

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
AT HYDERABAD**

**Criminal Jail Appeal No.D-153 of 2021
Confirmation Case No.33 of 2021**

**Present:
Mr. Khadim Hussain Tunio
Mr. Justice Jan Ali Junejo**

Appellants:	Abdul Khalique son of Muhammad Ayoub and Majid Ali son of Saajan Chandio through Mr. Imtiaz Ali Channa, advocate.
Complainant:	Amanullah son of Muhammad Achar Chandio through Mr. Abdul Rasheed Abro, advocate.
For the State:	Mr. Shahwak Rathore, D.P.G., Sindh.
Date of hearing:	10-09-2025
Date of Judgment:	08-10-2025

JUDGMENT

Jan Ali Junejo, J. --- This criminal jail appeal is directed against the judgment dated 07.12.2021 (hereinafter referred to as the "*Impugned Judgment*") passed by the learned Additional Sessions Judge-I/MCTC, Dadu (hereinafter referred to as the "*Trial Court*") in Sessions Case No.261 of 2021 (arising out of Crime No.34/2014, P.S. Rukkan, under Sections 302, 324, 337-F(iii), 337-H(ii), 504, 34 PPC), whereby the appellants Abdul Khalique and Majid Ali were convicted under Section 302(b) PPC read with Section 34 PPC and sentenced to death as Tazir, with compensation under Section 544-A Cr.P.C.; further convicted under Section 324 PPC read with Section 34 PPC and sentenced to seven years R.I. with fine and compensation; and also convicted under Section 337-H(ii) PPC read with Section 34 PPC and sentenced to three months R.I. with fine. All sentences were ordered to run concurrently with benefit under Section 382-B Cr.P.C. A reference under Section 374 Cr.P.C. for

confirmation of death sentence bearing Case No.33 of 2021 has been received from the learned trial Court. Both the appeal and the confirmation reference are being decided through this consolidated judgment.

2. The genesis of this case lies in a dispute over a soil boundary (banno) between adjoining agricultural lands. The prosecution case, as set out in FIR No.34/2014 (Ex.19/A) of Police Station Rukkan, lodged by the complainant, Amanullah Chandio (PW-3), on 03.05.2014, is that on 01.05.2014 at approximately 4:15 p.m., the appellants, Abdul Khaliq (armed with a Kalashnikov) and Majid Ali (armed with a gun), along with co-accused Sajjan (repeater) and Muhammad Saleh (gun), arrived at the land of Abdul Razzak Chandio near village Imam Bux Chandio. Following an exchange of abuses, Abdul Khaliq and Majid Ali fired upon Ubedullah (the complainant's brother), striking him in the chest and causing his death. Co-accused Sajjan and Muhammad Saleh simultaneously fired upon and injured Fida Hussain (PW-4) and Abid Ali (PW-5), respectively. The victims were transported to Civil Hospital Dadu, but Ubedullah succumbed to his injuries *en route*. The remaining injured were later referred to a hospital in Hyderabad. The FIR was lodged after the completion of funeral rites for the deceased and the management of the injured, explaining the two-day delay in its registration.

3. Investigation was conducted by ASI Mazhar Ali. Site inspection, collection of blood-stained earth and four 12-bore empties, inquest, postmortem arrangements, medical treatment letters and later submission of challan were undertaken. Initially, Muhammad Saleh was arrested and sent up; others were shown absconders and later arrested through supplementary challans. During trial, eight witnesses were examined.

The details of the witnesses alongwith their evidence and exhibits are as under:

1. PW-1: Liaquat Ali (Tapedar) - Exhibit 17

- **Evidence & Exhibits:** Acting on an official order from the Mukhtiarkar (Ex.17/A), the witness visited the crime scene with the IO and eyewitnesses. Using a measurement tape, he prepared a detailed sketch map (Ex.17/B) pinpointing seven specific locations: the spot where the deceased fell (Point A), the positions from which accused Abdul Khalique and Majid Ali fired their Kalashnikov and gun from 150 feet away (Points B & C), the locations of the injured witnesses (Points D & G), and the firing points of the other accused (Points E & F). This exhibit provided an official, scaled layout of the prosecution's narrative.
- **Cross-Examination:** The defense challenged the authenticity of the sketch, suggesting it was fabricated at the police station and not on-site. They pointed out procedural omissions, namely that the sketch lacked the crime number, the date of inspection, and the signatures of the witnessing parties. The witness firmly denied these allegations, maintaining that the sketch was prepared at the scene based on the eyewitnesses' directions.

2. PW-2: Dr. Sikandar Ali (Medical Officer) - Exhibit 18

- **Evidence & Exhibits:** The witness conducted the post-mortem on deceased Ubedullah and medically examined the injured. For Ubedullah, the post-mortem report (Ex.18/I) described two close-range firearm entry wounds to the chest with burning/blackening, causing fatal cardio-pulmonary damage. For injured Fida Hussain, he produced MLCs (Ex.18/B to 18/D) confirming firearm wounds to the legs. For injured Abid Ali, the initial MLCs (Ex.18/E) reserved opinion, but the final MLC (Ex.18/G), based on X-ray reports (Ex.18/F), surprisingly concluded his head injuries were caused by a “hard and blunt object”, not a firearm. All examinations were initiated via police letters (Ex.18/A & 18/H).
- **Cross-Examination:** The defense heavily emphasized the critical contradiction between the eyewitness account (gunshot to Abid's head) and the final medical opinion (blunt object injury). They also questioned the consistency of close-range injury signs (burning/blackening) with the Tapedar's evidence of a 150-foot firing distance. The doctor defended his conclusion, stating it was based on the official X-ray report from a specialized hospital.

3. PW-3: Amanullah Chandio (Complainant) - Exhibit 19

- **Evidence & Exhibits:** As the complainant and eyewitness, he established the motive—a dispute over a land boundary

("Banno"). He gave a detailed account of the incident, identifying all four accused by name, their specific weapons (Kalashnikov, repeater, guns), and their specific roles in attacking each victim. He produced the **FIR (Ex.19/A)** and explained the two-day delay in its registration was due to the burial rites and managing the injured.

- **Cross-Examination:** The defense challenged his narrative by getting him to admit that Abid Ali was a relative from another village who was specifically called to the scene that day. They also noted that other villagers who arrived were not made witnesses, suggesting a curated list. He admitted to a prior criminal case with another party but denied the current case was a false implication due to enmity.

4. PW-4: Fida Hussain (Injured Eyewitness) - Exhibit 20

- **Evidence & Exhibits:** His testimony served as direct corroboration for the complainant. As an injured party himself, he confirmed the entire sequence of events: the motive, the arrival of the accused, the specific weapons used, and most importantly, that accused Abdul Khalique and Majid Ali fired upon the deceased, while Sajan shot him in the legs.
- **Cross-Examination:** The defense explored inconsistencies in the timeline and logistics. He stated no tools were with them and the thresher machine hadn't arrived, potentially questioning their purpose at the land. He estimated the firing distance at 100-150 feet, which differed from other accounts. He firmly denied suggestions that the incident was an robbery or that the accused were innocent.

5. PW-5: Abid Ali (Injured Eyewitness) - Exhibit 21

- **Evidence & Exhibits:** As the second injured witness, his testimony further solidified the prosecution's case. He corroborated the accounts of PW-3 and PW-4, confirming the identities of all assailants and stating that accused Muhammad Saleh shot him in the head.
- **Cross-Examination:** His cross-examination revealed significant details: he was called by phone on the day of the incident and arrived on a motorcycle. Most notably, he estimated the firing distance at only **30-35 feet**, a major contradiction to the Tapedar's measurement of 150 feet and PW-4's estimate of 100-150 feet. This directly fueled the defense's challenge to the consistency of the prosecution's evidence.

6. PW-6: Abdul Razzak (Mashir) - Exhibit 22

- **Evidence & Exhibits:** This witness authenticated the police's investigative process. He testified to being present at the hospital where the IO prepared the memo of the dead body (**Ex.22/A**), the identification memo (**Ex.22/B**), and the injury memos (**Ex.22/C**). He also witnessed the

recovery of the deceased's clothes (Ex.22/D). Most crucially, he was at the crime scene where the IO recovered **blood-stained earth** and **four 12-bore empty cartridges**, formalized in the memo of the place of occurrence (Ex.22/E).

- **Cross-Examination:** The defense highlighted his relationship to the complainant (maternal cousin), implying bias. A major point was raised when the blood-stained earth was de-sealed in court and found not to contain any straw or roots from the harvested wheat field, suggesting it may not have originated from the scene. He also confirmed that no empty shell from a Kalashnikov was ever recovered.

7. PW-7: ASI Mazhar Ali Pitafi (I.O.) - Exhibit 23

- **Evidence & Exhibits:** The Investigating Officer presented the entire story of the investigation. He detailed registering the FIR, inspecting the scene, recovering evidence, and arresting co-accused Muhammad Saleh, from whom a DBBL gun and cartridges were recovered (Memo Ex.23/B). He produced the **Chemical Examiner's Report (Ex.23/D)** confirming human blood on the evidence and the **Ballistic Expert's Report (Ex.23/C)** which stated that two of the four recovered empties were fired from the gun seized from Saleh.
- **Cross-Examination:** The defense exposed a critical flaw: the gun seized (number **2695**) did not match the serial number recorded in the recovery memo (**2698**). This discrepancy was so severe it later led to Saleh's acquittal in a separate arms case. The IO also admitted to not keeping proper official diary entries for his movements, damaging his credibility regarding investigative rigor.

8. PW-8: HC Muhammad Umar (Police Witness) - Exhibit 24

- **Evidence & Exhibits:** His role was to corroborate the arrest of co-accused Muhammad Saleh and the recovery of the gun. He testified to being part of the police team that apprehended Saleh and witnessed the recovery of the weapon, confirming the contents of the memo (Ex.23/B).
- **Cross-Examination:** His testimony inadvertently reinforced the defense's case against Saleh. He confirmed the gun number discrepancy (2698 in memo vs. 2695 in court) and added that the gun's butt was broken and screwed—a detail omitted from the official recovery memo, further suggesting sloppy or dishonest investigation.

4. Following the presentation of its evidence, the prosecution formally closed its case vide the statement of the learned Assistant District Public Prosecutor (ADPP) recorded at Ex.25. Thereafter, the statements of the accused appellants, Abdul Khalique and Majid Ali,

were recorded under Section 342 of the Code of Criminal Procedure (Cr.P.C.) at Ex.26 to Ex.29. In their statements, they universally denied the allegations, claiming innocence and asserting that the prosecution witnesses, being close relatives of the complainant, had deposed falsely due to enmity stemming from a matrimonial dispute. They specifically alleged that the medical evidence was contradictory, the sketch of the place of incident (Ex.17/B) was managed and inconsistent with the medical evidence, the empty cartridges were foisted, the blood-stained earth was managed, and the chemical examiner and ballistic expert reports (Ex.23/C & Ex.23/D) were managed. Co-accused Muhammad Saleh, in his statement, further highlighted a critical discrepancy regarding the recovery of a gun, noting that the serial number in the memo (2698) did not match the weapon produced in court (2695), a point on which he had already been acquitted in a separate arms case, producing the judgment at Ex.26 to substantiate this claim.

5. When offered the opportunity to explain the evidence on oath under Section 340(2), Cr.P.C., both accused expressly declined, answering "No Sir." Similarly, they elected not to present any defence witnesses, thereby leading no evidence in rebuttal. Upon consideration of the entire record, the learned Additional Sessions Judge delivered the judgment on 07.12.2021. The court found the ocular evidence of the complainant (PW-3/Ex.19) and the two injured eyewitnesses (PW-4/Ex.20 & PW-5/Ex.21) to be consistent, credible, and trustworthy. Their testimonies were deemed to be sufficiently corroborated by the medical evidence of PW-2 Dr. Sikandar (Ex.18), particularly the post-mortem report (Ex.18/I) which established the cause of death, the site plan from PW-1 (Ex.17/B), the recovery of empties and blood-stained earth attested to by PW-6 (Ex.22/E), and the forensic reports (Ex.23/C & D). The court held that the prosecution had successfully proved its

case against appellants Abdul Khaliq and Majid Ali beyond a reasonable doubt for the murder of Ubedullah and the attempted murder of the injured parties. The minor contradictions in evidence, such as the variance between the ocular and medical evidence regarding the nature of Abid Ali's injury, were dismissed as not being fatal to the core of the prosecution's case. Consequently, the court convicted both accused under Section 302(b) of the Pakistan Penal Code (PPC) read with Section 34 PPC and sentenced them to death. They were further convicted under Section 324 PPC read with Section 34 PPC and sentenced to seven years' rigorous imprisonment with a fine, and under Section 337-H(2) PPC read with Section 34 PPC to three months' rigorous imprisonment with a fine. The sentences were ordered to run concurrently. The accused were also directed to pay compensation to the legal heirs of the deceased and the injured. The death reference was sent to the High Court for confirmation, and the case against the absconding co-accused was ordered to be proceeded with separately.

6. The learned counsel for the Appellants vigorously argued that the prosecution's case was riddled with fatal contradictions and a complete lack of reliable evidence. He emphasized that the ocular account was irreconcilably contradicted by the medical evidence, as the final medical certificate (Ex.18/G) conclusively proved that injured Abid Ali's wounds were caused by a hard, blunt object, not a firearm as alleged by the eyewitnesses. He further stressed the critical discrepancy in the ballistic evidence regarding co-accused Muhammad Saleh, noting the acquittal in the connected arms case due to the mismatched gun serial number (2698 in memo vs. 2695 in court), which he argued fatally undermined the entire recovery process and suggested evidence had been foisted. Additional points included the unnatural delay of two days in lodging the FIR, the failure to recover any Kalashnikov empties from the scene,

material inconsistencies in the estimated firing distances between witnesses, and the alleged bias of all private witnesses who were closely related to the complainant. He prayed that the Honourable Court would allow the jail appeal, set aside the impugned judgment of conviction and sentence, and acquit the appellants, extending to them the benefit of the doubt.

7. Contra, the learned counsel for the Complainant argued that the prosecution had presented a solid, consistent, and trustworthy case proven beyond a reasonable doubt. He contended that the testimonies of the eyewitnesses, particularly the injured ones, were natural, credible, and contained no material contradictions on the core question of the appellants' identities and their specific roles in the murderous assault. He asserted that the medical evidence, specifically the post-mortem report (Ex.18/I), fully corroborated the ocular account of a firearm-related homicide, and any minor variance regarding the nature of one injured witness's wound was inconsequential to the established charge of murder. He maintained that the motive was clearly established, the recovery of blood-stained earth and empties from the scene was duly witnessed, and the delay in filing the FIR was adequately explained by the circumstances of managing the dead and injured. He prayed for the dismissal of the jail appeal and the upholding of the appellants' conviction and sentence.

8. The learned Deputy Prosecutor General (DPG) for the State, aligning with the arguments of the complainant's counsel, submitted that the prosecution had successfully discharged its legal burden of proof through a chain of cogent, consistent, and corroborative evidence. He argued that the trial court had correctly appreciated the evidence in its totality, rightly accepting the reliable ocular evidence which was

supported by the medical and forensic findings. The state counsel emphasized that the appellants had failed to substantiate their plea of false implication or cast any legitimate doubt on the prosecution's narrative, especially as they chose not to affirm their defense on oath under Section 340(2), Cr.P.C. nor to produce any evidence in rebuttal. He prayed that the appeal, being devoid of any merit, be dismissed and the conviction and sentence awarded by the learned trial court be upheld.

9. We have considered the arguments advanced by the learned counsel for the Appellants, the learned counsel for the Complainant and the learned D.P.G. for the State. I have also gone through the entire evidence available on record with their valuable assistance. A meticulous perusal of the record unequivocally shows that PW-2 Dr. Sikandar conducted the postmortem on 01.05.2014 from 6:00 p.m. to 8:00 p.m. The deceased had two firearm lacerated entry wounds, adjacent, on the left chest below the nipple, each 0.5 cm with blackening/burning; corresponding exits on the back, 1.0 cm; left lung and heart penetrated; chest cavity full of blood; cause of death: cardio-pulmonary damage due to firearm; both injuries individually sufficient to cause death; interval between injury and death 5–10 minutes; between death and postmortem about 45 minutes (Ex.18/I). These findings conclusively establish: (a) homicidal death; (b) seat of injuries at the left chest, a vital area; (c) two distinct close-range shots, given the blackening/burning; (d) rapid death consistent with heart rupture. The medical evidence dovetails with the ocular attribution that two persons fired at the chest—Abdul Khaliq with a Kalashnikov and Majid Ali with a gun. The equality of entry diameters is not determinative of single-weapon causation; entry size depends on range, angle, ammunition, and tissue elasticity. Presence of two closely placed entries with blackening supports at least two close-range discharges. Thus, medical evidence corroborates the ocular version

on the substratum: two shooters targeting the chest at close range causing instantaneous fatality.

10. For injured Fida Hussain (PW-4), provisional MLC (Ex.18/B) notes firearm entry wounds with blackening; final MLC (Ex.18/D) classifies injuries as Ghayr-Jaifah Mutalahimah under Section 337-F(ii) PPC with pellets visible on X-ray (Ex.18/C). This supports a shotgun/repeater-type pellet dispersion to the legs, harmonizing with the allegation against co-accused Sajjan (not before us).

11. For injured Abid Ali (PW-5), provisional MLC (Ex.18/E) reserved opinion; final MLC (Ex.18/G) classifies head injuries as Shajjah-i-Khafifah caused by hard and blunt object, based on LUMHS record (Ex.18/F) showing no bony lesion and no explicit firearm note. This discrepancy with the ocular claim of a gunshot to the head needs careful treatment. It bears primarily on the role of Muhammad Saleh; more importantly, it does not impeach the independent, cogent proof of homicide by chest shots attributed to the appellants.

12. Three eye-witnesses testified: PW-3 Amanullah (complainant), PW-4 Fida Hussain (injured), and PW-5 Abid Ali (injured). All three consistently narrate the motive (banno dispute), the time/place, the arrival of four accused with specific weapons, the attribution of chest shots to Abdul Khalique and Majid Ali, and the concomitant injuries to PW-4 and PW-5, followed by aerial firing and escape. Presence at the scene is stamped for PWs 4 and 5 by medical record. Their narratives were tested in cross-examination. No foundational contradiction shake their core assertions on the identities of the two appellants and the target (deceased's chest). Minor variances in logistics (tools, meal/tea, exact arrival, and distances) are natural and, in a countryside harvest setting, expected. In similar circumstances, in the case of *Nazir Ahmed v. The*

State (2023 SCMR 1299), the Honourable Supreme Court of Pakistan held that: “Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored”. The defense stressed the “related/interested” character of witnesses. The law is settled that relationship is not a ground for rejection per se; often relatives are the natural witnesses to a family land dispute turning violent. The test is inherent credibility, consistency with medical evidence, and absence of material contradiction or motive for false implication to substitute real offenders. Here, the daylight, face-to-face occurrence; an ongoing boundary dispute; immediate medical corroboration; and lack of any plausible alternative hypothesis sustain their reliability. In similar circumstances, in the case of *Abid Hussain and another v. The State and others (2024 SCMR 1608)*, the Honourable Supreme Court of Pakistan held that: “In view of this, the question arises as to whether relationship of deceased with the witnesses is sufficient to discredit their testimonies. It is a settled principle of criminal law that mere close relationship of the deceased with witnesses is not the criteria to believe or disbelieve a piece of evidence”. It was further observed that: “Complainant undoubtedly was a witness of the occurrence which took place in broad daylight with no possibility of mistaken identity. Being a father of the deceased, he would not allow the real culprit to escape by implicating an innocent person”.

13. PW-1 Tapedar prepared a sketch (Ex.17/B) indicating points A–G, showing the deceased’s position and the firing points of all four accused. It records distances of around 150–157 feet between shooters and the deceased/injured. In cross, omissions were highlighted: absence of crime number/date, lack of witnesses’ signatures. These formal

deficiencies detract from ideality but do not negate the substantive mapping; more importantly, the sketch is a corroborative, not substantive, piece. We treat it with caution, especially where it diverges from medical indications of close range. PW-6 mashir and PW-7 I.O. speak to the recovery of four 12-bore empties and blood-stained earth (Ex.22/E). The chemical examiner (Ex.23/D) confirmed human blood on the deceased's clothes and soil. The de-sealing of blood-stained soil in court showed no straw/roots of wheat; this is an investigative lapse and weakens the purity of linkage to a harvested field. Likewise, no Kalashnikov empties were recovered—another lapse. Yet, settled jurisprudence holds that investigative omissions do not automatically eclipse credible ocular-medical proof. Presence of four 12-bore empties coheres with at least one shotgun user on scene (Majid, and/or co-accused). Absence of 7.62mm empties may arise from non-ejection, non-recovery, later contamination, or movement post-incident; it is not uncommon in rural, open fields with crowd movement soon after an event.

14. PW-7 and PW-8 deposed regarding the arrest of Muhammad Saleh and the recovery of a DBBL gun. The ballistic report (Ex.23/C) opines that two of the four 12-bore empties (C1 and C2) were fired from gun No. 2695, while the remaining two were not. However, the recovery memo (Ex.23/B) records the weapon as bearing No. 2698, whereas the gun actually produced bore No. 2695. Owing to this discrepancy, along with other contradictions, the Honourable High Court, in Criminal Jail Appeal No. S-06 of 2017 (order dated 14.09.2018), acquitted Muhammad Saleh in the Arms case. It is, however, a well-settled principle of law that the recovery of a weapon constitutes only a circumstantial and corroborative piece of evidence; hence, acquittal or conviction in respect of such recovery does not ipso facto affect the fate

of the main case. This view finds support from the dictum laid down in the case of *Abdul Khalique v. The State (2015 YLR 1015)*, wherein a learned Single Bench of this Court observed as under:

“Without prejudice to this, I would say that acquittal or conviction of the accused in case under charge of an offence under section 13(d) Arms Ordinance cannot be used as a shield against conviction in main case because allegation and nature of charge in main case are different from that of case under offshoot”.

15. Moreover, under Article 57 of the Qanun-e-Shahadat Order, 1984, judgments, orders or decrees, other than those covered by Articles 54, 55 and 56, are generally irrelevant unless their existence is itself a fact in issue or they become relevant under some other provision of the Order. Article 54 declares that a previous judgment which legally bars a second suit or trial is relevant (res judicata/double jeopardy). Article 55 makes judgments in probate, matrimonial, admiralty or insolvency matters final and conclusive proof of legal status or property rights. Article 56 provides that other judgments relating to matters of public nature may be relevant but are not conclusive, serving only as corroborative evidence.

16. We, therefore, place minimal reliance on the ballistics with respect to implicating any particular person. But that does not impeach the ocular-medical core against these appellants: the homicide is proved independently of ballistics. Discarding ballistics as corroboration still leaves the prosecution case intact on the central issue. Defense emphasized that PW-1's sketch places shooters about 150+ feet away, whereas medical evidence notes blackening/burning indicating close range. True, blackening typically suggests a much closer discharge—within a few feet to perhaps a handful of yards depending on weapon and ammunition. PW-4 estimated 100–150 feet; PW-5 estimated 30–35 feet; PW-3 gave 30–50 feet. The injured witness PW-5's estimate fits the medical signifiers more closely. In rural melee, witness estimates of

distance are often approximations. The Tapedar's fixed 150+ feet is, at best, his post-facto mapping on witnesses' pointation; it is not an infallible instrument measure contemporaneous to the firing. Where medical signs of close range are unequivocal, we prefer the combination of medical science and injured eyewitness recollection over a later-prepared, non-forensic sketch with procedural omissions. This resolves the apparent conflict: the shooters were close enough to cause blackening/burning, consistent with PW-5 and PW-3; the 150+ feet indication is inaccurate or a mapping error. The final MLC (Ex.18/G) opines Abid's head injuries as Shajjah-i-Khafifah by hard and blunt object. The ocular account asserts a gunshot. This is a material divergence insofar as it concerns co-accused Muhammad Saleh, whose Arms case has already collapsed. Could this variance infect the entire prosecution version? We think not, for several reasons:

- The charge of murder of Ubedullah rests on chest shots attributed to these appellants. That portion is solidly corroborated by medical evidence.
- The prosecution case is not a mathematical equation requiring every peripheral spoke to align perfectly; where the core is proved beyond reasonable doubt and the peripheral relates to another accused, failure in the periphery cannot nullify the core.
- In emergency settings, especially with scalp wounds, distinguishing between a grazing firearm impact, secondary blunt trauma, or superficial puncture can be complex; the MLO initially reserved opinion. The later classification may reflect hospital documentation gaps rather than an ironclad negation of any firearm-related mechanism.
- Importantly, this discrepancy does not exculpate the appellants from the homicide established by independent proof.

17. The FIR, lodged after two days, is explained: the deceased's postmortem, burial, and injured's referral/admission at Hyderabad. Police were engaged the same day for medico-legal formalities (Ex.18/H; Ex.22/A–D; Ex.23/A). In rural homicide with multiple injuries and funeral rites, such delay, supported by a natural narrative, is not fatal.

Statements of injured - PWs 4 and 5 were recorded. Given hospitalization at LUMHS, the delay is explicable. The defense has not shown that the delay was exploited for concoction; cross-examination did not surface a reasoned fabrication theory displacing the direct narrative. The defense pointed to non-citation of villagers who allegedly arrived on the scene. The prosecution is not bound to multiply witnesses; quality prevails over quantity. The three eyewitnesses, including two injured, are natural, present, and consistent. No reason is shown why they would spare real culprits and implicate these appellants in a daylight, known-identity feud. The investigation in this case was undeniably marred by lapses, including the non-recovery of Kalashnikov empties, procedural defects in the site sketch, questionable handling of blood-stained earth, and material discrepancies in the ballistic recovery. While these defects do not, per settled jurisprudence, absolve otherwise proven guilt, they cannot be ignored when determining sentence. Where the prosecution case rests upon direct evidence of injured witnesses corroborated by medical findings, conviction may safely be upheld; however, investigative irregularities diminish the overall confidence in the prosecution case and weigh against imposition of the irreversible penalty of death. In the present circumstances, these defects support the conclusion that life imprisonment is the more proportionate and judicious sentence. The defect, illegality, or irregularity in the investigation of a criminal case, even if established, does not ipso facto affect the jurisdiction of the trial Court to proceed with the trial, unless it is demonstrated that such defect or irregularity has resulted in a miscarriage or failure of justice. It is a well-settled principle of criminal jurisprudence that ordinarily any irregularity, omission, or illegality in the police investigation is curable under Section 537, Cr.P.C., and by itself does not vitiate the proceedings or render the trial void ab initio. The decisive

consideration remains whether the accused has suffered prejudice on account of such defect or irregularity, and unless such prejudice is shown, the trial and conviction, if otherwise based on reliable evidence, cannot be set aside merely on the ground of defective investigation. Reliance is placed upon the dictum laid down by the Honourable Supreme Court of Pakistan in the case of *Sastay Khan Masood v. The State (2004 SCMR 1766)*, wherein it was observed that: “*The defect of investigation of a case, if any, did not affect the jurisdiction of the trial Court to try the case in the absence of any miscarriage of justice. Ordinarily, an irregularity in police investigation is curable under section 537, Cr.P.C. and does not vitiate the trial*”. We view these lapses as mitigating on sentence but not exculpatory on merits. The homicidal death by firearm is proved. We find that the participation of both appellants, acting with common intention, in causing two close-range chest shots to the deceased stands proved beyond reasonable doubt, primarily on the consistent testimony of PW-3, PW-4, and PW-5, corroborated by the postmortem findings. The convergent ocular-medical nexus is strong; the core is unaffected by peripheral contradictions. The highlighted contradictions and lapses, in our view, do not create a reasonable doubt about the appellants’ culpability in the murder. They do, however, inform the sentencing discretion. The FIR delay and recording of 161 statements are satisfactorily explained and do not vitiate the prosecution case.

18. Death is a permissible but not mandatory sentence under Section 302(b) PPC; life imprisonment is an alternate. The court must balance aggravating and mitigating factors. A daylight, willful assault targeting a vital area; two close-range shots causing near-instant death; presence of multiple armed assailants; further violence on two others; aerial firing to terrorize. Investigative defects (no Kalashnikov empties; defective scene

documentation; doubtful ballistics tethered to a separately tainted recovery); variance regarding Abid's injury; a land-boundary quarrel suggesting escalation rather than calculated assassination; absence of previous proven murderous antecedents against appellants on record. Our jurisprudence counsels that where some mitigating circumstances exist, especially where forensics/scene management are less than ideal, life imprisonment may be preferred to obviate the risk of irreversible error while still meeting the ends of justice. We adopt that approach. In determining the quantum of sentence under Section 302(b) PPC, the strength or weakness of motive plays a pivotal role. In the present case, although the prosecution alleged a boundary dispute ("Banno") as the source of animosity, it failed to adduce independent and reliable evidence to establish motive. The result is that the incident appears to have arisen spontaneously in the heat of a quarrel rather than from a calculated, premeditated design. Jurisprudence of the Honourable Supreme Court has consistently recognized that a weak or unsubstantiated motive tilts the sentencing discretion towards life imprisonment rather than death, since the latter must be reserved for cases of deliberate, cold-blooded, or particularly brutal killings. Accordingly, the absence of a clear and convincing motive constitutes a significant mitigating factor. This Court has consistently held that, although absence or weakness of motive does not necessarily affect conviction where guilt is otherwise proved through reliable ocular and corroborative evidence, it does constitute a valid ground for awarding a lesser sentence. In this context, reference may be made to the guiding principle laid down in Case of *Naveed alias Needu & others v. The State (2014 SCMR 1464)*. In a recent case, *Fida Hussain alias Saboo v. The State (2025 SCMR 993)*, this Court commuted the death sentence of the convict to life imprisonment, observing that the

mitigating circumstances, failure to prove motive, and absence of premeditation did not justify the extreme penalty of death.

19. The present Criminal Jail Appeal, filed on behalf of the appellants, stands disposed of with modification to the extent of sentence only, in the following terms.

- Convictions of appellants Abdul Khalique and Majid Ali under Sections 302(b)/34 PPC, 324/34 PPC and 337-H(ii)/34 PPC are maintained.
- The sentence of death awarded to each appellant under Section 302(b) PPC is converted to imprisonment for life. Compensation of Rs.300,000/- each to the legal heirs of the deceased under Section 544-A Cr.P.C. is maintained; in default, the default sentence as determined by the trial Court is upheld.
- Sentences awarded under Section 324/34 PPC (seven years R.I., fine Rs.50,000/- each, compensation Rs. 100,000/- each to injured Fida Hussain and Abid Ali under Section 544-A Cr.P.C., with default sentence) and under Section 337-H(ii)/34 PPC (three months R.I., fine Rs. 5,000/- each, with default sentence) are maintained.
- All substantive sentences shall run concurrently; benefit of Section 382-B Cr.P.C. shall remain available.
- The Murder Reference bearing Confirmation Case No.33 of 2021 under Section 374 Cr.P.C. is answered in the negative; the death sentence is not confirmed. The Superintendent, Central Prison Hyderabad shall amend warrants accordingly and extend the benefit of Section 382-B Cr.P.C.
- The trial Court shall oversee realization and disbursement of compensation/fines to the legal heirs/injured after due verification and identification. The bifurcated cases of absconding co-accused Sajjan and Muhammad Saleh shall proceed strictly in accordance with law, uninfluenced by our observations on their individual culpability. Our minimal reliance on ballistics herein shall not prejudice either side in any future proceedings. Office to transmit the record to the trial Court along with a copy of this judgment for compliance. Copies be supplied to appellants free of cost as per Section 371 Cr.P.C.

JUDGE

JUDGE