

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.130 of 2024.

Appellant : Adnan son of Muhammad Nawaz Khan,
Through Mr. Hamadullah Bhutto, Advocate

Respondent : The State
Through Mr. Qamaruddin Nohri, APG

Date of hearing : 23.05.2025

Date of Judgment : 30.05.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J. – The appellant was convicted by the learned Ist Additional Sessions Judge, Malir, Karachi, in Juvenile Case No.2910/2021 vide judgment dated January 27, 2024, and sentenced for offence under section 302(c) PPC to suffer 14 years rigorous imprisonment, coupled with a fine of Rs. 100,000/- with benefit provided u/s 382-B Cr.P.C.

2. The factual narrative, as established through the trial proceedings, revolves around the tragic incident of August 6, 2021, at the Family Quarters of Social Security Hospital, Landhi, Quaidabad. The prosecution's case, as revealed through the testimony of its witnesses, painted the following picture:

- The Initial Scence of Distress (PW-1 ASI Shaukat Ali, Ex. 04): On the fateful evening of August 6, 2021, ASI Shaukat Ali, then serving as Duty Officer at P.S. Quaidabad, received urgent information via Jahangir Base about young Asadullah, aged about 16/17 years, being admitted to JPMC Hospital in a gravely injured state, a victim of an alleged fighting incident. Upon reaching the hospital, the ASI found Asadullah in such a critical and unconscious condition that the MLO explicitly refused to record his statement, deeming him unfit. The complainant, Israr Ahmed, Asadullah's distraught father, understandably prioritized his son's urgent medical treatment, informing the police that he would formally report the incident later.
- The Dying Declaration and FIR (PW-1 ASI Shaukat Ali, Ex. 04): Four days later, on August 10, 2021, with Asadullah still unconscious and hovering between life and death in Ward No. 16 ICU, ASI Shaukat Ali returned to JPMC. Faced with the dire reality, he recorded the 154 Cr.P.C. statement of the complainant, Israr Ahmed. In a poignant and critical piece of evidence, Israr Ahmed recounted his son Asadullah's harrowing return home on August 6, 2021, bleeding from a head injury, and his immediate, verbal disclosure: "neighbour Adnan S/o Nawaz had inflicted scissor blow on left side of his head and

injured him." This vital statement formed the basis of FIR No. 528/2021, initially registered under Section 324 PPC.

- A Life Lost, A Charge Intensified (PW-7 ASI Talib Hussain, Ex. 10): The grim reality struck on August 11, 2021, when Asadullah tragically succumbed to his injuries at JPMC. The investigative landscape immediately shifted, with ASI Talib Hussain (PW-7) commencing Section 174 Cr.P.C. proceedings over the deceased's body, and the grave Section 302 PPC (murder) being added to the FIR, reflecting the fatal outcome of the assault.
- The Hunt and the Apprehension (PW-2 PC Qareeb Khan, Ex. 05): The mantle of investigation then passed to SIP Zakirullah. Acting swiftly on intelligence, the I.O., accompanied by PC Qareeb Khan (PW-2) and the complainant Israr Ahmed, successfully apprehended the appellant, Adnan, on August 15, 2021, at Gul Ahmed Chowrangi, identified by the complainant.
- The Weapon Unearthed (PW-3 PC Khalid Khan, Ex. 06): In a crucial turn, on August 18, 2021, during the course of interrogations, the appellant, Adnan, volunteered to reveal the location of the crime weapon. He personally led the I.O. and PC Khalid Khan (PW-3) to the vicinity of the family quarters at Social Security Hospital, precisely pointing out a garbage spot from which he recovered the scissor he had allegedly used in the assault. A memo of recovery (Ex. 6/A) was duly prepared and attested at the scene.
- The Wounds and Their Legacy (PW-8 Dr. Kamran Khan, Ex. 11 & PW-10 Dr. Faraz Shahid, Ex. 15): The medical evidence powerfully corroborated the violent nature of the attack and its fatal consequences. Dr. Faraz Shahid (PW-10), the initial MLO, described Asadullah's critical state upon admission on August 6, 2021, detailing a "punctured wound on the left side of temporal region" caused by a "sharp & pointed article/weapon." Subsequently, Dr. Kamran Khan (PW-8), who performed the post-mortem, conclusively determined the cause of death to be "cardio pulmonary arrest, raised intra cranial pressure and left subdural hematoma secondary to assault by scissor," leaving no doubt as to the cause of death.
- The Human Voices: Eye-Witnesses (PW-5 Agha Badar, Ex. 08 & PW-6 Saeed Ahmed, Ex. 09): Beyond the dying declaration, the prosecution presented two direct eyewitnesses. PW-5 Agha Badar, the complainant's brother-in-law, and PW-6 Saeed Ahmed, the deceased's grandfather and complainant's father, both testified to having directly observed the appellant, Adnan, inflicting the scissor blow on Asadullah during an altercation at the scene.
- The Appellant's Defence: The appellant, in his statement under Section 342 Cr.P.C. (Ex. 17), vehemently denied his involvement, claiming innocence and false implication. He offered an alternative narrative, suggesting that he merely alerted his father, an ambulance driver, who then transported the injured Asadullah to the hospital, implying no direct role in the

assault. No defence witnesses were produced, nor did the appellant choose to depose on oath.

- The Juvenile Status: A crucial aspect, consistently acknowledged throughout the proceedings, was the appellant's juvenile status. The ossification test certificate (Ex. 14/M) confirmed his age at the time of the incident to be between 14 and 15 years, a factor duly considered by the learned trial court in awarding the sentence.

3. The appellant's defense was built upon a multi-pronged attack on the prosecution's case. It was strenuously argued that the complainant is not eye witness of the alleged occurrence, no eye witness is shown in the FIR, victim was 17 years old, accused was 12/13 years old at the time of incident, the incident occurred on 06.08.2021 and FIR u/s 324 PPC was lodged on 10-08-2021, while the deceased died on 11-08-2021 and the report to police was furnished on 12.08.2021. Seizure memo was prepared on 18-08-2021, but not sent for FSL examination and there is no private witness of the recovery and on 15-08-2021 accused arrested, charge for offence u/s 324 PPC. The appellant, being a juvenile, was a victim of false implication. The impugned judgment was lambasted as unjustified, resting on insufficient and unreliable evidence, and suffering from a palpable misreading and non-reading of crucial facts and legal provisions. The appellant's counsel highlighted alleged material contradictions in the testimonies of the complainant and police mashirs, contending that these discrepancies rendered the recovery of the weapon doubtful, exacerbated by the absence of independent private mashirs for both arrest and recovery proceedings. Furthermore, it was contended that the entire prosecution case was tainted by the reliance on "interested and inimical" witnesses, specifically PW-5 and PW-6, whose testimonies were allegedly riddled with contradictions, inconsistencies, and improvements, particularly given their belated disclosure in the FIR. The defence pointed to discrepancies between the FIR and the oral evidence concerning the time, place, and manner of the occurrence. The absence of any independent public witnesses, despite the incident occurring in a populated area in broad daylight, was also underscored. The defence emphasized the prosecution's failure to establish a clear motive for the crime and, crucially, the lack of any bloodstained recovery from the scene or the production of bloodstained clothes of the victim, undermining the forensic link to the appellant. Finally, it was asserted that the case primarily rested on "weak" medical evidence, which, without strong

independent corroboration, could not sustain a conviction, and that the sheer volume of contradictions in various statements warranted the appellant's acquittal.

4. The learned Assistant Prosecutor General for the State vehemently countered these assertions, asserting that the prosecution had discharged its onerous burden of proof beyond a reasonable shadow of doubt and that the impugned judgment was robust and legally sound. The APG underscored that the appellant's juvenile status was not overlooked but rather carefully considered by the trial court, leading to the application of Section 302(c) PPC, which, by its nature, provides for a lesser punishment, and a sentence commensurate with juvenile culpability. This demonstrates the trial court's correct understanding and application of the Juvenile Justice System Act, 2018. Addressing the delay in FIR, the APG stressed that it was not deliberate but a natural consequence of the victim's critical condition and the complainant's immediate focus on life-saving measures. This practical and humane explanation is universally accepted in jurisprudence. Regarding the credibility of PW-5 and PW-6, the APG cogently argued that their relationship to the deceased did not automatically render them incredible. Drawing upon settled superior court pronouncements (e.g., 2022 SCMR 1907), it was argued that without established prior enmity or a discernible motive for false implication, their testimonies remain valuable, especially when corroborated. The APG pointed out that any minor inconsistencies were natural human frailties and did not diminish the core consistency of their accounts with the dying declaration. The crux of their testimony, the direct observation of the appellant's assault, remained unshaken under cross-examination. The APG laid strong emphasis on the dying declaration of Asadullah to his father. This immediate, unprompted accusation by a gravely injured victim, facing imminent death, carries inherent reliability and high probative value. It formed the foundational pillar of the prosecution's case, lending powerful corroboration to the eyewitness accounts. Concerning the recovery of the weapon, the APG asserted its validity. While private mashirs were not secured, a common practical difficulty in community-based incidents, the police witnesses' testimony is admissible. Crucially, the recovery stemmed from the appellant's voluntary disclosure, demonstrating his knowledge and connection to the weapon. The argument regarding the "new and shining" appearance of the scissor was

dismissed as insufficient to negate its use; it is a common ploy for assailants to clean weapons to erase forensic traces. The essential element remains the appellant's direct involvement in leading to its discovery. Finally, the APG contended that the prosecution had indeed presented a coherent and consistent narrative, fortified by a compelling dying declaration, credible eyewitness accounts, and a valid recovery, all powerfully corroborated by the medical evidence which confirmed the fatal injury. The grounds agitated by the appellant, including the lack of a specific motive (which the trial court appropriately addressed by applying 302(c) PPC) or the absence of bloodstains (which can be explained), were characterized as minor technicalities or procedural omissions that do not, in the face of overwhelming substantive evidence, translate into reasonable doubt meriting acquittal.

5. Having undertaken a meticulous, dispassionate, and comprehensive re-evaluation of the entire evidentiary tapestry presented by the prosecution, juxtaposed against the cardinal principles of criminal jurisprudence, this Court is inexorably led to the conclusion that the prosecution has woefully failed to discharge its onerous burden of proving the guilt of the appellant, Adnan, beyond a reasonable doubt. The impugned judgment, though undoubtedly crafted with earnest effort by the learned trial court, suffers from fundamental infirmities in its appreciation of evidence, which, when meticulously dissected, leave gaping holes in the prosecution's narrative, compellingly pointing towards the appellant's acquittal.

6. It is a cardinal precept of criminal jurisprudence, deeply entrenched in both constitutional and statutory frameworks, that an accused person shall be presumed innocent unless and until his guilt is established through unimpeachable, cogent, and credible evidence that excludes every reasonable hypothesis of innocence. The burden of proof, resting solely on the prosecution, is not discharged by preponderance or conjecture but by proof beyond reasonable doubt, a standard that serves as a constitutional safeguard against miscarriage of justice and wrongful incarceration. It is the sacred obligation of the Court to vigilantly guard against even the semblance of doubt morphing into an unmerited conviction. In the present case, what surfaces is not a solitary, marginal doubt but a veritable

mosaic of profound, intersecting doubts rooted in factual contradictions, evidentiary infirmities, and procedural lapses. These doubts, far from being speculative, are anchored in the record and strike at the very heart of the prosecution's narrative. The law mandates that such doubts, real, plausible, and substantial, must ensure to the benefit of the accused, failing which the justice system degenerates into a punitive apparatus rather than a fair arbiter of guilt.

7. In methodically dissecting the structural underpinnings of the prosecution's case, it becomes evident that its primary scaffolding, the alleged dying declaration, is marred by procedural irregularities and evidentiary ambiguities that render it legally untenable. The sanctity of a dying declaration lies in its immediacy, spontaneity, and the solemn presumption that a person on the brink of death would speak the truth. However, jurisprudence consistently emphasizes that such declarations must be approached with utmost caution, particularly when not recorded by a Magistrate or lacking medical certification of the declarant's fitness. In the case at hand, the statement attributed to the deceased is not a direct judicial or medico-legal dying declaration, but a derivative oral narration communicated by PW-4 (the father) four days after the alleged incident. It is pivotal to note that both visits of PW-1 (ASI Shaukat Ali) to JPMC, on the day of the incident and again on August 10, 2021, yielded an unequivocal medical opinion declaring Asadullah unfit to give any statement. This starkly undercuts the feasibility of the declarant having made a coherent identification of the assailant upon returning home. Moreover, the delay in disclosing the identity of the alleged perpetrator to law enforcement, despite the availability of an opportunity during the initial hospital visit, creates a serious lacuna in the chain of narrative continuity. The explanation offered, that the complainant was preoccupied with his son's treatment, may justify the delay in lodging the FIR, but it cannot reasonably explain the complete omission of the most vital inculpatory fact: the name of the assailant. In light of this delayed, uncorroborated, and procedurally defective statement, its probative value is materially diminished. When a dying declaration is not recorded in accordance with the law, or is belatedly introduced through an interested witness, the Court must subject it to rigorous scrutiny and decline to base a conviction solely upon it without strong corroborative evidence. Here,

such corroboration is conspicuously absent, and the declaration fails to meet the threshold of reliability demanded by law.

8. The belated introduction of PW-5 (Agha Badar) and PW-6 (Saeed Ahmed) as direct eyewitnesses to the occurrence gravely undermines the structural integrity of the prosecution's case and casts serious doubt upon the genuineness of their testimonies. Their names are conspicuously absent from both the FIR (Ex. 4/G) and the complainant's initial statement under Section 154 Cr.P.C. (Ex. 4/F), which constitutes the foundational narrative of the prosecution. This omission is not peripheral but fundamental, given that both claimed to have witnessed the incident in real-time. Notably, PW-4 Israr Ahmed (the complainant) made an unequivocal admission during his cross-examination (Ex. 7), stating: "Neither I in my FIR nor in my statement or even during in my examination-in-chief disclosed the name of the person who witnessed the occurrence." Such candid acknowledgment is devastating to the prosecution's version, as it betrays a critical discontinuity in the chain of events. The attempt by the prosecution to gloss over this lacuna by stating that the investigating officer subsequently recorded the eyewitnesses' statements reflects a reactive and remedial strategy, suggesting post hoc fabrication.

9. Although the mere relationship of a witness to the complainant or the deceased does not by itself render the testimony inadmissible, the combination of delayed introduction, absence from the earliest version, and lack of independent corroboration in a public setting necessitates the application of heightened scrutiny. PW-5 is the complainant's brother-in-law, and PW-6 is the deceased's grandfather, thus both are highly interested witnesses in the legal sense. As repeatedly emphasized in judicial pronouncements that related witnesses may be relied upon only if their presence at the scene is natural, their accounts remain consistent, and their testimony is corroborated through unimpeachable circumstances or material evidence. In the instant case, no such corroboration is forthcoming. The trial court's reliance on precedents that permit related witnesses to testify misses the crucial preceding point: their belated disclosure and absence from the earliest account.

10. The prosecution's case suffers further collapse when the internal inconsistencies within the eyewitness accounts are scrutinized. There exists a fatal contradiction regarding the sequence of arrival and presence at the crime scene. PW-6 (Saeed Ahmed), during his examination-in-chief (Ex. 9), asserted that he and PW-5 were the first to witness the altercation, with the complainant arriving later. In stark contrast, PW-5 (Agha Badar), in his cross-examination (Ex. 8), narrated that it was the complainant, Israr Ahmed, who "caught hold/lapped his injured son Asadullah" immediately after the injury, implying his presence or earlier arrival. This contradiction on the central question of presence at the scene raises profound doubts about the reliability and authenticity of their narrative. More damaging, however, is the admission by PW-5 (Ex. 8) that he suffers from severe myopia, with a recorded eyesight of "minus 8." Claiming to have clearly observed a small, precise act of violence, a scissor blow, from a distance of 50 to 60 paces, under such significant visual impairment, borders on physical impossibility and renders his testimony wholly unreliable. Where a witness's physical condition precludes reliable observation, his evidence cannot be safely acted upon. Furthermore, the failure of the prosecution to recover the victim's blood-stained clothes or to present any forensic linkage between the recovered scissor and the injury creates a fatal evidentiary vacuum. The recovery memo lacks independent mashirs, the scissor was neither blood-stained nor subjected to FSL examination, and no fingerprints or trace evidence was matched. These omissions sever the critical forensic nexus between the weapon, the injury, and the accused, a necessary triad in a murder case. In the absence of credible eyewitnesses, reliable dying declaration, and forensic corroboration, the prosecution's case is left to rest on speculative foundations, which by law cannot sustain a conviction.

11. The credibility of the alleged recovery of the scissor, claimed to be the murder weapon, stands fatally compromised in view of the record, particularly the unambiguous admission made by PW-3 (PC Khalid Khan), the recovery mashir, during cross-examination (Ex. 6), that the recovered article was a "new and shining scissor having no blood stains." This admission, coming from a prosecution witness, is not merely damaging but dispositive. When juxtaposed against the consistent accounts of PW-4 and PW-5, who testified that blood had profusely oozed from the injury inflicted on the left side of the deceased's temporal region

and stained his clothes (Ex. 7, Ex. 8), the absence of blood on the alleged weapon is not merely suspicious, it is incompatible with basic forensic expectation. The weapon purportedly used to inflict a sharp penetrating wound, leading to massive cranial bleeding and subdural hematoma, would invariably retain some trace evidence if genuinely recovered from the crime scene. The absence of any visible or traceable biological evidence on the weapon, combined with its pristine condition, gravely undermines its evidentiary value and raises the specter of planted or fabricated recovery. This suspicion is deepened by the categorical admission of PW-4 that the investigating officer failed to collect bloodstains from the scene of occurrence, a location described as saturated with blood following a fatal blow to the head. Equally indefensible is the prosecution's failure to seize and produce the deceased's blood-soaked clothes, which were repeatedly referenced by witnesses but neither collected nor examined forensically. PW-6's conflicting account as to whether such clothing was ever handed over further confirms a disturbing lack of evidentiary integrity. In a case hinging on circumstantial linkage, such foundational lapses in the recovery and forensic trail constitute a dereliction fatal to the prosecution's case.

12. The totality of circumstances surrounding the alleged recovery, including the weapon's unblemished appearance, the lack of independent witnesses despite the recovery having occurred in a populated locale, and the highly suspect "voluntary disclosure" under Article 40 of the Qanun-e-Shahadat Order, 1984, compels this Court to conclude that the recovery cannot be treated as reliable or legally probative. It is well-settled that mere recovery of a weapon, unlinked through forensic corroboration or credible testimony, cannot serve as the basis of conviction. While the medical evidence presented through PW-8 and PW-10 confirms that the deceased died due to a penetrating cranial injury inflicted by a sharp, pointed object consistent with a scissor, the medical findings only establish the cause of death, not the identity of the perpetrator. For such evidence to serve a corroborative role, it must correspond with reliable ocular or circumstantial testimony. However, where the ocular account, comprising a dying declaration riddled with procedural infirmities and eyewitness testimony vitiated by contradictions and belated disclosures, fails to inspire confidence, medical evidence cannot resurrect an otherwise collapsing prosecution. The absence of any connecting evidence, such as

fingerprints on the weapon, DNA traces, bloodstains, or matching clothing, renders the prosecution's case devoid of that critical link necessary to transform suspicion into legal proof.

13. Furthermore, the trial court's own acknowledgment of the prosecution's failure to establish a motive adds yet another layer of uncertainty to an already tenuous case. While motive is not always indispensable, its absence becomes significantly relevant where the case is not based on direct, credible, and contemporaneous eyewitness testimony. The invocation of a "spur-of-the-moment" altercation, especially between juveniles, may conceptually explain impulsive violence, but such an explanation must rest upon a bedrock of credible, immediate, and corroborated evidence, which is conspicuously absent in the present matter. The supposed dying declaration is demonstrably infirm, having been derived from a second-hand narration by the complainant, recorded four days after the incident, and directly contradicted by medical evidence declaring the deceased unfit to speak at relevant times. The purported eyewitnesses are irreparably discredited due to their belated emergence, familial bias, and, in the case of PW-5, profound visual impairment (myopia of -8), rendering his observational capacity from a claimed distance of 50-60 paces medically implausible. Their testimonies are further plagued by mutually contradictory accounts regarding who arrived first at the scene, undermining their overall credibility. The alleged crime weapon, untested, bloodless, and retrieved without independent attestation, stands legally neutralized. The prosecution's inexplicable failure to collect and preserve blood evidence from the scene or submit the victim's allegedly blood-soaked clothes further deepens the evidentiary void. Collectively, these deficiencies strike not at the periphery but at the core of the prosecution's case. It is an inviolable principle of criminal law that the benefit of doubt, if reasonably arising from the record, must be extended to the accused, not as a matter of grace, but of right. In the instant case, such doubt is not only present but profound and pervasive. Accordingly, this Court holds that the prosecution has failed to prove the guilt of the appellant, Adnan, beyond a reasonable doubt. The conviction recorded by the learned trial court, based on speculative, contradictory, and unreliable evidence, is perverse and legally unsustainable.

14. The Criminal Appeal No.130 of 2024 is accordingly allowed. The impugned judgment dated January 27, 2024, passed by the learned 1st Additional Sessions Judge, Malir, Karachi, is hereby set aside. The appellant Adnan S/o Muhammad Nawaz Khan, is hereby acquitted of the charges. He is released forthwith, if he is not required in other custody case. Let the copy of this judgment be facsimiled to the learned trial court for information.

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