Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Criminal Appeal No.S-09 of 2024

(Shahban and others v/s. The State)

Criminal Appeal No.S-10 of 2024

(Naseem v/s. The State)

Criminal Appeal No.S-11 of 2024

(Shahban Sanjrani v/s. The State)

Appellants	:	1. Shahban son of Muharam 2. Naseem son of Sonaro 3. Hazoor Bux son of Bach Ali All by caste Sanjrani Through Mr. Habibullah G. Ghouri, Advocate.
Complainant	:	Mst. Hazooran Lashari Through Mr. Zafar Ali Malghani, Advocate.
The State	:	Mr. Nazir Ahmed Bhangwar, Deputy Prosecutor General, Sindh.

Date of Hearing: 03.10.2025

Date of Judgment: 03.10.2025

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JUDGMENT

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Nisar Ahmed Bhanbhro J. I, propose to decide of the fate of the captioned appeals against conviction, through this common judgment as all the cases stemmed out of a single transaction of murder charge and involve common evidence, facts and law. In Criminal Appeal No.S-09/2024 appellants Shahban, Naseem and Hazoor Bux were tried by the Court of learned Additional Sessions Judge-I/Model

Criminal Trial Court, Jacobabad, (Trial Court) in Sessions Case No.216/2023 (Re-The State v/s. Shahban and others) arising out of F.I.R. No.86/2022, registered with Police Station Mouladad for offence punishable under sections 302, 114, 148, 149 P.P.C. The appellants vide judgment dated 29.02.2024 were convicted and sentenced to suffer R.I for life as Ta'zir and burdened to pay compensation amount of Rs.5,00,000/-(Rupees five lac) each to the L.Rs of deceased in terms of section 544-A Cr.P.C, in fault of payment of compensation to further undergo S.I for one (01) year. In Criminal Appeal No.S-10 of 2024 appellant Naseem Sanjrani, was tried by the Court of learned Additional Sessions Judge-II, Jacobabad, vide Sessions Case No.218/2023 (Re- The State v/s. Naseem) arising out of F.I.R. No.04/2023, registered with Police Station Mouladad for offence punishable under sections 23(i) & 25 of Sindh Arms Act, 2013, he was convicted and sentenced to suffer R.I. for ten (10) years with fine of Rs.50,000/- (rupees fifty thousands), in case of non-payment of fine amount to further undergo S.I for six (06) months vide judgment dated 29.02.2024. In Criminal Appeal No. S-11 of 2024 appellant Shahban Sanjrani was tried by the Court of learned Additional Sessions Judge-II, Jacobabad, (Trial Court) vide Sessions Case No.217/2023 (Re- The State v/s. Shahban) arising out of F.I.R. No.03/2023, registered with Police Station Mouladad for offence punishable under sections 23(i) & 25 of Sindh Arms Act, 2013, he was convicted and sentenced to suffer R.I. for ten (10) years with fine Rs.50,000/- (rupees fifty thousands); in case of default in payment of fine to further undergo S.I for six (06) months vide judgment dated 29.02.2024. Benefit of section 382-B Cr.P.C was also extended to the appellants. (The judgment dated 29.02.2024, shall hereinafter be referred as to "the impugned judgment")

2. It is pertinent to mention that the sessions case No 217 of 2023 (The State Versus Shahban) and sessions case No 218 of 2023 (The State Versus Naseem) arose out of the FIRs registered against the appellants in recovery of weapons cases. The evidence of witnesses in recovery and murder case was common, therefore, all the appeals are proposed to be decided by this common judgment.

3. The facts of the prosecution case as unfolded in the F.I.R. No.86/2022 are that Complainant Mst. Hazooran Lashari lodged FIR on 26.12.2022 at 1500 hours alleging therein that on 24.12.2022, she along with her son Javed Ahmed aged about 25/26 years, brother-in-law namely Budhal, his son Eiddan were standing near house. It was about 01:00 P.M, when accused every one namely Waseem armed with K.K rifle, accused Shabir @ zulfiqar, Imran, Babar, Shahban, Ilyas,

armed with TT pistols, accused Hazoor Bux, Hussain Bux all by caste Sanjrani came from eastern side. On arrival accused Hazoor Bux and Hussain Bux instigated other accused to commit murder of Javed Ahmed, as he took away their girl. On their instigation, accused Waseem fired K.K rifle shot at Javed which hit on his hand, accused Shabir @ Zulfiqar, Imran and Babar fired TT pistol shots at Javed which hit him on front side, accused Shahban, Naseem caused fire arm injuries to Javed on his chest, accused Illyas caused fire arm injury to Javed on waist. On sustaining fire arm injuries Javed fell down the ground while yelling. Fire shot reports and commotion by complainant party attracted villagers. Upon seeing villagers coming, accused went away towards their houses along with respective weapons. Complainant party saw that Javed had sustained firearm injuries on his ribs, chest, waist, above left hands through and through and blood oozed from wounds and he expired away at spot. Complainant party informed to police of P.S Mouladad about incident. Police arrived there, conducted necessary formalities, removed dead body of deceased to hospital. After post-mortem and funeral ceremony of deceased complainant approached police and lodged FIR.

4. Facts of prosecution case as portrayed in F.I.R. No.03/2023 and 04 /2023 are that the Complainant ASI Abdullah Mirani lodged two separate FIRs on 12.01.2023, at 1030 hours alleging therein that he along with subordinate staff left police station for patrolling. During patrolling, at about 0840 hours they arrived near village Sikander Brohi where received spy information that accused Shahban, Naseem and Hazoor Bux, wanted in FIR No.86/2022, u/s 302, 311, 148, 149 PPC were standing at paka bridge. On such information they proceeded to pointed place, it was about 0900 hours, when complainant party reached at link road leading to Vakro, near paka bridge. Police party saw that three persons standing there, who upon seeing police party tried to slip away, but were apprehended on spot. Due to unavailability of private witnesses, PC Javed Ali and PC Ghulam Nabi acted as mashir. On enquiry, apprehended accused disclosed their names as Shahban S/o Muharram Sanjrani, Naseem S/o Sonaro Sanjrani and Hazoor Bux S/o Bagh Ali. On body search of accused one unlicensed TT pistol with empty magazine was recovered from accused Shahban and one TT pistol with empty magazine was recovered from accused Naseem. Accused Hazoor Bux was found empty handed. Accused Shahban and Naseem disclosed that recovered weapons were used in commission of murder of Javed on 24.12.2022. Thereafter, recovered weapons were sealed on spot and such memo was prepared in presence of witnesses. Police came to police station along with secured weapons and arrested

accused, two separate FIRs bearing Crime No 03 and 04 of 2023 were recorded against an offence punishable under section 23 of Sindh Arms Act 2013.

5. The investigation took its course, investigation officer found sufficient incriminating material against the accused and sent them to stand trial before the court of law, the case was ultimately transferred to the learned trial Court for disposal in accordance with law.

6. The appellants were indicted for charge in referred sessions cases separately, to which they pleaded not guilty and claimed trial. The charge was framed separately but common evidence was recorded in all the cases.

7. At trial prosecution examined PW-1 Complainant Mst. Hazooran, PW-02 mashir/eye witness Budhal, PW-03 Dr. Sohail Soomro, PW-04 ASI Abdullah Momdani, PW-05 ASI Talib Hussain, PW-06 PC Ghulam Nabi Khoso, PW-07 PC Ghulam Nabi Sinyanch, PW-08 SHO Saeed Ahmed Jumani PW - 09 Tapedar Bashir Ahmed, P.W-10 SIP Saifal Jakhro, learned prosecutor closed the side of prosecution for evidence. in offshoot cases PW 04 ASI Abdullah and PW 7 PC Ghulam Nabi were examined.

8. The statements of the accused/ appellants were recorded under section 342 Cr.P.C., wherein they professed innocence; however, did not opt to examine themselves on oath or to lead any evidence in defense.

9. Learned trial Court after hearing the parties through their counsel convicted the appellants as aforementioned.

10. Mr. Habibullah G. Ghori Learned counsel for the appellants contended that the prosecution story as unfolded in the F.I.R. is quite unbelievable as the incident took place on 24.12.2022 at 01:00 p.m., whereas F.I.R. was lodged after two days on 26.12.2022 at 03:00 p.m. He argued that there was no explanation for delay in lodging FIR. He argued that per own contention of the prosecution, that the police were informed about the incident promptly. He contended that the police came to the place of incident promptly, inspected the dead body, prepared inquest report, removed the dead body to the hospital for autopsy, but the complainant did not disclose the facts of the incident to the police. He contended that the parties were inimical to each other, therefore, false implication of the applicants through

consultations and deliberations was more than a mere possibility. He further submits that appellant Shahban and Naseem were arrested on 12.01.2023, whereas the recoveries were allegedly affected from their possession through a joint recovery memo. He contended that the joint recovery memo is not admissible in evidence. He further submits that police again inspected the place of incident, after registration of F.I.R. on 26.12.2022 secured empty shells of TT pistol and K.K. from the scene of offence, whereas it is an admitted fact that the police also visited the place of incident on 24.02.2022 but did not secure empty shells. He further submits that the investigation in the case was conducted prior to the lodgment of F.I.R., as such was in violation of law and police rules. The incident had taken place in broad day light in a village, but no independent person was cited as witness. He argued that all the witnesses were interested and closely related to the complainant. He further argued that P.W Eidan being co-mashir and eye-witness was not examined and he was given up therefore, an inference is drawn that had he been examined, his evidence would have gone averse to the prosecution case. He contended that the blood-stained earth was collected from the place of incident on 26.12.2022. He argued that the alleged recovered empties were sent for the forensic analysis on 19.01.2023 after the alleged recovery of the weapons on 12.1.2023 as such forensic reports were managed. He further argued that the prosecution witnesses contradicted each other on the material points; as P.W-1 Mst. Hazooran has deposed that after sustaining injuries, the deceased was alive, but was in critical condition, P.W-2 Budhal deposed that deceased Javed died instantaneously. He further submits that the ocular evidence was in conflict with the medical evidence as the P.W-3, M.L.O Dr. Sohail deposed that the deceased sustained pellet injuries, meaning thereby that the deceased sustained injuries through a gun type weapon, whereas per prosecution case, all the accused were armed with rifled type weapons and they caused injuries to the deceased through T.T. Pistols and K.K. Counsel further contended that the place of incident is also doubtful as the P.W-Tapedar Bashir Ahmed had deposed in evidence that the place of incident was situated in an abandoned canal, whereas per prosecution, the incident had taken place at the door of the house of complainant in the common street of the village. He prayed that there are serious misreading and non-reading of the evidence on record, therefore, the appellants may be acquitted of the charge. In support of his contentions, he relied upon the case law reported as 2019 SCMR 129 (Abdul Jabbar v/s. The State), 2025 SCMR 45 (Muhammad Akhtar and others v/s. The State and others), 2024 SCMR 1811 (Imran alias Mani v/s. The State), 2024 SCMR 1427 (Muhammad Hassan and another v/s. The State and others), 1995 SCMR 1345

(Tariq Pervez v/s. The State), 1995 SCMR 1030 (Muhammad Irshad and another v/s. The State) and 1999 SCMR 1034 (Asadullah and another v/s. The State).

11. Conversely learned Deputy Prosecutor General so assisted by learned counsel for the complainant submitted that the accused have committed murder of a young boy, son of the complainant by causing firearm injuries in presence of his mother. He argued that there is no ill-will on the part of the complainant to falsely implicate the accused persons as the mother will not substitute the real culprits. He further submits that contradictions in the prosecution evidence are minor in nature and occurred due to passage of time, which is a natural phenomena. He argued that the alleged incident had taken place in the month of December, 2022 and the evidence of the prosecution witnesses was recorded in the month of December 2023. He further submits that it is prerogative of the prosecution to examine any number of witnesses and non recording of evidence of P.W Eidan in no manner favoured defence as evidence of Eidan was in same line as deposed by P.W-1 Hazooran and P.W 2 Budhal. He further submits that six empty shells of T.T. pistol and one empty shell of K.K rifle were secured from the place of incident. He contended that the recovered weapons were sent for the forensic analysis, which matched with the recovered empty shells. He argued that the delay in registration of F.I.R. was plausibly explained as the young boy was done to death by the appellants, complainant was busy in post burial rituals. He argued that the prosecution witnesses were subjected to lengthy cross examination, but remained unison on material points and nothing fruitful came in favour of the appellants. He argued that seven injuries were sustained by the victim and empty bullets equal in number were recovered from the place of incident, which confirmed the prosecution version. He argued that the difference of the place of incident and the sketch so prepared by the Tapedar was of no consequences as it was a corroborative piece of evidence and did not tell the names of accused persons, therefore, any discrepancy in the site map cannot render the prosecution case doubtful. He further argued that the joint recovery memo was prepared as the accused were jointly arrested and the weapons were recovered from their possession, which were sealed separately. He contended that the police officials were as good witnesses as the people from public, therefore, non-association of private witnesses in the recovery proceedings were not fatal to prosecution case. He argued that there was no infirmity or illegality in the impugned Judgments, the evidence of the prosecution witnesses was properly appraised by Learned Trial Court. He prayed for maintaining the conviction.

12. Heard counsel for the parties and appraised the evidence available on record.

13. Admittedly, the incident had taken place on 24.12.2022 at 01:00 PM near the house of the complainant, which was situated at a distance of 13/14 KM from police station. Per narration in the F.I.R., complainant had informed the police about the incident promptly and police arrived at the place of incident at 03:00 PM on same day. Police started investigation of the case, inspected the dead body at 03:00 PM, prepared inquest report, collected last worn clothes of deceased at 1800 hours on 24.12.2022 and sealed the same in presence of the witnesses Budhal and Eidan. Per inquest report the information of the incident was conveyed to police at 02:00 PM on the same day. The dead body was taken to hospital for autopsy at 04:00 PM. Per prosecution record police remained in company of complainant party from 02:00 PM until 06:00 PM in the evening on the day of incident, but the details of the incident were not given to the police. The FIR was recorded on 26.12.2022 with a delay of about two days and no plausible reason was offered for such delay, thus an inference can be drawn that FIR was lodged with deliberations and consultations. Such delayed FIR created serious doubts as to veracity and correctness of the prosecution version. According to the investigating officer (I.O.), he along with other police officials reached at the place of the occurrence upon receiving an information regarding the incident by phone that accused Shahban Sanjrani and others had committed the murder of Javed Ahmed. That was the first information, which was entered in the relevant register maintained in the police station. The investigation officer PW 5 ASI Talib Hussain in his evidence produced Entry No 10 dated 24.12.2024 of daily diary of police station (Exhibit 16 A page 147 of paper book) wherein the name of only one accused Shahban transpired, meaning thereby that initially only accused Shahban was nominated. This information was the complaint of a cognizable offence for incorporation in 154 CrPC register. Police started investigation without recording FIR. Inordinate delay of more than 50 hours in lodging of FIR created doubt in the prosecution story, more particular when in the initial report only one accused was charged and later on the number of assailants increased to nine. The explanation furnished for the delay too was not plausible as the complainant and prosecution witnesses remained in company of police party for whole the day. In absence of any explanation furnished by the complainant Mst. Hazooran and witnesses for not disclosing the facts of the incident to police on the very day, an inference is drawn

that they were not present at the spot and had they witnessed the incident, on arrival of the police they could have straightaway narrated the occurrence and charged the accused for commission of the murder. It can be safely held that the occurrence has not taken place in the mode and manner as alleged by the complainant and PW Budhal. More particularly when the accused were residing in the same village and were well known to the complainant party.

14. This view finds support from the dicta laid down by Honorable Supreme Court in the case of Waqas Ahmed Versus The State reported as 2025 S C M R 1087, wherein it has been held that:

> *7. In this case the occurrence took place on 03.07.2009 at about 3.00/4.00 AM which has been reported by complainant Muhammad Ali (PW.7) at 07.00 AM, after a delay of 04 hours, if counted from 04.00 AM or 03:00 AM respectively. No explanation, much less plausible, has been furnished by the complainant for the said delay. It is settled law that unexplained delay in lodging FIR creates a doubt in the prosecution's case and its benefit has to be extended and construed in favour of the accused. In case titled, Mst. Asia Bibi v. The State and others (PLD 2019 Supreme Court 64), this Court has held that in absence of any plausible explanation, delay in lodging of FIR is always considered to be fatal as it casts suspicion on the prosecution story. In case of Zeeshan alias Shani v. The State (2012 SCMR 428) this Court has observed that delay of more than one hour in lodging the FIR give rise to the inference that occurrence did not take place in the manner projected by prosecution and the time was consumed in making effort to give a coherent attire to the prosecution's case, which hardly proved successful. Same is the view of this Court in case of Muhammad Fiaz Khan v. Ajmer Khan (2010 SCMR 105).*

15. Prosecution evidence was riddled with material contradictions and inconsistencies. PW 01 Complainant Mst. Hazoora deposed that on sustaining injuries deceased was alive and died later on. PW 2 Mohammad Budhal deposed that deceased died on spot instantaneously. PW 1 Mst Hazooran and PW 2 Budhal deposed that deceased sustained three fire shot injuries on front side through and through, two fire shot injuries over chest, one fire shot injury over belly and one fire shot injury over hand. Per Autopsy report deceased sustained all five injuries over and below the chest. In the present case, it is alleged that accused persons

launched attacked upon the deceased and caused him fire shot injuries from a distance of 8 to 9 paces, the complainant party has specified the seat of injury against all the assailants. It is humanly impossible to furnish individual account of the location of each fire shot on the person of the deceased and direction of each fire shot with exactitude. The material discrepancies in the prosecution case create doubt which ought to be resolved in favor of the accused.

16. This view finds support from the dicta laid down by Honorable Supreme Court in the case of Muhammad Riaz and others versus the State and others reported as 2024 S C M R 1839, wherein it is held that:

> *13. From the above-stated facts and circumstances, it is abundantly clear that in this particular case, the prosecution version is burdened/loaded with major discrepancies, which create serious doubts about its authenticity. The prosecution version with regard to the manner of killing, the medical evidence and the recoveries, contradict each other on material points creating serious cracks in the prosecution version. The prosecution has failed to bring on record any convincing material to establish that it was the appellants who had committed the occurrence. It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons as held by this Court in Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857). As the prosecution has failed to prove its case, we find there is no need to ponder the plea of alibi raised by the appellants in the defence*

17. It is pertinent to underline that the medical evidence did not lend support to the prosecution case regarding the kind of weapon used in the commission of crime. It is a settled law that medical evidence is just a corroborative piece of evidence which does not identify the assailant. At the most medical evidence is a supporting piece of evidence because it may confirm the ocular evidence with

regard to the receipt of the injury, its locale, kind of weapon used for causing the injury, duration between the injury and the death. It is case of the prosecution that deceased was fired upon by K.K and pistols which were rifled type weapons, deceased sustained injuries over chest and other parts of the body. Per deposition of PW 03 Dr Sohail deceased sustained pellet injuries meaning thereby that the gun type weapon was used in the commission of crime. Learned Deputy Prosecutor General contended that the MLO had favored the defence under extraneous considerations, but it is an admitted position and matter of record that PW 03 Dr Sohail was not re-examined to clarify this ambiguity. Even no any application was filed before Learned Trial Court complaining that the PW 3 Dr Sohail was won over by the defence. If prosecution considered that the witness was won over, it was better to give up the witness. If prosecution thought it was done deliberately, it could have been rectified by conducting re-examination of the witness by putting him suggestion that he was won over. The postmortem report, the statement of the doctor and his opinion do not support the prosecution case regarding kind of weapon used in the commission of crime. It is a settled principle of law that documentary evidence carries with it a presumption of truth, therefore, there is no reason to disbelieve the postmortem report and the evidence of the doctor, which proves the fact that the deceased did not sustain injuries of pistol or K.K. weapons.

18. Articles 132 and 133 of the Qanun-e-Shahadat Order, 1984 deal with examination of a witness and the different stages of the evidence of a witness. Articles 132 and 133 of the Qanun-e-Shahadat, 1984 read as under:

> ***"132. Examination-in-chief, etc.---(****1) The examination of a witness by the party who calls him shall be called his examination-in-chief. (2) The examination of a witness by the adverse party shall be called his cross examination. (3) The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.*

19. Article 133 of the Qanun-e-Shahadat, 1984 prescribes the order in which the witness is to be examined. It says, the witness shall be first examined-in-chief, then if the adverse party so desires, cross examined, and then, if the party calling him so desires, it can get him re-examined. The aforesaid provision, therefore, lays down a procedure as to how a witness called on behalf of a party is to be dealt with at the trial and the order in which the witness has to be examined by each

party (prosecution and accused) during the trial. It would be conducive to reproduce article 133 of the QSO, 1984 for the ease of reference, which reads as under:

> ***133. Order of examinations.---****(1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. (2) The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. (3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter.*"

20. Since in the cross-examination PW 03 Dr Sohail was questioned about the kind of weapon used in the commission of murder, he opined the same as pellet type, admittedly pellets are the filling material of cartridge used in gun type weapons, which belied the prosecution case that deceased sustained pistol shot injuries. Per deposition of PW 03 Dr Sohail available at page 108 of paper book an opportunity of re-examination was afforded to the prosecution but it was not availed. To clear this material point, the re-examination of the witness was necessary, but prosecution did not conduct re-examination thus opinion of the MLO PW 03 Dr Sohail remained unchallenged.

21. It is also noteworthy that the motive set up by the prosecution had not been proved by it. PW 01 Complainant Mst Hazooran alleged in FIR so also deposed before Trial Court that incident had taken place due to dispute over abduction of girl Shamza, PW 02 Budhal also deposed in the same manner, but during investigation or trial the statement of said girl Shamza was not recorded to establish that she eloped with Javed Ahmed, which resulted in his murder. It is by now settled that the prosecution though is not obliged to prove the motive in each and every case, however, once the motive is set up then it must be established and in case of failure to prove the same, then prosecution must suffer its consequences and not the defence.

22. In the instant case place of incident is also doubtful. PW 01 Complainant Mst. Hazooran and PW 02 Budhal deposed that the assailants committed murder

of deceased Javed Ahmed outside the house. PW 5 Talib Hussain, first investigation officer of the case in reply to a question by defence Counsel deposed that when police party arrived at the place of incident, the dead body was found lying on the ground in the courtyard of house. Per PW 07 Tapedar Bashir Ahmed that he visited the place of incident in presence of eye witness / Pw 02 Budhal and prepared site map with his assistance. He deposed that the Point A in the map denoted the place where dead body was lying. Point A as indicated in the map was a Pithal Karyo Wah 20 feet away from the house of Complainant. Per inspection memo of place of incident Exhibit 13 – D, prepared by IO the place of incident was located just outside the house of Complainant wherefrom six empty shells of Pistol and one empty shell of KK was secured. The variations in the statements of prosecution witnesses render the evidence as not trustworthy. Thus, it can be safely held that prosecution has failed to establish the presence of the eye-witnesses at the spot at the time of occurrence and that they have not furnished straightforward and truthful account of the occurrence. It is by now well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, court should ignore minor discrepancies in the prosecution's evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the prosecution's case, the defence can take advantage of it. While appreciating the evidence of a witness the approach of the Court must be whether the evidence read as a whole rang true. The evidence of a witness cannot be appreciated in piecemeals, as had been done by Learned Trial Court.

23. It is also an admitted fact that on the first day of visit of place of incident by police, no empty shell was secured from the place of incident. The empty shells and blood-stained earth were secured two days after the incident viz 26.12.2022. The alleged recovery of empty shells was also doubtful, as the empty shells and blood were collected outside the house of complainant. The alleged recovery was doubtful for the reason that in such like incidents, the family members, close relatives, kith and kin and friends gather in the funeral rituals of the deceased. The incident allegedly had taken place in front of the house of the complainant, therefore, the availability of empty shells and blood-stained earth at the place of incident for two days was a question mark and leads to an inference that the empty shells were not secured from place of incident but managed to strengthen prosecution case.

24. As far as the alleged recovery of the weapons is concerned, the same is of no consequence. Weapons were allegedly recovered from the possession of appellants on 12.01.2023 after the delay of about 19 days from the date of incident. It was the prosecution case that police party headed by ASI Abdullah Mamdani was on area patrolling, on a tip of that accused required in Crime No.86/2022 were standing at paka bridge near link road leading to Vakro they proceeded to the pointed place. Police party apprehended the accused on spot and recovered unlicensed T.T pistols from the left side shalwar fold of accused Naseem and Shahban. A joint recovery memo was prepared. It is a settled principle that the joint recovery memo was not admissible in evidence. The recovery memo available at page 129 reflects that it was a day time incident and there was every possibility for the accused to escape away, but they did not. The possibility that the weapons were foisted upon the accused to strengthen the prosecution cannot be ruled out, particularly when the recovered empties and case property was sent for chemical analysis on 19.01.2023 jointly and received by the forensic science laboratory on the same day. The safe custody of the arms and ammunition was compromised, as no record was produced to say that the recovered property was kept in safe custody during the intervening period. Since the crime empties were allegedly secured on 26.12.2022 as such should have been sent promptly to the forensic science laboratory for forensic analysis promptly without any wait for arrest of the accused. Prosecution did not examine the in charge of malkhana and PC Ashique Ali who dispatched the recovered weapons to Laboratory for forensic analysis to rule out the possibility of manipulation.

25. This view finds support from the dicta laid down by Honorable Supreme Court in the case of Muhammad Abras Versus the State reported as 2025 S C M R 1145 wherein it is held that:

> *7. In reconsidering the purported recovery of the crime weapon based on the appellant's indication, we note that the crime empties were collected on 03.06.2010 from the scene of the incident, while the alleged recovery of the crime weapon occurred on 16.08.2010. Notably, both items were subsequently received by the Forensic Science Laboratory, Punjab on 03.09.2010 from an individual named Faheem Ahmed No.7685-C, which transpired approximately 18 days after the claimed recovery. In the matter of Nasrullah v. State (2017 SCMR 724), this Court noted that the retrieval of the pistol from the appellant's possession bore no legal significance, as*

> *the laboratory's report revealed that both the recovered pistol and the secured crime empties had been submitted on the same day, thereby casting doubt on the potential for fabrication. In a comparable manner, the samples were dispatched to the laboratory following a considerable delay, which stripped the positive report (Ex.PFF) of any evidentiary significance.*

26. In another case of Muneer Malik and others Versus the State reported as 2022 S C M R 1494 Honorable Supreme Court of Pakistan has held that:

> *Furthermore, the record shows that eight empties of Kalashnikov and six empties of T.T. pistol were recovered from the scene of occurrence on the same day i.e. 17.05.2007 through recovery memo but the said crime empties were neither kept in safe custody nor sent to Chemical Examiner immediately after recovery. The weapons of offence and the crime empties were jointly sent to the office of Chemical Examiner after a delay of more than two months i.e. on 13.07.2007 for which no plausible explanation has been given by the prosecution. In these circumstances, the recoveries are inadmissible in evidence and cannot be relied upon to sustain conviction of the appellants. We, therefore, set aside the conviction of the appellants under section 13(e) of the Arms Ordinance.*

27. To bring guilt of the accused home, not the quantity but quality of the evidence is necessary. In the present case the prosecution evidence failed to pass the test of quality. This court has held time and again that to believe or disbelieve a witness, all depends upon intrinsic value of the statement made by him. There cannot be universal principle that in every case, interested witnesses should be disbelieved or disinterested witnesses be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present on scene of crime and that he is making true statement. The parameters of the appraisal of the evidence of the interested witnesses having animosity are quite different and the evidence in such cases is assessed and appraised with huge caution as in the present case. In the present case even the independent corroboration was lacking but for that account alone the conviction cannot be set aside.

28. The learned trial court lost site of the above important aspects of the prosecution case, which created doubt and dent in the prosecution case. It is an axiomatic principle of law that multiple circumstances were not necessary to

discredit the prosecution story even a single point creating a reasonable doubt in the prudent mind was sufficient to extend benefit of the doubt to the accused, because it is prosecution, burdened to prove its case beyond shadow of reasonable doubt. Re-appraisal of the evidence brings this Court to a candid opinion that the prosecution has failed to establish the accusation of the murder of deceased Javed Ahmed beyond reasonable doubt, therefore, the benefit of such doubt ought to be given to the accused.

29. This view finds support from the dicta laid down by Honorable Supreme Court in the case of Muhammad Nawaz Versus The State reported as 2025 S C M R 1053, wherein it is held that:

> *It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story.*

30. In another case of Abdul Jabbar and another versus The State reported as 2019 SCMR 129 Honorable Supreme Court observed that:

> *It is the settled principle of law that once a single loophole is observed in a case presented by the prosecution much less glaring conflict in the ocular account and medical evidence or for that matter where presence of eye-witnesses is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused."*

31. With due reverence, the case laws relied upon by the Learned Counsel related to the proposition of appreciation of evidence of interested witnesses, were thus distinguishable from the facts and circumstances of the instant case.

32. For what has been discussed hereinabove, I have reached to a firm conclusion that the prosecution has failed to prove its case beyond the reasonable doubt. Benefit of which ought to be extended to the appellants/accused. Consequently, Criminal Appeal No. S-09/2024 (Shahban and 2 others Versus The State), Criminal Appeal No S 10 of 2024 (Naseem Sanjrani Versus The State) and Criminal Appeal No 11 of 2024 (Shahban Sanjrani Versus The State) are allowed. The impugned judgment dated 29.02.2024 passed by Learned Trial Court in

captioned appeals stand set aside. The appellants Shahban son of Muhram, Naseem son of Sonaro and Hazoor Bux son of Bagh Ali are acquitted of the charge in Sessions Case No.216/2023 (Re- The State v/s. Shahban and others) arising out of F.I.R. No.86/2022, registered with Police Station Mouladad for offence under sections 302, 114, 148, 149 P.P.C. Appellant Shahban son Muhram Sanjrani is acquitted of the charge in Sessions Case No.217/2023 (Re- The State v/s. Shahban) arising out of F.I.R. No.03/2023, registered with Police Station Mouladad for offence punishable under sections 23(i) & 25 of Sindh Arms Act, 2013. Appellant Naseem son of Sonaro Sanjrani is acquitted of the charge in Sessions Case No.218/2023 (Re- The State v/s. Naseem) arising out of F.I.R. No.04/2023, registered with Police Station Mouladad for offence punishable under sections 23(i) & 25 of Sindh Arms Act, 2013, The appellants shall be released forthwith if not required for incarceration in any other custody case.

33. The appellants were acquitted of the charge vide short order dated 03.10.2025 and there are the reasons for the same.

Judge

Manzoor
Approved for reporting
Larkana
03.10.2025