

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No. S-21 of 2022

(Arising out of Sessions Case No. 452/2015, PS Bahoo Khoso Crime No. 19/2015)

AND

Criminal Appeal No. S-30 of 2019

(Arising out of Sessions Case No. 315/2015, PS Bahoo Khoso Crime No. 22/2015)

Appellants : 1. Ghulam Ali @ Lami s/o Dost Ali Bangulani
2. Dost Ali S/O Malhar Bangulani
Through Mr. Rafique K. Abro, advocate for appellants.

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar, DPG

Date of hearing : 07-07-2025

Date of Decision : 17-07-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J:-- This common judgment is rendered in two interconnected appeals, both originating from convictions passed by the learned Additional Sessions Judges, Jacobabad. The first, Criminal Jail Appeal No. S-21 of 2022, challenges the judgment dated April 18, 2022, in Sessions Case No. 452/2015, whereby appellants Ghulam Ali @ Lami and Dost Ali were convicted for offences under Sections 302, 324, 311, 337-F(v), 148, and 149 of PPC, receiving sentences including life imprisonment. The second, Criminal Appeal No. S-30 of 2019, contests the judgment dated May 23, 2019, in Sessions Case No. 315/2015, in which appellant Ghulam Ali @ Lami was convicted for offence under Section 23(1)(a) of the Sindh Arms Act, 2013, and sentenced to seven years' rigorous imprisonment. Given the intricate nexus of facts and evidence between both cases, and the commonality of the parties and the core events, it is deemed appropriate to dispose of both appeals through a consolidated judgment.

2. The prosecution's account hinges on an alleged incident that occurred in the early hours of May 28, 2015, at about 01:00 a.m. As per SIP/SHO Ali Muhammad Odho (complainant), while he and his police party were patrolling in a mobile near village Haibat Bangulani, they purportedly heard gunshots and cries. Upon proceeding to the scene, they claimed to have witnessed the appellants, Ghulam Ali @ Lami and Dost Ali, along with Gulab @ Dahro and two unidentified individuals, firing upon Mst. Lakhan and Nabi Bux. The police claimed to have identified the accused through the "head lights of mobile" before they allegedly fled. Mst. Lakhan was found dead with five firearm injuries, and Nabi Bux (PW-3) sustained three firearm wounds. Nabi Bux allegedly informed the police that he was injured on accusations of "Karo" with Mst. Lakhan. The complainant then undertook the initial legal formalities, preparing an inquest report (Exh.14-A) for the deceased, a memo of injuries for Nabi Bux (Exh.14-B), and a memo of the place of incident (Exh.14-C) from where blood-stained earth and empty casings were allegedly recovered. FIR No.19/2015 for the murder was subsequently lodged by the complainant himself.

3. Subsequently, appellant Ghulam Ali @ Lami was arrested on May 31, 2015 (Exh.14-H). Seven days later, on June 7, 2015, while still in police custody, he allegedly volunteered to produce the crime weapon. He purportedly led the police party to a heap of paddy straw (palal) near his house and produced an unlicensed TT pistol with a magazine containing two live bullets. This recovery led to the registration of a separate FIR No. 22/2015, offence under the Sindh Arms Act, 2013, with a recovery memo (Exh.14-I) being prepared.

4. The appellants have consistently pleaded not guilty, asserting their false implication in both cases. Their defence, as

articulated in the appeals, challenges the very foundation of the prosecution's narrative. They argue that the FIR for murder was false and orchestrated. In the Arms Act case, they vehemently deny the recovery, highlighting the delay in its purported occurrence while Ghulam Ali was already in custody, the non-association of independent private witnesses (mashirs), and the public accessibility of the alleged recovery site. A pivotal aspect of the defence is the categorical retraction by the injured eyewitness, Nabi Bux, who, during his testimony, explicitly contradicted the police version, denying the appellants' involvement and attributing the firing to "thieves."

5. Initially, Sessions Case No. 452/2015, stemming from FIR No. 19/2015, PS Bahoo Khoso, was decided by the learned Additional Sessions Judge-II, Jacobabad. However, the judgment passed by the said court was subsequently challenged before this Court in an appeal. Upon due consideration, this Court remanded the case back to the trial court for a fresh decision after the adduction of further evidence from certain witnesses. In the interim, the case was transferred to the Court of the learned Additional Sessions Judge-I, Jacobabad, who then proceeded to record the evidence of the remaining witnesses as directed, culminating in the impugned judgment. Charges were framed against Ghulam Ali @ Lami and Dost Ali for offences under Sections 302, 324, 311, 337-F(v), 148, and 149 PPC. To substantiate its case, the prosecution examined several witnesses including PW-1 Dr. Liaquat Ali (Medical Officer for Nabi Bux's injuries), PW-2 Dr. Rabia Khan (Woman Medical Officer for Mst. Lakhan's postmortem), PW-3 Nabi Dad @ Nabi Bux (injured eyewitness), PW-4 Qaimdin (Tapedar for site sketch), PW-5/PW-7 SIP/SHO Ali Muhammad Odho (complainant/investigating officer), PW-6/PW-2 HC Ali Sher (mashir), and PW-7/PW-1 PC Sikander Ali

(transported dead body). The trial court, after conducting a full-dressed trial, convicted both appellants on April 18, 2022, sentencing them to R.I. for life under Section 302(b) PPC, R.I. for 7 years under Section 324 PPC, and R.I. for 3 years under Section 337-F(v) PPC, along with fines and compensation, granting benefit under Section 382-B Cr.P.C. The case, originating from FIR No. 22/2015, PS Bahoo Khoso, was adjudicated by the learned 2nd Additional Sessions Judge, Jacobabad. The charge framed against appellant Ghulam Ali @ Lami was under Section 23(1)(a) of the Sindh Arms Act, 2013. The prosecution primarily relied on the testimonies of the police officials involved in the alleged recovery. The trial court, concluding its proceedings, convicted Ghulam Ali @ Lami on May 23, 2019, sentencing him to seven years' rigorous imprisonment and a fine of Rs. 20,000/-, also extending the benefit of Section 382-B Cr.P.C.

6. The learned advocates for the appellants presented a comprehensive critique of the prosecution's case, arguing that both impugned judgments are legally flawed and based on insufficient and unreliable evidence. Their core contentions, meticulously drawn from the grounds outlined in both appeals. It was vociferously argued that the initial FIR lodged by SIP Ali Muhammad Odho was a fabricated document, designed to falsely implicate the appellants. The defence produced evidence, which was allegedly disregarded, to establish their innocence, contending that the convictions were based on mere suspicion rather than concrete proof. The most significant attack on the prosecution's edifice was directed at the testimony of the injured eyewitness, Nabi Dad @ Nabi Bux (PW-3). His statement in court, that "The accused persons present in custody have neither fired upon me, nor at Mst. Lakhan," and his explicit attribution of the firing to "thieves," represents a complete and irreconcilable departure from the prosecution's foundational story. Furthermore, his claim of

"never examined by the Police" further undermines the police's version of his initial statement. This is not a minor discrepancy but a fundamental collapse of the direct evidence. The Honourable Supreme Court has consistently held that where the injured eyewitness, who is the best possible witness, retracts his statement and does not support the prosecution, the entire case against the accused becomes highly doubtful. Reliance was placed on Syed Saeed Muhammad Shah & others Vs the State (1993 SCMR 550), emphasizing that belated or unexplained police statements are to be disregarded. The learned counsel highlighted the extreme improbability of the police witnesses (SIP Ali Muhammad Odho and HC Ali Sher) accurately identifying the accused at 01:00 a.m. Despite claims of using "head lights of mobile," the record lacks specifics about the intensity of light, distance, or duration of observation, particularly given that the accused were allegedly "making fires" and then "ran towards their houses." It strains credulity to believe that armed individuals, after committing such a heinous crime, would remain exposed for clear identification by an arriving police party. More astonishing is the claim that the accused managed to escape from a police party, described as "good in numbers" and equipped with a "Government mobile van." This assertion defies practical realities and raises a strong inference that the identification was not genuine but merely a later assertion. This Court has repeatedly held that identification in dark or vague conditions, without reliable corroboration, is fraught with doubt. (Ref: Muhammad Mansha v. The State, 2018 SCMR 772). A critical legal infirmity pointed out was that SIP Ali Muhammad Odho, the complainant himself, conducted the investigation of the murder case. This practice is repugnant to the principles of fair investigation and impartiality, as it creates an inherent conflict of interest. The superior courts have consistently deprecated this practice, declaring that an investigation conducted

by the complainant himself vitiates the entire investigation and, consequently, the trial. This renders the evidence collected through such an investigation highly suspicious and unreliable. (Ref: 2019 SCMR 129).The pistol was allegedly recovered on June 7, 2015, a full seven days after appellant Ghulam Ali @ Lami was arrested on May 31, 2015. Throughout this period, he remained in police custody. It was argued that if the appellant had genuinely volunteered to produce the weapon, there was no logical reason for such a prolonged delay. The standard practice, and indeed expectation, is that a voluntary disclosure would occur much sooner. Such a delayed recovery from police custody, particularly when uncorroborated, is legally suspect and often indicative of a foisted recovery. (Ref: 2015 SCMR 840, 2021 SCMR 736). Both police witnesses, SIP Ali Muhammad Odho and HC Ali Sher, explicitly admitted that no independent private persons were associated as mashirs during the recovery of the pistol. This is a patent violation of Section 103 of the Criminal Procedure Code, 1898, which mandates the association of respectable inhabitants of the locality for such proceedings. The feeble excuse of "no private person was available due to odd hours of night" or "SHO did not try to call the residents of the village" is often deemed insufficient, particularly when the recovery site (a heap of paddy straw) was openly "in access of all the people of the village." Non-compliance with this provision, without compelling and convincing reasons, renders the recovery highly questionable. (Ref: Asad vs. the State, un-reported Cr. Appeal No. S-62 of 2016). The learned counsel highlighted that while HC Ali Sher stated that the pistol bore "marks of the stars on its plastic cover of club," these crucial identifying features were conspicuously absent from the recovery memo (Exh.14-I). Such a significant omission concerning the identity of the recovered article seriously undermines the authenticity and reliability of the recovery proceedings. The heap of

paddy straw was described as being "outside the enclosure of the house of accused" and "in access of all the people of the village," suggesting a publicly accessible area. This further diminishes the weight of the recovery, as it cannot conclusively prove exclusive possession or knowledge of the weapon by the accused. The preparation of the inquest report of deceased Mst. Lakhan, a female, by a male officer (SIP Ali Muhammad Odho) was highlighted as an irregularity, though not necessarily fatal to the case, it is a practice generally discouraged and reflects a lack of adherence to standard operating procedures. Contradictions emerged regarding the manner and timing of shifting the injured Nabi Bux and the deceased Mst. Lakhan to the hospital. Nabi Bux claimed he and dead body of Mst. Lakhan were brought in "one vehicle by our relatives," while the police stated Nabi Bux was sent first in a "private car by his relatives" and dead body of Mst. Lakhan later in a "private vehicle viz Datsun" with "none from relatives" accompanying. Such inconsistencies, while appearing minor in isolation, contribute to the overall unreliability of the police's account of the initial events. The fact that the empties recovered from the crime scene on May 28, 2015, were sent for FSL examination *collectively* with the pistol recovered on June 7, 2015, raises questions about the integrity of the chain of custody for the empties and suggests an unexplained delay in their forensic examination. This further indicates a slipshod investigation. The learned advocates emphasized that all prosecution witnesses were police officials and subordinates of the complainant, rendering them interested parties. In the absence of independent corroboration, their testimonies, especially when riddled with contradictions and implausible claims, cannot form the basis of a conviction. The Honorable Courts have frequently held that the uncorroborated testimony of interested police witnesses must be viewed with caution. (Ref: 2022 YLR Note 27). The learned counsel

cited several authorities to support his contentions, including 2022 YLR Note 27, 2015 SCMR 840, 2019 SCMR 129, 2021 SCMR 736, 2018 SCMR 772, un-reported judgment in Cr. Appeal No. 44 of 2020 (Re: Bajhi & another Vs. The State), un-reported judgment in Cr. Appeal No. S-62 of 2016 (Re: Asad vs. the State), un-reported Cr. Appeal No. S-27 of 2019 (Re: Rehmatullah Vs. The State), 2023 MLD 1845, and 2023 P.Cr.L.J Note 49.

7. The learned DPG for the State, on the other hand, vehemently supported the convictions recorded by the trial courts. He argued that the prosecution had discharged its burden by proving the guilt of the appellants beyond reasonable doubt. He contended that the testimony of the police witnesses was consistent regarding the occurrence, the identification of the accused, and the recovery of the crime weapon. He sought to downplay the contradictions highlighted by the defence as minor discrepancies that occur naturally in lengthy trials and do not fundamentally affect the core of the prosecution's case. He might have further submitted that the mere fact that a witness resiles does not automatically lead to acquittal, as other evidence on record could still suffice for conviction, or that police witnesses should be believed unless their testimony is inherently improbable or malicious. He prayed for the dismissal of both appeals.

8. I have meticulously reviewed the entire trial record, weighed the arguments from both sides, and analyzed the evidence in light of established legal principles and precedents. My assessment reveals serious and irreconcilable flaws in the prosecution's case, which cumulatively lead to a profound reasonable doubt.

9. A meticulous scrutiny of the prosecution's evidence reveals an array of material contradictions and inconsistencies that permeate the testimonies of key witnesses, thereby significantly

eroding the credibility of the State's narrative. These discrepancies are not merely minor deviations but pertain to fundamental aspects of the incident, including the shifting of the injured and deceased, the timing of the post-mortem examination, the alleged recovery of the crime weapon, and, most critically, the statement of the injured eyewitness himself. Firstly, a glaring and irreconcilable contradiction exists concerning the timing of the post-mortem examination. While the Lady Medical Officer, PW-5 Dr. Rabia Khan, unequivocally stated that she commenced the post-mortem at 08:00 p.m. on May 28, 2015, PC Sikander Ali (PW-1), who transported the deceased, asserted that he reached the hospital with the dead body at 02:30 a.m. on May 28, 2015, and crucially, handed over the dead body to the deceased's father "before sunrise" on the same day. This creates an impossible timeline: if the body was handed over to the family hours before sunrise, it could not have been presented for post-mortem 14 hours later at 8:00 p.m. on the same date. This discrepancy raises profound concerns regarding the integrity of the medical evidence and the chain of custody. Secondly, there are significant inconsistencies regarding the shifting of the injured and dead body to the hospital. The injured witness, PW-3 Nabi Bux, categorically stated that "Me and Mst. Lakhani... were brought in one vehicle to hospital by our relatives." This directly conflicts with the police accounts. PW-2 HC Ali Sher claimed the "injured was taken to the hospital in private car by his relatives, while dead body was referred to the hospital in official vehicle." Further complicating this, PW-7 SHO Ali Muhammad Odho stated the deceased was sent in a "private vehicle viz Datsun" and that "relative of the deceased were not accompanied with dead body to hospital," yet PC Sikander Ali (PW-1) maintained "The father of the deceased was in Police mobile, when I brought the dead body at hospital. No other relative was available in the Police mobile." The inability of the police to provide a

consistent account of how and by whom the victims were transported, coupled with their admission of not recording statements of these "relatives" or drivers, severely undermines their procedural claims. Thirdly, a material contradiction is evident regarding the exact location of the pistol's recovery. While PW-2 HC Ali Sher initially stated in his examination-in-chief that the accused produced the pistol from "the heap of paddy straw in his house," he directly contradicted this in cross-examination, asserting that the weapon was recovered from "the straws of paddy lying outside the house of the accused." This latter statement was corroborated by PW-7 SHO Ali Muhammad Odho, who also stated the recovery was from "the heap of paddy crop (Palal) available lying outside the house of accused." This inconsistency regarding whether the weapon was recovered from *inside* or *outside* the accused's premises is crucial, especially given the police's admission that the outside location was "in access of all the people of the village," weakening the claim of exclusive possession by the accused. Fourthly, a fundamental and devastating contradiction exists between the police's claims and the testimony of the injured eyewitness, PW-3 Nabi Bux. Both PW-7 SHO Ali Muhammad Odho and PW-2 HC Ali Sher asserted that Nabi Bux identified the accused at the scene and implicated them by disclosing that he was shot due to "Karo" allegations. However, PW-3 Nabi Bux, in his own sworn testimony, categorically resiled from this version, declaring that the accused persons "have neither fired upon me, nor at Mst. Lakhan." He instead attributed the firing to "thieves" and, critically, stated "I was never examined by the Police." This outright repudiation of the police's core narrative by the primary eyewitness is a decisive blow to the prosecution's case. Finally, inconsistencies surrounding the police's conduct at the scene further compound the doubts. Both PW-7 SHO Ali Muhammad Odho and PW-2 HC Ali Sher claimed to have clearly

identified the accused at 01:00 a.m. using vehicle headlights, even distinguishing their weapons. Yet, despite being an armed police party, they admitted to failing to apprehend the accused or firing upon them during a brief chase, allowing them to "make good their escape." Moreover, both police witnesses admitted to not associating any independent private mashirs for the recovery of the pistol, offering unconvincing explanations of "odd hours" or "no one was ready," thereby indicating non-compliance with mandatory legal provisions under Section 103 Cr.P.C. The unexplained seven days delay in the alleged discovery and production of the pistol by the accused, despite being in police custody and undergoing interrogation, also renders the recovery highly suspicious. In totality, these manifold contradictions, omissions, and implausibilities within the prosecution's evidence cast a formidable shadow of reasonable doubt over the entire case, rendering the testimonies unreliable and incapable of sustaining a conviction.

10. The whole case is based upon the evidence of P.W-01 who was later on re-called & re-affirmed by the prosecution on the directions after the case was remanded back for adducing the evidence of certain witnesses afresh. This Court is mindful of the fact that in the case of *Humayon Vs. the State* (2005 P Cr. LJ 337) the Hon'ble Peshawar High Court observed that in the case involving capital punishment the court would not base conviction of the sole testimony of witness, whose credibility was not free from doubt. For the safe dispensation of the justice the court would look for some independent corroboration. In the instant case presence of the accused at the place of incident and his identification and the manner in which the incident occurred is highly doubtful. Evidence of the eyewitness is not supported by any independent witness; therefore, his sole testimony cannot be relied upon.

11. The story does not end here, the bedrock of any criminal trial, particularly a murder case, is the ocular account. In the present case, the testimony of Nabi Dad @ Nabi Bux (PW-3), the injured eyewitness and presumably the most credible source of direct evidence, completely shatters the prosecution's version. His unequivocal denial of the appellants' involvement and his assertion that "thieves" were the perpetrators, coupled with his claim of not being examined by the police, is a material contradiction of such a profound nature that it cannot be overlooked or explained away as a minor omission. The trial court's failure to adequately address this fundamental departure from the FIR version constitutes a serious misappreciation of evidence. When the primary witness to the incident discredits the very premise of the prosecution, the superstructure built upon it inevitably crumbles. Moreover, the principle of common intention, as elucidated in *Ali Imran v. The State* (PLD 2007 SC 87), posits that for individuals to be held vicariously liable for an offense, there must generally exist elements of a common motive, pre-planned preparation, and actions taken in furtherance of such a plan. While intent can also be formed spontaneously, the presence of pre-planning significantly strengthens the prosecutions' case for common intention. In the present case, the prosecutions' theory of common intention among the accused faces substantial challenges when examined against the established circumstances and the contradictions in the evidence. Firstly, the very foundation of the "common motive, the allegation of "Karo" (honor killing) has been unequivocally denied by the injured eyewitness, Nabi Bux (PW-3). His testimony, stating that "thieves" were responsible for the incident and that the accused "have neither fired upon me, nor at Mst. Lakhan," directly undermines the prosecution's asserted motive for the alleged pre-planned attack. If

the alleged motive is refuted by the victim, the premise for a shared, predetermined intent among the accused becomes highly tenuous. Secondly, the evidence presented by the police regarding "pre-plan preparation and action in pursuance to such plan" is riddled with inconsistencies and implausibilities. The police claim to have identified multiple individuals, specifically discerning their weapons (TT pistols vs. guns), at 01:00 a.m. using vehicle headlights, yet they inexplicably failed to apprehend any of them despite a chase. This raises serious doubts about the actual identification and, consequently, about any preplanned collective action. Furthermore, the alleged recovery of the crime weapon, a crucial piece of evidence to link the accused to the "action pursuant to such plan," is marred by significant contradictions regarding its exact location of recovery (inside vs. outside the house) and the failure to associate independent witnesses, which suggests a managed, rather than genuine, recovery. The unexplained seven-days delay in the pistol's production by the accused while in police custody further weakens the claim of its spontaneous, voluntary disclosure as part of an ongoing criminal investigation. Given these circumstances, particularly the injured witness's retraction of the "Karo" motive and the severe inconsistencies surrounding the alleged occurrence and weapon recovery, it becomes exceptionally difficult for the prosecution to establish the necessary elements of common motive, preplan preparation, and coordinated action as required for proving common intention under Section 34 PPC. The evidence, as it stands, leans towards a scenario where the collective criminal intent, a cornerstone of vicarious liability, is neither demonstrably proven nor consistent with the independent testimony of the injured party.

12. Moreover, the principles laid down in 1993 SCMR 550 (Syed Saeed Muhammad Shah & others Vs the State) dictate that

statements recorded after delay and without proper explanation are to be ruled out of consideration, and indeed, the present resiling statement directly weakens the prosecution's case. The claim of identifying the accused at 01:00 a.m. by "head lights of mobile" is inherently weak. No specific details about the brightness, range of the lights, or the time available for identification were provided. It is highly improbable that individuals actively engaged in a firing spree would remain stationary long enough for clear identification by an approaching police party. The subsequent alleged "escape" of the accused from a police mobile carrying multiple officers further strains credulity. The element of surprise and the numerical superiority of the police, if true, would likely have resulted in immediate apprehension rather than escape. This aspect of identification is gravely doubtful and lacks the necessary corroborative evidence to inspire confidence.

13. The fact that SIP Ali Muhammad Odho, the complainant, also took up the investigation of the murder case (FIR No. 19/2015) is a fatal flaw. This is a well-established principle of criminal justice that the complainant should not be the investigator to avoid bias and ensure fairness. The Honorable Supreme Court has consistently held that such a practice vitiates the investigation and, by extension, the trial itself. (Ref: Arshad Ali v. The State, 2019 SCMR 129). This inherent conflict of interest undermines the credibility of all evidence gathered during the investigation.

14. The recovery of the pistol on June 7, 2015, seven days after Ghulam Ali @ Lami's arrest on May 31, 2015, while he was in continuous police custody, is a significant red flag. This delay, unexplained by any compelling reason, raises a strong presumption that the recovery might be foisted. The legal position is clear: a delayed recovery from an accused in police custody, without strong

and credible independent corroboration, is viewed with deep suspicion. Moreover, as per record 06 empties were recovered from the spot on the day of incident viz. May 28, 2016; however, the pistol was secured on June 07, 2016, but both of them were sent for forensic lab on the same day, which create the serious doubt. The prosecution has relied upon the evidence of crime weapon and empties secured from the place of incident that matched with the crime weapon according to FSL report. Record reveals that empties were secured from the place of incident on May 28, 2015 while the same were dispatched along to FSL after June 07, 2015 along with crime weapon which was shown to be recovered on June 07, 2015 that too with delay of 10 days from the date of recovery. Such delay in sending the case property with crime weapon has destroyed the evidentiary value of such piece of evidence. Reliance is placed on case of *Ali Sher v. The State (2008 SCMR-707)*. In the case of *Khuda-A-Dad v. the State (2017 SCMR 701)* the Honorable Supreme Court held that alleged recovery of firearm weapon from the possession of the accused during investigation was inconsequential because admittedly the crime empties secured from the place of incident had been sent to FSL after arrest of accused and recovery of Firearm weapon from his possession. Dispatching of empties secured from the crime scene after arrest of accused is discarded by the Superior Courts in various authoritative pronouncements. The Honorable Supreme Court recorded similar observation in the case of *Mohammad Irshad v. Allah Ditta and others (2017 SCMR 142)* and in the case of *Haleem v. the State (2017 SCMR 709)*. Such evidence of recovery has no value in the eyes of law in view of the observation laid down in the cases discussed hereinabove.

15. The admitted failure to associate any independent private respectable persons as mashirs for the recovery, despite the

purported site being publicly accessible ("in access of all the people of the village"), is a direct violation of Section 103 Cr.P.C. The justification offered (odd hours of night/no one called) is a common excuse and has often been rejected by superior courts as insufficient. The absence of independent witnesses in such crucial recovery proceedings when they could have been readily procured renders the recovery highly doubtful and unreliable. (Ref: Asad v. The State, unreported Cr. Appeal No. S-62 of 2016).The testimony of HC Ali Sher that the pistol bore "marks of the stars on its plastic cover of club" but the conspicuous absence of these distinct identifying marks in the recovery memo (Exh.14-I) is a significant omission. This inconsistency casts serious doubt on the meticulousness and veracity of the recovery document itself.

16. While the testimony of police officials cannot be outright rejected, it must be subjected to stricter scrutiny, particularly when they are subordinates of the complainant/investigating officer and there is no independent corroboration. Their inherent interest in the success of the prosecution, coupled with the glaring inconsistencies and legal infirmities highlighted above, diminishes the probative value of their statements. The cumulative effect of the numerous material contradictions, fundamental omissions, and grave irregularities enumerated above creates an insurmountable reasonable doubt regarding the guilt of the appellants. The ocular account, the very foundation of the prosecution, has been disowned by the key injured witness. The investigation is tainted by the complainant acting as investigator. The recovery of the weapon is plagued by an unexplained delay, violation of mandatory legal provisions and omissions in the recovery memo. The circumstances of identification are highly improbable. The law requires the prosecution to prove its case beyond a reasonable doubt. Where there is a single reasonable doubt, its benefit must always go to the

accused, as it is a cardinal principle of criminal jurisprudence that conviction cannot be based on mere suspicion, however strong. The trial courts in both cases appear to have overlooked these critical aspects and committed a serious misappreciation of the evidence.

17. For the foregoing reasons, I am of the candid opinion that the prosecution has abjectly failed to prove its case against the appellants Ghulam Ali @ Lami and Dost Ali in Sessions Case No. 452/2015 (the murder case) and against Ghulam Ali @ Lami in Sessions Case No. 315/2015 (the Sindh Arms Act case) beyond a reasonable doubt. The judgments recorded by the learned Additional Sessions Judges, Jacobabad, are based on an erroneous appreciation of evidence and suffer from material legal infirmities. Accordingly, both Criminal Jail Appeal No. S-21 of 2022 and Criminal Appeal No. S-30 of 2019 are hereby allowed. The impugned judgment dated April 18, 2022, passed by the learned 1st Additional Sessions Judge Jacobabad in Sessions Case No. 452/2015 (Crime No. 19/2015 PS Bahoo Khoso) and the impugned judgment dated May 23, 2019, passed by the learned 2nd Additional Sessions Judge Jacobabad in Sessions Case No. 315/2015 (Crime No. 22/2015 PS Bahoo Khoso) are set aside.

18. Appellants Ghulam Ali @ Lami S/O Dost Ali Bangulani and Dost Ali S/O Malhar Bangulani are acquitted of the charges leveled against them in both cases. They shall be released from judicial custody forthwith, if not required in any other case. The office is directed to communicate this order to the concerned Jail authorities and the trial courts.

J U D G E