

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

Criminal Appeal No. S-39 of 2024
[Wazeer Samoon v The State]

Counsel of Appellant : Mr. Sarfaraz Ali Talpur, Advocate
Counsel of Respondents : Mr. Neel Parkash, Deputy Prosecutor General.
Amicus Curiae : Mr. Maisum Hussain Sahar, Advocate
Date of Hearing : 24.09.2026
Date of Judgment : 29.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through the instant Criminal Appeal, appellant Wazeer Samoon challenges the judgment dated 16-04-2018 passed by the learned II Additional Sessions Judge, Mirpurkhas, in Sessions Case No. 108 of 2013 arising out of Crime No. 28 of 2013, Police Station Mirpur Old. He was convicted under section 302(b), PPC and sentenced to imprisonment for life, with a direction to pay compensation of Rs.50,000 to the legal heirs of Ali Sher Samoon and, in default, to undergo six months' simple imprisonment. The benefit of section 382-B, Cr.P.C. was allowed. The charge had also referred to section 504, PPC, but the operative part of the judgment records no separate conviction or sentence for that offence.

2. At the commencement of hearing, Mr. Sarfaraz Ali Talpur, learned counsel for the appellant, proposed that the appeal be disposed of by modifying the sentence to the period already undergone. Mr. Neel Parkash, learned Deputy Prosecutor General, stated that he had no objection. Mr. Maisum Hussain Sahar, learned *Amicus Curiae*, objected to deciding a life-sentence appeal by reference only to an aggregate custody figure. He submitted that the period actually spent in prison and the period credited by way of remission perform different legal functions; the latter cannot be substituted for a prescribed minimum period of substantive imprisonment merely because the two figures have been added on a jail roll. The preliminary issue requires resolution before the merits are addressed.

3. Section 302(b), PPC prescribes death or imprisonment for life as ta'zir. Section 57, PPC reckons life imprisonment as twenty-five years for the limited purpose of calculating fractions of terms of punishment; it does not itself convert every life sentence into a determinate twenty-five-year term, still less authorise an appellate court to substitute any shorter term. Commutation under section 55, PPC, remission or suspension under section 401, Cr.P.C., and a

constitutional pardon or remission under Article 45 are distinct exercises of power, each governed by its own source and conditions. Section 382-B, Cr.P.C. gives credit for pre-sentence detention; it does not change the character of a life sentence.

4. The prison framework likewise distinguishes sentence from earned remission. Rules 140 and 217 of the Pakistan Prison Rules, 1978, as considered in the reported decisions, prescribe reference of a life convict's case to the competent Government after fifteen years of substantive imprisonment and restrict ordinary and special remission under the rules from shortening life imprisonment below fifteen years' actual custody. The legal effect of any specific executive or constitutional order must be assessed on its own terms. This case involves no proved order commuting the appellant's sentence under section 55, PPC or expressly granting him an exceptional release under Article 45.

5. In *Nazar Hussain and another v The State* PLD 2010 SC 1021, the Supreme Court discussed the scheme governing life sentences and remissions, including the significance of the prison rules. In *Government of Khyber Pakhtunkhwa through Secretary, Home Department and others v Wali Khan and others* PLD 2022 SC 253, it considered the operation of remission against a sentence of imprisonment for life and the distinction between the sentence imposed by a court and its lawful reduction by a competent authority. Neither decision warrants treating an unverified aggregate on a jail roll as an automatic judicial conversion of the sentence imposed here.

6. More directly, a Division Bench of this Court at Sukkur in *Altaf Ali Buriro v Province of Sindh and others* 2025 SHC SUK 2717, C.P. No. D-1474 of 2019, examined a life convict released after approximately thirteen years' actual custody despite substantial credited remissions. It distinguished presidential remissions from additional credits granted without lawful authority by prison officials, applied the fifteen-year substantive-custody requirement under the applicable rules, and set aside the premature release. The case illustrates why the provenance and legal effect of remissions matter, and why physical custody cannot be replaced by a simple sum of physical custody and remission. The constitutional power of the President, where lawfully and specifically exercised, remains a distinct question.

7. There is a further and independent reason not to accept the proposed short disposal. In *Tariq Sajjad Khan v The State* 2026 SCMR 1215 = 2025 SCP 437, the Supreme Court construed section 423, Cr.P.C. and held that even when counsel asks only for reduction to the period already undergone, an appellate court must independently examine the record and decide whether the conviction is sustainable. Counsel's forensic choice or a prosecutor's concession cannot displace that duty. An alteration of sentence under section 423 must also be anchored in the

punishment lawfully available on the finding the Court makes; the consent of counsel cannot create a sentence unknown to section 302(b), PPC.

8. The submission for a disposal solely on sentence undergone is therefore declined. This is not a decision that a lawful remission can never operate, nor a finding on any unproduced individual remission order. On the custody figures presented, the prescribed substantive period has not been physically served, and the Court cannot replace its examination of a life conviction with an arithmetical accommodation accepted by both sides. The appeal must be decided on the evidence. That conclusion is particularly important because, if the conviction itself is unsafe, no question of preserving it by adjustment of sentence can arise.

9. The case alleged by the prosecution is that at about 0830 hours on 31-05-2013, Ali Sher Samoon sustained a chhuri or dagger injury in the vicinity of the appellant's house at village Muhammad Faqeer Baloch, Deh 106, Taluka Hussain Bux Mari, District Mirpurkhas. The charge locates the incident in front of the house and describes a blow to the chest. Other accounts place it in the house or in the street and describe a wound to the stomach or upper abdomen. The appellant and the deceased were related and known to each other. No prosecution witness professed to have seen the moment at which the wound was inflicted.

10. According to complainant Ali Nawaz (PW-2), Ali Sher called him at approximately 0830 hours, named the appellant as the person who had inflicted a knife blow, and sought assistance. Ali Nawaz and his son Ali Murad (PW-4) went to the village and found Ali Sher injured upon a cot. Ali Nawaz said the appellant's father arranged a Mehran car; Ali Murad's account of who had arranged it differed. The injured was taken to Civil Hospital, Mirpurkhas. The immediate movement of the patient and the fact of a recent injury are important parts of the prosecution case and are not dismissed merely because the subsequent account of the assailant is disputed.

11. According to complainant Ali Nawaz (PW-2), Ali Sher called him at approximately 0830 hours, named the appellant as the person who had inflicted a knife blow, and sought assistance. Ali Nawaz and his son Ali Murad (PW-4) went to the village and found Ali Sher injured upon a cot. Ali Nawaz said the appellant's father arranged a Mehran car; Ali Murad's account of who had arranged it differed. The injured was taken to Civil Hospital, Mirpurkhas. The immediate movement of the patient and the fact of a recent injury are important parts of the prosecution case and are not dismissed merely because the subsequent account of the assailant is disputed.

12. Dr. Muhammad Ayoub Rai (PW-1) examined Ali Sher at about 0900 hours on 31-05-2013 upon police letter No. 448, produced at Ex.5-A. He

recorded a stab wound measuring 4 cm by 1 cm on the right side of the mid-upper abdomen, initially described as skin and muscle deep (provisional certificate Ex.5-B). Surgeon Dr. Abdul Rehman was consulted and the patient was referred to LUMHS, Hyderabad. The witness later issued final certificate Ex.5-C on records received from LUMHS, which described the wound as reaching the abdominal cavity and referred to a further transfer towards Civil Hospital, Karachi on 02-06-2013.

13. ASI Kamran Ali Halepoto (PW-5) said he received information at the police station, reached the Mirpurkhas hospital, issued a treatment letter, prepared the injury memo in the presence of Muhammad Azam and Wali Muhammad (Ex.7-A), and recorded Ali Sher's statement under section 161, Cr.P.C. at the hospital on 31-05-2013. He produced the statement as Ex.10-C and described it as attributing a dagger injury to the appellant after a quarrel over domestic affairs. It preceded the formal FIR and the death. The early visit to hospital and the existence of an accusatory account attributed to the injured at that stage are circumstances favorable to the State, subject to the proof and weight of the account itself.

14. The FIR, Ex.6-A, was lodged by Ali Nawaz at 2130 hours on 03-06-2013, when Ali Sher remained alive and under treatment. The original accusation was of hurt or attempt to murder together with section 504, PPC. The FIR narrative, as recited in the trial judgment, placed the altercation at or near the appellant's house, gave a domestic or biradari disagreement as the cause, and described a blow to the chest. After registration PW-5 said he inspected the alleged place at about 2230 hours and prepared Ex.7-B. He claimed to have arrested the appellant at approximately 0700 hours on 04-06-2013 in the Khan Naka area and recovered a chhuri through memo Ex.7-C.

15. The treatment trail described in the evidence passes through Mirpurkhas, Hyderabad and Karachi. Dr. Sidra Javed (PW-6), a residency trainee at the Surgical ICU of Civil Hospital, Karachi, said the patient came there on 03-06-2013 after a referral from Jinnah Hospital, with a stab wound, marked difficulty in breathing and abdominal pain. She described ventilation, two operations and life-saving drugs. Ali Sher died following cardiac arrest on 06-06-2013. PW-6 identified the certificate produced as Ex.10-B, bearing her signature and that of Dr. Atif Iqbal, and produced daily history sheets Ex.11-A to Ex.11-D. On 08-06-2013 PW-5 recorded information about the death at Ex.10-A; clothes said to have been worn by the deceased were delivered to the police through Ex.8-A.

16. A report under section 173, Cr.P.C. was submitted after the offence was converted to section 302, PPC. Copies were supplied under section 265-C, Cr.P.C. The charge at Ex.4 was framed on 27-08-2013 under sections 302 and 504,

PPC; the appellant pleaded not guilty at Ex.4-A. The prosecution examined six witnesses: PW-1 Dr. Ayoub, PW-2 Ali Nawaz, PW-3 Wali Muhammad, PW-4 Ali Murad, PW-5 ASI Kamran Ali and PW-6 Dr. Sidra. The prosecution closed at Ex.12.

17. In his statement under section 342, Cr.P.C. at Ex.13, the appellant denied causing the injury, alleged that the documents and weapon recovery were contrived, and said his maternal uncle Ali Nawaz had implicated him because he refused to give his sister in marriage to Ali Murad. He did not testify on oath under section 340(2), Cr.P.C. or call defence witnesses. By judgment dated 16-04-2018, the trial Court convicted him under section 302(b), PPC, relying chiefly on Ex.10-C as a dying declaration, the oral accounts, the medical evidence and the recovery. It regarded the FIR delay as explained by treatment and treated the absence of a post-mortem as immaterial. The conviction and life sentence brought the present appeal.

18. Mr. Talpur contended on the merits that Ex.10-C was written by the investigating officer himself, with no Magistrate, contemporaneous medical certification, signature or thumb-impression of Ali Sher, or independent witness to its making. Ali Sher survived for several days, yet no attempt was shown to secure a judicial recording. Counsel submitted that the lack of safeguards becomes serious when the witnesses themselves disagree whether the assault happened inside the house, before it, or in the street, and differ on the reason for the visit and the seat or number of blows. None saw the assault; repetition of the appellant's name cannot establish that the several accounts were accurately and independently received from a conscious declarant.

19. Counsel further relied on the period between 31-05-2013 and the FIR of 03-06-2013, the discrepancies in the hospital chronology and the identity of the person who brought the injured to the first hospital, the absence of any proved post-mortem report, the limited explanation of the causal connection between the wound and death after operations, the failure to secure articles at either alleged scene, and the lack of any scientific result connecting the recovered chhuri with Ali Sher. The alleged recovery occurred in a populated area without an independent local mashir. The total effect, counsel argued, was a material doubt as to the prosecution's account, not a collection of harmless mistakes. He sought acquittal by benefit of doubt.

20. Mr. Parkash, learned DPG, supported the trial judgment while accepting that none of the private witnesses actually saw the blow. He submitted that the appellant and Ali Sher were close relatives and mistaken identity was implausible; every account attributed to Ali Sher consistently named the appellant; the injury was recorded within about half an hour of the alleged time; and the police

made contact with the injured and recorded Ex.10-C before the FIR and before death. The medical records support a serious injury inflicted by a sharp weapon and treatment until death. Treatment explains the reporting interval. Article 46 of the Qanun-e-Shahadat Order, 1984 (“QSO”) does not insist that a Magistrate alone record a dying declaration, nor does it prescribe a signature or an invariable medical certificate. On a fair cumulative reading, he said, the differences in detail do not outweigh the consistent accusation and medical support. He placed his reliance upon *Jan Muhammad v The State* 2016 YLR 2359, *Majeed v The State* 2010 SCMR 55, *Farmanullah v. Qadeem Khan and another* 2001 SCMR1474, *Niamat Ali v The State* 1981 SCMR 61, and *Ghulam Farid v The State* PLD1966 SC 264 . On 09-09-2026, the complainant appeared in person and expressed his confidence in the learned Deputy Prosecutor General to represent the prosecution case, stating that he did not wish to engage separate counsel on his behalf.

21. Mr. Maisum Hussain Sahar, learned Amicus Curiae, submitted his written synopsis, which is taken on record. He separated the relevance of a deceased person’s statement under Article 46, QSO from the assurance needed to rely on it as proof of a charge under section 302(b), PPC. In support of this distinction and the careful appraisal of dying declarations, he cited Riaz (deceased) through his brother *Abdur Rauf v Gulzar and another* 2026 SCLR 11 = 2025 SCP 469, *Mst Zahida Bibi v The State* PLD 2006 SC 255, *Abdur Rahim alias Rahima v The State and others* PLD 2003 SC 662, *Farman Ahmed v Muhammad Inayat and others* 2007 SCMR 1825, *Tahir Khan v The State* 2011 SCMR 646, and *Rajesh alias Rajoo v The State* 2025 SCMR 1876). Riaz illustrates the effect of a declaration supported by evidence of capacity and independent circumstances. Tahir Khan recognises that there is no absolute bar to relying on a declaration alone, but rejected reliance on the infirm declaration proved in that case. The remaining authorities address authentication, inconsistent medical evidence and the particular frailty of uncorroborated oral accounts.

22. On other subjects the Amicus cited *Abdur Rehman v The State* 1998 SCMR 1778 on the non-automatic effect of absence of post-mortem; *Muhammad Ramzan v The State* 2025 SCMR 762 on the limited function of medical evidence and the weakness of unsupported recovery; *Abid Hussain and another v The State and others* 2024 SCMR 1608 on the fact that relationship alone does not disqualify a witness; *Shaukat Hussain v. The State through Prosecutor General Punjab and another* 2024 SCMR 929 on unexplained FIR delay; *Nazir Ahmed v The State* 2023 SCMR 1299 on the distinction between minor and material discrepancies; and *Hashim Qasim and another v The State* 2017 SCMR 986 on the need for an unbroken chain of circumstantial proof. For the standard of reasonable doubt, he cited *Muhammad Riaz and others v The State and others* 2024 SCMR 1839 as well as Rajesh alias Rajoo. These are all the reported authorities named in his synopsis;

their application depends on the facts proved here rather than the number of cases cited.

23. During hearing the Court asked the Amicus to identify the legal basis and practical tests governing statements made before death. He submitted that Article 46(1), QSO permits a written or oral statement about the cause of death or the circumstances of the transaction resulting in death, whether or not the maker expected to die. No categorical statutory requirement confines the recording to a Magistrate. Yet the fact that a person could not be cross-examined makes proof of authorship, consciousness, mental capacity, voluntariness, freedom from prompting, opportunity to observe, internal consistency and independent support especially important. Rule 25.21 of the Police Rules, 1934 describes the usual safeguards for recording: a Magistrate wherever practicable, medical examination for lucidity wherever possible, reliable witnesses when a Magistrate cannot be obtained, and the maker's signature on a statement made to the police when possible. A failure concerning one safeguard does not create automatic exclusion; simultaneous failures may leave an otherwise relevant statement unsafe for conviction.

24. Mr. Talpur responded that his objection was to reliance upon Ex.10-C, even if it was legally relevant. The Court then asked whether a Magistrate recorded it; if not, whether a Medical Officer had certified that Ali Sher was conscious and fit at the time; and whether Ex.10-C carried Ali Sher's signature or thumb-impression. Having examined the material, Mr. Parkash fairly accepted that no Magistrate recording, such medical endorsement or signature/thumb-impression appeared in the papers relied upon. PW-5's cross-examination independently acknowledges that neither the patient nor a doctor signed the statement, and that no other person's signature identifies anyone present when it was recorded. The concession identifies an evidentiary omission; it does not substitute for evaluation of the rest of the record.

25. I have heard the learned counsel and the learned Amicus Curiae and have perused the record. The questions requiring determination are these:

- (i) which statements attributed to Ali Sher meet the requirement of relevance under Article 46(1), QSO and with what reliability have they been proved;
- (ii) whether the oral accounts, treatment records, medical evidence, scene investigation and recovery supply independent support for the identity of the assailant and the alleged manner of occurrence;
- (iii) whether death following treatment is sufficiently linked in the evidence with the injury said to have been inflicted by the appellant; and

(iv) whether, upon the evidence taken as a whole and the parties' competing explanations considered, guilt under the charge was established beyond reasonable doubt. These questions also require separate attention to the trial Court's treatment of the appellant's defence and of the prosecution's contrary evidence.

26. Article 46(1), QSO makes relevant a statement of a person who has died concerning the cause of that person's death or any circumstance of the transaction which resulted in it, in a proceeding in which that cause is in question. It expressly dispenses with a requirement that the maker have anticipated death. Ex.10-C was described by its recorder as a statement concerning the very injury said to have preceded Ali Sher's death. If the prosecution proves its making and contents, the fact that it was recorded initially under section 161, Cr.P.C. does not by itself foreclose consideration of its later relevance under Article 46. The same principle can apply to a properly proved oral statement. The legal permission to consider a statement is the beginning, not the end, of its evaluation.

27. The distinction between relevancy and weight is fundamental. A court first asks whether the statement is of a kind admitted by Article 46; it then asks whether this declarant actually made the statement as reported, understood what was being asked, was able to identify the attacker, was free from influence, and spoke truthfully. The second inquiry cannot be answered by the first. Since death prevents cross-examination of the maker, circumstances that would normally be tested directly must be established from the surrounding evidence. Equally, there is no inflexible rule that absence of a Magistrate, a medical endorsement or a signature in isolation renders a statement inadmissible. A condition may be proved by credible evidence other than a certificate; a genuine spontaneous statement may be made to a private person.

28. The Supreme Court's decisions illustrate both sides of the question. In *Riaz (deceased) through Abdur Rauf v Gulzar* 2026 SCLR 11 = 2025 SCP 469, the injured's prompt account was found reliable together with evidence that he was conscious and oriented, an eyewitness account and medical corroboration. In *Muhammad Saeed and another v The State and another* 2024 SCMR 1421, a woman's immediate oral nomination to relatives and an independent neighbour on the way to hospital was considered with the injury record, post-mortem and supporting circumstances; the Court emphasised fitness, freedom from influence and an examination of the entire setting. *Tahir Khan v The State* 2011 SCMR 646 explains that a declaration can in principle sustain a conviction without an invariable rule of corroboration; the Supreme Court nevertheless found the actual declaration in that case too infirm for conviction. These cases give proper force to the State's proposition that Article 46 evidence can be sufficient when its truth is established.

29. In contrast, *Mst Zahida Bibi v The State* PLD 2006 SC 255 insists that authenticity of the record and the setting in which it was made must be examined closely; it is unsafe to assume truth simply because a statement is attributed to a dying person. *Abdur Rahim alias Rahima v The State* PLD 2003 SC 662 treats an oral dying declaration, dependent on the recollection of another, as calling for independent support. In *Farman Ahmed v Muhammad Inayat* 2007 SCMR 1825, conflict between the alleged declaration and medical evidence was material to its credibility. *Rajesh alias Rajoo v The State* 2025 SCMR 1876 scrutinised a disputed video declaration, the declarant's capacity, influence of relatives and contradictory accounts; its reasoning concerns reliability rather than a formal prohibition on dying declarations. The cases are reconcilable: the strength of the evidence depends upon the circumstances in which the particular statement was proved.

30. Rule 25.21 of the Police Rules is relevant for that factual appraisal. It seeks to preserve an account that may later be unavailable while reducing the risk of misunderstanding, tutoring or alteration. An investigating officer who has immediate hospital access may reasonably record what an injured person says; the police origin of the writing does not automatically exclude it. Where time and facilities allow independent authentication, however, a court is entitled to ask why none was obtained. The more the State's case depends on that single writing, the greater the significance of avoidable omissions affecting its provenance.

31. PW-5 is the sole witness who says he wrote Ex.10-C. The statement was said to have been made at Civil Hospital, Mirpurkhas, on 31-05-2013, after the police reached the hospital. The officer did not specify in his deposition the precise time of recording relative to the examination, referral, analgesia or other treatment; nor did he say that a doctor assessed Ali Sher's ability to give a coherent account at that moment. Dr. Ayoub examined the wound and arranged treatment, but he neither certified fitness to speak nor testified that he was present when Ex.10-C was recorded. A medical description of a stab wound at 0900 hours is not, without more, a certification of lucidity at a later unidentified time.

32. PW-2 described Ali Sher as injured and "semi-conscious" when he arrived at the village. That expression does not prove the patient was unfit to speak either during the earlier telephone call or when PW-5 subsequently attended at hospital. It does prevent the Court from assuming uninterrupted full lucidity. Dr Ayoub was available at the first hospital; nevertheless the recorder obtained neither his attestation nor that of any member of staff. The omission is not proof of fabrication, but it leaves a specific factual question about capacity unanswered.

33. Nor was any Magistrate shown to have been contacted during Ali Sher's survival from 31-05-2013 to 06-06-2013. Some of that period was plainly

consumed by urgent transfer, operations and critical illness; the Court cannot invent an opportunity to obtain a Magistrate while he was ventilated in Karachi. The early interval at Mirpurkhas, when the police and doctor were present, did afford an opportunity at least to record who witnessed the statement and whether Ali Sher was capable of making it. No reason for the complete absence of a contemporaneous witness, signature or medical notation was supplied. The practical availability of a later Magistrate is less certain; the absence of any attempt or explanation nonetheless adds to the need for other assurance.

34. PW-5 expressly admitted that Ex.10-C bears neither Ali Sher's signature nor that of a doctor and carries no signature indicating in whose presence it was recorded. There is no evidence whether Ali Sher could have signed, could have placed a thumb-impression, or was prevented by his condition. The Court cannot infer that he refused, or that he was physically incapable. The problem is evidentiary: the statement is not authenticated by the injured or by anyone apart from the officer who was investigating the accusation. His evidence must accordingly be tested against the oral accounts and objective circumstances, rather than being treated as conclusive because the paper was tendered as an exhibit.

35. The reported contents of Ex.10-C, as given by PW-5, refer to a dagger injury inflicted by the appellant following a quarrel about domestic affairs. The FIR as recited by the trial Court speaks of a blow to the chest, preceded by abuse about domestic or biradari affairs. PW-2's own testimony at first describes a stomach blow and an admonition about drinking and crime; in cross-examination he attributed to the caller an assault in the street. These accounts share the nomination of a known relative and a sharp weapon, but diverge in their setting. The issue is not a requirement that every sentence use identical language. It is whether the Court can confidently know what Ali Sher actually said when the alleged statement is recorded only by the investigator without the safeguards just discussed.

36. The State correctly points out that Ex.10-C was said to have been recorded before the FIR and before death, reducing the possibility that it was first devised after the event. It does not follow that its contents are independently proved. The officer who reported the statement was also the officer who registered the later FIR, inspected the scene and made the alleged arrest and recovery. The supposed early account is therefore not external corroboration of his own investigation. A genuinely documented first account can be of great force, but its early date alone cannot answer the questions about the declarant's capacity, the actual words spoken and the absence of independent attestation.

37. For those reasons the contention that Ex.10-C is inadmissible merely because it was police-recorded or unsigned is rejected. The narrower submission of

the Amicus is accepted: Article 46 permits it to be considered, while its use as the principal basis of conviction remains unsafe on this record unless its central accusation is supported by reliable, independent proof. The trial Court did not adequately conduct this second inquiry. It treated production by PW-5 and the notion that a dying person would not lie as virtually sufficient proof of truth, without resolving the cumulative defects affecting authenticity.

38. The oral versions must then be examined separately. PW-2 Ali Nawaz said he personally received a telephone call from Ali Sher at approximately 0830 hours. In his examination-in-chief the message was that the appellant had given him a knife blow in the stomach. In cross-examination PW-2 said the caller had told him that the appellant gave the blow in the street while Ali Sher was going towards his own house. PW-2 also related an account of Ali Sher going to advise the appellant against drinking wine or committing offences. PW-2's opportunity to hear the call is direct evidence that a call was received if his testimony is accepted, but his knowledge of the assault itself is confined to what he says the injured conveyed.

39. PW-4 Ali Murad was present with his father when the call came. He testified that the caller said he had gone to the appellant's house to ask the appellant not to discuss domestic matters in public; the appellant became annoyed, abused him and inflicted chhuri "blows". PW-4 did not say that he personally received the call or explain whether he heard Ali Sher through the handset, through a loudspeaker, or learnt the words from PW-2 immediately afterwards. His presence when PW-2 answered is relevant, but it does not turn his narration of the telephone conversation into a second independent recording of Ali Sher's words. The difference between the singular wound recorded by PW-1 and PW-4's plural expression may reflect loose speech; it becomes relevant because PW-4 purports to reproduce the injured's own account of the manner of attack.

40. PW-3 Wali Muhammad, Ali Sher's brother, supplied a further account. In his examination-in-chief he narrated the presence of the appellant's parents, the appellant seated to one side with a chhuri, and a blow to the right side of the chest, as though he had seen the occurrence. His cross-examination establishes the opposite: he was at his own house when Ali Sher left, did not go to the appellant's house, proceeded directly to Civil Hospital, Mirpurkhas, and learnt the facts from Ali Sher there. His evidence may therefore prove an oral statement at the hospital if accepted, but it cannot be converted into eyewitness evidence of the seating arrangement, concealment, parental presence or the infliction of the blow.

41. PW-3 did not identify with precision which of those additional details Ali Sher actually told him, as distinct from what he subsequently heard from

family members. In the hospital account the reported wound was to the chest. The doctor who inspected the injury placed it on the right mid-upper abdomen. A layperson might call the lower chest or upper abdomen by an inexact name, so that variation by itself is not decisive. It nevertheless reinforces the need to distinguish the witness's own observation from narrative detail supplied after the event. The fact that PW-3 could accurately repeat the assailant's name does not establish that every surrounding detail came independently from Ali Sher.

42. There is no categorical reason to reject a statement made to a relative. As *Abid Hussain v The State 2024 SCMR 1608* explains, kinship alone cannot disqualify a natural witness. Ali Nawaz was related both to the deceased and to the appellant, a circumstance the DPG reasonably emphasised. But relationship is not a guarantee against mistake, misunderstanding or subsequent alignment of versions. PW-2 and PW-4 shared the same household and the one telephone call; PW-3 learnt of the matter at the same hospital where the others and the police had gathered. The three accounts are not three eyewitnesses to the assault and do not necessarily amount to three independent sources of a recorded accusation.

43. The broad point urged by the State remains substantial: each witness who attributed a statement to Ali Sher named Wazeer, whom Ali Sher knew. A mistaken visual identification of an unknown stranger is therefore not a plausible defence hypothesis. The question instead is whether the nomination was reliably shown to have originated from Ali Sher at the respective time, free of misunderstanding or influence, and whether the reported circumstances are consistent enough to sustain the accusation. Consistent repetition of a name cannot cure uncertainty in the method of recording Ex.10-C or conclusively reconcile inconsistent accounts of the place and reason for an unseen event.

44. Nor can the Court assume the opposite, namely that the witnesses deliberately invented the nomination. PW-1's 0900-hour medical examination and PW-5's hospital attendance preceded the later FIR. Those events make an accusation at an early stage plausible. There is, however, no signed medical history documenting whom Ali Sher named on arrival, no testimony from the first surgeon or hospital staff confirming the words attributed to him, and no independent witness to Ex.10-C. The issue remains one of sufficiency of proof, not an affirmative finding that the family or police fabricated every part of the account.

45. The disputed place of occurrence calls for particular attention because no witness saw the injury being inflicted. The charge says "infront of" the appellant's house. The FIR as recited in the trial judgment associates the blow with a visit to the house. PW-2's cross-examination attributes to Ali Sher an injury received in the street while returning towards his own home. PW-4 found him on a cot inside the appellant's house, an observation which identifies where the injured

lay later, not where the knife entered his body. PW-3 described events inside the house but admitted he never went there. The trial Court found the incident occurred in the appellant's house without explaining the contrary evidence about the street or the limited source of PW-3's knowledge.

46. A wounded person can be moved a short distance from a street to a cot. The State therefore correctly resists an assumption that finding Ali Sher inside a house is logically incompatible with his being injured outside it. The prosecution, however, had to establish a reliable account of where and how this happened when neither source had observed the act. PW-5 inspected the supposed scene on 03-06-2013 but took no blood-stained earth, cot, stained object or other article into custody. He acknowledged that the area contained thirty or forty houses and that he joined no residents of the adjacent Kumbhar or Meghwar houses. The site memo was not accompanied by the departure entry he said would support that visit, and no register number appeared in it. The absence of physical confirmation means that the competing locations remain unresolved, rather than a minor discrepancy resolved by the investigation.

47. The alleged motive is also variable. PW-2 spoke in his testimony of Ali Sher going to advise his cousin against drinking and committing crimes, while the FIR's account referred to discussion of domestic or biradari problems in public. PW-4 repeated the latter theme. PW-3 described complaints about drinking and thefts, although he was not at the house. PW-5's account of Ex.10-C referred generally to a domestic quarrel. A sudden altercation need not have a previously established motive, and an unproved motive alone would not defeat reliable direct proof. Here there is no eyewitness to the altercation, and the differences concern the very conversation said to have provoked it. The trial Court's finding that motive was proved by uniform corroboration cannot be reconciled with the differing accounts.

48. One wound was medically documented by PW-1. PW-2 spoke of a single blow to the stomach; PW-3 of one to the right chest; PW-4 of blows in the plural. The plural may be an ordinary imprecision and there is no medical basis to find several wounds. It would be an error to turn it into positive proof of multiple blows or to discard the entire testimony for that word alone. Its proper place in the appraisal is alongside the more significant uncertainty about the site and manner of an assault seen by none of these witnesses. Likewise, "knife", "chhuri" and "dagger" are compatible general descriptions of a sharp weapon; their use is not an independent contradiction.

49. A further difference concerns presentation at the first hospital. PW-2 and PW-4 said they brought the injured in the Mehran car, with PW-3 describing their journey from what he had been told. PW-1 said Ali Sher was brought by an

uncle called Sajan, with police letter No. 448. PW-5 said he had heard Ali Nawaz brought the patient, then attended the hospital himself and issued a treatment letter. The evidence thus also leaves the sequence of the police letter and the initial examination imprecise. It is possible that Sajan accompanied the others or was named in the hospital entry without being the only person present. No witness was asked to explain the discrepancy, and Sajan was not examined. This does not disprove the occurrence, but the earliest presentation might have established the patient's capacity and his first spontaneous history; that opportunity was left inadequately explored.

50. The chronology of onward transfer is not wholly uniform either. PW-1 said information received from LUMHS recorded a referral to Karachi on 02-06-2013; PW-2 described returning to Hyderabad on 03-06-2013 and a referral then, while PW-6 said Ali Sher reached Civil Hospital, Karachi from Jinnah Hospital on 03-06-2013. The stages may be reconciled by separate decisions to refer, transport and admit. Yet the underlying referral letter from Jinnah Hospital was not produced. PW-6 accepted she could not give the precise Karachi admission time without it. The timing does not impeach the fact of serious treatment; it affects the completeness with which the intervening clinical course and cause of death were proved.

51. The FIR was recorded about three days and thirteen hours after the alleged 0830-hour event. The need first to obtain urgent treatment, travel between hospitals and attend to a critically ill relative supplies a real explanation for some delay. PW-2 said he went with Ali Sher to Hyderabad, felt unwell and returned to Mirpurkhas, and only on 03-06-2013 reported formally after the onward referral. That explanation cannot be rejected merely by counting the hours. In *Shaukat Hussain v The State* 2024 SCMR 929, the Supreme Court treated an unexplained reporting delay in its factual setting as capable of weakening an already disputed prosecution account; the rule is not that every delay is fatal.

52. Here the police were at the hospital on 31-05-2013, the injured's relatives were available, and PW-5 said he had already recorded the alleged statement naming an assailant. PW-2 admitted returning to Mirpurkhas before the FIR and that police inspected the place before registration, whereas PW-5 maintained the formal site inspection followed the FIR at 2230 hours on 03-06-2013. Those statements may refer to different visits; the officer did not identify or document the earlier one. The delay consequently does not erase the injury or the claimed earlier statement, but it cannot be described as fully answered by treatment without dealing with the police's prior knowledge and the inconsistent accounts of the visits. It adds weight to doubts concerning the evolution of the accusation; it is not an independent automatic ground for acquittal.

53. The medical evidence must be considered at two separate levels. The first is injury. PW-1's prompt examination documented a stab wound on the right upper abdomen, and his later final certificate, based on LUMHS records, described entry into the abdominal cavity. PW-6 described a patient with a stab wound and serious abdominal and respiratory symptoms who required ventilation and operations. Those are meaningful objective supports for the fact that Ali Sher was injured by a sharp instrument and later became critically ill. They do not, by their nature, identify who wielded it. *Muhammad Ramzan v The State 2025 SCMR 762* explains the supporting, rather than assailant-identifying, function of medical evidence.

54. The second medical question is why Ali Sher died. He survived from 31-05-2013 until 06-06-2013, underwent further treatment at more than one institution and two operations in Karachi, and died following cardiac arrest. The certificate identified by PW-6 states the diagnosis as a stab wound and the immediate terminal event as cardiopulmonary arrest. A cardiac arrest describes the final cessation of function; on its own it does not specify the clinical mechanism by which a particular abdominal wound, a surgical complication or another condition brought about death. PW-6's testimony and history sheets support a connection between a serious wound and the ultimate death, but the causal question must be considered without substituting a chronology for a reasoned medical explanation.

55. PW-1's initial description was skin and muscle deep; his final assessment of abdominal-cavity depth came from records received from LUMHS, whose author was not called. The surgeon whom PW-1 consulted at Mirpurkhas, the relevant LUMHS clinicians, and the surgeons who performed the two Karachi procedures were not examined. PW-6 was a residency trainee who candidly acknowledged that one history sheet was not written by her and that she had produced neither the Jinnah referral letter nor a duty record covering the entire period. None of these omissions establishes that treatment was negligent or that an independent illness intervened; no such affirmative medical explanation was proved by the defence. They do limit the Court's ability to draw a precise causal conclusion from competent testimony about the wound's course and its contribution to death.

56. PW-3 and PW-4 said in their depositions that a post-mortem was performed after the body returned to Mirpurkhas. That assertion conflicts with PW-5's admission that he issued no letter requesting a post-mortem after learning of the death, and with the absence of any report or testimony from a post-mortem doctor. PW-1 said he himself had conducted none. The Court cannot resolve this by simply asserting as an established historical fact that no examination ever occurred. What is established for the purpose of proof is that no post-mortem findings were

tendered and tested at this trial. The unsupported assertion by two lay witnesses cannot supply anatomical findings, a medical cause of death, or a reconciliation of the discrepancy.

57. *Abdur Rehman v The State 1998 SCMR 1778* is a useful corrective to any absolute rule suggested by either side. In that prosecution arising from a fatal road accident, the Supreme Court did not hold that absence of autopsy automatically defeats proof that an act caused death; it examined the eyewitness and medical testimony which independently explained how the injuries caused death. The conviction could stand on the strength of the evidence actually produced. Here no eyewitness establishes the stabbing, and the patient survived for days across successive hospitals. The absent autopsy and incomplete evidence from treating specialists therefore matter to the strength of the causal account in a way they need not in a case of immediately fatal injuries supported by coherent expert evidence.

58. The death certificate uses “Haji Sher” where the injured person throughout the other evidence is called Ali Sher. PW-6 acknowledged that discrepancy, identified the certificate bearing her signature, and associated it with the patient she treated. The difference in name is not, in itself, a reasonable basis to infer that another patient died. It does, however, require the Court to rely on the oral explanation rather than the face of the certificate alone, particularly as the Jinnah referral record was not produced and Dr. Atif Iqbal did not testify. The certificate’s failure to identify the admission as medico-legal is similarly not conclusive by itself, but does not assist in repairing the incomplete documentary trail.

59. In the resulting state of proof it would overstate the matter to say that the wound and death are medically unrelated. The temporal sequence, nature of the wound, abdominal symptoms and serious treatment all make a causal connection plausible and indeed substantial. It would equally overstate the evidence to say the prosecution affirmatively proved, through an explained and complete medical chain, that this appellant’s alleged act was the cause of death beyond reasonable doubt. The qualification is important: even if the causal link between Ali Sher’s injury and death were accepted in the prosecution’s favour, medical evidence cannot close the separate and decisive gap as to the person who inflicted that injury.

60. The arrest and recovery do not close it. PW-5 said he arrested the appellant at Khan Naka at about 0700 hours on 04-06-2013 and recovered a chhuri. PW-3, one of the mashirs, described a location by the shrine of Nadir Shah about a kilometer from Khan Naka; his version of arrival also differed in that the mashirs were already there before police arrived. The places may describe the same general

locality, but the exact point was disputed. The arrest was in the morning in a populated area, yet no unrelated person from the locality attested the proceedings. This is not a statutory rule that two private strangers must attest every recovery; it leaves the recovery dependent on PW-3, another related mashir and the investigating officer.

61. There is no produced chemical or serological report detecting human blood on the blade, no blood grouping, no DNA result, and no fingerprint comparison connecting the chhuri with Ali Sher, the appellant or the injury. PW-5 admitted that he made no fingerprint referral. He referred to a “ballistic” expert in cross-examination, but ballistics would not ordinarily be the relevant discipline for a knife; the material point is the absence of any suitable forensic link. The police did not secure stained earth or an article from the scene for comparison. There is no proved distinguishing feature of the chhuri by which the doctor identified it as the implement causing this particular wound. A common sharp-edged article can be consistent with the injury without being identified as the instrument used.

62. There is no produced chemical or serological report detecting human blood on the blade, no blood grouping, no DNA result, and no fingerprint comparison connecting the chhuri with Ali Sher, the appellant or the injury. PW-5 admitted that he made no fingerprint referral. He referred to a “ballistic” expert in cross-examination, but ballistics would not ordinarily be the relevant discipline for a knife; the material point is the absence of any suitable forensic link. The police did not secure stained earth or an article from the scene for comparison. There is no proved distinguishing feature of the chhuri by which the doctor identified it as the implement causing this particular wound. A common sharp-edged article can be consistent with the injury without being identified as the instrument used.

63. In *Muhammad Ramzan v. The State* (2025 SCMR 762), the Supreme Court scrutinised an alleged discovery from a populated location, the absence of an independent local witness and the failure to establish a dependable evidentiary connection. The recovery there concerned a different object and different offence facts; the principle useful here is that a recovery remains a supporting circumstance whose genuineness and link must be proved. The State is entitled to rely on Ex.7-C to show what PW-5 and PW-3 say happened. It is not entitled to treat possession of an untested chhuri four days after the injury as independent scientific confirmation that the appellant inflicted the particular wound.

64. PW-5 also mentioned that the appellant admitted the offence when interrogated at the police station. No legally proved judicial confession is part of this record. Article 38, QSO prohibits proof of a confession made to a police officer against the accused, subject to the distinct and limited law of discovery of a fact;

the officer's account of a general admission cannot be used to fill a gap in proof. The case must stand upon admissible evidence independent of that assertion.

65. The absence of neighbours and other natural witnesses requires the same measured approach. The State was not bound to produce a particular number of witnesses; a trustworthy single witness can be sufficient. But the appellant's parents were said to have been in the house, several neighbours gathered, the father apparently arranged transport, the person identified by PW-1 as Sajjan brought the patient, and surgeons or staff had direct knowledge of his condition and treatment. None of those people was called to clarify a material disputed matter. PW-5's explanation that no neighbours were met sits uneasily with evidence of many houses and residents and PW-2's account that people gathered. Their absence becomes significant because the prosecution offers no independent answer to the uncertainty about the scene, the first history and the declaration's recording.

66. The trial Court characterised PW-2, PW-3 and PW-4 collectively as persons who "identified" the accused as the assailant. That expression obscures the critical distinction between identifying a known accused in court and having perceived him inflict a wound. PW-4 expressly disclaimed seeing the act; PW-3 acknowledged in cross-examination that he went straight to hospital; PW-2 arrived after receiving the call. Their evidence, if believed, establishes prompt discovery of an injury and statements attributed to its victim. It does not constitute ocular proof of the act. Treating it as such allowed the trial Court to regard the medical certificate and recovery as corroborating an eyewitness account that did not exist.

67. The trial Court also used the appellant's decision not to testify under section 340(2), Cr.P.C., and not to call defence witnesses as a circumstance against him. An accused's statement under section 342 affords an opportunity to answer incriminating material; a denial or alternative explanation in it need not be accepted merely because it is asserted. But the appellant bears no duty to prove his innocence or a suggested matrimonial motive. The rejection or lack of independent proof of his suggestion concerning Ali Murad cannot convert imperfect prosecution proof into certainty. His silence as a defence witness cannot authenticate Ex.10-C or establish the person who stabbed Ali Sher.

68. Nor could the unrelated allegation that the appellant had earlier killed his sister-in-law supply character evidence of this offence. PW-2 volunteered the accusation although he accepted it was not in the FIR and no case had been registered on that account. PW-4 repeated it. It was not a charge before the trial Court, was not proved through a conviction or direct evidence, and could not be used to infer that the appellant was disposed to kill. Article 68, QSO addresses the restricted relevance of previous bad character in a criminal case; nothing in the present record brought the allegation within an applicable exception. The trial

judgment referred to it when assessing guilt. The Court must remove that prejudicial material from consideration and decide the present charge upon admissible proof of the present occurrence.

69. The DPG's principal contention is now capable of a precise answer. An actual stabbing is supported by prompt medical examination; the appellant was known to the injured; his name occurs in all the versions attributed to the injured; the police reached hospital before the FIR; and a statement was attributed to Ali Sher before his death. Each point deserves weight. They would present a powerful case if the words of a fit and unprompted declarant were independently shown to have been recorded accurately and their setting sufficiently established. The record does not permit the Court to move from the fact of repeated nomination to that necessary assurance without examining how those statements were obtained and what else proves the act.

70. Mr. Talpur's more absolute submissions also require limits. The lack of a Magistrate or doctor's endorsement does not exclude Ex.10-C as a matter of law; three days' delay does not nullify an FIR during medical emergency; kinship does not invalidate the testimony; a chest-versus-upper-abdomen variation may be ordinary description; and the absence of post-mortem is not a universal bar to proof of murder. Those contentions are rejected in their categorical form. Their force in this case is cumulative and particular: several avoidable authentication safeguards are absent from the central account, the declarations have not been proved by independent sources to the necessary standard, and contested particulars of an unseen assault were left without objective scene or medical resolution.

71. *Nazir Ahmed v The State 2023 SCMR 1299* cautions against discarding a credible prosecution account for immaterial discrepancies. Applying that approach, the exact label of the sharp weapon, the first car's arranger and an approximate difference in the transfer date could have been accommodated if dependable substantive proof established the attack. The place of the blow, the source of PW-3's seemingly first-hand narrative, the contents actually heard by PW-4 during the telephone call, and the absence of a reliably authenticated Ex.10-C are different in kind. Each bears directly on whether a statement from Ali Sher, rather than later reconstruction of it, identifies the appellant as the person who caused the wound.

72. *Hashim Qasim v The State 2017 SCMR 986* requires a case dependent on circumstantial links to be examined for a complete and reliable chain. The prosecution here has more than free-standing circumstantial evidence: it relies on statements attributed to the injured which, if soundly proved, are substantive under Article 46. But the subsequent links are relied upon to assure the Court of their reliability. The medical evidence proves injury without identifying the actor;

the site investigation resolves neither house nor street; and the recovery provides no forensic connection. These are not independent links capable of restoring confidence where the central account's recording and source remain uncertain.

73. In *Mst. Zahida Bibi, Farman Ahmed and Rajesh*, the Supreme Court's caution was not an invitation to distrust all statements made before death. It required judicial scrutiny proportionate to the risk of relying on a maker who could not be questioned. *Riaz v. Gulzar and Muhammad Saeed* demonstrate the prosecution's legitimate answer when the maker's consciousness and the account's accuracy are established and there is meaningful independent support. The present evidence falls on the other side of that line. The early medical presentation establishes that Ali Sher was hurt; it is not proof that he dictated Ex.10-C with full capacity in the precise terms attributed by PW-5.

74. The clearest reasonable doubt is therefore whether the accusation attributed to Ali Sher was proved with sufficient assurance to identify the person who inflicted the wound. PW-5 did not obtain any contemporaneous independent authentication of the written statement, notwithstanding hospital access. The oral accounts arose among related persons, differ on the setting and basis of the encounter, and one supposed account from PW-3 initially described a scene he admittedly never witnessed. A trial Court can accept a dying declaration without any prescribed ritual when other evidence supplies assurance. Here the missing safeguards and the materially unsettled setting reinforce each other; neither has been satisfactorily met by recovery or the subsequent medical trail.

75. There is an additional doubt as to the extent of the medical proof of the link between the injury and death after intervening treatment, for the reasons stated above. That doubt is not treated as an established alternative cause of death, which the defence never proved and was not obliged to prove. Even assuming causation of death by the injury, the failure to establish beyond reasonable doubt who caused it suffices to resolve the appeal. The absence of proved forensic connection, the qualified explanation for FIR delay and the gaps in witness production deepen the central doubt, but the result does not depend upon a numerical tally of defects.

77. *Tariq Pervez v The State 1995 SCMR 1345* states the principle that if a reasonable doubt about guilt arises, its benefit belongs to the accused as of right, not concession. *Muhammad Mansha v The State 2018 SCMR 772* and *Muhammad Riaz v The State 2024 SCMR 1839* reiterate that several doubts are unnecessary: even one genuine circumstance sufficient to affect the mind of a prudent person requires that result. The rule is not a demand for imaginary certainty, nor is it suspended because the allegation is grave. It asks whether the admissible proof,

read as a whole, reaches the criminal standard. An appellant need not establish precisely which alternative assailant caused the injury.

78. The trial Court's conclusion rested on three propositions that do not withstand that standard. It treated the relatives' accounts as identifying evidence of the assault although none had seen it; it treated the fact that Ex.10-C was admissible as if that fact established authenticity and truth; and it treated the appellant's inability to substantiate his defence and an unrelated allegation against his character as reinforcing the prosecution. It also failed to resolve the street-versus-house conflict and spoke of post-mortem absence without addressing PW-3's and PW-4's opposing assertions. These are errors in evaluating the central evidence, not harmless defects of form.

79. The State's request to view the record cumulatively is correct in method. It produces no different conclusion. Prompt treatment, the familiar name and a purported early statement must be weighed together with PW-2's description of semi-consciousness, the officer's admitted lack of authentication, PW-4's uncertain source of the caller's exact words, PW-3's shift from apparent eyewitness detail to hospital hearsay, the unresolved location, missing scene material, qualified medical chain and unlinked weapon. Those matters interact at the very point on which the case turns: whether Ali Sher's accusation against Wazeer was so reliably proved that a conviction under section 302(b), PPC could safely rest on it.

80. The written synopsis of the Amicus is accepted insofar as it distinguishes legal relevance from sufficiency, recognises the circumstances supporting the prosecution and asks that the declaration be tested against its whole setting. I do not adopt any suggestion that every uncorroborated declaration is barred, that a treating doctor had to give a certificate as an indispensable condition of admissibility, or that a failure to perform a post-mortem automatically defeats the charge. Those questions are governed by proof and weight in the individual case. The appellant's claim for acquittal succeeds because the actual evidence, rather than any categorical exclusionary rule, fails to remove reasonable doubt.

81. It follows that the prosecution did not prove beyond reasonable doubt that appellant Wazeer Samoon inflicted the stab injury which preceded Ali Sher's death. The insufficiency concerns the reliability of the principal statements and their connection with the other evidence, rather than an easily curable omission in the investigative file. The trial Court did not adequately distinguish Article 46's permission to receive those statements from the Court's separate obligation to be affirmatively satisfied that they were truthful and sufficient to support life imprisonment. The doubt about identity also precludes sustaining any charge of intentional insult under section 504, PPC on this evidentiary basis; no distinct conviction under that section was in fact entered.

82. For the foregoing reasons, the appeal is allowed. The judgment dated 16-04-2018 of the learned II Additional Sessions Judge, Mirpurkhas, insofar as it convicts and sentences the appellant under section 302(b), PPC, together with the consequential direction for compensation and default imprisonment, is set aside. Appellant Wazeer Samoon is acquitted of the charge by extending to him the benefit of reasonable doubt. He shall be released forthwith if not required to be detained in connection with any other case.

A copy of this judgment shall be sent to the trial Court and the Superintendent of the prison concerned for immediate compliance.

JUDGE

APPROVED FOR REPORTING
FAISAL