

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Appeal No.S-125 of 2023
Criminal Appeal No.S-126 of 2023

Appellants.

Aurangzeb Khan in Crl. Appeal : Through M/s Noor Hassan Malik and
 No.S-125/2023 and appellant Samandar Ali shaikh, Advocate.
Rashid Umer in Crl. Appeal No.
 S-126 of 2023.

State. : Through Syed Sardar Ali Shah,
 Additional Prosecutor General Sindh.

Complainant : Through Mr.Asif Ali Jatoi, Advocate.
 Bilwal Ali Jatoi.

Dates of hearing: : 10.03.2025

Date of Decision : 10.03. 2025

Date of Reason : 03.04.2025

-.....-

JUDGMENT

Ali Haider ‘Ada’,J;- By means of these Appeals, the appellants Aurangzeb Khan and Rashid Umer have assailed the Judgment dated 27.10.2023 passed by learned Additional Sessions, Gambat in Sessions Case No.680 of 2021, being outcome of FIR No.12 of 2021 U/s 324, 337F(iii), 337F(v), 337H(ii), 148, 149 PPC registered at P.S. Landhyoon filed by appellants whereby the appellant Aurangzeb Khan was convicted and sentenced u/s 324 PPC to undergo imprisonment for ten years (R.I) and for u/s 337F(v) he was convicted and sentenced to undergo R.I for 05 years and as Daman of Rs.50,000/- which shall be payable to PW/injured Abdul Majeed while appellant/accused Rashid Ali was convicted and sentenced u/s

324 PPC to undergo R.I for Ten years and for offence u/s 337F(iii) he was convicted for three years (R.I) and as Daman of Rs.50,000/- which shall be payable to PW/injured Abdul Majeed. However, they were extended benefit under Section 382-B Cr.P.C.

2. The facts of the case in nutshell are that complainant lodged FIR on 05.06.2021, stating that there was dispute between complainant Bilawal Ali Jatoi and accused Aurangzeb Jatoi over distribution of lands. Aurangzeb used to issue threats not to cultivate the lands, otherwise they would not be spared. On 03.06.2021, the complainant alongwith his cousins Aakash Ali, Shahid Hussain and Abdul Majeed were working together in the fields. It was about 6:00 p.m. Accused Aurangzeb with repeater, SAjid Ali with KK, Zamir with KK, Rashid Ali with KK, Iqbal with KK, Gulab with repeater, Barkat with gun, Troohi with Repeater emerged there. They encircled the complainant party. Accused Aurangzeb asked the complainant party since they were restrained not to cultivate the lands but they did not stop therefore, they will cause their murder. Saying so, accused Aurangzeb and Rashid Ali opened direct fires of repeater and KK, respectively upon PW Abdul Majeed with intention to commit his Qatl-i-Amd. The fires hit him on elbow of his left arm and on thigh of his right leg. He fell down on the ground. The complainant party raised cries which attracted vicinity people and on seeing them they ran away by making aerial firing. Thereafter complainant and his PWs shifted injured at Police Station, Landhyoon, obtained letter and shifted injured to hospital for treatment and after admitting the injured complainant lodged FIR.

3. The investigation was completed and after completing investigation the appellants were sent-up for trial. The trial Court framed the charge in which they pleaded not guilty and claimed for trial vide their pleas at Ex.4-A to 5-D respectively.

4. At the trial, prosecution examined complainant Bilawal Ali at Ex.4, he produced FIR at Ex.5-A, PW-2 injured Abdul Majeed at Ex.6, PW-3 MLO Dr. Muhammad Ayoob at Ex.6, he produced letter, provisional MLC, referring letter, X-ray plates, report of radiologist, medical certificate of A.O, Hospital private Ltd. Karachi and final MLC of injured Abdul Majeed at Ex.6-A to 6-G respectively. PW-4 ASI Riaz Hussain (author of FIR) at Ex.7, PW-5 ASI Masood Ahmed at Ex.8, he produced memo of inspecting injuries, roznamcha entries, letter, memo of visiting place of incident and recovery at Ex.8-A to 8-F. PW-6 Manzoor Ali at Ex.9. PW-7 mashir Shahid Hussain at Ex.10 who produced copy of his CNIC at Ex.10-A. After closure of prosecution side the trial Court recorded the statement of accused and after that passed judgment as such assailed the judgment through these appeals. Hence, these appeals.

5. I have carefully heard learned counsel for the parties and scanned the entire evidence available on record.

6. Learned counsel for the appellants submits that there is two days delay in the FIR, as it lacks a plausible explanation. The complainant party received a letter on the same day of the incident, as alleged. The complainant has stated that the injured party was transported to Larkana hospital;

however, there is no documentation substantiating this claim. Moreover, the records from Karachi Hospital only contained a single photocopy of a certificate, indicating a lack of comprehensive documentation. There is a discrepancy between the medical evidence and the testimony of the eyewitness. The police recorded the witnesses' statements after a delay, and, upon examining the injury on the right thigh as alleged, it was determined that no pallet marking was available. Finally, the appellants pray for acquittal.

7. The learned counsel for the complainant as well as Learned Additional Prosecutor General contend that all witnesses provided support for their version of events. The medical evidence demonstrated that the injured party sustained firearm injuries. There is no material contradiction, and enmity is a double-edged sword that can be used against the accused. Finally, request has been made to uphold and maintain the conviction.

8. Heard arguments and perused the material available on record.

9. In order to properly ascertain the entirety of the case, the medical component of the case in conjunction with ocular set must be examined. In essence, the injured sustained injuries as Subject sustained injuries from firearms, specifically from repeater weapons and Kalashnikov. The details of injuries are as under:-

1. A Large irregular punctured wound of about 15.0 x12.0 CM noted at left fore-arm near elbow joint
2. A round punctured wound about 1.0*1.0CM noted on right inguinal region.

As according to the medical evidence no blackening and charring was seen while the fires were made from the distance of about 5/10 feet.

As per prosecution, the Investigation Officer secured ten empties of 12 bore cartridges and 06 empties of KK. It is imperative that this aspect be scanned with a view to medical jurisprudence.

a) The, Chapter 3, Medical Evidence and Medical Witness of Modi Medical Jurisprudence, 26th Edition highlights the basic role of medical practitioner that they give frequently evidence as medical expert, therefore, he has to acquire the habit of making a careful note of all the facts observed by him. In the instant case, the doctor's testimony indicated that he had not made a preliminary record of the examination of the injuries.

b) In Chapter 25, "Injuries by Mechanical Violence," of Modi Medical Jurisprudence, 26th Edition, and the text discusses the characteristics of punctured wounds. It notes that the depth of a punctured wound is greater than its length, whereas in the case of a *gunshot* wound, the length of the wound is small and the depth of the wound is much larger. In this particular instance, uncertainty surrounds the nature of the punctured wound due to a lack of explicit guidelines concerning the characteristics of such wounds. Additionally, the medical evidence is conspicuously silent on this pivotal issue.

c) Further in supra chapter of Modi Medical Jurisprudence, 26th Edition, elucidated that Firearm wounds generally produce two wounds or apertures, namely one of entrance and other of exit of the projectile. When the wound of entrance is present, but not the wound of exit, it means that a bullet is lodged in the body except in those rare cases where a bullet has been coughed out after entering the respiratory passages or lost in the stool after entering the intestinal tract and also where a bullet by coming in contact with a bone is so deflected, as to pass out by same orifice as it entered. If a bullet gets

fragmented inside the body, there may be multiple exist wound and a single entry wound. It is also possible to have multiple wounds of entrance and exit caused by a single bullet when it passes in and out of two portions of the body. The X-Ray Examination is also defined and explained in that chapter, that X-Ray examination is useful in the evaluation of firearm wound:

- (a) To locate the bullet/pellets inside the body;
- (b) To see whether any part of the bullet (projectile) is still in the body;
- (c) To locate for retrieval small fragments deposited inside the body by a bullet that has existed: and
- (d) To identify, sometimes, the type of ammunition or weapon prior to post-mortem
- (e) To see the bullet track inside the body.

In this case, there is an absence of exit wounds from both injuries, which complicates the determination of the location of cartridge components or bullets within the body. It is uncertain whether this information was ascertained by medical officers and subsequently the same was preserved.

It is imperative to note that the doctor's deposition indicated that after examination, the injured was referred to GIMS Hospital Gambat for X-Ray while the complainant party even injured did not disclose such fact in their deposition

The X-ray report indicates the presence of multiple metallic densities in the region of the right hip and pelvis. The Medical officer who examined the injury pointed that the site of injury was located in the right inguinal region. However, given the presence of distinct areas in both regions, a serious discrepancy was observed in their appearance.

The inguinal Region (Groin) Located in the lower abdominal wall, just above the thigh crease. It includes the inguinal canal, which is important in hernias. So far Pelvic Region is concerned, it refers to the entire lower part of the torso, including the pelvic bones, reproductive organs, bladder, and rectum. It is a broader area than the inguinal region. The Medical dictionary of almost defines that Inguinal means pertaining to groin and Pelvis is the large body basin- shaped cavity formed by the innominate bones and sacrum, containing the protecting the bladder, rectum and organ of generation. Therefore, from this perspective, The medical evidence is inconsistent with respect to the seat of the injury, thereby casting doubt on the prosecution's version regarding the manner in which the incident occurred. Reliance is placed upon case of *Khalil Ahmed & Others Vs. The State*, 2025 YLR 116.

10. The complainant's testimony, demonstrates a shift towards a more favorable perspective. The complainant stated that he, along with his witnesses Akash and Shahid, were present at the location where the accused party perpetrated the assault. Following the incident, they proceeded to the police station to obtain a letter of medical treatment. During the entry process at the police station, one Ashiq Hussain reported the incident to the police and got letter as per arrival entry No.11, produced by the Investigation Officer. The complainant did not disclose about the presence of the Ashiq during his deposition. The Investigation Officer did not include Ashiq as a witness. However, the prosecution did not call Ashiq as a witness during trial, despite his status as the first informer of the incident.

11. The ocular set attested to the presence of other witnesses independent of the villagers. Nevertheless, the investigative agency did not record the villagers' account or collect their evidence, as would be required to ascertain the facts independently.

12. According to the prosecution's case, the enmity is self-confessed; Furthermore, the complainant asserts that the FIR pertaining to the murder of a farmer was lodged against their own party by the accused persons. Reliance is placed upon case of *Muhammad Rahim Vs. Bakhat Muhammad & Others 2025 PCr.LJ 383*, as it held by Learned Division Bench of Lahore High Court that “Enmity is double edge weapon that cuts both ways, if, on the other hand, it provides a motive for accused to commit the occurrence in question, on the other hand, it equally provides an opportunity for the first informant to implicate his enmity”.

13. Pursuant to the complainant, the patient was initially transported to the Agra hospital after getting letter from Police, subsequently transferred to the civil hospital in Larkana; and then referred to a Karachi hospital on the following day. The Complainant did not disclose that the attending medical officer at the Agra hospital had referred them for an X-ray at Gambat, though the records indicated that the patient had been referred to Gambat for X-ray. The injured has remained completely silent regarding whether he was examined by a medical officer, referred to a radiologist, or transported to Karachi or Larkana. However, the doctor, in his testimony, stated that at the time of examination, the injured was conscious. It is a matter of great

astonishment that, except for the complainant's statement, there is no record indicating that the injured was referred to Larkana, whereas the doctor testified that the injured was personally shifted to Karachi. The injured did not provide any details regarding the anatomical location of the injuries, which he sustained. The aforementioned case demonstrates significant discrepancies in the prosecution's case. Reliance is placed upon case of ***Muhammad Rahim Vs. Bakhat Muhammad & Others 2006 SCMR 1217***.

14. The property in question consisted of ten empty cartridges and six empties of KK. These items were secured from the site of the incident by the investigation officer on 05-06-2021; and subsequently sent for analysis via road certificate dated 11-06-2021. On same day, the analyzer received the property. However, there are no records available indicating whether the property was either lawfully retained or not, as the records indicate an absence of any entries.

15. At the time of the site visit, the Investigation Officer maintained records of both arrival and departure. However, the arrival entry did not disclose the formalities that were carried out during the visit, as it failed to include such details in the aforementioned arrival record. The rule is unambiguous in this respect. It is imperative to note that the investigation officer also secured empties; therefore, the same should be noted on the entry. The Investigation Officer further stated that the memo of place of incident was prepared by one official WHC, but he was not present at the scene, as affirmed by him. The Rule 22.70 of Chapter XXII, Volume III of

Police Rules 1934 provides mechanism that every article placed in store room shall be entered in register and the removal of any such article shall be noted in the appropriate column.

16. There is two days delay in FIR while the complainant party reached at the day of incident, it is also a question that when the injured was discharge from the Karachi hospital. As, such delay is serious lapse until and unless explained but in instant case, no explanation was provided. Reliance is placed upon case of *Abdul Ghafoor Vs. The State 2022 SCMR 1527* and *Nadeem alias KALA Vs. The State , 2018 SCMR 153*.

17. The complainant party arrived at the conclusion that the injured had sustained an injury, as evidenced by the presence of blood oozing from the wound. This finding was affirmed by the medical officer, who acknowledged, However, the investigation agency or prosecution did not manage to procure any clothing from the injured to serve as a collaborative piece of evidence. Reliance is placed upon case of *Mst. Mir Zalai Vs. Ghazi Khan & Others 2020 SCMR 319*.

18. Once, the Court believed the evidence and convicted the accused while on the other part on same set of evidence acquitted the co-accused on the point that they have no active role, amount to disbelieve the set of evidence, so evidence or material did not read in Toto and such discrepancy is highlighted. Reliance is placed upon the case reported in *PLD 2019*

Supreme Court 527 in which Honourable Apex Court has held in Para 21 as under;

“We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society’s future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury.”

19. In view of above, it is established that the prosecution has failed to establish the case beyond any doubt as it is well settled principal of law that there is not obligatory or compulsory that several circumstances creates doubt, if, any single circumstance creates doubt then benefit should goes to accused. Reliance is placed upon case of Muhammad Riaz ***Vs. Khurram Shahzad & another 2024 SCMR 51.***

20. I have no hesitation to hold that the prosecution has failed to prove it’s’ case against the accused/appellants. Resultantly, these appeals are allowed. Conviction and sentence recorded by the trial court vide judgment dated 27.10.2023 is hereby set aside and appellants namely, Aurangzeb

Khan and Rashid Umer Jatoi are acquitted of the charge. The appellants, who are present on bail, shall have their bail bonds cancelled and their sureties discharged accordingly.

21. The foregoing reasons are rendered in support of the short order dated 10.03.2025.

J U D G E