

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Jail Appeal No. D- 35 of 2021
&
Criminal Confirmation Case No. D-31 of 2021

Before:
Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'.

Appellant: Gul Hassan @ Hassan son of Hamzo Chandio, *through* M/s Razi Khan Nabi Bux R. Chandio and Afsana Muhammad Hanif Wagan, Advocate for the Appellants.

The State: *Through,* Mr. Nazir Ahmed Bangwar, Deputy Prosecutor General, Sindh.

Cr. Jail Appeal No. S-102 of 2019

Appellants: 1.Abdulllah son of Hashim Chandio, (Died).
2.Noor Nabi son of Hamzo Chandio, and
3.Wazeer son of Manzoor Chandio, *through* M/s Razi Khan Nabi Bux R. Chandio and Afsana Muhammad Hanif Wagan, Advocates for the Appellants.

The State: *Through,* Mr. Nazir Ahmed Bangwar, Deputy Prosecutor General, Sindh.

Date of hearing: 11.08.2026.

Date of Judgment: 10.09.2026.

JUDGMENT

Ali Haider 'Ada', J:-, The appellant, namely Gul Hassan alias Hassan son of Hamzo Chandio, has preferred the Criminal Jail appeal against the judgment dated 30.09.2021, passed by the learned Additional Sessions Judge-I, Dadu, (trial Court), in Sessions Case No.221 of 2015, whereby he was convicted and sentenced to death as *Tazir* for an offence punishable under Section 302 PPC. He was further directed to pay compensation of Rs.200,000/- to the legal heirs of the deceased. The appellant was also convicted and

sentenced for the offence punishable under Sections 148 read with 149 PPC and awarded rigorous imprisonment for two years. He was further convicted under Section 337-H(2) PPC and sentenced to pay a fine of Rs.20,000/- and, in default of payment thereof, to suffer simple imprisonment for two months. Likewise, for the offence punishable under Section 506(2) PPC, he was sentenced to rigorous imprisonment for three years and to pay a fine of Rs.20,000/- and, in default of payment thereof, to suffer simple imprisonment for a further period of two months. Since the learned trial Court had awarded the extreme penalty of death, it also made a reference to this Court for confirmation of the death sentence in accordance with law.

2. Another set of accused, namely Abdullah, Noor Nabi and Wazir, also preferred appeals arising out of the same Sessions Case No.221 of 2015. However, they were tried separately and prior to the appellant Gul Hassan alias Hassan, as the latter was arrested subsequently. Being aggrieved by the judgment dated 23.10.2019 passed by the learned trial Court, they preferred appeals before this Court, whereby they had been convicted and sentenced to imprisonment for life and directed to pay compensation of Rs.100,000/- to the legal heirs of the deceased. They were also convicted and sentenced for the other connected offences. The benefit of Section 382-B Cr.P.C. was extended to them.

3. During the pendency of the proceedings, the appellant Abdullah expired; consequently, his appeal was abated vide order dated 21.11.2022.

4. The prosecution case, as set out in the FIR and subsequently relied upon during the trial, is that on 31.12.2014, at about 1700 hours, the complainant Azizullah, along with his nephews Ali Hassan and Abdul Jabbar, was proceeding towards the house of his brother Habibullah situated at K.N. Shah. When they stopped to have tea at Korai Hotel, Main Road, K.N. Shah, they allegedly saw

accused Abdullah Chandio, Gul Hassan alias Hassan, Noor Nabi, Wazir and Ali Khan (absconding accused), armed with pistols, who surrounded them with the intention of compelling the complainant party to withdraw a previously instituted case. It was alleged that the said Abdullah Chandio and others were already facing a criminal case for the murder of the complainant's brother, Amanullah, which had been registered through FIR. It was further alleged that, at the place of occurrence, accused Ali Khan instigated the other accused to commit the murder of Habibullah. Thereupon, accused Abdullah allegedly fired a pistol shot at Habibullah, which struck him on the left side of his face/cheek. Accused Gul Hassan alias Hassan also allegedly fired at Habibullah, hitting him on the left shoulder, while accused Noor Nabi fired another shot which struck Habibullah on his right leg, as a result whereof he fell to the ground. Thereafter, the accused allegedly abused the complainant party and fled from the scene. The injured Habibullah subsequently succumbed to the injuries sustained in the occurrence. Thereafter, the requisite codal formalities were completed, and the complainant lodged the FIR at about 2030 hours on the same day, setting the criminal law into motion.

5. After completion of the usual investigation, the challan was submitted before the learned trial Court. Initially, accused/appellants Abdullah, Noor Nabi and Wazir faced the trial and, upon conclusion thereof, were convicted and sentenced vide judgment dated 23.10.2019, which was assailed by them through Criminal Appeal No.S-102 of 2019. Subsequently, accused Gul Hassan alias Hassan was arrested and proceeded against separately, whereafter, upon conclusion of his trial, he was convicted and sentenced to death vide judgment dated 30.09.2021.

6. At the first stage of the proceedings, after taking cognizance of the offence, the learned trial Court framed an amended charge on 30.07.2016 against accused Abdullah, Noor Nabi and Wazir. The accused pleaded not guilty to the charge and claimed trial. To

substantiate the charge, the prosecution examined the Medical Officer, who produced and exhibited the post-mortem report of the deceased. The Tapedar was also examined, who produced the sketch map of the place of occurrence. PW Ali Hassan was likewise examined. Thereafter, the complainant Azizullah entered the witness box and produced a copy of the FIR. The prosecution further examined Kaleemullah, who acted as a mashir and produced the relevant mashirnama relating to the dead body and injuries, the inquest report, the memo of clothes of the deceased and the memo of the place of incident. The prosecution also examined ASI Ali Bux, who had received information regarding the occurrence through a cellular telephone and thereafter performed the requisite formalities in connection with the exhumation of the dead body. The prosecution produced the Chemical Examiner's report relating to the clothes and blood-stained earth through the statement of the learned State Counsel. Thereafter, the prosecution closed its side.

7. The statements of accused Abdullah, Noor Nabi and Wazir were recorded under Section 342 Cr.P.C, wherein they denied the allegations levelled against them, professed their innocence. After hearing the learned counsel for the parties, the learned trial Court pronounced the judgment dated 23.10.2019, whereby the said accused were convicted and sentenced as mentioned above.

8. Subsequently, accused Gul Hassan alias Hassan was arrested and a charge was framed against him on 02.02.2021. He pleaded not guilty to the charge and claimed trial. During his trial, the learned trial Court examined the complainant Azizullah, PW Ali Hassan, the Medical Officer, the Tapedar, the mashir and ASI Ali Bux. Thereafter, the prosecution closed its side. The statement of the appellant Gul Hassan alias Hassan was recorded under Section 342 Cr.P.C., wherein he denied the prosecution allegations and professed his innocence. After hearing the learned counsel for the parties, the learned trial Court pronounced the impugned judgment

dated 30.09.2021, whereby he was convicted and sentenced to death, besides the sentences awarded for the other offences.

9. Learned counsel for the appellants, while assailing the impugned judgments, contended that no incriminating recovery whatsoever was effected from the appellants and that they had been falsely implicated due to previous enmity. He submitted that the learned trial Court failed to properly appreciate the material contradictions appearing in the prosecution evidence and, without extending the benefit arising from such contradictions to the appellants, recorded their conviction. He further contended that there is a marked inconsistency in the sentences awarded to the accused, inasmuch as the co-accused were sentenced to imprisonment for life, whereas the appellant namely Gul Hassan alias Hassan was awarded the extreme penalty of death. He, therefore, submitted that the appellants are entitled to the benefit of doubt and their conviction and sentence are liable to be set aside. In support of his contentions, learned counsel relied upon the cases reported as 2021 SCMR 810, 2018 SCMR 326, 2019 SCMR 652, 1998 SCMR 570, 2010 SCMR 385, 2020 SCMR 2025, 2018 SCMR 787 and 2019 MLD 1597.

10. It was reported that the complainant had expired during the pendency of the proceedings. Notices were, therefore, issued to the legal heirs of the deceased; however, despite service, they chose not to appear before the Court. Conversely, the learned Deputy Prosecutor General supported the impugned judgments and contended that specific and direct allegations had been levelled against each of the accused. He submitted that the appellants had actively participated in the occurrence and shared the common intention. According to him, the prosecution evidence was consistent on material particulars and the discrepancies, if any, were minor in nature and did not affect the core of the prosecution case. He, therefore, contended that the learned trial Court had rightly

appreciated the evidence and convicted the appellants in accordance with law, and prayed for dismissal of the appeal.

11. Heard the learned counsel for the parties and perused the record with their assistance.

12. Upon a careful consideration of the entire material available on record and the evidence brought forth by the prosecution, it is apparent that the prosecution case primarily rests upon the alleged motive, the ocular account and the medical evidence. Since the convictions of the appellants are founded principally upon these pieces of evidence, each of these aspects requires careful appreciation and deeper scrutiny, particularly to determine whether the prosecution has succeeded in establishing the charge against the appellants beyond reasonable doubt.

13. In the present case, the alleged motive attributed to the appellants are that the occurrence was committed with the object of compelling the complainant party to withdraw the criminal case relating to the murder of the complainant's brother. However, the prosecution has failed to place on record any convincing material, including the FIR or any other documentary evidence, to establish the existence of such a criminal case or to substantiate the alleged motive. Thus, the motive remains an assertion unsupported by independent or documentary evidence. Moreover, where the alleged motive is not established, and no recovery of the alleged crime weapon has been effected from the appellants, the ocular account assumes greater significance and requires strict scrutiny. In this regard, reliance may appropriately be placed upon the judgment of the Honourable Supreme Court in *Ghulam Ali and another v. The State* (Jail Petition No.155 of 2022).

14. It is also an established principle that motive is a double-edged circumstance. It may provide a reason for the commission of an offence, but, at the same time, it may furnish a reason for falsely implicating an accused. Therefore, where the alleged motive is not

independently established through reliable evidence, it cannot be treated as a circumstance lending substantial corroborative support to an otherwise doubtful prosecution case. In this respect, reliance can be placed upon *AZHAR IQBAL and 3 others Versus The STATE through P.G Punjab, Lahore and others, 2026 SCMR 182*.

15. Now turn to the ocular account. PW Ali Hassan, who is stated to be a nephew of the deceased and was projected as an eyewitness of the occurrence, deposed in his examination-in-chief that accused Abdullah fired at the deceased, hitting him on the face; accused Noor Nabi also fired, hitting him in the clavicle region; accused Ali Khan, the absconding accused, fired a shot which struck the deceased on his right leg; whereas accused Gul Hassan alias Hassan and Wazir resorted to aerial firing. However, when the testimony of the complainant, Azizullah, is examined, a materially different account emerges. He deposed that accused Abdullah fired at the deceased, hitting him on the left cheek; accused Gul Hassan alias Hassan fired a shot which struck the right side of the upper portion of the chest; while accused Noor Nabi fired a shot which hit the deceased on the right thigh. The accounts are not merely different in minor particulars; rather, they materially differ with regard to the attribution and location of the injuries allegedly caused by the accused. Most significantly, PW Ali Hassan did not attribute any specific injury to Gul Hassan alias Hassan and Wazir, stating instead that they had resorted to aerial firing, whereas the complainant Azizullah specifically attributed a firearm injury to Gul Hassan alias Hassan on the right upper portion of the chest, which was also contrary to the version given by him in the FIR. Such a material departure between the accounts of the alleged eyewitnesses directly affects the credibility of the ocular evidence and requires cautious judicial scrutiny. Ordinarily, an eyewitness who claims to have remained present throughout an occurrence involving firearm injuries would be expected to furnish a reasonably consistent account regarding the number, nature and attribution of the injuries

sustained by the deceased. Where the witnesses materially differ even on such aspect of the occurrence, their testimony cannot be accepted without seeking independent corroboration. In this regard, guidance may be drawn from the judgments of the Honourable Supreme Court in *Muhammad Nawaz v. The State* (2025 SCMR 1053), and *MUHAMMAD ZUBAIR vs The State* 2026 SCMR 1193.

16. The matter assumes greater significance in the present case because, during the subsequent trial of Gul Hassan alias Hassan, the same prosecution witnesses were examined, yet the ocular account did not furnish a consistent and specific attribution regarding the particular injury allegedly caused by accused/appellants. Thus, the evidence led against the appellants in the subsequent proceedings does not acquire any evidentiary value merely because he was tried separately. On the contrary, when the testimony of the same witnesses is examined comparatively, material inconsistencies emerge regarding the role attributed to the appellants.

17. It is a fundamental principle of criminal jurisprudence that where the prosecution case is attended by doubts, inconsistencies and unexplained circumstances, the accused is entitled to the benefit thereof. In *Muhammad Aslam v. The State* (2025 SCMR 1240) and *Imtiaz Hussain Shah v. The State* (2025 SCMR 1110), the Honourable Supreme Court reiterated that where the prosecution case contains doubts, the benefit of such doubt must necessarily go to the accused, who remains the favourite child of the law. Likewise, in *Mustaq Ahmed v. The State* (2026 SCMR 60), the Honourable Supreme Court emphasized the effect of material flaws and contradictions in the statements of prosecution witnesses where such deficiencies create doubt in the prosecution case. The same principle finds support from *Muhammad Nawaz v. The State* (2024 SCMR 1731).

18. Another circumstance which calls for consideration is the conduct of the alleged eyewitnesses in the light of ordinary human

behavior. The witnesses claimed to be closely related to the deceased, one being his brother and the other his cousin. Despite their alleged presence at the place of occurrence and their relationship with the deceased, neither of them intervened to rescue him nor raised any hue and cry to attract the attention of people in the surrounding area. Although such conduct, by itself, may not invariably be sufficient to discard an ocular account, in the peculiar circumstances of the present case it assumes significance when considered together with the other material discrepancies and infirmities appearing in their testimony. The Honourable Supreme Court, while examining the conduct of witnesses in the context of ordinary human behavior and the circumstances in which an occurrence is alleged to have taken place, has emphasized the importance of assessing such conduct along with the entire prosecution evidence. In this regard, reliance may be placed upon *Muhammad Amjad and another v. The State and others* (2026 SCMR 921), wherein the Honourable Supreme Court observed, inter alia, as under:-

9. *We are also not in agreement with the findings of the Courts below regarding presence of the alleged eye-witnesses at the spot at the time of occurrence. The conduct of the alleged eye-witnesses is highly unnatural and inconsistent with ordinary human behaviour. Despite being brother and cousin of the deceased, they neither intervened to rescue the deceased nor raised hue and cry to attract people to the spot. More notably, the alleged eyewitnesses have not charged the appellant for firing at them despite the fact that they were also on equal footing for the accused having common motive like the deceased. The passive and inactive conduct of the alleged eye-witnesses coupled with their escape when they too were at the mercy of five accused persons or their let off by the accused to stand eyewitnesses against them, casts serious doubt on their presence at the spot at the time of occurrence. The sequence of the deceased running after the initial shot, being chased, encircled, and then collectively fired upon by five armed assailants, without any injury being caused to any of the co-accused or a stray bullet hitting another, is also implausible and does not appeal to reason or the ordinary course of human conduct. The possibility of such a coordinated assault, in which all five assailants simultaneously and accurately fire at a single individual running for his life, without any unintended consequences, is highly improbable.*

19. Another significant circumstance which casts doubt upon the prosecution case relates to the place of occurrence. The prosecution itself has described the place as a busy and frequented thoroughfare, where the occurrence allegedly took place at hotel. The alleged eyewitnesses themselves admitted that customers were present in the hotel at the relevant time. The complainant and the other alleged eyewitness also referred to the presence of other persons at the hotel and in the vicinity. Thus, according to the prosecution's own case, independent persons were available at and around the place of occurrence who could have witnessed the incident. Despite the availability of such natural and independent witnesses, none of them was associated with the investigation or produced before the learned trial Court. More significantly, the shop of one Sikandar Qambrani was situated at the place of occurrence, yet he was neither examined by the Investigating Officer during the course of investigation nor subsequently produced by the prosecution as a witness. No satisfactory explanation has been furnished for withholding such a natural witness, particularly when the prosecution relies upon an occurrence allegedly committed at a public and busy place in the presence of several persons. The withholding of available and natural witnesses assumes considerable significance in the present case, particularly when the testimony of the interested and related witnesses is itself attended by material discrepancies and inconsistencies. In such circumstances, an adverse inference may legitimately be drawn under **Article 129(g) of the Qanun-e-Shahadat Order, 1984**, to the effect that had the withheld witnesses been produced before the Court, they might not have supported the prosecution case. The Honourable Supreme Court, while dealing with similar circumstances, has emphasized the evidentiary significance of withholding natural and independent witnesses and the effect of glaring omissions and contradictions in the prosecution evidence. Reliance in this regard may be placed upon *Waqas Ahmad v. The*

State (2025 SCMR 1087) and *Muhammad Ramzan v. The State* (2025 SCMR 762).

20. Another circumstance which requires consideration is the unexplained delay in preparation of the post-mortem report. The post-mortem examination was conducted on the deceased, but the report was not prepared and issued on the same day; rather, it was issued after a delay of one day, for which no plausible explanation has been furnished by the prosecution or the concerned Medical Officer. The standard medico-legal practice requires the findings of a post-mortem examination to be recorded during the course of the examination. In this regard, *Modi's Medical Jurisprudence and Toxicology* (26th Edition, Chapter 13, p.296) emphasizes that the Medical Officer should carefully record the findings and details of the post-mortem examination during the examination itself, either at the spot or in a notebook, rather than postponing their preparation.

21. The site plan/sketch prepared by the Tapedar also does not lend support to the prosecution case. As per the Tapedar's report, the sketch plan of the place of occurrence was prepared; however, surprisingly, it does not indicate the position or pointation of any of the accused at the time of the alleged occurrence. More importantly, the sketch plan does not disclose from which particular place the accused allegedly fired at the deceased. The deficiency becomes more significant when the deposition of the Tapedar is examined alongside the sketch plan. The Tapedar did not state that any hotel by the name of "Korai Hotel" was situated at the place of occurrence, despite the prosecution specifically alleging that the occurrence took place at said hotel. Thus, the site plan does not corroborate the prosecution version regarding the exact place and setting of the occurrence. Reliance is placed upon the case of *Muhammad Shaukat v. The State* (2020 P.Cr.L.J Note 170-DB) (Sindh).

22. Another material deficiency in the prosecution case relates to the alleged recovery of crime empties. Although the prosecution claimed to have secured the crime empties from the place of occurrence, there is nothing on record to establish that the said empties were subsequently transmitted to the forensic laboratory for examination. No forensic or ballistic report has been produced showing that the crime empties were examined by a competent expert or that they were connected with any weapon allegedly used in the commission of the offence. Thus, the evidentiary chain in respect of the crime empties remains incomplete. Mere recovery of empties from the place of occurrence, without their examination by a forensic expert, does not constitute meaningful corroboration of the ocular account. Guidance can be drawn from the case of *Hazaray Khan v. The State* (2024 SCMR 2042).

23. An additional material infirmity in the prosecution case relates to the Chemical Examiner's report. The said report, concerning the blood-stained earth and the clothes allegedly worn by the deceased, was not produced through the deposition of the concerned witness in accordance with the ordinary procedure for proving and exhibiting documentary evidence. Rather, it was subsequently placed on record by the learned State Counsel through a formal statement. Thus, the report was neither properly proved through the competent witness nor formally exhibited in accordance with the procedure prescribed by law. Such mode of production cannot substitute the legal requirement of proving a document in evidence. A document relied upon by the prosecution must be brought on record and exhibited in accordance with the prescribed procedure so that the accused is afforded a fair opportunity to question its authenticity, contents, preparation and evidentiary value. Mere placement of a document on the record through a formal statement does not, by itself, make the document substantive evidence against an accused. In this regard, the procedure prescribed under *Chapter V, Part-A of the Federal Capital and*

Sindh Courts Criminal Circulars is relevant, Paragraph 9 thereof, inter alia, provides that the depositions of witnesses and documents exhibited in evidence shall ordinarily be marked by numbers and that documents produced in evidence are, as a rule, required to be properly exhibited.

24. The prosecution has also relied upon the alleged abscondence of the appellant Gul Hassan alias Hassan, contending that, as he remained absconding, his trial was subsequently conducted after his arrest. However, such circumstance is required to be assessed in conjunction with the substantive evidence available on record and cannot be considered in isolation. More importantly, mere abscondence, by itself, cannot constitute the sole basis for conviction. In this regard, reliance may be placed upon *Muhammad Masood v. The State* (2025 SCMR 888).

25. Further, important aspect requiring consideration is the inconsistency in the approach adopted by the learned trial Court while determining the sentence of the accused facing trial in the same Sessions Case. In the earlier judgment dated 23.10.2019, while considering the cases of accused Abdullah (expired), Noor Nabi and Wazir, the learned trial Court, in paragraph No.34 thereof, treated the circumstances of the case as mitigating factors and, instead of awarding the extreme penalty of death, sentenced them to imprisonment for life. However, in the subsequent trial of the appellant Gul Hassan alias Hassan, the learned trial Court adopted a materially different approach and, without recording any cogent or distinguishing reason as to why the mitigating circumstances earlier recognized in the same case were not applicable to the present appellant, awarded him the extreme penalty of death.

26. It is a settled principle of criminal jurisprudence that the benefit of doubt is to be extended to an accused. Even a single circumstance creating reasonable doubt in the prosecution case is sufficient to entitle an accused to acquittal, provided such doubt is

reasonable and arises from the evidence on record. The prosecution is required to establish its case beyond reasonable doubt, and the accused is not required to prove his innocence or establish the existence of doubt. The Honourable Supreme Court, in *Iftikhar Ahmed alias Papu v. The State* (2026 SCMR 1010), has reiterated the principle that if even a single circumstance creates reasonable doubt in the prosecution case, the same is sufficient to entitle the accused to the benefit of doubt and consequently to his acquittal.

27. In the present case, as discussed hereinabove, there are not merely one but several circumstances which create reasonable doubt regarding the appellants involvement, including material inconsistencies in the ocular account, absence of recovery of the alleged crime weapon, failure to properly connect the crime empties with any weapon, non-production of natural and independent witnesses, deficiencies in the site plan, and other infirmities in the prosecution evidence. Each of these circumstances, when examined independently, casts doubt upon the prosecution case; when considered cumulatively, they render the convictions of the appellants unsustainable.

28. For the foregoing reasons, discussion and findings, it is evident that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. Consequently, the impugned judgments cannot be sustained in law and are liable to be set aside.

29. Accordingly, Criminal Jail Appeal No.D-35 of 2021, preferred by Gul Hassan alias Hassan, whereby he was awarded the death penalty, is hereby allowed. Consequently, the impugned judgment dated 30.09.2021, passed by the learned trial Court, is set aside. The appellant Gul Hassan alias Hassan son of Hamzo Chandio is acquitted of the charge arising out of FIR No.260 of 2014, registered at Police Station K.N. Shah. The Reference made by the learned trial Court for confirmation of the death sentence is answered in the **NEGATIVE**.

30. Consequently, Criminal Jail Appeal No.S-102 of 2019, preferred by Noor Nabi son of Hamzo Chandio and Wazir son of Manzoor Chandio, is also allowed. The impugned judgment dated 23.10.2019, passed by the learned trial Court, whereby the appellants were convicted and sentenced to imprisonment for life, is hereby set aside. The appellants, namely Noor Nabi son of Hamzo Chandio and Wazir son of Manzoor Chandio, are acquitted of the charge arising out of FIR No.260 of 2014, registered at Police Station K.N. Shah. The appellants namely Gul Hassan alias Hassan son of Hamzo Chandio, Noor Nabi son of Hamzo Chandio and Wazir son of Manzoor Chandio shall be released forthwith, if not required to be detained in any other criminal case.

JUDGE

JUDGE