regarding the departure or arrival at the place of recovery, nor did he associate any member of the public. PW-9 acknowledged that his signature was missing on the recovery memo (Ex. P) and that the alleged pistol had no serial number and was never sent for forensic examination. PW-10 confirmed that all recoveries were made within the Rawalpindi police jurisdiction, but no report or intimation was recorded at the local police station. He also conceded that no public witness was joined. Such

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recoveries, unsupported by independent corroboration, cannot safely be relied upon.

15. PW-11 Abdullah Khan, Assistant Commissioner, who conducted the identification parade, admitted in cross-examination that he had not verified the identity of the witnesses, nor ascertained the period during which the accused remained in police custody prior to the parade. He further admitted that he was already aware of the incident and that he did not follow the standard procedure prescribed under the Identification of Prisoners Act and the Police Rules. The identification parade was conducted almost two years after the occurrence, and witnesses had prior access to the accused in Police Station. Hence, the identification proceedings are tainted and devoid of evidentiary worth.

16. The investigation itself suffers from gross procedural defects. The alleged recoveries of cash were made after a lapse of 2 years. Admittedly the currency notes were not the same, which was stolen and the currency notes were drawn from the bank, hence it is insufficient and against the norms of justice to connect the present accused/petitioners with alleged recovery.

17. All witnesses to the recovery were members of the same police station. This fact created doubts regarding the recovery. Reliance is placed on 2023 PCrLJ 977 [Lahrore] (Muhammad Akram alias Akri Vs. The State, etc) supra. Furthermore, neither the recovered dagger nor the pistol was sent for expert examination, and no fingerprints or forensic evidence were

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collected from the crime scene. These omissions render the investigation highly doubtful and unreliable.

18. The accused before this Court were arrested almost two years after the occurrence. The absence of independent witnesses, the defective identification parade, the contradictory testimony of the prosecution witnesses, and the superficial nature of the injury all create reasonable doubt regarding the prosecution's story. It is a well-settled principle of criminal law that the prosecution must prove its case beyond a reasonable doubt, and any such doubt must be resolved in favour of the accused.

19. In the present case, the ocular account is unreliable, the medical evidence does not support the prosecution's story, and the circumstantial evidence in the form of recoveries is fabricated and uncorroborated. The prosecution has, therefore, miserably failed to establish its case beyond a reasonable doubt.

20. In view of the foregoing discussion, these Criminal Revisions petitions are **allowed**. Upon reappraisal of evidence on record, it is manifest that the prosecution has utterly failed to substantiate the charge against the accused beyond the shadow of a reasonable doubt. The entire case of the prosecution rests upon doubtful identification, defective investigation, doubtful recoveries, and contradictory statements of witnesses, which cannot form the basis of a conviction. The delay in recording the FIR, the absence of independent corroboration and material inconsistencies in the ocular and medical evidence further demolish the prosecution's story. Accordingly, the petitioners are acquitted of the

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charges by extending them the benefit of doubt. The impugned judgments and convictions dated 08.05.2023 and 26.07.2023 recorded by the learned Trial Court as well as by Appellate Court are hereby set aside. Since the petitioners present before this Court are on bail, their bail bonds stand cancelled, and sureties are discharged from their liabilities. The case property, if not required in any other connected proceedings, shall be disposed of in accordance with the law. Perpetual Non-Bailable Warrants shall, however, be issued against the absconding accused/petitioner no.2 (Daulat Khan) till his arrest.

(KHADIM HUSSAIN SOOMRO)
JUDGE

Announced in open court on 7th day of November, 2025

(KHADIM HUSSAIN SOOMRO)
JUDGE

Approved for Reporting

Niqab

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