IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No. S-81 of 2024

Appellant	:	Abdul Majeed s/o Sachal Bhayo, t*hrough* Mr. Saeed Ahmed Bijarani, Advocate.
Complainant	:	*through* Mr. Muhammad Afzal Jagirani, Advocate
Respondent	:	The State *through* Mr. Nazeer Ahmed Bhangwar, Deputy Prosecutor General
Date of Hearing	:	04.08.2025.
Date of Short Order:		04.08.2025.
Date of Reason	:	06.08.2025.

J U D G M E N T

Ali Haider 'Ada':J . – Through this appeal, the appellant has challenged the judgment dated 24.08.2024, passed by the learned Additional Sessions Judge-II, Kandhkot, in Sessions Case No.02/2023, titled The State v. Abdul Majeed, arising out of FIR No.46/2022, registered at Police Station Ghouspur, for offences punishable under Sections 324, 337-A(i)(iii), 337-F(i)(v), 148, and 149 of PPC. By the said judgment, the learned Trial Court convicted the appellant as under:

> *For the offence punishable under Section 324 PPC read with Section 149 PPC, the appellant was sentenced to Rigorous Imprisonment for 10 years and directed to pay a fine of Rs.500,000/-. In case of non-payment of fine, he shall undergo Simple Imprisonment for 2 years. For the offence punishable under Section 148 PPC read with Section 149 PPC, the appellant was sentenced to Rigorous Imprisonment for 3 years and directed to pay a fine of Rs.50,000/-. In default of payment, he shall undergo Simple Imprisonment for 3 months. For the offence punishable under Section 337-A(i) PPC read with Section 149 PPC, the appellant was directed to pay Daman of Rs.50,000/-.For the offence punishable under Section 337-F(v) PPC, the appellant was sentenced to Rigorous Imprisonment for 5 years and directed to pay Daman of Rs.200,000/- to injured PW Akbar. For the offence punishable under Section 337-F(i) PPC, the appellant was directed to pay Daman of Rs.100,000/- to injured PW Adam. For the offences punishable under Sections 337-A(i) and 337-L(ii) PPC read with Section 149 PPC, the appellant was directed to pay Daman of Rs.100,000/- to injured PW Abdul Jabbar.For the offences punishable under Sections 337-L(ii) and 337-A(i) PPC read with Section 149 PPC, the appellant was directed to pay Daman of Rs.100,000/-; and for the offence under Section 337-A(ii) PPC read with Section 149 PPC, to pay Daman of Rs.200,000/- to injured PW Deedar and to undergo Rigorous Imprisonment for 3 years as Ta'zir. For the offences punishable under Sections 337-L(ii) and 337-A(i)*

PPC read with Section 149 PPC, the appellant was directed to pay Daman of Rs.100,000/-; and for the offence under Section 337-F(v) PPC read with Section 149 PPC, to pay Daman of Rs.200,000/- to injured PW Mst. Suhni and to undergo Rigorous Imprisonment for 5 years as Ta'zir. All the sentences were ordered to run concurrently, with the benefit of Section 382-B, Cr.P.C. extended to the appellant.

2. As, per prosecution case, on 17.09.2022 at about 4:00 p.m., due to a grudge arising out of a dispute involving children outside the complainant's house near Shahdad Bhayo, accused Muhammad Nawaz armed with a K.Kov, along with the present accused Abdul Majeed (appellant) and ten others, all armed with lathis, formed an unlawful assembly and launched an assault upon the complainant party. In prosecution of their common object, the accused committed rioting. During the incident, accused Muhammad Nawaz fired his K.Kov at the complainant's brother, Deedar, which hit him. On hearing the noise, the complainant's sisters, Mst. Suhni and Mst. Arbab Khaton, came out of the house to intervene. At that moment, the appellant Abdul Majeed allegedly struck Mst. Suhni with a lathi, causing an injury to her left arm. Other prosecution witnesses also sustained injuries at the hands of the accused persons, who thereafter fled the scene. The complainant, who also sustained injuries, shifted three male injured and two female injured persons to Police Station Ghouspur, where a duty police official issued letter for medical treatment. The injured were then referred, via letter, for medical examination and treatment to Government Civil Hospital, Kandhkot, from where the male injured were referred to Government Civil Hospital, Sukkur, and remained under treatment for several days. After that the complainant approached the police station, whereupon FIR No.46/2022 was registered on 05.10.2022.

3. After registration of the FIR, the trial was initially conducted in the first phase against accused Bashir, Abdul Hameed, Kashif, and Ashique, wherein the learned trial Court convicted them and sentenced each to four months' imprisonment. The said accused did not challenge the judgment, and it attained finality. Subsequently, the present appellant was shown to have been arrested through an imaginary memo dated 16.08.2024, and a separate trial was conducted at a later stage. The learned trial Court framed the charge against the appellant on 31.07.2024, to which he pleaded not

guilty, and the prosecution was directed to lead its evidence. In support of its case, the prosecution examined the witnesses: PW-1: Complainant Akbar Ali, PW-2: Injured witness Deedar Ali, PW-3: Abdul Jabbar, PW-4: Adam, PW-5: Mst. Suhni, PW-6: Mst. Arbab Khatoon, PW-7: Shaukat Ali, PW-8: Abdul Rasool (wrongly recorded as PW-7), PW: Muhammad Ayoob, Investigation Officer, PW: Mst. Arbeli, mashir of inspection of injuries. After the conclusion of prosecution evidence, the statement of the appellant was recorded under Section 342, Cr.P.C., wherein he professed his innocence and prayed for acquittal. The appellant neither opt to be examined on oath under Section 340(2), Cr.P.C. nor he produce any defence witness in support of his version.

4. Thereafter, the learned Trial Court passed the impugned judgment, which has been challenged by the appellant through the instant appeal.

5. Learned counsel for the appellant submitted that not a single documentary piece of evidence was exhibited or produced during the course of the second trial. He emphasized that no medical officer was examined, and even the marginal witness was withheld by the prosecution without justification. It was further contended that there was an unexplained delay of approximately 17 days in lodging the FIR, which has not been plausibly accounted for by the prosecution. Learned counsel argued that no recovery was effected, and the learned trial Court, without properly appreciating the material available on record, proceeded to convict the appellant and imposed Daman in the form of punishment. Learned defence counsel concluded his arguments by asserting that the prosecution has failed to prove its case beyond a reasonable doubt, and therefore, prayed for the acquittal of the appellant.

6. On the other hand, learned counsel for the complainant submitted that the prosecution successfully established the case, and the ocular testimony stands corroborated by the medical evidence. He further argued that the appellant failed to demonstrate any mala fide or ulterior motive on the part of the complainant to falsely implicate him in the case.

7. Conversely, the learned State Counsel supported the impugned judgment, submitting that although the case pertains to injuries, the

medical evidence recorded during the earlier trial is available on the record and should be read in conjunction with the subsequent proceedings. He conceded that the medical officer was not examined in the second trial, but contended that since he was examined in the earlier phase of the trial and had corroborated the ocular account, the medical evidence remains intact. He further submitted that the appellant is not entitled to acquittal, though he did not oppose the remand of the matter for the limited purpose of recording the medical officer's evidence, if deemed necessary.

8. Heard arguments and perused the material available on record with utmost judicial scrutiny.

9. During perusal of the record, it transpires that after framing of charge, the prosecution evidence, as detailed supra, was recorded on 16.08.2024, wherein cross-examination of all witnesses was reserved. The entire prosecution witnesses were then cross-examined on 24.08.2024, and on the very same day, the statement of the accused under Section 342, Cr.P.C. was recorded. Subsequently, on that same date i.e., 24.08.2024, the learned trial Court proceeded to pronounce the impugned judgment. Such procedural haste, whereby cross-examination of multiple witnesses, recording of the accused's statement, and pronouncement of judgment occurred on a single day, raises serious constitutional and procedural concerns, particularly under Article 10-A of the Constitution of the Islamic Republic of Pakistan, which guarantees the right to a fair trial and due process. For ready reference, the same is as follows:

> ***10A. Right to fair trial:*** *For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.*

10. The principle of fair trial, as enshrined under Article 10-A, is not a mere formality but a substantive constitutional right, recognized and fortified through numerous judgments of the Superior Courts. The trial must be conducted in a manner that inspires confidence in the impartiality and fairness of proceedings.

11. Furthermore, upon scrutiny of the impugned judgment, it appears that the trial Court observed that the learned Assistant District Public

Prosecutor (ADPP) summed up the prosecution's case in terms of Section 265-G, Cr.P.C., and adopted the medical evidence of doctors already available on record, thereafter closing the prosecution side through statement marked as Ex:52. However, upon examination of Ex:52, it reveals that it is in fact not a statement of the learned ADPP but rather the deposition of PW Mst. Arbeli, who acted as the mashir for the inspection of injuries. There is no statement available on the record or in the paper book which would reflect that the prosecution adopted the earlier medical evidence or that it legally closed its side as alleged in the impugned judgment**.** A further perusal of the case diary dated 24.08.2024, available in the paper book (backside of page 31, i.e., page 32), reveals that the learned trial Court through that case diary noted that a statement was filed by the learned ADPP adopting the previously recorded medical evidence and that the prosecution side was accordingly closed at Ex:53. However, Ex:53 is nowhere found on record, nor it is available in the R&Ps or paper book.

12. Further, in the instant case, not a single document was exhibited during the trial of the appellant. The prosecution, instead, relied entirely upon the evidence recorded in the previous trial without producing or exhibiting any documents afresh in the subsequent proceedings. Not even a certified true copy of any document was placed on record during the second phase of trial to substantiate the charges against the appellant. When scrutinized through the lens of evidentiary law, this procedural approach brings into focus the relevancy and applicability of Article 47 of the Qanun-e-Shahadat Order, 1984, which governs the use of evidence given in a previous judicial proceeding. For ready reference, Article 47 is reproduced below:

> ***47. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated*** *.– Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:*

> *Provided that–*
>
> *the proceeding was between the same parties or their representatives-in-Interest;*
>
> *the adverse party in the first proceeding had the right and opportunity to cross-examine;*
>
> *the questions in issue were substantially the same in the first as in the second proceeding.*
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> *Explanation.– A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this Article.*

13. The mandatory conditions laid down in Article 47 were neither satisfied nor even considered in the present case. The doctor, whose evidence formed a vital part of the earlier proceedings, was not examined afresh in the trial of the appellant, nor any application made to justify his non-production. Most critically, the appellant was not afforded any opportunity to cross-examine the medical officer, whose deposition from the previous trial was allegedly relied upon. This omission violates not only Article 47 but also the settled principles of fair trial and due process as guaranteed under Article 10-A of the Constitution. The contention of the learned trial Court that the State Counsel had adopted the deposition already recorded in the previous trial is misconceived and contrary to the principles of administration of justice. In support of this contention, reliance is placed upon the case of ***Syed Ali Nawaz Shah and 2 others vs The State*** **2023 YLR 1887,** wherein the Division Bench of this Court held that:

> *6. In terms of Section 353, Cr.P.C. all evidence is to be taken in presence of accused; except as otherwise expressly provided, and when his personal attendance is dispensed with, in presence of his pleader. Admittedly, insofar as the earlier evidence, including the documents which were exhibited are concerned, were never brought in the evidence before the present Appellants, hence, the same cannot be treated as evidence recorded in presence of the accused. As to earlier proceedings, it is a matter of record that the trial Court had treated them as guilty of having entered into a plea bargain with NAB, and therefore, were never required to attend the Court as accused at the time of evidence of the prosecution. Insofar as Article 47 of the 1984 Order is concerned, it provides relevancy of certain evidence for proving the same in subsequent proceedings, and states, that the evidence given by a witness in a judicial proceeding, or before any person authorized*

by law to take it, is relevant for the purpose of proving the same, in a subsequent proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. It further provides that such proceedings should be between the same parties or their representatives in interest and the adverse party in the first proceeding had the right and opportunity to cross-examine and the questions in issue were substantially the same in the first as in the second proceeding. Now when both these provisions are read into juxtaposition, it appears that apparently, the learned trial Court failed to appreciate these provisions and simply allowed the prosecution to rely/mention these documents in their deposition/subsequent examination in chief which were exhibited by them in the earlier proceedings. Though the witnesses produced subsequently, (including some of the earlier witnesses as well as new witnesses in place of those who had expired), were cross-examined on behalf of the Appellants, but at no point of time, any of the documents and the exhibits recorded in the earlier evidence were ever brought on the record of the subsequent proceedings in hand. We have labored ourselves through the entire R&Ps of this Reference, and are surprised to note that not even certified copies of the earlier exhibits were produced in their examination in chief by the witnesses, and instead they only stated that all documents have already been exhibited in the earlier evidence. In our considered view, a bare minimum, production of certified copies could have sufficed, as in that case the Court could have permitted production of such certified copies, being part of the judicial proceedings to be exhibited once again in the subsequent proceedings. As noted, in R&Ps there is nothing on the record in this Reference, and admittedly, the trial Court may be for the reason that it had the privilege of examining the earlier record and the evidence, simply referred to the exhibit numbers of the earlier proceedings and thought that they are also part of the present proceedings and can be used as evidence against the present Appellants. We are afraid this procedure adopted by the learned trial Court was not only irregular; but apparently is an illegality which perhaps cannot be cured in any manner. In Muhammad Younis[1], a learned Division Bench of the learned High Court was seized with almost an identical situation, wherein certain witnesses were common in three cases and when one of these witnesses appeared in the witness box, his statement was recorded in one case and then a verbatim copy of his statement was placed on record of two other cases, with the addition of such matter brought out in cross-examination for the special purpose of that particular case. It was held that the witness was thus not examined in full in each case.

14. Further, reliance upon the case of ***Chaudhry Muhammad Aslam vs The State,*** **2010 PCr.L.J 1778,** wherein it has been held by this Court that:

> *In the case of Noor Elahi reported in PLD 1967 SC 708, one of the members of the Bench, B.Z. Kaikaus, J. (as he then was) observed as under: --*
>
> *"The law is that every criminal proceeding (and in fact every civil proceeding) is to be decided on the material on record of that proceeding and neither the record of another case nor any finding recorded therein should affect the decision. If the Court takes into consideration evidence recorded in another case of a finding recorded therein the judgment is vitiated."*

15. First and foremost, medical evidence primarily serves to identify the seat and nature of the injuries, determine the kind of weapon used, and medically substantiate the injuries allegedly sustained by the victim. This type of expert evidence is vital as it lends objective corroboration to the ocular account and is instrumental in assessing whether the injuries are consistent with the prosecution's version of events. However, in the present case, the Medical Officer was not examined during the subsequent trial of the appellant.

16. So far as the merits of the case are concerned, certain material inconsistencies and contradictions in the prosecution's evidence have come to the fore. The complainant, in his deposition, stated that Mst. Suhni sustained injuries on her left arm and left thumb at the hands of the appellant. However, prosecution witnesses Abdul Jabbar, Adam, and Mst. Arbab Khatoon testified that Mst. Suhni sustained injury only on her left arm, while Mst. Arbab was the one who received injury on her left thumb. Furthermore, Mst. Suhni herself made an improvement in her version, by later claiming that she had also sustained a head injury, which was never mentioned by the other witnesses. Reliance is placed upon the case of ***Zaheer Sadiq vs Muhammad Ijaz and others,*** **2017 SCMR 2007** and ***Muhammad Naveed vs The State*** **2023 P.Cr.L.J 896**.

17. Furthermore, according to the prosecution's own version, medical letters for treatment were obtained on the day of the incident, which suggests that the complainant party did, in fact, approach the police promptly after the occurrence. However, despite this early approach, no FIR was registered at that time, no any deposition or testimony by any prosecution witness to show that the complainant party immediately

disclosed the names of the accused or recorded their version before the police. The FIR was registered on 05-10-2022, i.e., after an unexplained delay of 17 days, without any plausible or satisfactory explanation being provided by the prosecution for such a significant lapse. This prolonged and unexplained delay in lodging the FIR seriously dents the credibility of the prosecution case and gives rise to a legitimate inference of deliberation, consultation, and afterthought. It is a settled principle of law that prompt reporting of a cognizable offence is essential to exclude the possibility of consultation, deliberation, or fabrication. Reliance in this regard based upon the case of ***Khial Muhammad vs The State*** **(2024 SCMR1490)**.

18. It is a well-settled rule in Criminal Law that a person cannot be found guilty just because it seems likely based on the available evidence. The conviction must be based on clear and strong proof presented during the trial. Courts must rely on solid evidence and clear conclusions drawn from that evidence not on guesses or assumptions. If a case is decided only on what seems likely or probable, rather than proven facts, it would be unfair and against the principles of justice. Support is drawn from the case of ***Naveed Asghar and 2 others V. the State*** **(PLD 2021 SC 600)**, wherein it was elaborated as under:-

> *33. It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability standard applied in civil cases. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary of artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession. The rule of giving benefit of doubt to accused person is essentially a rule of caution and*

> *prudence, and is deep rooted in our jurisprudence for safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (peace be upon him): "Avert punishments [hudood] when there are doubts"; and "Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment". A three-member Bench of this Court has quoted probably latter part of the last mentioned saying of the Holy Prophet (peace be upon him) in Ayub Masih v. State in the English translation thus: "Mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent."*

19. It is a well-settled principle of criminal jurisprudence that if a single loophole in the prosecution's case comes on record, the benefit of such doubt must be extended to the accused. The standard of proof in criminal trials requires the prosecution to establish its case beyond reasonable doubt. Any failing in this regard entitles the accused to acquittal. In support of this proposition, reliance is placed on the authoritative judgment of the Hon'ble Supreme Court of Pakistan in the case of ***Ahmed Ali and another vs. The State*** **(2023 SCMR 781),** wherein it was held as under:

> *12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).*

20. In view of the foregoing reasons and detailed discussion, the instant appeal was allowed vide short order dated 04.08.2025, whereby the appellant was acquitted of the charges framed against him. Consequently, the conviction and sentence awarded to the appellant and judgment dated 24.08.2024, passed by the learned Additional Sessions Judge-II, Kandhkot, in Sessions Case No. 02 of 2023, were set aside to the extent of the appellant. The Jail Authorities were directed to release the appellant forthwith, if not required in any other criminal case. These are the detailed reasons in support of the short order announced earlier.

J U D G E

Asghar Altaf/P.A