

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Jail Appeal No. S-11 of 2023

Appellants:

1. Moula Bux
2. Moula Dad.
3. Muhammad Ibrahim.
4. Khushhal.

through Mr. Alam Shar Khan Bozdar Advocate for Appellant No. 01 to 3 and Mr. Achar Khan Gabol Advocate for Appellant No.04.

The State:

through Mr. Raza Muhammad Katohar, Deputy Prosecutor General.

Date of Hearing: 02.06.2025.

Date of Short Order: 02.06.2025.

Date of Reason: 03.07.2025.

JUDGMENT

Ali Haider 'Ada',J:- Through this appeal, the appellants have challenged the judgment dated 14-01-2023, passed by the learned Additional Sessions Judge-II, Ghotki, in Sessions Case No. 289 of 2021, titled The State vs. Moula Bux and others, arising out of Crime No. 21 of 2021, registered at Police Station "B" Section, Ghotki, for offences punishable under Sections 324 and 336-B of the PPC. Through the impugned judgment, the appellants were convicted and sentenced to imprisonment for life, along with a fine of Rs. 1,000,000 (one million) each. In case of default in payment of the fine, they shall undergo simple imprisonment for a further period of two months. Each accused was also directed to pay compensation of Rs. 300,000 to the injured, as provided under Section 544-A of the Criminal Procedure Code. In case of default in the payment of compensation, each accused shall further suffer simple imprisonment for a further period of six months. As far as the benefit of Section 382-B Cr.P.C is concerned, the same was awarded by the learned trial Court.

2. The prosecution case, briefly stated, Mst. Sharifan had contracted a love marriage with Abdul Rehman, the complainant of the case. Mst. Sharifan is the sister of the accused Moula Bux and Moula Dad. Due to this marriage, the accused were allegedly annoyed. On 09-03-2021, the complainant Abdul Rehman, along with his brother Sajawal, was traveling on a motorcycle (driven by the complainant), while another motorcycle was engaged by witnesses

Ghulam Muhammad and Rahib. They were returning from Ghotki to their village, Sardar Khan. At about 7:30 p.m., when they reached Link Road, Qadirpur, three motorcycles suddenly appeared, carrying the accused Ali Hassan (holding a plastic bottle/can), Moula Bux and Moula Dad (armed with pistols), Muhammad Ibrahim (armed with a gun), and one unidentified person. The accused signaled the complainant's party to stop. Due to fear of the weapons, the complainant and others stopped and dismounted from their motorcycles. At this point, Ali Hassan instigated the other accused, and Sajawal (the complainant's brother) responded by asking them not to do anything. However, accused Moula Bux caught hold of Sajawal, and Ali Hassan threw acid on Sajawal's face, chest, shoulders, and back. After committing the offence, the accused fled the scene. The complainant party then approached the concerned police station, obtained a medical treatment letter, and proceeded to the hospital at Ghotki. After receiving first aid, the injured Sajawal was referred to GIMS Burns Ward, Gambat. After shifting Sajawal to the hospital, the complainant lodged an FIR at the police station on 10-03-2021 at about 04:30 p.m. Subsequently, on 01-08-2021, the complainant's further statement was recorded, in which he disclosed the identity of the previously unidentified accused as Khushhal. The case was investigated by two Investigation Officers, who later submitted the challan and sent the accused for trial.

3. The learned trial Court, after completing initial formalities, supplied requisite documents to the appellants/accused and framed charges against them on 16-09-2021. The appellants pleaded not guilty and claimed trial. The prosecution was directed to present its evidence, during which the following witnesses were examined:

PW-1: Intezar Ali (ASI) – He reported the injuries, prepared the injury memo, and issued the medical letter. He exhibited both documents.

PW-2: Dr. Abdul Rauf (Medical Officer) – He examined the injured and exhibited both the provisional and final medical certificates.

PW-3: Abdul Rehman (Complainant) – He narrated the incident and exhibited a copy of the FIR.

PW-4: Sajawal (Injured) – The victim of the acid attack.

PW-5: Ghulam Muhammad (Mashir and eyewitness) – He exhibited the memo of inspection of the place of occurrence (from where the plastic bottle/can was secured) and memos of arrest of accused Moula Bux and Muhammad Ibrahim.

PW-6: Allah Dino (Second Investigation Officer) – Continued the investigation.

PW-7: Sardar Bux (Police Official) – He dispatched the case property to the chemical laboratory in Karachi and exhibited the letter to the Chemical Examiner dated 02-05-2021.

PW-8: Nisar Ahmed (First Investigation Officer) – He exhibited various roznamcha entries, the Chemical Examiner's Report (pertaining to the clothing and the secured acid can), and photographs of the injured.

4. Thereafter, the statements of the accused were recorded under Section 342 CrPC, wherein the appellants denied the allegations, pleaded innocence, and prayed for acquittal. Appellant Muhammad Ibrahim placed on record certain documents in his defense, including an enquiry report conducted by the DSP Complaint Cell, which declared him innocent in connection with the present incident. He also submitted a copy of a judgment from previous litigation wherein some of the present appellants had been nominated as accused but were acquitted, as well as a copy of the Call Data Record. However, none of the appellants opted to be examined on oath under Section 340(2) CrPC, nor they examined any defense witnesses in support of their defense.

5. Thereafter, the learned trial Court, after hearing the arguments of parties through their respective counsel, passed the impugned judgment, convicting and sentencing the appellants as already mentioned. The same is now challenged through this appeal by the appellants.

6. It is pertinent to mention here that a mutual compromise application was filed on 16-04-2024, whereupon this Court, vide order dated 27-05-2024, referred the matter to the learned trial Court with directions to conduct an inquiry regarding the compromise. In compliance with the said order, the learned trial Court submitted its report, stating that during the course of the inquiry, the complainant and the injured recorded their statements and raised no objection to the acquittal of the accused from the offences with which they were charged. Subsequently, on 29-05-2025, the complainant also filed a statement before this Court, affirming that he had no objection to the acquittal of the appellants. Despite this, the Court issued notice to the counsel for the appellants to satisfy on the point that Section 336-B PPC is a non-compoundable offence, and to explain under what authoritative law the compromise could be given effect. In response, on the date of hearing of the appeal, i.e., 02-06-2025, both learned counsel for the parties pressed the appeal on merits, instead of relying on the compromise.

7. Both the learned counsel advanced arguments on merits. The learned defense counsel contended that the main role in the incident is attributed to the absconding accused Ali Hassan, who was specifically alleged to have thrown the acid. It was further argued that the name of the appellant Khushhal was incorporated later through a supplementary statement, which was recorded after an unexplained delay of five months. Regarding the alleged motive, it was submitted that the complainant, Abdul Rehman, had contracted marriage with the sister of some of the accused persons not the injured Sajawal. Therefore, it appears unnatural and improbable that the accused party, harboring enmity with the complainant, would instead attack Sajawal, who had no direct connection to the underlying dispute. On these grounds, the defense prayed for the acquittal of the appellants.

8. Conversely, the learned Deputy Prosecutor General opposed the arguments advanced by the defense counsel. He emphasized that there are specific allegations and active roles attributed to the appellants in the commission of the offence. Furthermore, it was pointed out that a plastic bottle/can was recovered from the place of occurrence, and the chemical examiner's report confirmed the presence of a corrosive substance. Therefore, it was argued that the appellants are not entitled to any concession or benefit, and that the learned trial Court rightly convicted them on the basis of cogent evidence.

9. Heard the arguments advanced by the learned Counsel for the respective parties. The record has been carefully examined, and the evidence has been thoroughly appreciated in the light of the facts of the case and the applicable legal principles. A comprehensive and judicious analysis of all relevant aspects of the matter has been undertaken to arrive at a just conclusion.

10. The prosecution case is based on an incident that allegedly occurred on 09-03-2021 at about 07:30 p.m. On the same night, the complainant party received a medical treatment letter from the police. However, despite the availability of medical evidence and initiation of the medical process, the FIR was not registered until 10-03-2021 at about 04:30 p.m., reflecting an unexplained delay of approximately 20 hours. Interestingly, the police official who prepared the memo of injuries did so on 09-03-2021 at around 09:00 p.m., suggesting that the police were already aware of the incident shortly after it occurred. This delay in lodging the FIR, despite early police involvement, casts

doubt on the truthfulness of the prosecution's version. It also creates a dent in the credibility of the case, as unexplained delays in criminal reporting often indicate afterthoughts, deliberation, or manipulation in naming the accused. This position fortified by judgments of the Hon'ble Supreme Court in case of *Pervaiz Khan and another v. The State* (2022 SCMR 393) and *Ghulam Abbas v. The State* (2021 SCMR 23). As, in case of *Altaf Hussain vs The State* (2020 P Cr.LJ 1419-DB), held that:

12. *The charge against the Appellant is that on 22.4.2013 at about 10:30 p.m. he along with his co-accused Nazir Hussain in furtherance of their common intention trespassed into the house of Complainant Ghulam Muhammad (PW-7) and threw acid on his wife Azizan Bibi and daughters Sania Bibi and Sonia Bibi (PW-12). Subsequently, Azizan Mai and Sania Bibi succumbed to burn injuries. Complainant Ghulam Muhammad (PW-7), Muhammad Aslam (PW-8), Robina Mai (PW-9) and Sonia Bibi (PW-12) furnished ocular account of the incident.*

13. *At the very outset, we have observed that according to the prosecution the occurrence took place at 10:30 p.m. but the matter was reported to the police at 1:30 a.m., i.e., after three hours, and FIR No.174/2013 Exh.PA/1 was registered at 2:00 a.m. although the police station was just six miles from the place of occurrence. There is no explanation for this delay so this Court must scrutinize the evidence with utmost care to obviate possibility of false implication.*

11. The second and equally significant aspect of the case relates to the testimony of police official Intezar Ali (PW-1), who deposed that he received information regarding the injuries sustained by Sajawal and then proceeded to the hospital, where he prepared the memo of injuries after examining and noting the injuries. However, the entire ocular account including the complainant and other prosecution witnesses deposed that immediately after the incident, they approached the police station, where they obtained a letter for medical treatment, and the memo of injuries was prepared at the police station, not the hospital. This contradiction raises a serious inconsistency in the prosecution's version. More importantly, despite the alleged prompt approach to the police station on the same day of the incident, the prosecution failed to produce any entry from the daily diary (roznamcha) reflecting such visit, complaint, or request for medical assistance. The prosecution is completely silent about what was recorded at the police station on 09-03-2021, and more critically, no immediate mention of the incident or identification of the accused was made at that time. This silence and failure to disclose such a crucial detail particularly when the complainant party was allegedly in a position to do so,

casts serious doubt on the authenticity and timing of the FIR, which appears to have been lodged as an afterthought.

12. Under the Police Rules, 1934, all material events are required to be duly recorded in the daily diary. The absence of any such record supports the inference that the FIR and associated documents may have been prepared belatedly and without transparency. This procedural lapse reflects adversely on the credibility and reliability of the prosecution case. The Daily Diary, as prescribed under *Rule 22.48 of the Police Rules, 1934*, serves as a crucial official record maintained by the police for all events, complaints, and procedural actions taken during the course of duty. For reference and clarity, the relevant provision is reproduced as under:

FORM No.22.48(1)

REGISTER NO.11.- THE STATION DAILY DIARY.

STATION_____DISTRICT_____

The following officers were present at morning roll-call_____Sub-Inspector_____
_____Assistant Sub-Inspector_____head constables_____
constables_____mounted head constables_____mounted constables.

The remaining staff were_____on duty_____sick.
Station is_____

under/over sanctioned strength.

Remarks_____

Diary of the above station commencing at_____o' clock on the _____
and ending _ o'clock on the _____

Serial No.	Name of reporter	Substance of report

Signature of officer incharge of police station.

The relevant portion of said Rule is also reproduced below for ready reference:

22.48 - Register No II - The Daily Diary shall be maintained in accordance with section 44 of the Police Act. It shall be in Form 22.48 (1) and shall be maintained by means of carbon copying process. There shall be two copies. One will remain in the police station register and the other shall be despatched to a Gazetted Officer to be designated by the Superintendent of Police or the Superintendent of Police himself every day at the hours fixed in this behalf.

Shortly before the close of each quarter, books containing the proper number of pages ensuring the three months shall be issued to police station by the Superintendent. The Superintendent shall fix the hours at which station diaries shall be daily closed with reference to the hour of despatch of the post or messenger.

(2) The daily diary is intended to be a complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers, but also visits of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.

(3) -----

(underline is for emphasis)

Further reliance is placed upon the case of *Ali Gul Vs The State (2020 M L D 952-DB)*, wherein it was held that:

..... The first is that immediately after the incident the complainant went with 3 or 4 of the others including the two other eye witnesses in this case to Police Station Garho with the body of the deceased and injured Ms. Janaat who they thought was dead. According to the eye-witnesses they knew the accused as he was a co-villager and as such they were able to identify him. However quite astonishingly when they reached the PS with the two bodies not one of the 3 eye-witnesses lodged the FIR against the accused. Instead a Roznamcha entry is made concerning the incident at 23.40 (approx one hour and 40 minutes after the incident) mentioning the incident but not naming the accused and stating that "I will get registered report in detail later on". This begs the question why later on? The complainant and other eye witnesses knew who the culprit was and any other of the eye witnesses present could have taken Ms. Jannat to hospital or lodged the FIR as they were also eye witnesses. In our view the reason why they did not lodge the FIR there and then against the accused has not been adequately explained

(underline if for emphasis)

13. The another important conclusion in this regard is that the injured Sajawal was allegedly targeted in the incident, whereas the motive put forward by the prosecution relates to the marriage of the complainant Abdul Rehman with the sister of the accused persons. It is therefore unnatural that the accused, if truly aggrieved by the marriage, would leave the actual person involved (Abdul Rehman) and instead choose to attack Sajawal, who had no direct

involvement in the marriage or the supposed cause of enmity. This inconsistency weakens the prosecution's version and suggests that the actual motive may have been fabricated or misrepresented. The Hon'ble Supreme Court in case of *Muhammad Nasir Butt and 2 others v. The State and others* (2025 SCMR 662), held that:

11. The motive of the occurrence was stated to be altercation between Muhammad Hamid Amjad (brother of the complainant) and convict Baqir Butt prior to the occurrence by the complainant. Muhammad Hamid Amjad, allegedly present at the crime scene during the occurrence, was neither targeted by the accused nor he received any injury. As per statement of Shumaila (DW-1) the deceased Abid Ali had held her hand in the street, in the meanwhile the convict Baqir Butt (brother of Shumaila) came there and rescued her from Abid Ali and at the same moment Abid Ali made firing on them and she received firearm injuries at her arm. The alleged motive lacks the force necessary to connect the convicts with the commission of the offence. Reliance in this regard is placed on the case of "Muhammad Ijaz v. The State".

(underline is for emphasis)

14. It would be highly relevant to mention here that the motive is a double-edged weapon, which can be used either way or by either side i.e. for real or false involvement. As held by Honourable Supreme Court of Pakistan in case of *Muhammad Hassan and another Versus The State and others* (2024 SCMR 1427), *Muhammad Ashraf alias Acchu v. The State* (2019 SCMR 652).

15. Now coming to the aspect of the recording of statements of prosecution witnesses by the Investigation agency, it is significant to note that Sajawal, the injured, deposed that his initial statement was recorded by the Investigation Officer on 28-03-2021, and his further statement, wherein he disclosed the name of accused Khushhal (who was not named in the FIR), was recorded on 03-08-2021. This means his first statement was recorded after an unexplained delay of 17 days following the registration of the FIR. No plausible explanation has been offered for this delay. Even if the explanation is accepted that Sajawal was admitted at Gambat Hospital, this reasoning does not hold, as the Investigation Officer himself deposed that he recorded Sajawal's statement at Gambat Hospital. Therefore, the delay remains unexplained. Furthermore, the ocular witnesses, including Sajawal himself, clearly stated that he was conscious and in his senses after the incident. This undermines the suggestion that his medical condition prevented the early recording of his statement. The inordinate and unexplained delay in recording both the initial and

supplementary statements raises serious doubts about their credibility. Reliance is placed upon the case of *Muhammad Ikhlas vs The State* (2025 PCr.L.J 57), as held that:

9. The above material aspect of the prosecution case creates a reasonable doubt in respect of receiving injuries by the PW-1 Toor Jan, whereas the testimony of Ghulam Habib (injured) is concerned, his statement under Section 161 Cr.P.C was recorded on 10.10.2022, with delay of one day. To cover such delay, he deposed that after inflicting injury by the appellant on the spot he became unconscious and he regained conscious in the ward of hospital, while the doctor in his cross-examination No.12 stated that "both injured were conscious" it appears that the prosecution has failed to reasonably explain the delay of one day in recording the statement of PW-3 statement under section 161 Cr.P.C. It is settled principle that even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon. Reliance in this respect is to be made on case titled Muhammad Asif v. The State (2017 SCMR 486).

16. So far as the act of the accused persons is concerned, the prosecution version is contradictory in nature. According to the FIR and the testimony of various prosecution witnesses (except the complainant), it was stated that accused Moula Bux and absconding accused Ali Hassan caught hold of the injured, and that Ali Hassan threw acid on the injured Sajawal. However, the complainant later improved his version during his testimony by asserting that it was accused Moula Dad, from the other side, who caught hold of the injured. Such improvements and inconsistencies in assigning specific roles to the accused persons indicate that the prosecution case is not free from doubt and that the witnesses are not wholly trustworthy. Reliance is placed upon the case of *Muhammad Riaz and others vs the State and others* (2024 SCMR 1839) and *Said Rehman vs The State and another* (2025 YLR 632-DB).

17. In the pursuit of uncovering the factual truth, it is an essential responsibility of the Investigating agency to employ modern forensic techniques, including the collection and analysis of fingerprints from any material objects recovered at the scene of the crime. In this case, despite the alleged recovery of a plastic bottle or can used in the acid attack, the investigators made no effort to extract or preserve fingerprint evidence that could have established a direct link between the accused and the recovered article. The failure to engage forensic experts for such investigative procedures demonstrates a clear oversight on the part of the investigating agency. Whether the fingerprints of the accused had been secured and matched with the recovered item, the omission to take such necessary step reflects a significant

lack in the investigative process. In this context, reliance is placed upon the case of *Aqeel Hussain vs The State* (2022 YLR 999-DB), wherein it was held that:

17. Although investigating officer took into possession jug, clothes and terra, all acid stained. These articles were sent to forensic lab for analysis. Report of forensic expert (Exh:PN) divulges that all aforementioned items were stained with sulfuric acid. It would not be out of place to mention that no finger prints were extracted from the metallic jug recovered from the place of occurrence. Recovery of aforementioned articles and forensic report do not connect the present appellant with the commission of crime in question. Even otherwise, recovery of these articles is of no avail to prosecution case when ocular account is unreliable and not worthy of credence.

Further Reliance is placed upon the cases of *Muhammad Faheem vs The State*, (2023 YLR 1084), and *Abdul Manan vs The State* (2020 MLD1477). An, additional, *Rule 25.14 of the Police Rules 1934* specifically provides a procedural mechanism. For ready reference, the relevant provision reads as under:

25.14 Technical assistance in investigation. – (1) Investigating officers are expected to take steps to secure expert technical assistance and advice, whenever such appears desirable in the course of an investigation for purposes of evidence or for demonstration in court.

(2) The Criminal Investigation Department is able to obtain expert technical assistance on many subjects and should be freely consulted in that connection by investigating officers through their Superintendents of Police. When such assistance is required a full report shall be sent to the Assistant Inspector General, Crime and Criminal Tribes, so that he may be in a position to decide whether it is essential to send an expert to the scene of the crime or whether the material to be dealt with should be sent to the expert. In making such reports use should be made of telegraphic and telephonic facilities.

(3) The Criminal Investigation Department, in conjunction with the Finger Print Bureau, undertakes photographic and some other varieties of technical work. In addition it is in contact with technical experts on many subjects, whose services can frequently be obtained for work in connection with criminal investigation. In respect of the examination of hand writing, investigating officers can obtain the services of the Examination of Questioned Documents with the Government of India, through the Criminal Investigation Department. That department is also the channel for obtaining the services of the Inspector of Explosives for Northern India who, as well as advising on explosives generally, can give expert opinion as to whether a weapon has been recently fired, whether certain matter is gunpowder or not, and all questions generally savoring of chemical analysis.

18. Now coming to the aspect of the Chemical Examiner's analysis, it is observed that the prosecution failed to establish the safe and secure transmission of the alleged acid sample. According to the prosecution, the acid can was recovered during the site inspection, and the memo of site inspection was prepared on 10-03-2021. However, the said sample was sent to the

Chemical Examiner on 02-05-2021, after an unexplained delay of 46 days (1 month and 21 days). The prosecution has not provided any plausible explanation for this significant delay, nor produced any evidence to show how the alleged acid was preserved or stored during this period. This gap in the chain of custody raises serious doubts about the reliability of the chemical evidence. Reliance is placed upon the cases of *Mir Muhammad and others vs The State* (2024 PCr.L.J 370-DB), *Shahzaib alias Wadero Feroze vs The State* (2024 YLR 1298-DB) and *Mukhtiar Ali vs The State* (2023 PCr.L.J 662-DB).

19. Even otherwise, the Chemical Examiner’s Report is not conclusive or significant when examined in light of standard forensic principles, particularly those contained in *Modi’s Medical Jurisprudence and Toxicology*. The report merely states that H₂SO₄ (Sulphuric acid) tested positive, without clarifying the melting point, boiling point, Density and Solubility. In *Section 2 (Toxicology) of Modi’s Medical Jurisprudence and Toxicology, under Chapter 2 titled "Corrosive Poisons,"* Sulphuric Acid has been defined. For ready reference, the relevant portion is reproduced as under:

Pure sulfuric acid is a colorless, heavy, hygroscopic, oily liquid, which emits no fumes, when exposed to the air. When mixed with water, it evolves much heat and is reduced in volume. It chars and blackens the skin, cloth and any other organic matter. The portion of the cloth or paper, which comes into contact with the acid is destroyed, leaving a redish-brown stain, which is usually Moist. Similarly, the stain on wood is damp black owing to its charring effect.

Name	Sulfuric acid
Molecular formula	H SO ₄
Melting point	-2 C
Boiling point	327 C
Density	1.84g/mL
Solubility	reacts violently with water
Water soluble in all properties	

20. In the absence of such a significant explanation, it is important to note that the expert in the present case neither opined that any portion of the cloth or material was destroyed due to contact with acid, nor the report provided any details regarding the properties or concentration of the acid, as required under

the standard forensic protocols, including those outlined in *Modi's Medical Jurisprudence and Toxicology*.

21. It is a well-settled principle of Criminal Law that even a single reasonable doubt regarding the guilt of an accused is sufficient to extend the benefit of doubt in their favour; even one credible doubt is enough to justify an acquittal. In this regard, the Hon'ble Supreme Court in *Tariq Mehmood v. The State* (2025 SCMR 780) held that:

According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. Reference in this regard may be made to the cases of 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).

22. Upon a comprehensive appraisal of the evidence on record, and in light of the detailed discussion and legal analysis set out hereinabove, it is evident that the prosecution has failed to discharge its burden of proof to establish the guilt of the accused/appellants. Given the presence of material doubts in the prosecution's case, the appellants are entitled to the benefit of doubt under the settled principles of criminal jurisprudence. Accordingly, vide short order dated 02-06-2025, the appeals were allowed by this Court, the appellants were acquitted of the charges, and the impugned judgment of conviction and sentence, including the compensation awarded by the learned trial Court, was set aside. The appellants were directed to be released forthwith, unless required to be detained in any other case. Accordingly, this judgment sets out the detailed reasoning of the short order of even date.

JUDGE