JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:
Mr. JUSTICE OMAR SIAL
Mr. JUSTICE MUHAMMAD HUMAYON KHAN

Criminal Jail Appeal No.D-51 of 2022
Confirmation Case No.06 of 2022
[Khan Muhammad & another v The State]
Criminal Jail appeal No.S-299 of 2019
[Muhammad Khan v. The State]
Criminal Jail Appeal No.S-301 of 2019
[Khan Muhammad v. The State]

Appellants	:	Khan Muhammad son of Muhammad Hashim Leghari and Muhammad Khan son of Muhammad Moosa Leghari through Mr.Muhammad Saleem Laghari, Advocate.
Respondent	:	The State through Mr. Altaf Hussain Khokhar, Deputy Prosecutor General, Sindh.
Date of Hearing	:	10.11.2026
Date of Judgment	:	19.11.2026

JUDGMENT

MUHAMMAD HUMAYON KHAN, J. — Through this jail appeal, the appellants Khan Muhammad and Muhammad Khan challenge the judgment dated 26.04.2022 of the learned Vth Additional Sessions Judge/Model Criminal Trial Court, Shaheed Benazirabad, in Sessions Case No. 60 of 2016, arising out of the FIR bearing Crime No.180/2015 lodged at Police Station Sakrand for the offence punishable under sections 302, 427, 337-H (ii), 147, 148, 149 PPC. By that judgment both appellants were convicted under section 302 (b) read with section 149 PPC for the *qatl-i-amd* of Zulfiqar Ali and Ali Asghar. Each was sentenced to death on two counts, subject to confirmation by this Court, and ordered to pay Rs.300,000/- each as compensation under section 544-A Cr.P.C. to the legal heirs of each deceased. They were also convicted and sentenced under section 148 PPC and section 337-H (ii) PPC. The learned trial Court has sent a reference under section 374 Cr.P.C. for confirmation of the death sentences, numbered as Confirmation Case No. 06 of 2022. We decide

the appeal and the reference together as well as Criminal Jail Appeals Nos.299 and 301 of 2019 being offshoot cases of the main crime.

2. The prosecution case is that the complainant Anwar Khan Rahu and the appellant Khan Muhammad, a serving soldier, had an old dispute and a case between them was pending before the Civil Court at Sakrand. At about 1030 hours on 05.12.2015, the complainant was travelling with others in a white Suzuki Cultus car towards their lands. His brother Zulfiqar Ali was driving, his maternal cousin Ali Asghar sat in the front seat, and he, Mashooque Ali and Javed Ali sat behind. When they reached the National Highway near Nakur Shaakh, Deh Sabu Rahu, Taluka Sakrand, they were confronted by the appellants and the absconding accused Ghulam Sarwar, Muhammad Hashim and Abdul Majeed, all armed with pistols, with four unidentified companions. The accused fired at the occupants of the car. Khan Muhammad's shots struck Zulfiqar Ali on the back of the head and the back, and others struck Ali Asghar on the chest and arms. Zulfiqar Ali died on the way to hospital. Ali Asghar was referred onward from Taluka Hospital, Sakrand and died on the way. After the post-mortem examinations the complainant lodged the FIR at about 1900 hours on 06.12.2015.

3. Khan Muhammad was arrested on 07.12.2015, and a pistol with two live rounds was recovered from him, for which separate FIR bearing FIR No.181/2012 was registered; while, Muhammad Khan was arrested later with a pistol, for which a separate case bearing FIR No. 252 of 2017 was registered. Ten pistol empties and six cartridge empties were secured from the place of incident. The Forensic Science Laboratory reported that the pistol empties had been fired from the pistol recovered from Khan Muhammad.

4. The procedural history is important. At the first trial, by judgment dated 20.09.2019, the learned trial Court convicted both appellants under section 302 (b) PPC and sentenced them to imprisonment for life. The appellants filed Criminal Jail Appeals Nos.S-299 and S-301 of 2019, and the complainant filed Criminal Revision Application No.40 of 2019 seeking enhancement. By judgment dated 09.03.2021, this Court set aside the sentencing part of that judgment. It held that no specific and sound reason had been assigned for awarding the lesser punishment, in breach of section 367

(5) Cr.P.C., and remanded the case for the judgment to be re-written after hearing the parties. On remand, after hearing both sides, the learned trial Court passed the impugned judgment and awarded the sentence of death. The absconding accused remain at large, and the case against them has been kept on the dormant file.

5. PW-1 Dr. Amjad Hussain, Medical Officer at Taluka Hospital, Sakrand, was examined at Ex. 09.

- **Zulfiqar Ali:** he conducted the post-mortem examination of Zulfiqar Ali on 05.12.2015. He found a firearm entry wound on the back of the head, with its exit through the face fracturing the palate and teeth. He also found a firearm wound on the back of the upper left chest, with an exit near the left nipple. On internal examination, the occipital bone was fractured, the brain matter and cerebral vessels were ruptured, the left lung was punctured, the heart was ruptured, and the chest cavity was full of clotted blood.

- **Ali Asghar:** he found firearm entry and exit wounds through the chest cavity at the left axilla and chest, the left deltoid region, the right upper arm and the right forearm. The left lung was ruptured and the chest cavity was full of clotted blood.

- **Cause of death:** in both cases, shock and haemorrhage from the firearm injuries. All the injuries were ante-mortem, and the post-mortem reports are Ex. 09-B and 09-D.

  His evidence was not seriously challenged in cross-examination.

6. PW-2 Anwar Khan Rahu, the complainant, was examined at Ex. 10. He described the old dispute with Khan Muhammad, the journey, and the attack in line with the FIR, naming each assailant with his weapon and the part of the body his shots struck. In particular, he attributed to Khan Muhammad two pistol shots at Zulfiqar Ali, one striking the back of his head and one the back of his shoulder. He also attributed to the accused shots striking Ali Asghar on the chest and arms. He described the shifting of the injured to hospital and their deaths. He was lengthily cross-examined, but his account of the occurrence was not shaken. He accepted the earlier litigation between the parties.

7. PW-3 Mashooque Ali, eye-witness, supported the complainant on every material particular: the time, the place, the assailants, their weapons and the shots each fired. He identified both appellants in Court. He accompanied the injured to hospital, and he was the one who informed the police. His cross-examination produced minor variations about the damage to the car and the movements of the party after the incident, but nothing touching the core of his account.

8. The official witnesses included the Tapedar, who prepared the sketch of the place, and ASI Sabir Hussain Gopang, who reached the hospital, prepared the memos of the dead bodies, and inspected the place of incident. He secured blood-stained earth, ten pistol empties and six cartridge empties there (Ex. 13/F).

9. The Investigating Officer deposed to the arrest of Khan Muhammad on 07.12.2015 and the recovery from him of a pistol with two live rounds, in the presence of mashirs, as recorded in the memo Ex. 14/A. He produced the chemical examiner's report (Ex. 15/C), which found the earth and clothes stained with human blood. He also produced the ballistic expert's report (Ex. 15/D), which found that the empties recovered from the place of incident were fired from the pistol recovered from Khan Muhammad.

10. The eye-witness Javed Ali was given up by the prosecution. In their statements under section 342 Cr.P.C., the appellants denied the allegations and claimed false implication because of enmity. They produced photocopies of earlier FIRs and other papers. They neither gave evidence on oath nor led defence evidence.

11. Mr. Muhammad Saleem Laghari, learned counsel for the appellants, contended that the appellants were falsely implicated because of long-standing enmity and pending litigation between the families. He made the following points:

- The eye-witnesses are interested relatives of the deceased, and no independent witness was examined, although the occurrence took place on a national highway.
- The FIR was lodged after about a day and a half, which suggests consultation.

- The car in which the deceased were travelling was neither taken into possession nor shown in the charge sheet, which makes the basic story doubtful.
- There are contradictions between the witnesses, and between the ocular account and the sketch of the place of incident.
- The recovery of the pistols was not witnessed by any private person, and its identification was doubtful.
- Khan Muhammad is a serving soldier and should have been tried under army law.
- In any event, the trial Court had itself found reasons to award imprisonment for life at the first trial, and the sentence of death was not warranted.

He prayed for acquittal or, alternatively, for reduction of the sentence.

12. Mr. Altaf Hussain Khokhar, learned Deputy Prosecutor General, supported the impugned judgment and the reference. He contended that two persons were killed in broad daylight in the presence of eye-witnesses who were travelling in the same car, and whose presence at the scene is natural and unshaken. The witnesses named the appellants with specific roles in a promptly reported occurrence, he argued, and the medical evidence fully corroborates the nature and location of the injuries. He added that the recovery of the pistol from Khan Muhammad is linked to the crime empties by a positive ballistic report, and that the motive of previous enmity stands proved. He submitted that no mitigating circumstance exists, and that this Court had already found the earlier award of life imprisonment unsupported by reasons. He prayed for dismissal of the appeal and confirmation of the death sentences.

13. Heard. Perused. The questions for determination are the following:

- whether the prosecution proved beyond reasonable doubt that the appellants, as members of an armed unlawful assembly, caused the deaths of Zulfiqar Ali and Ali Asghar on 05.12.2015;
- whether the objections raised on behalf of the appellants create a reasonable doubt;
- whether the trial Court had jurisdiction to try the appellant Khan Muhammad; and
- whether the sentence of death is the appropriate sentence, so that the reference for confirmation should be answered in the affirmative.

14. In a reference for confirmation of a sentence of death, this Court is not confined to the grounds urged by the appellants. Section 376 Cr.P.C. requires us to examine the entire evidence for ourselves. We must satisfy ourselves both that the guilt of each appellant is proved beyond reasonable doubt and that the sentence of death is the appropriate sentence. We have undertaken that exercise with the care that the gravity of the sentence demands.

15. The Medical Officer, PW-1, conducted the post-mortem examinations within hours of the occurrence. On Zulfiqar Ali he found a firearm entry wound on the back of the head, with its exit through the face, a fractured occipital bone and ruptured brain matter. He also found an entry wound on the back of the upper left chest, puncturing the lung and rupturing the heart. On Ali Asghar he found entry and exit wounds through the chest cavity at the left axilla, with a ruptured lung, and further wounds on the left deltoid, the right upper arm and the right forearm. In both cases he attributed death to shock and haemorrhage from firearm injuries, all of them ante-mortem.

16. None of this was seriously challenged in cross-examination. The deaths of Zulfiqar Ali and Ali Asghar by firearm injuries are therefore proved beyond doubt. The medical evidence cannot, however, tell us who fired. As the Supreme Court explained in ***Muhammad Hassan v The State 2024 SCMR 1427***, medical evidence can establish the nature, seat and cause of injuries but cannot identify the assailant. That question turns on the ocular account.

17. The ocular account is given by the complainant, PW-2, and Mashooque Ali, PW-3. Both were travelling in the same car as the deceased, at about 1030 hours, on their way to their own lands. Their presence at the scene is therefore natural. They are not chance witnesses who have to explain why they happened to be there, for the journey was their own and the deceased were their fellow passengers. The occurrence took place in broad daylight, at close range, on a highway, and the assailants were members of a family well known to the witnesses because of a long-standing dispute. There is no room in these circumstances for mistaken identity.

We have examined the evidence of both witnesses side by side. They agree on the following:

- the time and place of the occurrence and the seating of the occupants of the car;
- the names and number of the assailants, and the weapon carried by each;
- the shots attributed to each appellant and the part of the body each struck; and
- the shifting of the injured to hospital and their deaths.

18. Their account of Khan Muhammad's role, two pistol shots at Zulfiqar Ali striking the back of his head and the back of his upper body, is precise. It is matched exactly by the entry wounds the Medical Officer found. Both witnesses were cross-examined at length, and nothing was elicited that touches the core of their account. The variations pointed out relate to the movements of the party after the occurrence and the damage to the car. Such variations are to be expected from truthful witnesses recalling a sudden and traumatic event years afterwards, and they do not go to the root of the case.

19. The principal attack on the ocular account was that the witnesses are relatives of the deceased and hostile to the appellants. The law on this point is settled. A witness does not become unreliable merely because he is related to the deceased. An interested witness, in the sense that calls for caution, is one who has a motive of his own to implicate the accused falsely: ***Feroze Khan v The State 2002 SCMR 99***. In ***Ijaz Ahmad v The State 2009 SCMR 99***, the Supreme Court held that the testimony of a related witness is not to be rejected on that ground, but is to be scrutinized with care. If found truthful on that scrutiny, it may be relied upon. The Supreme Court has also held that the evidence of a single witness may sustain a conviction where it is of a quality that inspires confidence: ***Farooq Khan v The State 2008 SCMR 917***. Here there are two such witnesses, and they corroborate each other.

20. Enmity is a double-edged weapon. It explains why the appellants attacked the complainant's family, and it might in another case supply a reason for false implication. But no witness has a reason to let the real killers of his own brother and cousin go free and to

substitute others for them. The defence produced photocopies of earlier FIRs to prove the enmity. They prove only what the prosecution itself asserts, that the families were at odds. They show no reason for these witnesses to name the appellants falsely. The learned trial Court rightly applied the principle, stated in ***Niazuddin v The State 2011 SCMR 725***, that confidence-inspiring direct evidence may on its own sustain a conviction for murder.

21. The occurrence took place on a national highway, and no independent witness was examined. In cases arising from feuds between families, members of the public are seldom willing to come forward and give evidence. The law requires the quality of evidence, not its quantity, and the prosecution is not bound to produce every person who may have seen the occurrence. The eye-witness Javed Ali was given up, but his evidence would only have repeated the consistent account of two eye-witnesses whom we have found reliable. The presumption under Article 129 (g) of the Qanun-e-Shahadat Order, 1984 is permissive, not mandatory. We decline to draw it in these circumstances.

22. The occurrence took place at about 1030 hours on 05.12.2015, and the FIR was lodged at about 1900 hours the next day. Learned counsel argued that the delay shows consultation. In ***Muhammad Asif v The State 2008 SCMR 1001***, the Supreme Court held that an unexplained delay in reporting a crime seriously undermines the prosecution case, because it leaves room for deliberation and false implication. The question is therefore whether the delay here was explained.

23. The record shows that it was. The two injured were taken to Taluka Hospital, Sakrand. Ali Asghar was referred onward and died on the way, and post-mortem examinations were then conducted on both deceased. The police were not kept in the dark. ASI Sabir Hussain Gopang reached the hospital on the day of the occurrence and prepared the inquest papers, and he inspected the place of incident and secured the empties. The failure to record the FIR at that stage was a failure of the police to perform the duty imposed by section 154 Cr.P.C., the importance of which the Supreme Court emphasized in ***Imran Ashraf v The State 2001 SCMR 424.*** It cannot be held against a complainant who was dealing with the deaths of two

members of his family, and it did not create any opportunity to fabricate the case.

24. Ocular evidence that is otherwise reliable gains strength where the medical evidence agrees with it in the nature, number, seat and direction of the injuries. That agreement is present here in every material respect. The witnesses described close-range pistol fire into a stationary car, with Zulfiqar Ali struck from behind. The Medical Officer found entry wounds on the back of his head and back, with exits in front. The witnesses described shots striking Ali Asghar on the chest and arms. The Medical Officer found exactly that: wounds through the chest cavity at the left axilla and on both arms. The time of death given by the Medical Officer also accords with the time of the occurrence.

25. Ten pistol empties were secured from the place of incident on the day of the occurrence. Two days later, Khan Muhammad was arrested and a pistol was recovered from him. The ballistic expert found that the empties had been fired from that pistol. We are conscious that recovery evidence is corroborative only, and that the prosecution must prove the safe custody of the articles and their safe transmission to the expert: ***Kamal Din alias Kamala v The State 2018 SCMR 577***; ***Ahmad Ali v The State 2023 SCMR 781.***

26. The objection pressed by the defence was not one of tampering. It was that no private witness attested the recovery and that the identification of the pistol was doubtful. Official witnesses are competent, and their evidence is not to be discarded merely because of their employment: ***Zafar v The State 2008 SCMR 1254***. No enmity between the appellants and the recovery witnesses was suggested. The pistol was produced in Court under seal, and its description matches the memo of recovery. In any event, the conviction does not rest on the recovery. It rests on direct evidence that we have found reliable on its own, and the recovery adds independent corroboration of Khan Muhammad's role.

27. The car in which the deceased were travelling was not taken into possession, and the learned trial Court found the charge under section 427 PPC unproved for that reason. There are also minor differences between the sketch of the place and the witnesses'

description. These are lapses in the investigation. The Supreme Court held in ***Sheraz Asghar v The State 1995 SCMR 1365*** that defects in investigation do not affect the result unless they uproot the structure of the prosecution case, and these do not. The occurrence, the presence of the witnesses, the identity of the assailants and the injuries are all proved by direct and medical evidence that does not depend on the car or the sketch. An accused is not to be acquitted because the investigating officer failed to do what he ought to have done, where the remaining evidence proves the case beyond reasonable doubt.

28. Liability under section 149 PPC requires proof of three things: an unlawful assembly of five or more persons, the common object of that assembly, and the commission of the offence in prosecution of that object, or an offence the members knew was likely to be committed in prosecution of it: ***Muhammad Altaf v The State 2002 SCMR 189.*** Each of those ingredients is proved here:

- The witnesses described the appellants and the three absconding accused, all armed with pistols, together with four unidentified companions armed with guns and lathis. That is an unlawful assembly of far more than five persons.
- The assembly confronted the car together and opened fire on its occupants. Its common object, to kill members of the complainant's family in pursuance of the old enmity, appears from the weapons carried, the manner of the attack and the number of shots fired.
- The murders of Zulfiqar Ali and Ali Asghar were the very object of the assembly, and so were committed in prosecution of it.

Each appellant is named as present, armed and firing. Each is therefore liable for both murders, whichever of them fired the fatal shot.

29. Learned counsel argued that Khan Muhammad, as a serving soldier, should have been tried under army law. The offence was a civil offence committed outside any military duty. Nothing on record shows that the military authorities ever claimed him for trial by court martial. The objection was not taken at the stage of the charge, and no prejudice has been shown. The ordinary criminal courts had jurisdiction to try him.

30. The benefit of doubt is a right of the accused, not a concession, and a single reasonable doubt is enough to secure it:

Tariq Pervez v The State 1995 SCMR 1345; Muhammad Mansha v The State 2018 SCMR 772. The Supreme Court has, however, consistently made clear that the doubt must be reasonable and must arise from the evidence. It must not rest on speculation or on minor discrepancies that leave the core of the prosecution case untouched.

31. On our own reappraisal of the whole record, the prosecution has proved by reliable ocular evidence that both appellants took part in the armed assault that killed Zulfiqar Ali and Ali Asghar. That evidence is corroborated by the medical evidence, by the ballistic evidence in the case of Khan Muhammad, and by proof of the motive. The guilt of both appellants under section 302 (b) read with section 149 PPC is established beyond reasonable doubt.

32. Section 302 (b) PPC provides for death or imprisonment for life as ta'zir for *qatl-i-amd*. The Supreme Court has long held that death is the normal penalty for *qatl-i-amd*, and that once the case is fully proved it should be imposed unless mitigating circumstances exist: ***Muhammad Zaman v The State PLJ 2008 SC 1018; Jawed Malik v The State PLJ 2004 SC 874***. In the latter case the Supreme Court also disapproved of courts seeking a laboured pretext to substitute imprisonment for life.

33. The Supreme Court has equally emphasized that imprisonment for life is an alternative sentence prescribed by the legislature. It must be awarded wherever the facts disclose a genuine mitigating circumstance: ***Muhammad Riaz v The State 2007 SCMR 1413; Ahmad Nawaz v The State 2011 SCMR 593***. In ***Ghulam Mohy-ud-Din alias Haji Babu v The State 2014 SCMR 1034***, the Supreme Court held that even a single mitigating circumstance may suffice, and that extra care is required in deciding the quantum of sentence in capital cases. That approach has been followed in a consistent line of recent decisions:

- ***Muhammad Yasin v The State 2024 SCMR 128;***
- ***Khalid v The State 2024 SCMR 1474;***
- ***Liaquat Hussain v The State 2024 SCMR 1600; and***
- ***Ghulam Rasool v The State 2025 SCMR 74.***

We have therefore examined the record specifically for any mitigating circumstance, in the light of the categories the Supreme Court has recognized.

34. Where the motive alleged by the prosecution is not proved, or remains shrouded in mystery, the Supreme Court has often treated that as a ground for imprisonment for life: ***Nadeem Zaman v The State 2018 SCMR 149; Muhammad Akram alias Akri v The State 2019 SCMR 610; Ali Asghar alias Aksar v The State 2023 SCMR 596.*** That category does not apply here. The motive, an old dispute and pending litigation between the families, was proved by the evidence of the eye-witnesses. It was also accepted by the appellants themselves, who relied on the same enmity in their defence and produced documents to prove it.

35. In ***Shameem Khan v The State 2024 SCMR 1802***, and earlier in ***Rehmat Khan v The State 2017 SCMR 2034***, the Supreme Court recognized that the firing of a single shot, particularly where the recovery is inconsequential, may justify the lesser sentence. In ***Zeeshan Afzal alias Shani v The State 2013 SCMR 1602*** and ***Mohammad Shobhan v The State 2022 SCMR 1608,*** the Supreme Court likewise considered the role actually attributed to the accused in deciding the sentence.

36. As for Khan Muhammad, he is not a person whose role was limited to a single shot or to a non-vital part. He fired twice at Zulfiqar Ali from behind, striking him on the back of the head and on the back, with fatal effect. The pistol recovered from him was linked to the crime empties by the ballistic evidence, so the recovery is far from inconsequential. His case therefore falls outside the reasoning of Shameem Khan and Rehmat Khan.

37. The position of Muhammad Khan requires more careful consideration, and we have given it that. The shot attributed to him struck Ali Asghar, whom the Medical Officer found to have died of shock and haemorrhage from his firearm injuries considered together. Muhammad Khan was not a bystander who fired once in a sudden quarrel. He was one of a group of armed men who lay in wait on a public highway, in pursuance of an old enmity, and fired repeatedly into a car carrying unarmed persons with the common object of killing

them. Under section 149 PPC, his liability for both murders is the same as that of the member who fired the fatal shot. In the circumstances of a pre-planned double murder committed in pursuance of a proved motive, the fact that his own shot is not shown to have struck a vital part does not, in our view, amount to a mitigating circumstance warranting the lesser sentence.

38. The failure to take the car into possession was a lapse in the investigation. It raises no doubt about the guilt of the appellants, and so it provides no ground for reducing the sentence. Nor does the time the appellants have spent in custody since their conviction. The Supreme Court held in ***Muhammad Mansha v The State 2016 SCMR 958*** that lengthy incarceration as a condemned prisoner is not by itself a mitigating circumstance.

39. Learned counsel also relied on the fact that the learned trial Court awarded imprisonment for life at the first trial. That sentence was set aside by this Court on 09.03.2021, because no reason had been recorded for preferring it, as section 367 (5) Cr.P.C. requires. On remand, the learned trial Court heard both sides afresh, found no mitigating circumstance, and awarded the normal penalty. We have independently examined the record and reached the same conclusion.

40. Two young men were killed in broad daylight on a public highway by a group of armed men who had lain in wait for them in pursuance of an old enmity. The motive is proved, the roles of the appellants are clearly attributed, and the account of the eye-witnesses is corroborated by the medical and ballistic evidence. No mitigating circumstance of the kind recognized by the Supreme Court is present. The sentence of death on each count was rightly awarded to both appellants, and we answer the reference for confirmation in the affirmative.

41. For these reasons, **Criminal Jail Appeal No. D-51 of 2022** is **dismissed**. The convictions and sentences awarded to the appellants Khan Muhammad son of Muhammad Hashim Leghari and Muhammad Khan son of Muhammad Moosa Leghari by the judgment dated 26.04.2022 are **maintained**. This includes the sentence of death on two counts under section 302 (b) read with section 149 PPC, the

compensation under section 544-A Cr.P.C., and the sentences under sections 148 and 337-H (ii) PPC.

42. **Confirmation Case No. 06 of 2022** is answered in the **affirmative**, and the sentences of death awarded to both appellants are confirmed.

43. Criminal Jail Appeals Nos. S-299 and S-301 of 2019 were directed against the earlier judgment dated 20.09.2019, which this Court set aside by its judgment dated 09.03.2021. To the extent that they remain pending, they stand disposed of as having become infructuous.

44. The Office shall send a copy of this judgment to the learned trial Court and to the Superintendent of the jail where the appellants are confined.

JUDGE

JUDGE

Approved for Reporting
Abdullahchanna/PS