IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No. D-33 of 2021
Criminal Confirmation No. D-27 of 2021

***Before*:**
Mr. Justice Shamsuddin Abbasi,
Mr. Justice Ali Haider 'Ada'

Appellant	:	Ghulam Mustafa son of Ghulam Sarwar Kori, *through* Mr. Altaf Hussain Surhayo, Advocate.
The State	:	*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General
Complainant	:	Mst. Ghulam Sakina D/o Wahid Bux w/o Nabi Bux Kori, *through* Mr. Javed Ahmed Soomro, Advocate
Date of Hearing	:	24.09.2025.
Date of Decision	:	01.10.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through this Criminal Jail Appeal, the appellant has assailed the judgment dated 16.09.2021, passed by the learned Additional Sessions Judge-I, Kamber (trial Court), whereby the appellant was convicted in Sessions Case No. 103 of 2013, arising out of FIR No. 38 of 2012, registered at Police Station Drigh, for an offence punishable under Section 302, 148, 149, 337-H(ii), P.P.C. The learned trial Court, upon conclusion of trial, awarded the appellant the sentence of death, to be hanged by the neck till he is dead, and further directed him to pay compensation of Rs. 5,00,000/- (Rupees Five Hundred Thousand only) to the legal heirs of the deceased in terms of Section 544-A, Cr.P.C. As required under Section 374, Cr.P.C, a reference for confirmation of death sentence was also submitted by the learned trial Court along with a copy of the impugned judgment. The appellant, being aggrieved and dissatisfied with the said judgment and sentence, has preferred the instant appeal before this Court.

2. The brief facts of the prosecution case are that on 24.06.2012, at about 10:00 a.m., complainant Mst. Ghulam Sakina along with her brother Allah Rakhio (deceased), her son Ali Murad, and her niece Mst. Asia (daughter of the deceased) proceeded towards the village of their relatives. When they reached near the saloon shop of Sikandar Dakhan, they saw the accused

persons, namely Ghulam Mustafa (appellant) armed with a rifle, Sikandar and Hakeem armed with repeaters, Juman armed with a gun, and Nooral armed with a pistol, who, being annoyed on account of a prior monetary dispute, encircled the deceased and made straight fires upon him. As a result, the deceased fell down and succumbed to the injuries at the spot, while the accused persons fled away. Thereafter, the complainant left the witnesses near the dead body, proceeded to the police station, and lodged the FIR at about 01:00 p.m. on the same day, i.e., 24.06.2012, against the named accused persons.

3. The investigation was carried out in the usual manner; however, due to the abscondence of the accused persons, the challan under Section 512, Cr.P.C. was submitted before the learned trial Court. Upon completion of the necessary legal formalities, the learned trial Court, vide order dated 19.06.2013, kept the case on the dormant file till the arrest of the accused.

4. Subsequently, on 16.06.2021, a supplementary challan against the present appellant was received by the learned trial Court from the concerned Magistrate, as the appellant had been shown to be arrested on 28.05.2021. Thereafter, the learned trial Court supplied the requisite copies of documents to the appellant in compliance with Section 265-C, Cr.P.C. On 24.06.2021, a formal charge was framed against the appellant, to which he pleaded not guilty and claimed to be tried.

5. Thereafter, the learned trial Court recorded the depositions of the prosecution witnesses. PW-1 Mst. Ghulam Sakina (complainant) was examined, who produced the copy of the FIR. PW-2 Ali Murad and PW-3 Mst. Asia (alleged ocular witnesses) were also examined. Subsequently, PW-4 Waseem Ahmed, mashir of various proceedings, appeared and deposed, producing the danishnama, memo of place of incident, memo regarding the dead body, recovery of empties, blood-stained earth, and clothes of the deceased. PW-5 Muhammad Idrees, second Investigating Officer, was examined, who produced relevant roznamcha entries, memo of arrest and recovery, copy of FIR in Crime No. 32 of 2021, memo of place of incident regarding arrest of the accused, and the report of the Forensic Science Laboratory (FSL). Thereafter, PW-6, the mashir of arrest, was examined. PW-7 Dr. Guru Dino, who had conducted the post-mortem examination, was examined and exhibited the lash chakas form and the post-mortem report. Subsequently, PW-8 Mashooq Ali, first Investigating Officer, was examined,

who produced relevant roznamcha entries. PW-9 Arbab Ali was examined and produced the memo of arrest of the accused. PW-10 Shakeel Ahmed and PW-11 Ali Raza, cited as mashirs of arrest, were also examined. Lastly, PW-12 Ameer Ali, Tapedar, was examined and produced the sketch map of the place of incident.

6. After recording the depositions of the above witnesses, the learned Prosecutor closed the side of the prosecution. Thereafter, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C, wherein he professed his innocence and pleaded false implication, praying for his acquittal. Upon hearing the learned counsel for the parties, the learned trial Court passed the impugned judgment dated 16.09.2021, through which the appellant was convicted and sentenced as detailed hereinabove, which judgment is now under challenge in the present appeal.

7. Learned counsel for the appellant, while assailing the impugned judgment, contended that the prosecution case is fraught with major contradictions and material inconsistencies, which have been completely ignored by the learned trial Court. He further argued that the incident allegedly took place in the middle of the city, yet no independent witness from the locality was examined, thereby casting serious doubt upon the veracity of the prosecution version. It was further submitted that there is no specific or individual allegation attributed to the present appellant regarding the commission of the murder; rather, the role assigned to all accused persons is collective in nature. Learned counsel maintained that the prosecution had miserably failed to prove the charge against the appellant beyond reasonable doubt, but despite that, the learned trial Court awarded the extreme sentence of death without appreciating the evidentiary shortcomings. In the alternative, learned counsel submitted that the conviction may at least be converted from death sentence to imprisonment for life.

8. Conversely, learned counsel for the complainant supported the impugned judgment and argued that the learned trial Court had rightly convicted the appellant as he was fully involved in the commission of the offence. He submitted that the prosecution successfully established the charge against the appellant through reliable ocular testimony as well as strong circumstantial evidence. It was further contended that the FIR was lodged promptly, and the motive behind the occurrence also stood fully proved, hence the appellant is not entitled to any leniency. However, learned counsel

for the complainant did not oppose the alternate plea of the appellant's counsel regarding the conversion of sentence from death to imprisonment for life.

9. Learned Deputy Prosecutor General also endorsed the arguments advanced by the learned counsel for the complainant. He further contended that there exists no material inconsistency or contradiction in the prosecution evidence that could justify acquittal of the appellant. According to him, the prosecution had successfully proved its case beyond shadow of doubt, and the conviction and sentence awarded by the learned trial Court call for no interference by this Court.

10. Heard the learned counsel for the parties and perused the material available on record.

11. First and foremost, the prosecution case rests upon the assertion that the incident took place on 24.06.2012 at about 10:00 a.m. According to the complainant, she reached the police station at around 10:30 a.m., however, her FIR came to be recorded at about 01:00 p.m. on the same day, i.e., after an unexplained delay of about two and a half to three hours. This aspect casts a serious doubt upon the veracity of the prosecution version. Once the complainant claims to have approached the police station at 10:30 a.m., then there was no plausible reason for the police to withhold the registration of FIR until 01:00 p.m. No satisfactory explanation has been furnished by the prosecution to justify this delay in setting the law into motion. It is also of significance that the police functionaries themselves did not support the version of the complainant. According to the police record, the complainant approached the police station only at 01:00 p.m., where her statement was recorded. This contradiction between the complainant's stance and the police account further extends the doubt. Even otherwise, if the complainant had actually left the dead body at the spot around 10:00 a.m. and immediately proceeded to the police station, then it remains unexplained as to why she would wait for about three hours before lodging the FIR. Such unexplained delay in the registration of FIR gives rise to the possibility of deliberation, consultation, or even false implication.

Support for this legal position is drawn from the case of **Waqas Ahmed v. The State (2025 SCMR 1087),** wherein the Hon'ble Supreme Court of Pakistan 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).***

12. Furthermore, PW Ali Murad deposed that the dead body was removed from the place of occurrence at around 12:00 noon to 12:30 p.m. Conversely, according to the police, as reflected in the memo of scene of occurrence and memo of securing the dead body, the same was lifted from the spot only at about 02:00 p.m. It is indeed surprising that from 10:00 a.m. to 02:00 p.m. for nearly four hours the dead body of the deceased allegedly remained lying in a busy area, yet no independent person from the vicinity was attracted to the scene nor examined as a witness. Such circumstances render the prosecution case highly doubtful. The Hon'ble Supreme Court in **Khalid Mehmood v. The State (2021 SCMR 810) and Najaf Ali Shah v. The State (2021 SCMR 736)** has categorically held that material discrepancies in ocular and documentary evidence, coupled with unexplained delay in registration of the FIR, are fatal to the prosecution case. In the present case also, the glaring contradictions regarding the time of lodging of FIR, the movement of the complainant, and the removal of the dead body materially shake the foundation of the prosecution story.

13. According to the complainant party, there existed murderous enmity between both sides. In his deposition, PW Ali Murad further stated that even the Nek Mard of the locality had made the complainant side responsible for the murder of a person from the accused side. It is well-settled by now that motive, though relevant, is always regarded as a double-edged weapon, which may be employed either to actually commit an offence or to falsely implicate an adversary. Therefore, when the prosecution itself admits the existence of prior enmity, such motive can equally provide the basis for false

implication of the accused, unless the prosecution substantiates its case through strong, reliable, and independent evidence. In this regard, guidance is sought from a catena of precedents. The Hon'ble Supreme Court of Pakistan in **Manzar Abbas v. The State (2025 SCMR 1024)** reiterated the settled principle that motive may cut both ways and cannot, by itself, form the basis of conviction unless supported by unimpeachable ocular and corroborative evidence. In the present case, the admitted position that there existed a prior blood feud between the parties, coupled with the absence of any independent corroboration, materially dents the prosecution case. The possibility of false implication of the appellant, therefore, cannot be safely excluded.

14. Another significant aspect of the matter is that there is no corroboration of the prosecution story from any independent source. The complainant herself admitted during cross-examination that all the witnesses produced by her were close relatives of the deceased. The incident, as alleged, occurred in front of the saloon of Sikandar Dakhan, yet neither the said Sikandar nor any other person from the locality was cited as a witness by the prosecution. Even the Investigating Officer did not make any effort to record the statements of independent persons present in or around the place of occurrence. In this context, guidance may be sought from the case of **Muhammad Ramzan v. The State (2025 SCMR 762),** wherein the Hon'ble Supreme Court of Pakistan held that where the prosecution withholds an independent witness who is otherwise available, an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984 is to be drawn to the effect that had such witness been produced, he would not have supported the prosecution version. Applying the said principle to the present case, the non-examination of the owner of the saloon or any other independent person from the locality creates a strong presumption that their testimony, if produced, would not have advanced the prosecution case. This omission, coupled with the fact that the ocular witnesses are all closely related to the deceased, further renders the prosecution case unsafe to rely upon without strong corroboration, which is conspicuously lacking in the present matter.

15. The prosecution also relied upon the recovery of blood-stained earth and the last-worn clothes of the deceased. The first Investigating Officer deposed that he had secured such articles from the place of incident and had also issued a letter to the competent authority seeking permission to send the same for chemical examination. However, his deposition ended at this point,

and he did not state anything further regarding whether any reply to that letter was ever received, nor whether the recovered articles were in fact dispatched to the Chemical Examiner. The record also reflects that neither the said letter for permission was produced at trial nor any Chemical Examiner's report was exhibited by the prosecution through any witness. This omission creates a serious gap in the chain of evidence. In this regard, reliance is placed upon the case of **Nadir Khoso and others v. The State and others (2024 YLR 1565).** Accordingly, in the present case also, the non-production of the alleged forensic evidence regarding the blood-stained earth and clothes of the deceased materially dents the prosecution story and strengthens the defence plea of false implication.

16. It is also pertinent to observe that the prosecution has failed to establish the common object or common intention of the accused persons. There is no corroborative evidence to prove the presence of the complainant party at the scene of occurrence, while there are material discrepancies in the chain of timings narrated by the witnesses. The role attributed to the present appellant is not specific in nature. The prosecution case rests on the assertion that all the accused persons indiscriminately fired from their respective weapons, most of which were pellet-based firearms. If indeed five persons had fired simultaneously from such weapons, the natural outcome would have been multiple pellet injuries far exceeding the ten injuries found on the deceased. Yet, the prosecution has not clarified whether each accused fired only a single shot or several shots, nor has it specified the particular injury attributed to any specific accused. The FIR itself is contained in generalized and collective terms, alleging indiscriminate firing by all accused without ascribing any distinct role or injury to deceased. In this context, reliance is placed upon the judgment of the Hon'ble Supreme Court in **Liaqat Ali and others v. The State and others (2021 SCMR 455).** Accordingly, in the present case also, the prosecution's failure to prove common intention or common object, coupled with the collective and vague nature of the allegations, renders the case against the appellant doubtful.

17. The incident is alleged to have been committed in the year 2012, whereas the recovery of the crime weapon on the pointation of the accused is shown to have taken place in the year 2021, i.e., after an unexplained delay of about nine years. Such recovery is not only highly unnatural but also improbable in the peculiar circumstances of the case. It is shown in the record

that the weapon was allegedly secured from beneath a heap of earth at a house which, in the meantime, had already been demolished. The question naturally arises as to how the weapon could remain intact and concealed at such a place for such an extended period of time without being discovered earlier, particularly when the property itself was razed. In these circumstances, the belated recovery of the crime weapon becomes doubtful and cannot be safely relied upon. The Honourable Supreme Court in the case of **Muhammad Jamil v. Muhammad Akram and others (2009 SCMR 120)** has held that when there is an unexplained delay in recovery or where the circumstances of recovery are unnatural, such evidence does not inspire confidence and is liable to be disbelieved. Accordingly, in the present case, the alleged recovery of the weapon of offence suffers from serious doubt and cannot be made a basis for sustaining the conviction of the appellant.

18. As per the prosecution case, the appellant was arrested on 28-05-2021, whereas the recovery of the alleged weapon of offence was shown to have been effected on 02-06-2021, i.e., after an unexplained delay of four days during interrogation. Such circumstances render the recovery highly doubtful and devoid of probative force. It is a settled principle that in order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that an accused person, while in the custody of the police, conveyed specific information or made a statement to the police leading to the discovery of a new fact relating to the commission of the offence, which was not already within the knowledge of the police. Such information or statement is required to be reduced into writing. In the present case, the prosecution has failed to produce on record any such written statement evidencing the disclosure allegedly made by the appellant which led to the recovery of the weapon. Mere discovery of a fact, without proof of the accused's disclosure in the prescribed manner, does not bring the case within the contemplation of Article 40. The Honourable Supreme Court in the case of **Zafar Ali Abbasi and another v. Zafar Ali Abbasi and others (2024 SCMR 1773)** has held that:

> ***5. In order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police. Such information or statement should be in writing and in presence of witnesses. In absence of information or statement from a person, accused of an offence in custody of police officer, discovery of fact alone, would not bring the case of the prosecution under the said Article. According to the prosecution, a***

> ***dagger used in the commission of the offence was recovered on the disclosure and pointation of the appellant. Surprisingly, the I.O. did not record the information received from the appellant in writing, in presence of a witness, while he was in police custody. The prosecution has failed to establish any disclosure from the appellant, therefore, recovery of the dagger, in the circumstances was immaterial.***

Applying the above dictum to the case at hand, the delayed and unsupported recovery of the alleged weapon of offence cannot be considered trustworthy evidence against the appellant.

19. The record further reveals that the empties allegedly secured from the place of occurrence were taken into possession in the year 2012, whereas the crime weapon was allegedly recovered from the appellant in the year 2021. Surprisingly, both the empties and the weapon were dispatched to the Forensic Science Laboratory (FSL) together in 2021. This fact creates serious doubt about the genuineness of the prosecution story, as it clearly demonstrates that the empties were withheld for nearly nine years, awaiting the recovery of the weapon, which is contrary to the settled practice of promptly sending such exhibits for examination. It is a well-established that unexplained delay in sending empties and weapons to the FSL creates the possibility of manipulation and fabrication. Such delayed submission not only offends the principle of safe custody of case property but also strips the positive report of any evidentiary worth. The Honourable Supreme Court in **Muhammad Abras v. The State (2025 SCMR 1145)** has 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.***

In the instant case as well, the belated transmission of the empties (secured in 2012) and weapon (recovered in 2021) to the FSL on the same day raises a strong inference of manipulation. Therefore, the positive report is inconsequential and does not advance the prosecution case in any manner.

20. Furthermore, the prosecution has failed to establish the safe custody of the recovered weapon and crime empties, as well as their safe transmission to the Forensic Science Laboratory (FSL). The record is completely silent regarding any documentation or evidence demonstrating where, how, and in whose custody the weapon and empties remained during the long intervening period. No roznamcha entries, malkhana registers, or other documents were produced to show the chain of safe custody of these articles for such an extended period. The unexplained silence on this crucial aspect casts a serious shadow of doubt upon the authenticity of the exhibits and renders the prosecution case unreliable. Support is drawn from the case of **Fazal Khaliq v. The State (2025 YLR 233).** In the instant case, the prosecution's silence about the nine-year gap in the custody of empties, as well as the absence of proof regarding the safe handling of the weapon, strips the entire recovery evidence and subsequent FSL report of any probative value.

21. During the course of trial, the medical officer who conducted the post-mortem examination categorically stated that he could not determine the kind of weapon used for causing the injuries. The post-mortem report is also silent in this regard. It is a settled principle of law that the scope of medical evidence is limited, it may confirm the cause of death, the nature and seat of injuries, and the kind of weapon used in the occurrence. However, when such evidence remains inconclusive on a material point, it cannot be stretched to fill the gaps left by the prosecution's ocular account. In the present case, since neither the testimony of the doctor nor the post-mortem report established the nature of weapon used, the prosecution's version loses considerable corroborative support from medical evidence. This lacuna renders the case against the appellant doubtful, especially where other circumstances already cast serious suspicion upon the prosecution story. Guidance in this regard may be taken from the judgment of the Hon'ble Supreme Court in **Muhammad Ramzan v. The State (2025 SCMR 762) and Muhammad Masood alias Mithu v. The State (2025 SCMR 888).**

22. Furthermore, it has been observed that the post-mortem report produced in the present case is only a single-page document. It does not contain any detailed determination or explanation of the external examination or the internal examination of the deceased. This is a serious lapse because it is the prime duty of the medical officer conducting the autopsy to meticulously record every observation in accordance with settled medico-legal standards.

Reference in this regard is found in **Chapter 13 (Post-Mortem Examination) of Modi's Medical Jurisprudence, 26th Edition,** which unequivocally clarifies that ***"all the details of the post-mortem as observed by the medical officer should be carefully entered by him on the spot in the post-mortem report."*** The said chapter even provides a specimen of the report of post-mortem examination, which contains specific columns for external and internal examination, condition of the organs, nature and dimensions of each injury, and the probable kind of weapon used. In the case at hand, the absence of such details from the post-mortem report not only reflects a non-compliance with established medico-legal procedure but also weakens the evidentiary value of the report. When the medical officer has neither described the injuries with clarity nor provided the internal findings, it cannot be said that the prosecution case finds reliable support from medical evidence. On the contrary, such deficiencies lend further strength to the argument that the prosecution failed to establish its case beyond reasonable doubt. The report of the post-mortem examination is fully prescribed in *Modi's Medical Jurisprudence and Toxicology*, Chapter supra. For ready reference, the relevant extract is reproduced herein below:

Report of the Post-Mortem Examination

On the body of: Place: Date: Time:

Body identified by police constable: No. and Chaukidar:

Probable age: Height: Probable time since death:

(I) External Examination

- Condition of body as regards muscularity, stoutness, emaciation, rigor mortis and decomposition.
- Marks of identification, especially in the case of the body of an unknown person.
- Eyes.
- State of natural orifices, ears, nostrils, mouth, anus, urethra, and vagina.
- Injuries---nature, exact position and measurements including direction, especially in incised wounds.
- State of limbs, contents of hand if clenched, bones and joints.
- Genitalia, breasts.
- Additional remarks.

(II) Internal Examination

(i) Head and Neck

(a) Scalp, skull bones (vertex).
(b) Membranes.
(e) Vertebrae.
(f) Spinal cord.1

(c) Brain.
(d) Base of the skull.
(g) Neck structures.
(h) Additional remarks.

(ii) Thorax

(a) Walls, ribs, cartilages.
(b) Pleurae, diaphragm.
(c) Larynx, trachea and
(d) Right lung with weight.
(e) Left lung with weight.
(f) Pericardium.
(g) Heart with weight, cavities and valves coronary.
(h) Large vessels. (Size of aorta). bronchi.
(i) Additional remarks.

(iii) Abdomen

(a) Walls.
(b) Peritoneum.
(c) Peritoneal cavity.
(d) Buccal cavity, teeth, tongue.
(e) Oesophagus.
(f) Stomach and its contents.
(g) Small intestine and its possible contents.
(h) Large intestine and its contents.
(i) Liver (with weight) and gall bladder.
(j) Pancreas.
(k) Spleen with weight.
(l) Kidneys with weight and pharynx.
(m) Bladder.
(n) Organs of generation.
(o) Additional remarks with, where medical Officer's deduction from the state and amount of the content of the stomach as to time since death.

23. Another glaring flaw in the prosecution case relates to the investigation proceedings. The record reflects that the initial investigation was conducted by Mashooq Ali (the first Investigation Officer), who deposed that after registration of the FIR, he commenced investigation but was subsequently transferred, where after the investigation was entrusted to ASI Muhammad Idress. Surprisingly, however, the challan in this case was submitted by Inspector Allah Warayo in the year 2012, though he was never shown to have been formally entrusted with the investigation nor was he examined as a witness at the trial. The situation becomes even more contradictory in light of the deposition of ASI Muhammad Idress (the second Investigation Officer), who stated that he had received the file from the first IO on 31-05-2021. This statement raises a serious question that if the first IO was transferred in 2012, how could he hand over the file to the second IO after nearly eight years? The intervening period is left unexplained. This contradiction becomes more acute as the challan is on record to have been submitted by Inspector Allah Warayo in 2012, which clearly suggests that he also acted as an Investigation Officer, yet he was never examined before the Court. This unexplained gap of almost eight years in the chain of investigation, coupled with the omission of Inspector Allah Warayo from the list of witnesses, amounts to a serious lacuna in the prosecution case. The missing link in the investigation not only creates doubt about the fairness of the proceedings but also undermines the credibility of the entire investigation. It is a settled principle of law that

whenever contradictions and doubts arise in the prosecution case, the benefit thereof must always go to the accused. The Honourable Supreme Court in ***Qurban Ali v. The State*** **(2025 SCMR 1344)** has been pleased to reiterate this principle in clear terms.

24. For the foregoing reasons, and after careful appraisal of the entire record, it has come to the fore that the prosecution has miserably failed to establish its case against the appellant beyond the shadow of reasonable doubt. At this juncture, it is also pertinent to address the submission advanced by the learned counsel for the appellant that alternate, the death penalty may be converted into life imprisonment, which submission was not opposed by the learned counsel for the complainant. With respect, we are not inclined to accede to such a proposition. It is trite law that where the prosecution fails to prove its case beyond reasonable doubt, the accused cannot be convicted for any offence merely on considerations of concession. The principle of criminal jurisprudence is clear that it is the duty of the prosecution to prove its case, and failure to do so mandates acquittal. The law does not sanction conviction in doubtful circumstances. The golden principle of criminal justice is that **"it is better that ten guilty persons escape than that one innocent suffers."** This maxim, rooted in centuries of jurisprudence **(*"melius est enim decem nocentes evadere quam unum innocentem condemnari"*),** further enshrines the doctrine that conviction must rest only upon evidence that is unimpeachable, trustworthy, and free of doubt.

25. Accordingly, the impugned judgment dated 16-09-2021 passed by the learned trial Court, whereby the appellant was awarded the death sentence along with other connected convictions, sentences, compensation, and fine, is hereby set aside. The appellant is acquitted of the charge by extending him the benefit of doubt. The Jail Authorities are directed to release the appellant forthwith, if he is not required to be detained in any other custody case. Consequently, the Murder Reference forwarded by the learned trial Court for confirmation of the death sentence is answered in the Negative.

JUDGE

JUDGE