

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

CRIMINAL JAIL APPEAL No.S-33 of 2024 (NEW)

CRIMINAL JAIL APPEAL No.S-243 of 2021 (OLD)

Appellant : Shaggan s/o Arjun Kolhi
Through Mr. Pervez Akhter Talpur, Advocate.

Respondent : The State.
Through Mr. Ghulam Abbas Dalwani, D.P.G

Date of hearing : 28.10.2026

Date of Judgment : 28.10.2026

J U D G M E N T

NISAR AHMED BHANBHRO, J.- Through instant Criminal Jail Appeal, preferred by appellant Shagan s/o Arjun through Senior Superintendent Central Prison, Mirpurkhas, he has assailed the judgment dated 08-12-2021 (impugned judgment) passed by learned Additional Sessions Judge-I/ M.C.T.C, Mirpurkhas (Trial Court), in Sessions Case No.508 of 2010, arising out of the F.I.R bearing Crime No.61/2020 for offence under sections 302,324,337-A(i),337-A(ii),337-F(ii) P.P.C registered at Police Station Jhudo, whereby he was sentenced as under:

- 1). *For the offence punishable under section-302(b) PPC for the murder of deceased Atam the accused Shagan to under-go Life Imprisonment as Tazir and to pay Rs.2,00,000/- (Rs. Two lacs) as compensation u/s 544(a) Cr.P.C to the legal heirs of deceased Atam and in case of default of payment, he shall suffer S.I for the period of Six (06) months more.*
- 2). *For the offence punishable under section-337-F(ii) PPC, the accused Shagan to suffer R.I for Two (02) years as Tazir and to pay Rs.10,000/- (Rs. Ten Thousand) only as Daman to P.W/ injured Herchand.*
- 3). *For the offence punishable under sections-337-A(i),337-A(ii) and 337-F(ii) PPC, the accused Shagan to suffer R.I for Three (03) years as Tazir and to pay Rs.10,000/- (Rs. Ten Thousand) only as*

Daman and Rs.2,13,000/- (Rupees Two lacs and Thirteen thousand) only as Arsh (5% of Diyat amount) to P.W/injured Pavan.

- 4). *For the offence punishable under section-337-A(ii) PPC, the accused Shagan to suffer R.I for Three (03) years as Tazir and to pay Rs.2,13,000/- (Rs. Two lacs and Thirteen Thousand) only as Arsh (5% of Diyat amount) to P.W/injured Shrimati Amyan. All the sentences shall run concurrently.*

2. The facts of the prosecution case as per F.I.R lodged by complainant Naino on 25-04-2020 at P.S Jhudo are that his brothers namely Aatam and Harchand reside along with their families in village Hashim Soomro. Shagan Kolhi also resides there alongside his brothers. On 24.04.2020, in the evening, he along with his son Kirshan went to the village of his brothers to meet them. There, his brothers Aatam and Herchand complained to him that Shagan Kolhi harboured ill will against them and that all of them were under threat from him, as he might kill them at any time. After having dinner, they slept there for the night. On the following morning, i.e., 25.04.2020, at about 5:00 a.m., while he was awake, Shagan Kolhi, armed with hatchet, entered the house of his brother Aatam. Immediately upon entering, he hurled abuses at his brother and threatened him, saying, "I will not spare you today; I will kill you." Having said so, he caused a forceful blow with the hatchet to his brother Aatam, who was sleeping on a cot, striking him on the right side of his abdomen. In the meantime, his son Kirshan, brother Herchand, sister-in-law namely Shrimati Amyan and nephew Pawan rushed forward to rescue Aatam. However, accused Shagan Kolhi, with intention of causing injuries, delivered forceful blows with the hatchet to his brother Herchand, sister-in-law Shrimati Amyan and nephew Pawan, as a result of which they sustained injuries and fell to the ground. Thereafter, the accused fled from the scene along with hatchet while hurling abuses. They

then noticed that his brother Aatam had sustained hatchet blow on the right side of his abdomen, from which a considerable amount of blood was oozing. They arranged transportation and took all the injured persons to the Government Hospital, Jhudo, where the doctors declared his brother Aatam dead. Thereafter, leaving the dead body of Aatam and other injured persons in the care of his son Kirshan, he appeared at the police station and lodged instant F.I.R.

3. After completion of the usual investigation, the I.O submitted a police report under section 173 Cr.P.C before the concerned Judicial Magistrate. Since the alleged offence is exclusively triable by the Court of Sessions, therefore, learned Magistrate sent up the R&Ps of the case to learned Sessions Judge, Mirpurkhas, who transferred the same to the Trial Court for disposal in accordance with law.

4. After supplying copies of necessary documents, charge was framed against the appellant, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined as many as nine (09) witnesses, namely PW 01 Dr Rahim Bux, PW 02 Dr Padma, PW 03 Tapedar Muhammad Hanif, PW 04 Complainant Naino, PW 05 Injured Herchand, PW 06 Injured Pawan, PW 07 Mashir Kirshan, PW 08 Injured Shrimati Amyan and Pw 09 IO ASI Imdad Ali who produced numerous documents and thereafter, the prosecution closed its side for evidence.

6. The statement of the appellant under section 342 Cr.P.C was recorded wherein he denied the allegations being false and claimed his innocence. However, neither he examined himself on oath as required under section 340(2) Cr.P.C nor examined any witness in defence.

7. After hearing the parties' counsel, the trial Court convicted and sentenced the appellant as mentioned above.

8. Notice of instant Appeal was issued to the complainant, but he chosen to remain absent; however, his brother injured P.W Herchand appeared and showed his confidence upon learned D.P.G to proceed with the case on behalf of the complainant.

9. Learned counsel for the pauper appellant has contended that there are material contradictions and improvements in the prosecution case; per narration in the F.I.R, complainant Naino has shown his presence at the place of incident at the time of occurrence and per evidence of P.W Dr. Raheem Bux and P.W lady Dr. Padma, injured persons and dead body were brought to the hospital by said Naino, but the complainant Naino in his deposition before the trial court has stated that he was informed by one Soomro regarding the incident; thereafter, he came to Jhudo hospital. He further contended that injured Herchand, Pawan and Shr. Amian were examined during trial, but they did not describe the locale of injuries sustained by them and injured Herchand and Pawan categorically stated that after sustaining injuries they became unconscious and did not see the accused while causing injuries to the deceased. He further contended that clothes of the injured were also not secured and injured were examined in the hospital and F.I.R was not recorded by any of the injured witness, which was lodged by complainant Naino on the second day. He further contended that per deposition of injured Herchand they were taken to hospital by Habibullah but said witness was not examined by the prosecution before trial court. He, therefore, submits that case of prosecution is doubtful and benefit of the same should be extended to the appellant as a matter of right. He prayed for allowing instant appeal and acquittal of the appellant. In support of his contentions, he has relied upon

case of **Muhammad Akhtar and others V. The State and others** (2025 S C M R 45), **Mst. Sughra Begum and another V. Qaiser Pervez and others** (2015 S C M R 1142), **Ghulam Akber and another V. The State** (2008 S C M R 1964) and **Amin Ali and another V. The State** (2011 S C M R 323).

10. Learned D.P.G contended that incident was promptly reported to the police; injured were examined in the hospital and F.I.R was lodged on the next day of incident for the reasons that three persons received injuries and one person died, therefore, complainant party was busy in their treatment and autopsy and in such like cases delay is natural. He further contended that no ill motive has been attributed to the complainant party for false implication of the appellant. He further contended that injured prosecution witnesses have supported the prosecution case in totality and in cross examination they could not be shattered; as such conviction was rightly awarded. He prayed for dismissal of instant Appeal and maintaining the sentence.

11. Heard arguments and perused the material available on record.

12. Scanning of the prosecution evidence on record reveals that the prosecution case is highly doubtful for the following reasons:

- *The F.I.R of the incident was lodged with a delay of 25 hours without any explanation. Though the injured and dead body were shifted to hospital promptly, where police also arrived noted injuries on the person of deceased.*
- *In F.I.R complainant Naino stated that he was present at the place of incident at the time of occurrence along with his and soon after the incident he shifted the injured persons to Jhudo hospital; whereas in his deposition before the trial court he stated that he was not present at the time of occurrence but was informed about the incident by one person Soomro by caste and thereafter he directly came to the hospital and frankly replied to a question during cross examination that he had not witnessed the incident. He denied in totality the version as*

narrated by him in the F.I.R. The complainant was neither declared hostile nor prosecution put him to the test of cross examination so as to determine whether narration conveyed by him to the police in the F.I.R was correct or his evidence before the trial court.

- *P.W 01 Dr. Raheem Bux and P.W 02 lady Dr. Padma deposed that injured Pawan, Herchand, Shr. Amian and dead body of deceased Aatam were brought to the hospital in the Datsun by Naino, which negates the version of injured witnesses that they were brought to hospital by one Habibullah Soomro.*
- *Injured witness Herchand was examined during trial; he did not describe in detail the incident; however deposed that he sustained injuries at the hands of accused Shaggan, but frankly conceded that he did not see accused while causing injuries to the deceased; whereas it is case of the prosecution that accused firstly caused injuries to deceased Atam and thereafter when witnesses attempted to rescue deceased, they sustained injuries at the hands of appellant. .*
- *Injured Pawan and injured herchand deposed before trial court that after sustaining injuries they became unconscious and could not see accused causing injuries to deceased Atam. Such piece of evidence of the injured witness was contrary to the evidence of Dr. Raheem Bux, who deposed that injured were in senses at the time of their examination and they came at hospital by foot.*
- *Injured witness Herchand, Pawan and Shr. Amian have not disclosed the injuries on the person deceased; even they did not depose about locale of injuries caused to them.*
- *Injured Herchand and Pawan have deposed before the trial court that incident has taken place at 5:00 a.m in the morning; whereas injured Shr. Amyan deposed that incident had taken place during dark hours of the night.*
- *The accused was arrested on 26-04-2020 and he voluntarily produced hatchet, allegedly used in the commission of crime, which was found blood stained; however, said hatchet was not sent for cross-matching*

or identification of blood recovered from the place of incident to say that it was same hatchet containing the blood of injured and deceased.

- *Evidence of neutral witness Habibullah Soomro was also withheld by the prosecution, as he was not produced before Trial Court or during investigation to furnish details of the occurrence, strong presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984, was to be drawn to the effect that had he been produced at the trial, he would have not supported the prosecution version.*
- *The statement of the accused was recorded before the trial court on 27-10-2021 and the certificate appended at the foot was not inscribed through the hands of learned Presiding Officer, which violated the mandatory provisions of law. This mistake cannot be cured by exercising powers under section 537 Cr.P.C; however, on re-appraisal of evidence it transpires that prosecution case is highly doubtful, therefore, remanding back the matter to learned trial court for re-recording statement of accused (appellant) under section 342 Cr.P.C will not serve the purpose, when prosecution evidence is also found deficient to award conviction.*

13. It is settled principle of law that prosecution is burdened to prove its case beyond shadow of doubt and prosecution evidence should be free from doubts and it is not a hard and fast rule that merely because a person is injured in an incident, his evidence should be accepted as gospel truth. The prosecution evidence must be consistent, confidence inspiring and convincing; however in this case though three witnesses were injured and examined during trial by the prosecution but their evidence was not up to the mark and failed to satisfy the standards and was not confidence inspiring to hold that prosecution had proved its case beyond shadow of doubt.

14. The cumulative effect of the material contradictions, inconsistencies, and dishonest improvements noted above creates serious doubt in the prosecution case. The learned Trial Court has

squarely overlooked the material contradictions, inconsistencies, and dishonest improvements appearing in the testimony of the alleged eye-witnesses and has, thus, wrongly believed and relied upon their evidence. The recovered hatchet was sent for forensic analysis with delay and matching with the blood secured from spot was not with the blood found on hatchet and the principles settled by this Court with regard to delayed, unsafe, and doubtful forensic evidence are consistent. Even otherwise, such piece of circumstantial evidence, being purely corroborative in nature, is not by itself sufficient to bring home the charge against the appellant in the absence of any direct or substantive evidence. It is by now well settled that unless the prosecution succeeds in producing reliable direct evidence, a conviction cannot be recorded merely on the basis of other forms of evidence, howsoever strong, convincing, or persuasive they may appear. The recovery of incriminating articles is primarily meant to lend corroboration to the ocular account. Ocular evidence and recoveries, therefore, are to be examined and evaluated in juxtaposition with each other so as to arrive at a just and proper conclusion.

15. Honorable Supreme Court of Pakistan in the case of **Munir Ahmed and 3 others V. The State and others (2026 S C M R 1498)**, while appreciating the prosecution evidence held that:

13. The cumulative effect of the foregoing discussion is that the prosecution has miserably failed to prove the guilt of the appellants through cogent, confidence-inspiring direct evidence duly corroborated by reliable circumstantial evidence and supported by medical evidence. The learned courts below, while overlooking the material contradictions and glaring discrepancies in the prosecution evidence which created serious doubt in the prosecution case, arrived at an erroneous conclusion by holding the appellants guilty of the offence. It is

settled law that while giving the benefit of doubt to an accused, it is not necessary that multiple circumstances creating doubt must exist. If a single circumstance raises a reasonable doubt in the mind of a prudent person regarding the guilt of the accused, the accused is entitled to such benefit, not as a matter of grace or concession, but as a matter of right. This principle is founded on the maxim that it is better that ten guilty persons be acquitted than that one innocent person be convicted.

14. Consequently, Criminal Appeals Nos. 11-L and 12-L of 2021 are allowed. The convictions and sentences of the appellants recorded by the courts below are set aside, and while extending them benefit of doubt, they are acquitted of the charge levelled against them. They shall be set at liberty forthwith, if not required to be detained in connection with any other case.

16. In the case of **Muhammad alias Ahmed V. The State (2025 S C M R 2052)** Honorable Supreme Court of Pakistan has held that:

9. In light of the material contradictions and inconsistencies in the ocular account, the unexplained delay in reporting the incident and conducting autopsy, the medical evidence contradicting the ocular account coupled with the unnatural conduct of the alleged eye-witnesses, we are persuaded to hold that the alleged eye-witnesses were not present at the spot at the time of occurrence. Rather, it appears that they were procured subsequently by the police and planted as eye-witnesses to support the prosecution case. In such circumstances, it is unsafe to maintain the conviction of the appellant on the basis of such unreliable and untrustworthy evidence. The courts below, while failing to advert to the material contradictions, inconsistencies, and inherent improbabilities highlighted hereinabove, have fallen into manifest error in recording the conviction of the appellant. The prosecution's case is riddled with doubts, and it is by now a well-entrenched and axiomatic principle of criminal jurisprudence that the benefit of doubt, however slight, must always be extended to the accused. Once the prosecution's version is found to be tainted with doubt, the accused becomes

entitled to acquittal as a matter of right and not as a matter of grace.

10. In view of the foregoing, this appeal is allowed. The conviction and sentence of the appellant, as recorded by the courts below through the impugned judgment, are hereby set aside. Consequently, the appellant is acquitted of the charge. He shall be released forthwith if not required to be detained in any other case.

17. In the case of ***Muhammad Akhtar and others v. The State and others (2025 S C M R 45)***, it is held as under;

“9. There is no medico legal certificate of alleged injured Muhammad Umair on record. The alleged injured Muhammad Umair and Muhammad Shafique (brother of the complainant allegedly present at the place of occurrence) have not been produced as prosecution witnesses at the trial. Presumption under Article 129(g) of the Qanun-e-Shahadat, 1984 is drawn to the effect that had these two witnesses been produced at the trial, they would have not supported the prosecution version.”

18. It is settled principle of law that multiple circumstances were not required to create dent in the prosecution case, but a single circumstance creating reasonable doubt in a prudent mind is sufficient to discredit the entire prosecution story. Reliance in this regard is placed on the case of **Laiq Shah V. The State (2026 S C M R 257)** wherein Honorable Supreme Court of Pakistan has held that:

9. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its cases against the petitioner beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant

case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as Tariq Pervez v. The State (1995 SCMR 1345) and Muhammad Akram v. The State (2009 SCMR 230). Consequently, this petition is converted into an appeal and allowed. The judgments dated 31.03.2020 and 08.10.2019, of the learned High Court and the learned trial Court, respectively are hereby set aside. The petitioner is acquitted of the charges while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

19. For the forgoing reasons, it can be safely held that prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt and benefit of which could be given to the appellant as a matter of right. Consequently, instant Appeal is allowed; result thereof, the impugned judgment dated 08-12-2021 passed in S.C.No.508/ 2020 (arising out of F.I.R bearing Crime No.61/ 2020 for offence under sections 302, 324, 337-A(i), 337-A(ii), 337-F(ii) PPC of PS Jhudo) by learned Additional Sessions Judge-I/M.C.T.C, Mirpurkhas is hereby set aside and appellant namely Shagan s/o Arjun is acquitted from the charge of said case. Appellant is confined in Jail, he shall be released forthwith if not required in any other custody case.

JUDGE

Approved for reporting

Saleem