

# THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

## Criminal Revision Application No.S-44 of 2021

Applicants: Ali Ghulam, Muhammad Ali, Ali Gul, Ali Sher and Gul Sher through Mr. Zahoor Ahmed Baloch, Advocate.

Respondent: The State through Mr. Irfan Ali Talpur, D.P.G. Sindh.

Complainant: Hadi Bux Laghari through Mr. Zain-ul-Abdin Sahito, Advocate.

Date of hearing: 05.05.2025.

Date of Judgment: 05.05.2025.

### O R D E R

**RIAZAT ALI SAHAR, J.** The applicants namely, Ali Ghulam, Muhammad Ali, Ali Gul, Ali Sher and Gul Sher have assailed the legality and propriety of the judgment dated 26.11.2020, passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Badin in Criminal Appeal No.05/2020, whereby maintaining the judgment dated 28.08.2020, passed by learned 1<sup>st</sup> Civil Judge & Judicial Magistrate, Badin/MTMC in Criminal New Case No.44/2020, Case No.145/2019, in crime No.152/2019 registered at PS Tando Ghulam Ali for the offences punishable under sections 341, 337-A (i), 337-F (i), 337-L (ii), 504, 34 PPC, whereby the applicants were convicted and sentence in the following manner:-

“For offence of Shajjah-i-Khafifah U/S 337-A (i) read with section 35 PPC to pay daman in sum of Rs.100,000/- (One lac) jointly and be paid to the victim/injured, for the offence of Ghayr-jaifa Munaqillah punishable under section 337-F (vi) R/W 35 PPC and sentence them to pay daman in sum of Rs.100,000 (One lac) jointly and be paid to the victim/injured. The above named accused persons are also convicted for the offence of other hurts punishable under section 337-L(ii) R/W 35 PPC and are hereby sentenced to pay daman in sum of Rs.100,000 (One lac) jointly and be paid to the

victim/injured. In case of default of payment of Daman, the accused persons shall be dealt in accordance with section 337-Y (2) PPC”.

2. As per the prosecution, on 08.07.2020, the complainant, Hadi Bux Leghari lodged FIR, alleging that on 27.06.2020, he was present at his shop along with his son when accused Ali Gul Leghari stopped a rickshaw in front of the shop and began playing music at a high volume. Upon being asked to stop, the accused became enraged and started abusing the complainant and his son. Thereafter, Sabir Ali (brother of the complainant) and Ali Hassan (son of the complainant) proceeded to transport some household items to their home. However, shortly thereafter, both returned and Ali Hassan informed the complainant that at about 2030 hours, while they were on the way to their house and reached the Mubhi Ali Leghari link road near Barr stop, they saw accused Ali Ghulam armed with a hatchet and accused Ali Gul, Ali Sher alias Karo Gulsher and Muhammad, all having lathies, standing on the road. The accused intercepted them, hurled abuses, and questioned why Hadi Bux had stopped them from playing loud music. When Sabir Ali attempted to de-escalate the situation, accused Ali Ghulam allegedly struck him with a hatchet on the head and left ear, while the remaining accused assaulted him with lathies. On hearing the commotion, local residents gathered, upon which the accused fled away. The injured was then taken to the police station, from where a referral letter was obtained, and he was shifted to the hospital for medical treatment. Hence, the FIR was lodged.

3. After usual investigation and completion of necessary legal formalities, final report in terms of section 173 Cr.P.C was submitted. Learned trial Court framed the charge against the applicants to which they pleaded ‘not guilty’ and claimed trial.

4. In order to prove its case, the prosecution examined the following witnesses:

- PW-1 Hadi Bux (Complainant) was examined at Exh.04. He produced in evidence the police letter at Exh.04/A and the FIR at Exh.04/B.
- PW-2 Sabir Ali (injured witness and brother of the complainant) was examined at Exh.05.
- PW-3 Ali Hassan (son of the complainant and eyewitness) was examined at Exh.06.
- PW-4 Idrees (Mashir) was examined at Exh.07. He produced the mashirnamas at Exh.07/A to Exh.07/C.
- PW-5 Munawar Lal (Medical Officer) was examined at Exh.08. He produced the police letter, referral form, provisional MLC, radiologist's report, final MLC, letters addressed to the DG Health, and the decision of the medical board, which were exhibited as Exh.08/A to Exh.08/I.
- PW-6 SIP Muhammad Sharif (Investigating Officer) was examined at Exh.09. He produced relevant entries from the police record, exhibited as Exh.09/A to Exh.09/C.

Thereafter, the learned Assistant District Public Prosecutor for the State closed the prosecution side by submitting a statement at Exh.10.

**5.** The statements of the accused were recorded in terms of section 342 Cr.P.C. wherein they denied the allegations and pleaded false implication on account of prior enmity and disputes over matrimonial issues and rickshaw stoppage. Accused Muhammad Ali, Ali Gul, and Gul Sher specifically denied any knowledge of the alleged incident. Accused Ali Ghulam denied both his arrest from the place shown by the police and the alleged recovery of the hatchet. Similarly, accused Muhammad Ali denied his arrest from the alleged location. The accused further contended that all prosecution witnesses were closely related and interested, being from the complainant's family. None of the accused opted to examine themselves on oath under Section 340 (2) Cr.P.C, nor did they produce any evidence in their defence. They professed their innocence and prayed for justice from the Court.

6. Learned counsel for the applicants has contended that the charge framed against the accused was defective as it failed to specify individual roles, rendering it violative of fair trial principles and contrary to the ruling reported in **Zain Shahid Vs. The State and another** (2024 SCMR 843). He argued that the case property was not exhibited with any article numbers, which vitiated the evidentiary process, relying on **Abdul Sattar and others Vs. The State** (2002 P Cr. L J 51). He contended that the memo of injuries originally recorded only two injuries, which was inconsistent with the medical certificate showing four injuries. He contended that the medical board later acknowledged only two swellings, casting further doubt on the nature and number of injuries. He also contended that the hatchet allegedly used in the assault was not sealed at the place of recovery, nor was it signed by the mashirs, thereby violating procedural safeguards and Section 103 Cr.P.C. He further contended that no independent witness was associated with the recovery. He also pointed out that during recording of statements under Section 342 Cr.P.C., no incriminating article was put to the accused for explanation, which omission alone is sufficient to vitiate the conviction. He has further contended that due to serious contradictions in the medical and ocular evidence, lack of independent corroboration and procedural irregularities, the applicants are entitled to acquittal by extending them the benefit of doubt.

7. Conversely, learned D.P.G for the State supported the impugned judgments and contended that the prosecution successfully established the case through the consistent depositions of the complainant, injured and eyewitnesses. He contended that the minor contradictions and delay in FIR are not fatal to the case, as the overall chain of events and motive stood unshaken. He contended that medical evidence corroborated the nature of injuries and the prosecution's version. He prayed for the dismissal of the revision application as being meritless.

8. Learned counsel for the complainant endorsed the findings of both trial and appellate courts, contending that the testimonies of eyewitnesses were consistent and credible. He contended that although the injury memo initially reflected two injuries, the MLC and subsequent medical board confirmed four to five injuries, thus corroborating the assault. He contended that the delay in lodging FIR was sufficiently explained and did not cast doubt on the case. He prayed that the applicants may be denied any relief and the revision application may be dismissed.

9. Heard and perused the record very carefully.

10. Upon careful evaluation of the evidence of prosecution witnesses, several material contradictions, omissions, and procedural lapses emerge, which materially undermine the veracity of the prosecution case and shake confidence in the truthfulness of the version advanced. These inconsistencies, supported by direct excerpts from the record, are discussed hereunder.

11. PW-1, complainant Hadi Bux, in his examination-in-chief deposed that upon hearing cries, members of the Bheel and Kolhi communities gathered at the place of incident, which caused the accused to flee. PW-3, namely Ali Hassan, supported this version, stating that the accused ran away upon seeing the ladies from the Bheel and Kolhi communities. However, this claim was directly contradicted by PW-2, namely Sabir Ali, who in his cross-

examination stated that “no any Bheel or Kolhi from the surrounding rushed there at the time of occurrence.” This contradiction was further corroborated by PW-4, namely Kareem Bux and PW-6, namely SIP Sharif, who stated that during site inspection no member of the Bheel or Kolhi community had gathered at the scene despite being called. As such, if it is believed that anyone from Bheel or Kolhi community came at the place of incident then why not he was cited as witness of the incident or associated as mashir and if it is presumed that no one appeared at the place of incident then question arises as to which version is correct. These conflicting statements suggest that the alleged intervention by public members was an afterthought to add weight to the prosecution story and casts serious doubt on its veracity.

12. I have also found material inconsistencies in respect of the number, nature and location of injuries when the medical evidence is compared with the ocular account of the prosecution witnesses. The prosecution examined PW-1 complainant Hadi Bux, PW-2 injured Sabir Ali, PW-3 eyewitness Ali Hassan, PW-4 mashir Kareem Bux and PW-5 the medical officer Dr. Munawar Lal. PW-1, in his examination-in-chief, stated that accused Ali Ghulam inflicted a hatchet blow on the head of his brother Sabir Ali, while the other accused assaulted him with lathis on various parts of the body. During cross-examination, however, he admitted that the memo of injuries recorded only two injuries and volunteered that some minor injuries were also present but not noted. PW-2, Sabir Ali, added that he received the hatchet blow on the back side of his left ear, along with lathi blows on his hand and other parts of the body. PW-3, Ali Hassan, reiterated this version and specifically referred to a hatchet blow behind the left ear. Contrary to these accounts, PW-5 Dr. Munawar Lal, who medically examined the injured, found only five injuries: a lacerated wound on the occipital region of the head, swelling of the third and little fingers of the right hand and three bruises with swelling on the left back of the chest. Interestingly, no injury was found behind the ear or on other

parts of the body as described by the witnesses. Moreover, PW-4 Kareem Bux, in his cross-examination, stated that at the time of preparing the injury memo, the injured had only two injuries, which further contradicts the later medical certificate indicating five injuries. These serious discrepancies between the medical evidence and the inflated oral testimony of the prosecution witnesses cast considerable doubt on the truthfulness of the alleged assault and substantially diminish the credibility of the prosecution's case. The Hon'ble Supreme Court as to the "dishonest improvement" and the unexplained absence of independent corroboration rendered the ocular evidence unreliable, warranting acquittal.<sup>1</sup>

**13.** Coming to the recovery of the alleged weapon, i.e., the hatchet said to have been used by accused Ali Ghulam in the assault, this aspect of the case appears to be anxious with serious procedural lapses and factual improbabilities. The incident admittedly took place on 27.06.2019, while the hatchet was allegedly recovered on 09.07.2019, as per mashirnama of arrest and recovery (Ex.7/C), reflecting a delay of twelve days. PW-6, namely SIP Muhammad Sharif, who conducted the recovery proceedings, candidly admitted in his cross-examination that the hatchet was not sealed at the place of recovery, and further conceded that the signatures of the mashirs were not obtained on the recovered article. This critical omission was also confirmed by PW-4, namely Kareem Bux, who acted as mashir but stated that his signature was not taken on the weapon. Such non-compliance with the mandatory procedure of sealing and attestation renders the recovery legally defective and undermines its evidentiary sanctity. More importantly, there is no reasonable explanation on record as to why the accused would retain the very weapon allegedly used in the crime for a period of twelve days, knowing that its discovery could directly link him to the offence. In ordinary human conduct, an offender would be expected to destroy or dispose of the incriminating weapon promptly after the incident to evade

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1. "MUHAMMAD AKHTAR & others v. The STATE" (2025 SCMR 45)

detection. The prosecution’s silence on this improbability, coupled with the delayed and improperly conducted recovery, justifies the inference that the weapon was either not used in the offence or was planted later to bolster the case, thereby rendering the alleged recovery highly doubtful and devoid of evidentiary weight. As to the violation of Section 103 Cr.P.C., the Honourable Supreme Court emphatically ruled that where recovery of a weapon is claimed, the prosecution must associate independent local mashirs—failure to do so amounts to "flagrant violation" of Section 103 and the recovery cannot be relied upon.<sup>2</sup> Furthermore, the apex Court also held that unless valid reasons are shown, omission to adhere to Section 103 is illegal and fatal to evidentiary value.<sup>3</sup> These precedents establish that the defective recovery process and mysterious retention of the hatchet for nearly two weeks—without sealing, attestation, or plausible rationale—render the seizure **untrustworthy** at best and **inadmissible** as evidence at worst.

14. As to the very important point regarding lodgment of FIR and non-production of the NC as allegedly recorded by the complainant is concerned, PW-1, namely Hadi Bux, stated that the incident occurred on 27.06.2019, but the FIR was not registered until 08.07.2019, causing an unexplained delay of eleven days. He claimed that he initially lodged an NC (non-cognizable report) but admitted in cross-examination that the NC was not produced in Court. PW-2, namely Sabir Ali, also confirmed that an NC was initially lodged and the FIR was filed later. However, the prosecution’s failure to produce the NC or explain the delay raises serious concerns about the authenticity of the prosecution’s case. The delay and suppression of initial N.C. give rise to a strong presumption of afterthought, manipulation, or fabrication of events. The Honourable Supreme Court held that an unexplained delay in FIR registration “tarnishes the authenticity of the FIR, casts a cloud of doubt on the entire prosecution case,” especially where the

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2. “MUHAMMAD ISMAIL & others v. The STATE” (2017 SCMR 898)

3. “STATE v. BASHIR and others” (PLD 1997 SC 408).



prosecution case lacks independent corroboration.<sup>4</sup> Likewise, the apex Court has emphasized that even a delay as brief as **three hours**—when traced to consultation or preparation—amounts to fatal infirmity in the prosecution case.<sup>5</sup> Thus, the delay of eleven days coupled with the suppression of the initial NC falls squarely within this legal framework, giving rise to a presumption of fabrication or manipulation and significantly undermining the credibility of the prosecution’s narrative.

15. Another important aspect of the investigation on the part of Investigating Officer also conflicts the timeline in respect of recording statements under section 161 Cr.P.C. PW-3, namely Ali Hassan, stated that the police recorded his statement on 09.07.2019. However, PW-2, namely Sabir Ali, claimed that his statement was recorded on the day of the incident i.e., 27.06.2019. PW-6, namely SIP Sharif, contradicted both by confirming that statements of both witnesses were in fact recorded on 09.07.2019. In my view, this inconsistency also questions the spontaneous nature of the witnesses' accounts but also raises doubts about whether the statements were recorded after deliberation or tutoring. In this regard, the Honourable Supreme Court is of the view by observing that even one or two days of unexplained delay in recording an eye-witness's statement can prove fatal to its reliability.<sup>6</sup> In this case, the seven to twelve days discrepancy, coupled with inconsistent testimony about when statements were recorded, strikes at the heart of credibility and should be viewed as eroding the probative value of the prosecution's evidence.

16. Not only the above contradictory evidence is found to be ended here but still the witnesses also gave conflicting accounts regarding the Suzuki vehicle used in the police operation. PW-1, namely Hadi Bux, said he did not know the rent amount; PW-2, namely Sabir Ali, said he did not remember the rent; PW-3, namely Ali Hassan, stated specifically that the Suzuki was hired for Rs.600;

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4. “AYUB MASI H v. The STATE” (PLD 2002 SC 1048).

5. “STATE through Advocate General NWFP Peshawar v. SHAH JEHAN” (PLD 2003 SC 70).

6. “MUHAMMAD ASIF v. The STATE” (2017 SCMR 486).

while PW-6, namely SIP Sharif, stated that the Suzuki was not hired at all and in fact belonged to a police constable. These conflicting versions from both prosecution and official witnesses reflect poorly on the coordination and truthfulness of the prosecution witnesses and cast doubt on the genuineness of the operation. Furthermore, I would like to discuss as to how the alleged injury inflicted on the hand of PW Sabir Ali. In this regard, PW-1, Hadi Bux, deposed that accused Ali Gul tried to strike Sabir Ali with a lathi, which hit him on the hand. PW-2, namely Sabir Ali, added more detail by saying that he put his hand forward to defend himself, causing the lathi blow to hit his fingers. However, PW-3, namely Ali Hassan, did not refer to any defensive action and merely stated that the blow landed. These inconsistent details about how the injury occurred reflect a lack of consistency in the eyewitness accounts and further affect the prosecution's version.

17. In view of these glaring contradictions especially in the medical and ocular account as well as defects in the investigation without implication of independent witnesses/mashirs, the prosecution's case appears doubtful. It is a well-settled proposition of law that in order to extend the benefit of doubt to an accused, it is not necessary for multiple circumstances to exist that create uncertainty. Rather, if a single circumstance gives rise to a reasonable doubt regarding the guilt of the accused, then such doubt must be resolved in favour of the accused, entitling him to the benefit thereof. In this respect, reliance can be placed upon case of ***Muhammad Hassan and Another v. The State* [2024 SCMR 1427]** wherein the Honourable Supreme Court has held that:

*“According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused.”<sup>7</sup>*

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<sup>7</sup> See also; MUHAMMAD MANSHA v. The STATE 2018 SCMR 772- "4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as

18. In view of the foregoing discussion and in reliance upon the established judicial precedents, as well as considering that even a single material loophole in the prosecution is sufficient to entitle the accused to acquittal and the instant case suffers from multiple inconsistencies, which collectively agitate the foundation of the prosecution version. Consequently, the impugned judgments dated 28.08.2020 passed by 1<sup>st</sup> Civil Judge/Judicial Magistrate/MTMC, Badin and dated 26.11.2020 passed by learned 2<sup>nd</sup> Additional Sessions Judge, Badin stand set aside, and as such, the instant Criminal Revision Application was **allowed** through a short order dated 05.05.2025, whereby the applicants were acquitted of the charge. As the applicants were on bail, hence, their bail bonds were ordered to be cancelled and surety discharged. **The foregoing constitutes the detailed reasons for the short order dated 05.05.2025.**

**J U D G E**

\*Abdullahchanna/PS\*

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a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”