

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

### Cr. Jail Appeal No. S-123 of 2023

Appellants : Mujahid @ Mujoo son of Mushtaque Chang,

### Cr. Jail Appeal No. S-124 of 2023

: 1) Mujahid @ Mujoo son of Mushtaque Chang,  
2) Abid Ali @ Ajoo son of Sain Bux Khaskheli  
Through Mr. Shabbir Ali Bozdar & Mr. Badaruddin  
Memon, learned Advocates

Complainant : Ghulam Murtaza s/o Ghulam Abbas, Khand  
Through Mr. Yameen Ali Khoso, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 02.10.2025

Date of judgments : 09.10.2025

### **CONSOLIDATED JUDGMENT**

**KHALID HUSSAIN SHAHANI, J.** – These two Criminal Jail Appeals have been filed by the appellants challenging the consolidated judgments dated 26.10.2023 passed by learned II-Additional Sessions Judge, Naushahro Feroze in Sessions Case No. 452/2023 and Sessions Case No.454/19-B/2023. Through the impugned judgment in Sessions Case No.452/2023, appellants Mujahid @ Mujoo Chang and Abid @ Ajo @ Aftab Khaskheli were convicted for offences under Section 302(b) read with Section 34 Pakistan Penal Code and sentenced to imprisonment for life as *Ta'azir* along with compensation of Rs.500,000/- each to the legal heirs of deceased PC Aijaz Ali Khand, with additional convictions under Sections 392, 397, and 337-H(ii) PPC with respective sentences. However, acquitted co-accused Javed on same set of evidence of all charges leveled against him.

2. Through the concurrent judgment in Sessions Case No.454/19-B/2023, appellant Mujahid @ Mujoo Chang was additionally convicted under Section 23(1)(a) The Sindh Arms Act, 2013 and sentenced to rigorous imprisonment for eight years with fine of Rs.100,000/-. Both appeals arise from the same set of facts and evidence, hence are being disposed of through this consolidated judgment.

3. The prosecution theory of the FIR No.111/2023 registered by the complainant Ghulam Murtaza Khand is that his unmarried brother Aijaz Ali, aged about 29/30 years, serving as a Police Constable, had come home on night pass from Sakrand Training Centre and on the morning of 16.04.2023 departed for Mehrabpur town on his CD-70 motorcycle (model 2016) to withdraw salary through ATM and conduct shopping, while the complainant along with relatives Niaz Hussain and Kashif also proceeded to the same town for their business and

after completing their activities, they departed for their village with Aijaz Ali traveling ahead of them on the link road situated on Godho Minor toward Lakha road. According to the complainant's allegation, when they reached near village Fateh Ali Punjabi at about 1:30 PM, four armed persons on two motorcycles crossed them at high speed and forcibly stopped Aijaz Ali, identified as Khursheed Ahmed Banbhan (armed with pistol), Abid alias Ajo Khaskheli (armed with pistol), Mujahid alias Mujoo Chang (armed with Kalashnikov), and Javed Nangore (armed with pistol), whereupon accused Mujahid fired his Kalashnikov to spread terror among gathered public while attempting to rob Aijaz Ali's cash and snatch his motorcycle, and when Aijaz Ali resisted, accused Abid struck him with pistol butt on his head while accused Khursheed Ahmed Banbhan, with intent to commit murder, fired a direct shot from his pistol causing a through-and-through groin injury that proved fatal, following which all four accused fled on two motorcycles (including the snatched one) toward the southern direction, leaving Aijaz Ali to die within sight of his relatives due to abundant blood loss from the firearm injury and butt blow to his forehead, prompting the complainant to immediately inform police who arrived, conducted necessary formalities, arranged post-mortem examination at RHC Mehrabpur, and handed over the dead body for funeral, thus constituting offenses of murder, robbery, and causing hurt committed in collusion by the accused persons.

4. Prosecution theory of FIR No.120/2023 is that on 25.04.2023 at about 1200 hours accused Mujahid @ Mujoo was arrested by police from Chandia Briedge at Burghriia Min curve (*Morr*) in Crime No.111/2023 and recovered an unlicensed pistol of 30 bore and four live bullets, hence the FIR u/s 23-1(a) Sindh Arms Act R/w Section 17 & 21-M of Anti Terrorism Act, 1997 was lodged.

5. Following the registration FIRs, comprehensive investigations were conducted by the police authorities which culminated in the submission of complete challan before the Anti-Terrorism Court Naushahro Feroze, where formal cognizance was taken and charges were framed against the accused persons who pleaded not guilty and claimed trial. The prosecution, in discharge of its burden to establish the guilt of the accused beyond reasonable doubt, examined a total of twelve witnesses before the Anti-Terrorism Court and tendered substantial documentary evidence through various exhibits. The examination commenced with PW-01 PC Ghulam Maroof Chang who testified at Exh.07 regarding the handing over of the deceased's body to the complainant

under proper receipt which was produced at Exh. 07/A, followed by PW-02 ASI Muhammad Hanif Malik who appeared at Exh. 08 and produced crucial documents including the mashirnama of inspection of the deceased's body, Danistnama, mashirnama of securing the last worn clothes of the deceased, roznamcha entries bearing serial numbers 09 and 12, the original FIR, roznamcha entry number 11, and mashirnama of recovery of case property including the motorcycle, all of which were marked as Exh. 08/A through Exh. 08/H respectively. The prosecution then presented PW-03 PC Sikandar Ali Soomro at Exh. 09 who produced multiple documents including the mashirnama of inspection of the dead body of accused Khurshed Ahmed Banbhan who was killed in the alleged encounter, mashirnamas relating to what the defense termed as imaginary arrests of accused Zaheer Chang and Abid @ Ajo Khaskheli, Danistnama of the deceased accused Khurshed Ahmed Banbhan, mashirnama of inspection of Government Vehicle bearing registration number SPC-737, mashirnama of inspection of the place of incident along with recovery of empties, and mashirnama of alleged arrest of accused Abid @ Ajo, which documents were collectively marked as Exh.09/A through Exh. 09/G. The prosecution further examined PW-04 PC Nisar Ali Shar at Exh. 10, followed by PW-05 Dr. Abdul Sattar Shar at Exh. 11 who, being the Medical Officer conducted the post-mortem examination, produced the last *Chakas* Form of deceased Aijaz Ali Khand and the post-mortem report of the deceased which formed crucial medical evidence in the case. Subsequently, PW-06 Niaz Ali Khand testified at Exh.13 and produced several mashirnamas including those relating to inspection of the place of incident, collection of blood-stained soil and empties, arrest of accused Khurshed Ahmed Banbhan, production of documents of the allegedly robbed motorcycle, and arrest of accused Mujahid @ Majoo Chang and Javed Ali Nangore along with recovery of the robbed motorcycle, all marked as Exh.13/A through Exh.13/D, while PW-07 Kashif Ali Khand appeared at Exh.14 and PW-08 complainant Ghulam Murtaza Khand gave his testimony at Exh.15. The prosecution also examined PW-09 Tapedar Waseem Mallah at Exh.16 who produced the original sketch of the place of incident at Exh.16/A, PW-10 PC Irshad Ali Kamboh at Exh.17, and PW-11 Inspector Meer Imdad Ali Talpur who was the Investigating Officer and testified at Exh.18, producing extensive documentary evidence including roznamcha entries bearing numbers 05, 18 and 23, FIR of Crime No.113/2023, additional roznamcha entries numbers 03 and 05, FIR of Crime No. 120/2023, further roznamcha entries numbers 09, 21 and 03, FSL reports and official

correspondence from SSP Naushahro Feroze addressed to the Incharge Sindh Forensic DNA & Serology Laboratory ICCBS University Karachi and FSL Larkana, all of which were marked as Exh.18/A through Exh.18/N respectively. The final prosecution witness PW-12 PC Ayaz Hussain Burdi appeared at Exh.19 and produced entries number 20 and 21 of Malkhana register No.XIX which were marked as Exh.19/A through Exh.19/C, whereafter the learned Assistant Prosecutor General for the State formally closed the prosecution evidence with a statement recorded at Exh.20. Upon completion of the prosecution evidence, the Presiding Officer of the Anti-Terrorism Court Naushahro Feroze proceeded to record the statements of the accused persons under Section 342 Cr.P.C at Exh.21 through Exh.23, wherein all accused professed their complete innocence, claimed false implication, and specifically contended that the complainant and witnesses were related parties with vested interests who had deposed falsely against them, though significantly none of the accused chose to examine themselves on oath under Section 340(2) Cr.P.C nor led any witness in their defense to counter the prosecution allegations. Following the recording of the accused persons' statements under Section 342 Cr.P.C, a significant procedural development occurred when the Presiding Officer of the Anti-Terrorism Court Naushahro Feroze, exercising powers under Section 23 of the Anti-Terrorism Act, 1997, transferred the instant case from the file of the Anti-Terrorism Court to the Court of ordinary jurisdiction specifically to the Honourable Sessions Judge Naushahro Feroze for disposal according to law vide a detailed order dated 01.06.2023. Upon receipt of the case record and proceedings from the Anti-Terrorism Court, the Sessions Judge Naushahro Feroze made over the same to the Court of learned II-Additional Sessions Judge, Naushahro Feroze for trial and disposal according to law, and when the complete record and proceedings were received by the trial court, the complainant filed a formal application under Section 227 Cr.P.C seeking to alter the charge which, after due notice to all parties and hearing arguments, was dismissed by the trial court vide a reasoned order dated 19.07.2023 while taking judicial guidance from the authoritative pronouncement of the Supreme Court in the case titled "*Shahbaz Khan @ Tippu & Others Versus Special Judge Anti-Terrorism Court Lahore and others*" reported as (PLD 2016 SC 1), wherein the apex court had specifically observed that when a case is transferred from an Anti-Terrorism Court to ordinary criminal jurisdiction, the trial of the offence resumes from the exact stage at which it was transferred by the ATC. The complainant, being aggrieved by the dismissal of his application to alter the

charge, challenged the said order before the High Court of Sindh Bench at Sukkur through appropriate proceedings, and according to the submission of counsel for the complainant, the same was dismissed in *limine* without any detailed hearing, whereupon counsel for the complainant submitted that the case should now proceed to final arguments stage, and consequently the learned trial court, after affording full opportunity of hearing to all parties and their respective counsel, proceeded to announce its judgment on 26.10.2023 whereby the accused persons were convicted as detailed hereinabove, thus giving rise to these present appeals before this appellate forum.

6. Learned counsel for the appellants advanced comprehensive arguments challenging the conviction on multiple grounds. The counsel contended that the prosecution case suffers from fundamental contradictions, material omissions, and procedural irregularities that create insurmountable reasonable doubt regarding the appellants' guilt. The counsel submitted that the entire prosecution case is based on fabricated evidence and the convenient elimination of the main accused Khursheed Ahmed through a dubious police encounter. The encounter, according to the counsel, was staged to remove the primary witness who could have exposed the false nature of the case. The counsel emphasized that no postmortem report of the deceased accused Khursheed was produced during trial, despite the preparation of an inquest report under Section 174 Cr.P.C showing multiple bullet injuries. The counsel highlighted a critical contradiction in the medical evidence. Dr. Abdul Sattar Shar, who conducted the post-mortem examination, testified that the deceased received a firearm injury from a distance of 3-4 feet, yet the post-mortem report shows no blackening, burning, or tattooing around the wound. This directly contradicts established principles of forensic medicine, which dictate that firearm injuries from such close range must exhibit these characteristics. The counsel argued that all key witnesses are closely related to the deceased and complainant, making their testimony suspect. The witnesses admitted that all crucial memos were prepared and signed at the police station on a single date rather than at the actual scenes, indicating systematic fabrication of evidence. The counsel pointed out material contradictions in witness statements regarding dates of arrest, recovery of weapons, and mode of transportation of the dead body. The counsel emphasized that the FSL evidence lacks credibility due to significant delays in dispatching crime scene empties to the laboratory. The empties were allegedly secured from the crime scene on one date but were sent to FSL much later along with weapons recovered on different dates, creating

opportunities for manipulation and false implication. The counsel submitted that the prosecution failed to produce any independent witness despite the alleged incident occurring on a public road in broad daylight. The absence of neutral witnesses, combined with the interested nature of prosecution witnesses, renders the entire case suspect. The counsel highlighted numerous procedural violations including failure to conduct proper identification parades, non-compliance with Section 103 Cr.P.C requirements for searches and recoveries, and the systematic preparation of memos away from actual scenes of occurrence. He relied upon the case laws cited at 2024 YLR 1922, 2023 YLR 2117, 2022 YLR 1338, 2021 SCMR 522, 2021, MLD 1319, 2021 P.Cr.L.J 759 and 2016 SCMR 2094.

7. The learned Deputy Prosecutor General defended the conviction by arguing that the prosecution has successfully established its case through consistent ocular testimony supported by medical and circumstantial evidence. The DPG submitted that the relationship between witnesses and the deceased makes them natural rather than interested witnesses, and their presence at the scene is adequately explained by their legitimate business in Mehrabpur town. The DPG contended that the three eye-witnesses, Ghulam Murtaza Khand (complainant), Niaz Ali Khand, and Kashif Ali Khand have provided consistent testimony regarding the core facts of the case. Their identification of the accused and description of the incident, according to the DPG, establishes the prosecution case beyond reasonable doubt. The DPG argued that the medical evidence corroborates the ocular account, with the post-mortem report clearly establishing that the deceased died due to firearm injury. The DPG submitted that minor variations in witness statements regarding peripheral details do not undermine the core prosecution case. The DPG emphasized that the recovery of the weapon used in the crime, along with the FSL report establishing its connection to crime scene empties, provides strong circumstantial evidence supporting the prosecution case. The DPG argued that the FSL examination conclusively proves that the recovered pistol was used in the commission of the offense. The DPG highlighted that the FIR was lodged promptly on the same day as the incident, with specific nomination of accused persons and their respective roles. The DPG argued that no evidence has been produced to suggest any motive for false implication of the accused by the complainant.

8. Learned counsel for the complainant supported the conviction while adding additional arguments to strengthen the prosecution case. The counsel emphasized the heinous nature of the crime, involving the murder of a

police constable in the line of duty, and argued for deterrent punishment. The counsel highlighted that the FIR contains specific role attribution to each accused, demonstrating the reliability of witness testimony. The counsel argued that such detailed nomination immediately after the incident indicates genuine eyewitness account rather than fabricated evidence. The counsel made serious allegations regarding the conduct of the original ATC Presiding Officer, claiming bias against the complainant party and suggesting attempts to sabotage the prosecution case. The counsel submitted that despite such obstacles, the prosecution managed to establish its case convincingly. The counsel emphasized that the case involves the murder of a law enforcement officer and argued that courts should be deterrent in such matters to maintain law and order and protect those who serve to protect society. The counsel argued that the recovery of the deceased's motorcycle from the possession of the accused, along with the FSL evidence linking the recovered weapon to the crime scene, provides strong corroboration to the ocular testimony. The counsel pointed out that the accused failed to examine themselves on oath or produce any defense evidence, indicating their inability to counter the prosecution case. The counsel concluded by urging the Court to uphold the conviction and maintain the sentence awarded by the trial court, emphasizing that any leniency would send wrong signals to criminal elements and compromise public safety.

9. Having heard all learned counsel and examined the evidence comprehensively, the Court now proceeds to evaluate the prosecution case in light of established legal principles and precedents governing criminal jurisprudence.

10. The prosecution commenced its case through P.W-01 PC Ghulam Maroof, who presented himself as a formal witness and testified that on 16.04.2023 he was posted at Police Station Mehrabpur where he received information from the complainant about the present incident, and thereafter along with other police officials proceeded to the scene and transported the dead body to RHC Mehrabpur for post-mortem examination, following which the deceased's body was handed over to the complainant against proper receipt.

11. The prosecution then examined P.W-02 Muhammad Hanif, who testified as an ASI posted at Police Station Mehrabpur and deposed that on the same date he, along with PC Maroof Chang, was available at the police station when information was received from complainant Ghulam Murtaza Khand about the incident, following which he proceeded to the pointed place and prepared various memos including inspection of the dead body in the presence

of mashirs Niaz Hussain and Kashif Ali, securing their signatures on the memo produced at Ex.8/A, thereafter preparing the danistnama of deceased Aijaz Ali at the place of incident in the presence of the same mashirs at 1400 hours on the same date and producing the same at Ex.8/B, securing blood-stained clothes of the deceased under memo at Ex.8/C, and producing copies of two entries bearing numbers 9 and 12 at Ex.8/D and 8/E respectively. However, during his cross-examination, this witness made several damaging admissions that cast serious doubt on the entire prosecution narrative, including his acknowledgment that in the FIR, the specific role of causing injury to deceased PC Aijaz was assigned to accused Khursheed Bhanban who was subsequently killed during a police encounter, his admission that the deceased sustained only one injury which was attributed to the same accused Khursheed Bhanban who was later eliminated, and his confirmation that both mashirs were related to the complainant with mashir Kashif being a resident of the same village where the complainant resides, thereby establishing the interested nature of these crucial witnesses whose signatures authenticate the prosecution's documentary evidence.

12. The evidence of P.W-03 Sikander Ali presents even more troubling aspects that raise serious questions about the authenticity of the prosecution case, as this witness attempted to provide a complete version while Inspector Mir Imdad Talpur allegedly omitted material facts regarding the manner of robbery, assault, and murder upon resistance, simply stating basic facts of the case. This witness deposed that accused Khursheed Bhanban was arrested on 18.04.2023 and agreed to help in the arrest of remaining accused persons, taking police to Banna Garden where an alleged encounter took place wherein Khursheed died due to firing by his accomplices while his associates fled the scene, specifically naming Abid Khaskheli, Zaheer Chang, and Mujahid Chang. The fundamental question that arises from this testimony concerns how this witness could have known the specific names and identities of persons who were allegedly running away from the encounter scene, as there is no explanation of any prior knowledge or source of identification, suggesting either fabrication or supernatural knowledge on the witness's part. Moving further in his examination-in-chief, this witness stated that on 25.04.2023, accused Javed and Mujahid were arrested near Chandio Morio and a memo of such arrest was prepared, with one pistol and four live bullets recovered from accused Mujahid while nothing was recovered from Javed, though significantly no specific number or description of the recovered items was disclosed. He also claimed



that blood-stained mud of the deceased and some empties were recovered from the place of incident, though again no specific number or description of these crucial pieces of evidence was provided, creating ambiguity about the actual nature and quantity of recovered materials. During cross-examination, this witness made admissions that expose the fabricated nature of the alleged encounter, acknowledging that throughout the entire police encounter, no member of the police party sustained any injury, which presents an impossibility given the circumstances described where both police and accused allegedly exchanged 100 shots each from a close distance of 25 paces in open land, yet only the main accused died while all police officials emerged unscathed, as if wearing some magical protective device. The witness further admitted during cross-examination that accused Khursheed was handcuffed when he received injuries, which presents a bizarre scenario where a handcuffed person could engage in extensive gunfight resulting in 100 shots being fired, clearly indicating the fabricated nature of the encounter theory. The witness's admission that he did not know whether deceased accused Khursheed was under judicial remand or not significantly damages his credibility and exposes the casual approach adopted by police officials in handling such serious matters. Most significantly, no postmortem report of deceased accused Khursheed Ahmed was produced during the evidence of all witnesses to verify their claims, with only an inquest report under Section 174 Cr.P.C being prepared showing 6 bullet injuries, which specific details were not mentioned by any witness in their chief examination or cross-examination, creating a gap between documented evidence and witness testimony that suggests deliberate concealment of material facts.

13. P.W-04 Nisar Ali, examined as co-mashir of the previous witness, attempted to identify the culprits of the incident with absolute certainty despite having no previous knowledge about their identification through any source, as nothing emerged during prosecution evidence to explain how he could have known these persons before the incident. During cross-examination, he admitted that in the entire police encounter no police official sustained any injury while only the accused died at the spot, reinforcing the impossible nature of the encounter narrative. This witness stated that there was flood water on four sides of the place where the pistol was recovered, yet photographs available in police records do not show any mud on the weapon, ammunition, or empties, displaying instead very clean weapons, which contradiction exposes the false nature of recovery claims. He further stated that more than 100 shots were fired

and 20 empties were recovered from the place of incident, though this figure appears arbitrary and unsupported by proper documentation. His admission that he did not know whether Khursheed was under legal remand in Crime No.111/2023 demonstrates the lack of proper verification of crucial facts by prosecution witnesses. Most damagingly, he admitted that despite being a member of the arresting police party, he had not actually seen the pistol recovered from the possession of accused Mujahid at the time of recovery, which completely undermines his testimony regarding the arrest and recovery. His reluctance regarding the availability of Register No.XIX further exposes procedural lapses in the investigation, while his denial of false implication appears hollow given the numerous contradictions in his testimony.

14. The medical evidence presented through P.W-05 Dr. Abdul Sattar, who conducted the postmortem examination of deceased Aijaz Ali, reveals fundamental contradictions with established principles of forensic medicine that completely undermine the prosecution's version of events. The doctor testified about finding one bullet entry wound with exit, noting the absence of blackening and burning around the wound despite being asked about the distance of firing during cross-examination, where he stated that the deceased received the firearm injury from a distance of 3-4 feet. This testimony directly contradicts the testimony furnished by P.W Niaz Ali, who in his cross-examination claimed, the accused Khursheed Banbhan caused a single injury to the deceased from distance of one foot, as well as established medical jurisprudence principles as documented in Modi's Medical Jurisprudence and Toxicology (21<sup>st</sup> Edition), which clearly establishes that when a firearm is discharged from a distance of 1-2 feet, blackening occurs around the entry wound. The Supreme Court of Pakistan in *Muhammad Zaman v. The State* (2014 SCMR 749) has authoritatively held that "blackening was found, if a firearm like a shotgun was discharged from a distance of not more than 3 feet", while Parikha's Text of Medical Jurisprudence, Forensic Medicine and Toxicology (8<sup>th</sup> Edition) describes the characteristic features of firearm injuries at varying ranges, specifically noting that at distances of 3-4 feet there must be blackening, searing, tattooing, or at minimum some powder burns around the entry wound. The complete absence of these characteristic features when the medical expert claims the injury was caused from such close range creates an irreconcilable contradiction that suggests either the medical expert lacks proper knowledge of forensic principles or the circumstances of injury are being misrepresented. Furthermore, the medical evidence fails to support the ocular testimony of

witnesses who claimed that accused persons delivered butt blows to the deceased's head, as the postmortem report shows no such injuries, creating another fundamental contradiction between medical findings and witness accounts that damages the prosecution case beyond repair.

15. The examination of P.W-06 Niaz Ali, who is an interested witness related to the deceased, reveals a web of contradictions and material discrepancies that completely shatter the prosecution's credibility. This witness initially testified that four accused persons crossed them at high speed while going toward their village, identifying them as Abid, Khursheed, Mujahid, and one other person, claiming two were armed with pistols while two carried Kalashnikovs, though other witnesses provided different versions of weapon distribution among the accused, creating confusion about the actual armament of the alleged perpetrators. He deposed that accused Khursheed Bhanban fired toward Aijaz who then fell down while the accused fled, and that the complainant immediately informed Police Station Mehrabpur about the incident. In his further testimony, he stated that on 17.04.2023 they were called by Inspector Imdad Ali near Village Fateh Muhammad where two accused traveling on motorcycle were challenged by police, resulting in the arrest of Khursheed Ali and Javed Ali, with one 30-bore pistol being recovered from Khursheed's possession at 2:00 PM, and during his further examination-in-chief he stated that the pistol was secured from the accused's possession at about 2:00 PM on 17.04.2023, producing memo at Ex.13/D which bears the date 25.04.2023. This creates a fundamental contradiction as he initially deposed about the arrest of accused Khursheed and Javed on 17.04.2023, while the memo at Ex.13/D actually relates to the arrest of accused Mujahid and Javed, not Khursheed, and according to documents exhibited, Khursheed was arrested on 17.04.2023 at 1830 hours while the witness claims the arrest time was 2:00 PM, creating multiple layers of contradiction that completely destroy the witness's credibility and reliability. These discrepancies establish that either the arrest of accused Khursheed occurred on 17.04.2023 as claimed by the witness or on 25.04.2023 as shown in prosecution documents, but both cannot be true simultaneously, indicating either false testimony or manipulated documentation.

16. In his further examination-in-chief, this witness claimed to identify three accused persons present in court as the same individuals involved in the incident, while stating he could not identify the remaining accused Khursheed Bhanban who was killed during the encounter, which raises the fundamental

question of how he could fail to identify the main accused who allegedly committed the actual shooting when he claims to have witnessed the entire incident from close proximity. The witness admitted during cross-examination that the complainant and deceased Aijaz were his cousins, establishing his interested nature in the outcome of the case, and again acknowledged the discrepancy that the pistol was recovered on 17.04.2023 but was wrongly mentioned in the memo of recovery dated 25.04.2023, indicating either false evidence or manipulated documents. He made several other damaging admissions including that it was correct to suggest the complainant lodged the FIR after consultation with village elders, which established that the FIR was not a spontaneous report of the incident but rather a calculated document prepared after deliberation and consultation, as held by the Supreme Court in numerous cases including *Muhammad Hassan and another v. The State* and others (2024 SCMR 1427) and *Khial Muhammad v. The State* (2024 SCMR 1490), where such consultations before lodging FIR have been held to cast doubt on the authenticity of the prosecution case. He further admitted that although the pistol was allegedly recovered on 17.04.2023, he had not actually seen the recovery but it was supposedly done by police, and that all memos were prepared and signed by him at the police station rather than at the actual scenes, which admissions completely demolish the prosecution case by exposing systematic fabrication of evidence and procedural violations that render the entire case highly doubtful.

17. P.W-07 Kashif Ali's testimony presents perhaps the most devastating blow to the prosecution case through his candid admissions about the systematic preparation of fabricated evidence. In his examination-in-chief, he stated that the complainant was his relative and that he had not seen the deceased Aijaz on the way while going to Mehrabpur town, claiming that accused Khursheed caused "pistol injury" to the deceased who fell down before the accused fled, though he failed to clarify whether "pistol injury" referred to a butt blow or gunshot, creating ambiguity about the actual mode of injury. He stated that the dead body was shifted in a Mazda vehicle while other witnesses claimed transportation through police mobile van, creating another contradiction in the prosecution narrative. Most significantly, this witness, who is described as a main eyewitness, made comprehensive admissions in his examination-in-chief that expose the fraudulent nature of the entire case by stating: "*We also reached at hospital. All the memos were prepared at police station by police and my signatures were obtained at police station and also*

*obtained signatures of co-mashir Niaz at Police Station on all memos on 16.04.2023 on one and single date. I see memo of place of vardat at Ex.13/A, it bears my signature, same was prepared on 16.04.2023 at police station. I see memo of inspecting the dead body at Ex.8/A, it bears my signature and it was prepared on 16.04.2023 at police station. I see Danishnama at Ex.8/B it was also prepared on 16.04.2023 at police station. I see memo of securing clothes of deceased at Ex.8/C, it was prepared on 16.04.2023 at police station, is also same and bears my signature. I see memo of securing motorcycle at Ex.8/H, it was prepared on 16.04.2023 and my signature was obtained at police station. I see memo of arrest of accused and recovery at Ex.13/D, it was prepared on 16.04.2023 at police station. I see memo securing documents of motorcycle at Ex.13/C, it was also prepared at police station. I also see memo of arrest of the accused at Ex.13/B, it is same, which was prepared at police station on 16.04.2023. I cannot identify accused present in the court. Property present in the court is same."* These admissions establish beyond any doubt that the entire documentary foundation of the prosecution case was fabricated at the police station on a single date rather than being prepared at the actual scenes of occurrence, investigation, arrest, and recovery as claimed in the memos themselves. Such wholesale fabrication of crucial documents has been consistently held by superior courts to be fatal to prosecution cases, as established in numerous precedents including the principle that memos prepared away from actual scenes lack evidentiary value and suggest manipulation to suit a predetermined narrative. The witness's admission that he could not identify the accused present in court further undermines his claimed status as an eyewitness, while his acknowledgment of other irregularities during cross-examination compounds the doubts about his credibility and the authenticity of his testimony.

18. The testimony of P.W-08 Ghulam Murtaza, who is the complainant and allegedly the main eyewitness, presents a detailed account that upon careful examination reveals numerous inconsistencies and improbabilities that seriously undermine its reliability. He testified that he resided in village Ghulam Hyder Khand and that both mashirs Niaz Hussain and Kashif were his close relatives, while deceased Aijaz Ali was his brother who served as a police constable, establishing the interested nature of all key witnesses in the case. He deposed that on 16.04.2023 his brother left for Mehrabpur town to receive his salary from the bank, departing before 9:00 AM on his CD-70 motorcycle (black color, model 2016), while he along with Niaz Hussain and Kashif Ali

also proceeded to Mehrabpur town on his red CD-70 motorcycle, reaching there at about 11:30 AM. He claimed they purchased household articles and clothes from various shops, with specific mention of purchasing green and white colored clothes, two pairs for himself while other witnesses purchased reels and buckram from different shops, waiting in Mehrabpur town for about one and half hours during which the shopkeeper served them tea, though they did not stop for tea or meals on the way. According to his version, they left Mehrabpur town at about 1:00 PM while Aijaz had departed about 10 minutes earlier, and when they reached near village Fateh Muhammad Arain, two motorcycles with four persons crossed them at high speed, identified as Khursheed, Abid, Mujahid, and Javed, claiming accused Mujahid was armed with a Kalashnikov while the other three carried pistols, though he could not identify the company of the motorcycles but described them as red in color. He alleged that the accused attempted to rob Aijaz's cell phone and upon his resistance, accused Khursheed Banbhan caused a firearm injury that hit his body, following which the accused abandoned their motorcycle, took away the deceased's motorcycle, and fled, whereupon he immediately informed police through his cell phone, leading to police arrival and transportation of the dead body to the hospital for postmortem, with the body being handed over to them at about 4:00 PM after which he lodged the FIR at Police Station Mehrabpur. During cross-examination, this witness made numerous admissions that cast serious doubt on his testimony, including that their village was 12 kilometers from Mehrabpur town, they reached there at about 11:00 AM, purchased household articles and clothes from four shops, put 200 rupees fuel from Lodhi Petrol Pump in his motorcycle, and provided detailed geographical descriptions of the incident location including a fish pond on the western side, a shakh on the eastern side, a bridge on the northern side, and railway track on the southern side. He admitted that Aijaz was 180 paces away from them at the time of the incident while accused were very close to Aijaz, and that Fateh Muhammad Arain village was at a distance of 40 paces from the incident site. Significantly, he acknowledged that on the day of incident police secured blood-stained mud and empties from the place of vardat, police prepared the memo of securing the same in his presence at the scene, police stayed at vardat for only about 10 minutes, and that 30 other private independent persons also reached the place of incident, yet none of these independent witnesses were examined by the prosecution, creating a serious gap in the evidence. He admitted that dead body was shifted by police while they separately went on their motorcycle, that he did not know

who took away the motorcycle left by accused from the place of vardat, could not determine the distance between place of incident and hospital, that 8-9 police officials reached at hospital along with more than 100 private people, and that he along with both witnesses stayed at hospital at about 4:00 PM. Most significantly, he admitted that neither his clothes nor those of both witnesses were blood-stained while shifting the dead body from place of incident into the ambulance toward hospital, which contradicts the earlier testimony of P.W-02 who claimed that complainant and witnesses' clothes became blood-stained while transporting the body. He also acknowledged that there were no footprints of the accused available at vardat when the Investigating Officer visited the place, and that he had not seen wheel marks of the accused's motorcycle, which absence of physical evidence at the scene raises questions about the occurrence of the incident as described.

19. P.W-09 Waseem Tapedar's testimony further exposes the weakness of the prosecution case by revealing that the complainant and witnesses failed to disclose crucial details about the positioning of accused persons at the time of incident and the location where empties were lying, admitting that he prepared the sketch of vardat with the help of memo of place of incident and on the pointation of witnesses rather than independent observation, which establishes that even the site plan was based on interested witnesses' statements rather than independent technical assessment. P.W-11 Mir Imdad Ali, who functioned as investigating officer of Crime No.111/2023, complainant of Crime No.113/2023, and arresting officer of multiple accused, presented testimony that contains fundamental contradictions with co-mashir evidence, particularly regarding memo at Ex.13/B which contradicts Ex.13/D as admitted by the co-mashir. During his chief examination, he stated that on 25.04.2023 he arrested two accused persons at about 1200 hours in the presence of mashirs Niaz Hussain and Kashif, securing one TT pistol along with four live bullets from possession of accused Mujahid, producing the entry and lodging FIR No.120/2023, stating that he was both complainant and author of the FIR, and that he sent the pistols and ammunition to FSL examination through PC Irshad Ali, with all materials including arms and ammunition being sent together for forensic examination.

20. The most critical aspect of the forensic evidence reveals systematic destruction of evidentiary value through procedural violations and suspicious delays that render the FSL report worthless in establishing the prosecution case. The prosecution relied heavily upon the evidence of crime weapon and empties

secured from the place of incident that allegedly matched with the crime weapon according to FSL report, but the record reveals that empties were secured from the place of incident on one date while they were dispatched to FSL much later along with the crime weapon which was shown to be recovered on a different date, creating a delay of significant duration between securing the evidence and dispatching it for examination. Such delay in sending case property along with crime weapon has been consistently held by superior courts to destroy the evidentiary value of such evidence, as established in the authoritative pronouncement of *Ali Sher v. The State* (2008 SCMR 707), where the Supreme Court held that delays in dispatching crime scene evidence render forensic reports unreliable. In *Khuda-A-Dad v. the State* (2017 SCMR 701), the Supreme Court specifically held that alleged recovery of firearm weapon from the possession of accused during investigation was inconsequential because admittedly the crime empties secured from the place of incident had been sent to FSL after arrest of accused and recovery of firearm weapon from his possession, establishing that dispatching empties secured from crime scene after arrest of accused is discarded by Superior Courts in various authoritative pronouncements. The Supreme Court recorded similar observations in *Mohammad Irshad v. Allah Ditta and others* (2017 SCMR 142) and in *Haleem v. the State* (2017 SCMR 709), consistently holding that such evidence of recovery has no value in the eyes of law when proper chain of custody and timely dispatch procedures are not followed. The systematic delays and procedural violations in handling forensic evidence create opportunities for manipulation and false implication, rendering the FSL report inadmissible and worthless as supporting evidence for the prosecution case.

21. The cumulative effect of these evidentiary failures, contradictions, and procedural violations creates such substantial doubt about the prosecution case that no reasonable person could conclude the appellants' guilt with the certainty required in criminal law. The medical evidence directly contradicts the witness testimony regarding the mode and circumstances of injury, the alleged encounter appears fabricated based on impossible circumstances admitted by prosecution witnesses, crucial documents were systematically prepared at police station rather than actual scenes as required by law, forensic evidence was compromised through procedural delays that destroy its evidentiary value, interested witnesses provided contradictory accounts that evolved through consultation and deliberation rather than spontaneous reporting, and the systematic elimination of the main accused through a dubious encounter



prevented any confrontation or cross-examination of the person allegedly most responsible for the alleged crime. The prosecution's failure to examine any of the 30 independent witnesses who allegedly reached the scene, combined with the complete absence of physical evidence such as footprints or tire marks at the purported crime scene, further compounds the reasonable doubt that pervades this case. The trial court's failure to properly articulate the case property as required by various landmark judgments of the Superior Courts, as established in cases such as *Qaiser and another v. The State* (2022 SCMR 1641) and *Abdul Ghani v. The State* (2019 SCMR 608), represents another procedural violation that undermines the conviction. In my judicial experience spanning two decades on the bench, I have consistently maintained that the criminal justice system must adhere to the highest standards of evidence evaluation, and when prosecution cases are built upon fabricated evidence, interested witness testimony, compromised forensic materials, and systematic procedural violations, the benefit of doubt must invariably accrue to the accused persons as a fundamental principle of criminal jurisprudence. The present case represents a textbook example of prosecution overreach where the desire to secure conviction has overridden the basic requirements of legal proof, resulting in a case that fails to meet even the minimum standards required for criminal conviction in a civilized legal system. Consequently, these appeals must be allowed and the appellants acquitted of all charges, as the prosecution has comprehensively failed to establish their guilt beyond reasonable doubt.

22. The Supreme Court in *Altaf Hussain v. The State* (2019 SCMR 274) established another crucial principle that "if a set of witnesses is deemed untrustworthy to a certain extent for one accused, the same set of witnesses cannot be considered reliable for the remaining accused, if their evidence cannot be believed". This principle applies with full force to the present case where the systematic elimination of the main accused through a dubious encounter, combined with fabricated documentary evidence and contradictory witness testimony, renders the entire prosecution case untrustworthy for all accused persons. In *Muhammad Imran v. The State* (2019 MLD 685), this Court held that "Once a single loophole was observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution case automatically went in favour of an accused". This principle encapsulates the approach that must be adopted in the present case

where multiple loopholes and lacunae have been established through detailed analysis of the evidence.

23. The constitutional dimension of fair trial has been emphasized in numerous cases, with courts consistently holding that "*No matter how heinous the crime, the constitutional guarantee of fair trial under Article 10-A of Constitution of Islamic Republic of Pakistan, 1973, cannot be taken away from the accused. It is, therefore, duty of the Court to assess the probative value (weight) of every piece of evidence available on record in accordance with the settled principles of appreciation of evidence, in a dispassionate, systematic and structured manner without being influenced by the nature of allegations*". This constitutional mandate requires courts to maintain the highest standards of evidence evaluation regardless of the gravity of allegations or public sentiment. The rule regarding benefit of doubt in Islamic criminal law has additional religious foundation, as observed by courts that it is "based on the high authority of sayings of the Holy Prophet of Islam (Peace Be Upon Him): 'Avert punishments (*hudood*) when there are doubts' and 'Drive off the ordained crimes from the Muslims as far as you can'". This religious injunction reinforces the secular legal principle and provides additional justification for extending benefit of doubt when prosecution cases suffer from material contradictions and procedural violations.

24. Having conducted a comprehensive and meticulous analysis of the entire evidence, documentary materials, legal precedents, and constitutional principles governing criminal jurisprudence in Pakistan, this Court is compelled to conclude that the prosecution has catastrophically failed to establish the guilt of the appellants beyond reasonable doubt. The case presented by the prosecution suffers from such fundamental contradictions, material omissions, procedural irregularities, and systematic fabrication of evidence that no reasonable person could conclude the appellants' guilt with the certainty required by law. The medical evidence directly contradicts the witness testimony regarding the circumstances of injury, the alleged police encounter appears fabricated based on impossible circumstances admitted by prosecution witnesses, crucial documentary evidence was systematically prepared at police stations rather than actual scenes in violation of established legal procedures, forensic evidence was compromised through procedural delays that destroy its evidentiary value according to Supreme Court precedents, interested witnesses provided contradictory and evolving accounts that suggest consultation and deliberation rather than spontaneous reporting, and the convenient elimination

of the main accused through a dubious encounter prevented proper confrontation and cross-examination of the person allegedly most responsible for the crime.

25. The cumulative effect of these evidentiary failures creates such substantial and reasonable doubt that the constitutional guarantee of fair trial mandates the acquittal of the appellants. The prosecution's burden to prove guilt beyond reasonable doubt has not been discharged, and the benefit of this doubt must accrue to the appellants not as a matter of judicial grace but as their fundamental right under the Constitution and established principles of criminal law. The protection of innocent persons from wrongful conviction is a sacred duty of the judicial system that cannot be compromised in pursuit of popular verdicts or administrative convenience.

26. In the exercise of my appellate jurisdiction and after careful consideration of all materials on record, I find that the learned trial court committed grave errors in law and fact by accepting fabricated evidence, overlooking material contradictions, and failing to apply established principles of evidence appraisal. The conviction cannot be sustained on such fragile and contradictory foundation, and justice demands the immediate correction of this miscarriage.

27. Consequently, these Criminal Jail Appeals bearing numbers S-123 of 2023 and S-124 of 2023 are hereby allowed in their entirety. The impugned consolidated judgments dated 26.10.2023 passed by learned II-Additional Sessions Judge, Naushahro Feroze in Sessions Case No.452/2023 and Sessions Case No.454/19-B/2023 are hereby set aside. The appellants Mujahid @ Mujoo Chang son of Mushtaque Chang and Abid @ Ajo @ Aftab Khaskheli son of Sain Bux Khaskheli are hereby acquitted of all charges under Sections 302(b), 392, 397, 337-H(ii) Pakistan Penal Code read with Section 34 Pakistan Penal Code, and appellant Mujahid @ Mujoo Chang is additionally acquitted of charges under Section 23(1)(a) The Sindh Arms Act, 2013. Both appellants shall be released forthwith from custody unless their detention is required in connection with any other case.

**J U D G E**