IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Jail Appeal No.S-47 of 2024

Appellant	:	Ghulam Akbar Chandio Through Mr. Habibullah G. Ghouri, Advocate
Complainant	:	Through Mr. Mazhar Ali Bhutto, Advocate
The State	:	Through Mr. Sardar Ali Solangi, DPG.
Date of hearing	:	24-07-2025
Date of Judgment	:	30-07-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J—Appellant Ghulam Akbar Chandio has challenged the judgment dated 08.08.2024, passed by the learned I-Additional Sessions Judge (MCTC), Larkana, in Sessions Case No. 446 of 2021, emanating out of FIR No. 05 of 2021, registered at Police Station Seehar, whereby convicted for offence under section 302(b) PPC and sentenced to life imprisonment as Tazir; besides, to pay Rs.300000/ to the legal heirs of deceased as compensation, and in default of payment thereof to undergo SI for six months. He was also convicted for offence under section 148 PPC and sentenced to SI for three years. Both the sentences to run concurrently, with benefit under section 382-B Cr.P.C.

2. The brief facts of the case as alleged in the FIR are that on 03.05.2021 at about 1130 hours, the complainant Ashiq Ali Chandio along with his brother Meer Muhammad alias Dholo was present at their general store in village Samtia. At the relevant time, their relatives Aijaz Ali and Illahi Bux had also joined them. While they were sitting outside the shop, accused Azizullah, Ghulam Akbar (appellant), Muhammad Parial @ Paroo (all armed with pistols), Riaz (armed with a repeater), and an unidentified individual, riding on two motorcycles,

arrived. Accused Azizullah allegedly instigated the others to kill the complainant's brother. Thereafter, Ghulam Akbar, Muhammad Parial and Riaz allegedly fired at the deceased, causing him fatal head injuries, and he succumbed on the spot. After the postmortem and burial, the FIR was lodged inter alia on above facts..

3. Following registration of the case, the investigation was conducted and challan was submitted, showing the appellant in custody while co-accused Azizullah, Muhammad Parial, Riaz and an unknown absconding. The appellant was charged for offenceunder Sections 302, 114, 148, and 149 PPC. He pleaded not guilty and claimed trial. During trial, the prosecution examined ten witnesses, including the complainant, eye-witnesses, mashirs, medical officer, and investigating officer. The defense produced ASI Mumtaz Ali from PS Korangi as a witness and relied upon documentary entries showing that the appellant had been arrested in Karachi on 23.06.2021.

4. Learned counsel for the appellant contended that the entire case is built upon fabricated and contradictory evidence. He argued that the ocular account was not supported by medical evidence, as the eyewitnesses claimed the deceased was sitting when shot, while the doctor stated the injuries indicated the deceased was lying down. He further argued that the sketch of the scene prepared by the Tapedar contradicts the location of the accused persons and the position of the deceased. He submitted that the arrest and recovery are patently false and stage-managed. The official record from PS Korangi shows that the accused was arrested in Karachi on 23.06.2021, thereby negating the alleged recovery of the weapon on 24.06.2021 in Seehar. He further submitted that no independent witnesses were examined despite the incident occurring in a market, and that all prosecution witnesses are related to the deceased. He highlighted that the motive alleged by the prosecution i.e. dispute over children remained unproven, vague, and unsupported by any documentary or

oral evidence. He also pointed out that the prosecution introduced the name of another accused during trial, which was not mentioned in the FIR, reflecting dishonest improvement. He further argued that the pistol allegedly recovered from the possession of accused was not sent for forensic examination. The FSL report produced by the prosecution only showing about the emptie of 12 bore and 30 bore, however no cross-matching with the alleged recovery of pistol from accused is available. He also argued that the accused in that case is acquitted. He also argued that the learned trial court has termed the arrest of accused as dubious and if the arrest of accused is doubtful, the other testimonies cannot be recorded as a reason for conviction, therefore the learned trial court erred while passing the impugned judgment. In view of these contradictions and omissions, he prayed that the appellant be acquitted.

5. On the other hand, the learned counsel for the complainant and the learned Deputy Prosecutor General contended that the prosecution had successfully established the guilt of the appellant through consistent and trustworthy ocular account supported by medical evidence. They submitted that the presence of the complainant and witnesses at the place of occurrence was natural and established, and that the delay in lodging the FIR was justifiable on the ground that the complainant had first attended the burial of the deceased. They further argued that minor contradictions in statements of witnesses do not affect the prosecution case and should not be given undue weight. The learned DPG supported the conviction on the ground that the evidence brought on record by the prosecution had not been shattered in cross-examination.

6. This Court has undertaken a meticulous and comprehensive scrutiny of the impugned judgment, the entirety of the trial record, the evidentiary material adduced by both the prosecution and the defense, and the cogent arguments advanced by the learned

counsel for all parties. The fundamental jurisprudential inquiry guiding criminal adjudication is whether the prosecution has succeeded in establishing its case against the accused beyond reasonable doubt as per the dictum laid down in the recent judgment of the Honorable Supreme Court in a case reported as Muhammad Qasim Vs. The State (2025 SCMR 880), wherein the Honorable Supreme Court was in a strict view that;'

> "… It is an axiomatic principle of law that the benefit of doubt is always extended in favor of the accused. The case of the prosecution if found to be doubtful then every doubt even the slightest is to be resolved in favor of the accused. In this regard reliance may be placed on case titled, "Muhammad Masha v. The State" (2018 SCMR 772) and case titled, "Abdul Jabbar v. The State and another (2019 SCMR 129)."

This principle dictates that if a single reasonable doubt arises from the evidence, its benefit must unequivocally accrue to the accused, leading to acquittal. It is within this crucial framework that the learned trial court's judgment is being subjected to rigorous appellate review.

7. A re-evaluation of the prosecution's ocular account reveals glaring contradictions, embellishments, and inconsistencies that collectively render the version unreliable. The complainant (PW-4) and eyewitnesses (PW-5 and PW-6), who were closely related to the deceased, narrated the sequence of events, but their accounts contradict the physical evidence presented through the Tapedar's sketch (Ex.9/B), which places the assailants inside the shop, while the eyewitnesses assert that the accused fired from outside. Such a material contradiction regarding the locus of occurrence impugns the credibility of the entire account. Reliance is placed on the case of Muhammad Nawaz and another Vs. The State (2024 SCMR 1731), Ahmed Ali Vs. The State (2023 SCMR 781).

8. Further, the name of one of the accused Muhbat appears nowhere in the FIR but is introduced during the trial. This is a classic

example of dishonest improvement. As enunciated in case of *Muhammad Nasir Butt Vs. The State* (2025 SCMR 662 Supreme Court) it was enunciated that material improvements not found in earlier versions render subsequent statements unreliable. Moreover, the failure to associate any independent witness, despite the incident occurring at a public place, remains an unrectified lapse. As per the case of Nasir Butt (Supra), the testimony of witnesses must be corroborated by independent evidence, which is conspicuously missing here. Moreover, the PW-1 Ghulam Rabani (Tapedar) who was examined at Ex.09 and he prepared sketch (Ex.9/B) depicts Point B, where the accused were "said to be standing," as inside the shop. This directly contradicts the consistent ocular testimony of PW-4, PW-5, and PW-6, who claimed the accused fired from outside the shop or from the veranda. This is not a minor inconsistency but a fundamental contradiction concerning the very scene and mechanics of the crime, which gravely impacts the reliability of the prosecution's story. Such material contradictions going to the root of the case can vitiate the entire prosecution evidence. Reliance is placed on the case of Muhammad Jahangir Vs. The State (2024 SCMR 1741). Apart from this, PW-1 admitted that he did not produce any document suggesting that the Mukhtiarkar directed him to prepare the sketch. He also failed to state in his examination-in-chief when he made the verbal request to the police or how he precisely measured the distances. These omissions indicate a lack of proper official procedure in preparing a crucial piece of physical evidence, raising questions about its authenticity and reliability.

9. PW-2 PC Nadeem, examined at Ex.10 initially stated Samtia village is 3 K.M. from the PS, but then changed it to 5 K.M. Similarly, he stated Taluka Hospital Dokri is 10 K.M. away, then altered it to 25/30 K.M. These significant discrepancies concerning basic geographical facts raise concerns about his truthfulness and memory.

It is settled principle of law that the falsus in uni is falsus in omnibus. In cross-examination, PW-2 was directly confronted with the suggestion that he "neither had received dead body nor I handed over same to brother of deceased in fact all documents have been prepared at PS by WHC at the time of preparation of challan." While he denied it, this suggestion, when viewed alongside other procedural lapses by the IO, casts a shadow on the genuineness of the documents he attested. He could not remember the name of the medical officer to whom he handed over the dead body for postmortem. Such a lapse concerning a critical step in the chain of custody of the deceased's body is notable. Conversely, the P.W-03 CMO Dr. Zulfiqar Ali explicitly admitted, "I am not designated as Medico Legal Officer," and "I have not produced any document authorizing to me to conduct postmortem," voluntarily adding he was "verbally directed to do so." The legal validity of a postmortem conducted by an officer without proper designation or official authorization is highly questionable. Expert evidence, including medical opinion, must be from a duly qualified and authorized person. Any doubt on authority can affect the weight of the evidence. Moreover, he stated that the "time of death as well as duration between injury and death" was mentioned "as per police document." This indicates he did not independently ascertain these crucial timings but relied on the police version, thereby failing to provide independent medical corroboration on this aspect. He admitted he "did not record temperature of the dead body" and "did not use any measuring scale" for injury measurements, relying solely on his "experience." He also did not specify the length of injuries at different points or observe which injury was fractured. Such omissions diminish the scientific rigor and evidentiary value of the postmortem report. P.W -3 stated that "deceased sustained injury No.1 while sitting while the person making fire was standing." He further added, "The deceased was lying down when he received injury No.2." and

"Firing was made at the deceased from his front." These statements about the deceased's position and the direction of firing ("from his front" for injury 2) introduce inconsistencies with the singular narrative of sudden firing on a sitting person.

10. Moving further, PW-4 Ashiq Ali (Complainant - Ex. 12) make a most glaring improvement by way of introduction of "Muhbat" as an accused in his court deposition. He clearly admitted in cross-examination, "It is true that this is not written in the FIR." This constitutes a material and dishonest improvement, indicating an attempt to bolster the prosecution case by introducing details not present in the earliest version. Reliance is placed on the case of Javaid Akber Vs. Muhammad Amjad & Jameel @ Jeela (2016 SCMR 1241). Moreover, he failed to state when the dispute occurred, if it was reported to the police, or if any *faisla* (settlement) was conducted. He also did not mention in the FIR that accused Ghulam Akbar was part of the earlier dispute, only voluntarily adding this in court as an afterthought to connect the appellant to the alleged motive. These omissions weaken the prosecution's stated motive. He did not mention in the FIR the conveyance used by witnesses, voluntarily adding in court that "they came on motorcycle." He stated, "I and witnesses were sitting in veranda in its north corner," which contradicts PW-5 who stated they were in the "centre" and PW-6 who stated "northern side" but also implied sitting together. Such discrepancies, though seemingly minor, reflect inconsistent observations among the key witnesses. He admitted, "the accused did not cause any injury to me and the witnesses," and "we did not resist or call for help. Voluntarily says we did not have the opportunity to do so." This passive conduct from witnesses to a brutal murder, especially when they claim to be present during the entire incident, is unnatural and raises questions about their actual presence or ability to observe. Reliance is placed on the case of 2025 SCMR 281 (case of Abdul Hayee

and Abdullah @ Ghazali Vs. The State), wherein it was depicted that unnatural conduct can render eyewitness testimony doubtful. Complainant admitted that "people were available at the time of Incident" and even named several (Muhammad Iqbal Kandhro, Shahnawaz Soomro, etc.), but their names were "not mentioned in the FIR," and the Investigating Officer "did not ask anyone being mashir." This is a critical lapse when the place is described as "busy," and suggests a deliberate avoidance of independent evidence. Reliance is placed on the case of Nasarullah Khan Vs. The State (2022 YLR-N 205), wherein Sindh High Court observed that;

> *"…No explanation in this regard has been furnished by the prosecution and so also no efforts were made by the complainant to secure the independent witness. It is by now well-established principle of law that despite of availability of independent/neutral witnesses on spot, non-examination of such witnesses draws an inference in view of Article 129(g) of Qanun-e-Shahadat Order, 1984, that if they had been examined, they would not have supported the case of prosecution, therefore, non-compliance of provision of Section 103, Cr.P.C. creates doubt in the prosecution story. In this regard, we are supported with the cases of Mushtaq Ahmed v. The State reported in PLD 1996 SC 574 and The State through Advocate General, Sindh v. Bashir and others reported in PLD 1997 SC 408."*

11. Moving ahead, the complainant confirmed that the Investigating Officer, ASI Sadaruddin Jiskani, is his "neighbour and friend," which inherently compromises the impartiality of the investigation. He stated, "I lodged the FIR before burial of deceased," but later contradicted himself by saying, "After burial, I along with witnesses went to PS at 1700 hours and lodged the FIR." Apart from this all the proceedings were held before the registration of the FIR. This fundamental inconsistency regarding the sequence of events at a crucial stage (proceeding before FIR and subsequent FIR lodgment) undermines his credibility.

12. PW-5 Illahi Bux (Eye Witness - Ex. 13) likewise P.W-04 introduced "Muhbat" as an accused, a name not present in the FIR. Similar to PW-4, he did not state the date/time/place of the initial dispute, or the names of the children involved, weakening the stated motive. He stated, "We were sitting together in the center of veranda," which contradicts PW-4's "north corner" and PW-6's vague "northern side." He stated the deceased was sitting at "6/7 feet from the shutter," differing from PW-4's "12 feet" and PW-6's "3 or 4 feet." Such variations on key observational details weaken the collective ocular account. He admitted it's "not written in my statement before the police that the accused overpowered us," and that "accused did not cause us any harm except the deceased," and "we did not offer resistance or raise cries." This reinforces the unnatural conduct observed in PW-4. He stated, "My clothes did not have blood stains; complainant's clothes had blood stains." This directly contradicts PW-4 who stated, "Clothes of me and witnesses did not have blood stains." This is a significant contradiction between two key prosecution witnesses. He admitted that "many people gathered at the place of incident and witnessed the incident. It is true that none from those people has been cited as witness." This further exposes the selective collection of evidence. Identically, PW-6 Aijaz Ali (Eye Witness - Ex. 14) introduced "Muhbat" as an accused, a name not in the FIR, he too failed to provide details on the initial dispute, further undermining the motive, he stated, "We were sitting in veranda from northern side," which conflicts with the specific positions given by PW-4 and PW-5. He stated the deceased was sitting at "3 or 4 feet from shutter of the shop," which is different from both PW-4 and PW-5. Similar to other ocular witnesses, he did not state in his statement that they offered resistance or were overpowered, reinforcing the unnatural conduct. He stated, "About 20/25 people gathered there; they saw the accused

while going," yet none were made witnesses, highlighting the investigative lapse.

13. PW-7 Sajjan Ali (Mashir - Ex. 15/A) is the complainant's uncle and explicitly stated, "I acted as mashir as complainant asked me to." This immediately renders his testimony as an interested mashir requiring independent corroboration, which is absent. The evidence of an interested mashir requires substantial corroboration in view of Saeed Noor Vs. State (2024 P.Cr.L.J 1021). He confirmed that despite "people of different communities were available at the time of preparation of memo Ex.15/A," the police "did not ask the people who had gathered to act as mashir." This points to a deliberate failure by the IO to follow proper procedure. He stated that PC Bakhat Ali wrote the memos, but then admitted, "memos do not show that the same were written by Bakhat Ali" and "none of the document bear signature of Bakhat All." This seriously undermines the authenticity and integrity of the mashirnamas. He stated that "point B is shown in the sketch Ex.9/B inside shop and point A is at the counter of the shop," which is a clear admission of the discrepancy between the sketch and the ocular account regarding the accused's position. He admitted, "I don't know the procedure of sealing," and when asked if police did not seal in his presence, he said, "It is incorrect to suggest that police did not seal the case property in my presence," implying doubt. He also stated the SIO sealed clothes and obtained "only one signature of me," indicating improper attestation.

14. The important and foremost evidence of PW-8 SIP Saddaruddin (Investigating Officer - Ex. 16) is also not free from fatal contradictions and fabrication in arrest and recovery of the accused. This witness's testimony is the most damning for the prosecution's case, revealing blatant fabrications regarding the appellant's arrest and the alleged recovery of the weapon. Who Wrote Memo of Arrest? He claimed "PC Oshaq wrote the memo of arrest" but then stunningly

admitted that "PC Oshaq was not the member of arresting party." This is a direct admission of fabrication of an official document by the IO himself. He asserted, "It is true that number is visible from the pistol," directly contradicting the memo of recovery (Ex.16/L) which states, "the number of pistol was erased." This is a material contradiction on a crucial piece of physical evidence. He stated he saw the accused from "3 or 4 paces" and "I apprehended him," contradicting PW-9 PC Nazir's version of "10 paces" and "I and PC Naeem apprehended him." When directly asked if "SHO Altaf Hussain arrested accused Ghulam Akbar from Karachi on 23.6.2021 and maintained entry at PS Korangi," he dishonestly replied, "I don't know." This denial is utterly false, as the defense witness DW-1 ASI Mumtaz Ali later firmly established this prior arrest with official records (Ex.21/A, Ex.21/B). This demonstrates a deliberate attempt by the IO to conceal the truth and perpetuate a false narrative and a dishonest denial. Such deliberate falsehoods by the IO, particularly concerning arrest and recovery, undermine the entire investigation. He admitted, "I did not ask independent persons to act as mashirs," despite acknowledging that the "place of incident is at busy road in a populated village [and] Various people were available." This deliberate omission, combined with the IO's close ties to the complainant, leads to the irresistible conclusion that the recovery and other memos were managed. The failure to associate independent witnesses from a populated area where they were available renders the recovery highly doubtful and suspicious. He admitted that memos (like Lash Chakas Form and Danishnama) did not denote who wrote them, despite him claiming PC Bakhat Ali wrote them. He also admitted "time of entry and FIR is same," which suggests a mechanical and potentially pre-written FIR, devoid of natural flow of events. The other biasness showing in his evidence when he confirmed the complainant was his "neighbour and friend," further strengthening the defense's claim of a managed investigation.

15. Another aspect of the case that PW-9 PC Nazir Ahmed (Mashir of Arrest/Recovery examined at Ex. 17) He stated, "ASI received spy information at about 1545 hours," contradicting the IO's earlier testimony of "1.50 or 1.55 pm" and arrest at "1400 hours." He stated he saw the accused from "about 10 paces" and "I and PC Naeem apprehended him," contradicting the IO's "3 or 4 paces" and "I apprehended him." His testimony that "WPC Oshaq wrote memo of site inspection" is inconsistent with the IO's testimony about PC Oshaq writing the *arrest* memo, and the fact that Oshaq was not part of the party. These internal inconsistencies within the police party's evidence are destructive to its credibility. He falsely claimed, "No one was available that is why ASI did not induct any private person as mashir," despite the complainant and PW-7 confirming the presence of numerous people at the busy location. This is a clear attempt to cover up a procedural flaw. His denial that "we have falsely Implicated accused showing his arrest on 24.6.2021" directly clashes with the compelling defense evidence (DW-1) and the IO's own admissions. P.W-10 Sada Hussain admitted that, "my name is not mentioned in the R.C.," which is a significant procedural flaw in maintaining the chain of custody for crucial case property. He stated, "It is true that I have deposited the case property or dates then those of R.Cs." This indicates discrepancies in the timeline of depositing evidence, further weakening the chain of custody and casting doubt on the integrity of the collected items.

16**.** The overwhelming evidence pointing to a fabricated arrest and recovery of the alleged crime weapon is the gravest infirmity in the prosecution's case. The direct evidence of DW-1 ASI Mumtaz Ali, an independent police officer with no discernible motive to lie, demonstrating that the appellant was arrested a day earlier by PS Korangi and handed over to Seehar police, completely discredits the prosecution's narrative of arrest and recovery on 24.06.2021. The

IO's (PW-8) and Mashir's (PW-9) material contradictions, outright falsehoods regarding the memo writer, and the pistol's features, all confirm the fabrication. When the very act of arrest and the purported discovery of a crucial piece of evidence (the weapon) are demonstrably proven to be manipulated or false, it creates an insurmountable reasonable doubt regarding the entire prosecution story. This is not merely a technical defect but a profound indication of a dishonest investigation aimed at securing a conviction by any means. The superior courts of Pakistan have consistently held that a doubtful recovery cannot be used to corroborate ocular evidence, and if a recovery is not proved beyond reasonable doubt, the benefit must unequivocally go to the accused. A false recovery tends to cast a serious doubt on the entire prosecution case.

17. The cumulative effect of the multitude of contradictions, significant omissions, dishonest improvements, embellishments, and blatant fabrications by the prosecution witnesses, particularly the Investigating Officer, leads to the irresistible conclusion that the prosecution has utterly failed to establish its case against the appellant beyond reasonable doubt. The ocular account, though appearing consistent on the surface, emanates from interested witnesses whose presence is dubious given their distant residences and the conspicuous absence of independent public witnesses from a busy locality. This account is further tainted by dishonest improvements not found in the FIR and material contradictions with the physical evidence (Tapedar's sketch). The medical evidence, while confirming death by firearm, is from a doctor whose authority and procedural adherence are questionable.

18. Most critically, the entire edifice of the prosecution's corroborative evidence collapses with the unequivocal proof that the appellant's alleged arrest and the recovery of the crime weapon were fabricated. Such a profound flaw in the investigation inherently infects

the entire prosecution case, rendering it unsafe to rely upon any part of its evidence for conviction. The benefit of these insurmountable doubts must, by all canons of criminal justice, be extended to the appellant. It is a fundamental principle of criminal law that if a single reasonable doubt arises from the evidence, its benefit must unequivocally accrue to the accused, leading to acquittal.

19. For the aforementioned reasons, and the foregoing detailed discussion, this Court finds that the prosecution has utterly failed to establish the charge against the appellant Ghulam Akbar beyond reasonable doubt. The cumulative effect of the material contradictions in the ocular account, the dishonest improvements made by the prosecution witnesses, the fundamental discrepancies between the ocular account and the site plan, and most critically, the utterly dubious and fabricated nature of the appellant's arrest and the alleged recovery of the crime weapon, creates an insurmountable reasonable doubt in the prosecution's narrative. The benefit of this doubt must, by all canons of justice, accrue to the appellant. Accordingly, the appeal is allowed. The conviction and sentence recorded by the learned I-Additional Sessions Judge (MCTC), Larkana, vide judgment dated 08.08.2024, are hereby set aside. The appellant Ghulam Akbar is acquitted of the charge. He shall be released forthwith if not required in any other case. The case against other absconding co-accused shall be kept on dormant file till finalization. The case property order will remain in field.

J U D G E

Asghar Altaf/P.A