IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Appeal No. S-50 of 2023
&
Criminal Appeal No. S-51 of 2023

Appellant:	Nazar Ali Narejo, *through* Mr. Falah Sher Sandeelo, Advocate
The State:	*Through* Mr. Muhammad Raza Katohar, Deputy Prosecutor General
Date of hearing:	15-05-2025, 22-05-2025, 26-05-2025.
Date of announcement:	07-07-2025.

JUDGMENT

Ali Haider 'Ada', J;- By this single judgment, I propose to dispose of the above-captioned appeals, as both arise from the same chain of events and the evidence led by the prosecution is also identical in nature.

2. Criminal Appeal No. 50 of 2023 pertains to Crime No. 36 of 2017, registered under Section 302(b), Pakistan Penal Code, which is the main case concerning the charge of murder. On the other hand, Criminal Appeal No. 51 of 2023 arises out of Crime No. 38 of 2017, which is an offshoot of Crime No. 36 of 2017, registered under Section 23(1)(a) of the Sindh Arms Act, 2013, pertaining to the recovery of the weapon allegedly used in the commission of the offence. Since both appeals are in actual fact connected and rest upon the same factual matrix and chain of circumstances, they are being decided together through this judgment.

3. Through the instant Criminal Appeals, the appellant has assailed the judgment dated 05.05.2023, passed by the learned Additional Sessions Judge-I / Model Criminal Trial Court–I, Khairpur (hereinafter referred to as "the Trial Court") in Sessions Case No. 728 of 2017, titled The State vs. Nazar Ali and another (Main Case). By virtue of the said judgment, the appellant was convicted under Section 302(b) of the P.P.C and sentenced to life imprisonment as Tazir, along with a direction to pay compensation of Rs. 300,000/- (Three Hundred Thousand Rupees) to the legal heirs of the deceased under Section 544-A of Cr.P.C. In case of default in payment of compensation, the appellant was further directed to undergo simple imprisonment for one year. However, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

The conviction arises out of Crime No. 36 of 2017, registered at Police Station Faiz F.M Narejo. In addition, the appellant has also challenged the judgment dated 05.05.2023, passed by the same Court in Sessions Case No. 729 of 2017, which is an offshoot of the main case, wherein he was convicted under Section 23(1)(a) of the Sindh Arms Act, 2013, and sentenced to undergo rigorous imprisonment for fourteen (14) years, along with a fine of Rs. 100,000/- (One Hundred Thousand Rupees). In default of payment of fine, he was directed to undergo simple imprisonment for a further period of one year. The benefit of Section 382-B Cr.P.C. was also extended to the appellant in this case.

4. The case of the prosecution is that on 24.09.2017, complainant ASI Muhammad Ismail, along with his subordinate staff, left the police station for routine patrolling. During the course of patrolling, they received spy information that one Nazar Ali Narejo was planning to kill his wife, Mst. Naheedan, allegedly due to her illicit relationship with one Kaleemullah and that he intended to commit the act with the help of his co-accused. Acting upon this information, the police party proceeded towards the house of Nazar Ali and at about 2240 hours, reached the location. In the light of the government vehicle, the police party saw and identified the accused persons as Nazar Ali, Mazhar Din, Mumtaz, Mor, Ali Hassan, Shahzado, and one unidentified person, all of whom were armed with weapons and seen coming out of a room in the house. Upon seeing the police, the accused persons fled from the scene. The police party then entered the room and found the dead body of a woman lying inside. Upon inquiry from the neighbors, the deceased was identified as Mst. Naheedan, wife of accused Nazar Ali. Despite efforts by the police to involve neighbors in the legal proceedings as witnesses, they refused to cooperate. Consequently, police officials Atta Muhammad and Nadsarullah were appointed as Mashirs (witnesses to recovery and proceedings). Upon examining the body, two injuries were observed as one on the abdomen, exiting from the right side and another injury on the inner muscle of the right arm. From the scene of the incident, the police recovered two empty red-colored cartridges, which were sealed on the spot. Blood-stained earth was also collected and sealed accordingly. A memo of recovery was prepared and the dead body was sent to Hospital for post-mortem examination through police constable Lal Bux. Thereafter, the police party returned to the police station, and on 25.09.2017 at about 12:30 a.m., the FIR was registered.

On 26.09.2017, the Investigation Officer along with his subordinate staff, left Police Station Faiz Mohammad Narejo for the purpose of investigating in Crime No. 36 of 2017, During patrolling, when the police party reached Ulra Bhutta Curve, they received spy information that the wanted accused in Crime No. 36 of 2017, namely Nazar Ali (the appellant), was coming from the Katcha area towards the Pacca side. Acting upon this information, the police party proceeded to the pointed location and observed a person armed with a Single Barrel Breach Loading (SBBL) gun standing there. Upon noticing the police, the suspect attempted to flee; however, he was successfully apprehended.Upon inquiry, the arrested person disclosed his name as Nazar Ali and allegedly confessed to having killed his wife with the same weapon, accusing her of having an illicit relationship (*Karo Kari*) with one Kaleemullah. As no private individuals were available at the time, the complainant appointed police officials Nasarullah and Atta Muhammad to act as witnesses to the recovery proceedings. Upon inspection, it was revealed that the recovered SBBL gun was unlicensed, as the serial number appeared to have been erased. Additionally, three live red-colored cartridges were recovered from the personal search of the accused. After completing the necessary legal formalities, a separate FIR was registered against the appellant under Section 23(1)(a) of the Sindh Arms Act, 2013, being Crime No. 38 of 2017 at the same police station.

5. Upon completion of the investigation and fulfillment of other legal formalities, the Investigating Officer submitted the final reports (challans) against the present appellant in both crime. In main case one co-accused, Shahzado, was shown as an absconder, while the remaining co-accused were found to be innocent during the investigation and, therefore, their names were placed in Column No. II of the report. Consequently, the appellant was sent up to face trial in both cases before the learned trial Court.

6. The requisite documents were duly supplied to the appellant/accused. On 01-01-2018, the learned Additional Sessions Judge-IV, Khairpur, framed the charge against the accused. As co-accused Shahzado subsequently joined the trial proceedings in main case, the charge was amended on 09.02.2018; and the prosecution was directed to present its evidence. In support of its case, the prosecution examined the following witnesses:

> *PW-1*: Muhammad Ismail (Complainant), He produced and exhibited the inquest report, memo of place of incident, recovery of empties and

securing blood-stained earth, roznamcha entry regarding patrolling and arrival, memo of dead body examination, copy of FIR, and receipts of documents.

PW-2: Atta Muhammad (Mashir), He produced the memo of recovery of clothes of the deceased.

PW-3: Lal Bux (Police Constable), He produced the receipt confirming that the dead body was handed over to Mst. Rabia, mother of the deceased.

PW-4: Ghulam Ali (Hyder) (Investigating Officer), He produced relevant roznamcha entries, memo of arrest and recovery, letter to the Mukhtiarkar for preparation of the site sketch, letter to the SSP seeking permission to send clothes and blood-stained earth for chemical analysis, letter of the SSP to the Incharge Forensic Division Larkana and reports from the Chemical Examiner and Ballistics Expert. He also produced the statement recorded under Section 161 Cr.P.C. of Mst. Rabia, the deceased's mother. He was also examined in the offshoot case in his capacity as the complainant.

PW-5: Nasarullah (Mashir), He supported the memo of place of incident, recovery of empties, and securing of blood-stained earth. He was also examined in the offshoot case in his capacity as the Mashir.

PW-6: Mohsin Ali (Tapedar), He produced the sketch of the scene of incident.

PW-7: Mst. Rabia (Mother of the deceased), She gave her statement regarding the incident and the identity of the deceased.

PW-8: Dr. Aisha (Medical Officer), She conducted the post-mortem examination and produced the post-mortem report, the letter to the Chemical Examiner for analysis of swabs and the chemical analysis report.

7. After completion of the examination of witnesses, the learned State Counsel closed the prosecution's evidence through a statement. On 18.05.2022, the learned Additional Sessions Judge-I, Khairpur, received the Record and Proceedings (R&P) from the learned Additional Sessions Judge-IV, Khairpur, and thereafter took over the proceedings of the case.

8. Subsequently, the learned Trial Court recorded the statement of the accused under Section 342, Cr.P.C., wherein the appellant denied the allegations, professed innocence and prayed for acquittal. He neither opted to examine himself on oath under Section 340(2), Cr.P.C., nor produced any evidence in his defense. After hearing the arguments advanced by both the learned State Counsel and the defense counsel, the learned trial Court passed the impugned judgment, whereby the appellant was convicted, while

co-accused Shahzado was acquitted of the charge. The appellant has now filed the present Criminal Appeals, challenging the legality and propriety of the said judgments.

9. The learned counsel for the appellant contended that this is a case of no direct evidence, as no eyewitness was produced to establish who actually committed the alleged murder. The conviction is based merely on presumption, arising from the fact that the appellant, being the husband of the deceased, allegedly killed her. It was argued that even under the Karo-Kari custom, both the man and the woman accused of illicit relations are usually killed; however, in the present case, there is no allegation or evidence that the appellant murdered Kaleemullah, who was purportedly involved with Mst. Naheedan. It was further submitted that no corroborative evidence supports the prosecution's version. Even Mst. Rabia, the mother of the deceased, did not depose anything incriminating against the appellant. Regarding the alleged recovery, it was pointed out that the ballistic expert's report is negative in nature and does not connect the recovered weapon with the offence. In light of these deficiencies, the learned counsel argued that the prosecution has failed to prove the case beyond reasonable doubt, and therefore, the appellant is entitled to the benefit of doubt and should be acquitted. The learned counsel for the appellant further contended that safe custody and safe transmission of the recovered weapon were not properly proved and neither the Incharge Malkhana nor any official responsible for the dispatch or receipt of the weapon was examined during trial. It was further argued that although the recovery was allegedly effected from a thickly populated area, no private person was associated as a mashir (witness), which casts serious doubt on the credibility of the recovery proceedings.

10. On the other hand, the learned counsel for the State contended that, in a situation where the wife of the appellant is found murdered, the strongest suspicion naturally falls upon the husband, especially in the absence of any other plausible explanation. It was further argued that the circumstantial evidence, including the statement of police officials who allegedly saw the accused armed with weapons fleeing the scene, provides a chain of events that points towards the guilt of the appellant. The learned counsel also submitted that the trial Court had already taken a lenient view by awarding life imprisonment instead of the death penalty and thus the impugned judgment is

well-reasoned, in accordance with law**,** and does not warrant any interference by this Court. Learned counsel for the State further contended that since the wife of the appellant was found murdered, and the weapon allegedly used in the offence was recovered from the possession of the appellant**,** prima facie recovery stands established**,** and as such, the appellant is not entitled to the benefit of acquittal**.**

11. Heard the arguments advanced by the learned counsel for the appellant as well as the learned State Counsel. Perused the material available on record with due care and conducted a deeper appreciation of all aspects of the case. The prosecution's evidence has also been carefully examined in the light of the entire record.

12. Regarding the first aspect of the case, the complainant, in his deposition, testified that he received spy information alleging a conspiracy between the accused persons. However, no independent witness was produced to substantiate the existence or preparation of any such conspiracy. The complainant's claim regarding the conspiracy thus remains uncorroborated and inherently doubtful. In Case of ***FazalMaula vs The State*** **(PLD 2006 Peshawar 108-DB),** held that:

> *It is settled law that in order to establish conspiracy, the prosecution has to prove agreement between the appellants to kill deceased.Generally, the agreement between the conspirators cannot directly be proved but its existence can certainly be inferred from the facts established on the record. The prosecution witnesses had not mentioned either the names of conspirators or their agreement to kill or the names of witnesses of conspiracy. No evidence whatsoever of the conspiracy or sequence of circumstances from which the existence of conspiracy can be inferred was led at the trial. No inference of conspiracy to kill can be drawn from the facts narrated by the P.W.8, P.W.11 and C.W.13. No evidence either direct or circumstantial of any overt act or omission is available on the record to suggest a pre-concert or a common design between or amongst the appellant to commit Qatl-i-Amd of the deceased. It is equally settled that in order to record conviction for a murder charge, circumstantial evidence must be of a high value and degree and all circumstances must lead to the guilt and be wholly incompatible with any reasonable hypothesis of the innocence of A accused; Mst. Sairan alias Saleema v. State PLD 1970 SC 56, Muhammad Aslam v. Muhammad Zafar PLD 1992 SC 1.*

13. Moreover, a serious contradiction arises concerning the injuries sustained by the deceased. The complainant's testimony regarding the seat of the injury is inconsistent with the FIR. The FIR states that the deceased received a firearm injury on the abdomen, while the complainant during his examination-in-chief asserted that the injury was on the chest**.**

This contradiction amounts to a contra-statement, casting doubt on the reliability of his testimony. Additionally, the complainant failed to mention the existence of a second injury during his testimony, which was, however, recorded in the FIR as a firearm injury on the right arm of the deceased. This omission further detracts from the credibility of the complainant's version. The lady doctor deposed that the deceased sustained a firearm injury at the front of the abdomen, which she identified as the wound of entry, while the wound of exit was on the left side of the abdomen. This medical testimony, however, contradicts the account recorded in the FIR and the memo of the dead body, which stated that the exit wound was on the right side of the abdomen. Further, there is a discrepancy concerning the second firearm injury. The ocular testimony of witnesses who saw the dead body at the spot, as per the FIR, indicated that the second injury was on the right arm of the deceased. The prosecution also examined another witness, namely Atta Muhammad, who accompanied the police party during the investigation, said witness testified that the deceased received a firearm injury on the left upper arm, which directly contradicts the documentary evidence that indicated the injury was on the right arm. Conversely, the medical officer's deposition confirmed that the second firearm injury was sustained on the left elbow joint. Such material inconsistencies between the medical evidence and the FIR as well as the ocular account seriously undermine the consistency of the prosecution's evidence. Refernce is made to the case of ***Gulab alias Jamaluddin vs Ghulam Muhammad and 5 others*** (**2020 YLR 2286)** with regard to that facts suggested that ocular evidence was contradictory to the medical evidence. Further, in this consideration, reliance is placed upon the case of ***Muhammad Naveed vs The State*** **(2023 P Cr. L J 896- DB, Lahore)** as it was held that:

> *14. As far as the medical evidence is concerned, it evinces from the record that even the medical evidence runs contrary to the prosecution's case as according to Abdul Waheed, complainant (PW.1) and Mst. Sughran Bibi (PW.3), the appellant made straight fire shot hitting Mst. Noreen Bibi (deceased) at her right cheek thereafter, he made repeated fire shots hitting at different parts of her body. It appears that both the PWs failed to describe the specific seat of injuries except one injury and according to the medical evidence (post mortem report Exh. PE) the only specific injury described by the eye-witnesses on the right cheek of the deceased (injury No.2) is an exit wound. Moreover, Doctor Momina Arif, WMO (PW.7), who conducted autopsy on the dead body of the deceased, during her cross-examination has stated as under:-*
>
> *"….it is correct that direction of injury No.1 was from lower side to upward. The track/direction of injury Nos. 5 and 6 was also from downward to*

upward…"

These glaring contradictions between the ocular version and the medical evidence have sufficiently established that the alleged eye-witnesses were not present at the spot at the relevant time, which aspect of the case prompts this Court not to place any reliance on them. Keeping in view the afore-stated circumstances, this Court is of the view that the prosecution version with regard to ocular account seems to be tainted, not inspiring confidence and result of due deliberations as well as consultations, hence the same cannot be given any legal credence. Reliance is placed upon the case law titled as "Ghulam Abbas and another v. The State and another" (2021 SCMR 23).

14. For the purpose of medical examination, it is imperative to carefully consider the medical findings, as the prosecution relies heavily on such documents to substantiate its case. Upon scrutinizing the postmortem report, it is noted that the abdominal examination reveals certain contradictions. The chain of evidence and medical documentation must be clear and coherent to be considered credible. As per the post-mortem report, during the examination of the abdomen, the Medical Officer opined that the abdominal wall, small intestine, and large intestine were punctured. However, with regard to the Peritoneum, it was noted as "healthy." This observation appears inconsistent with standard medical understanding. According to ***GEM Medical Dictionary, 21st Revised Edition,*** the peritoneum is defined as the delicate serous membrane which lines the abdominal and pelvic cavity and also covers the organs contained in them pertioneal. In cases of firearm injury to the abdomen, where internal organs such as the intestines are punctured, it is medically expected that the peritoneum would also be compromised or show signs of damage, given its anatomical position and protective function. Therefore, the finding that the peritoneum was "healthy" despite clear internal injuries is contrary to medical norms and raises questions about the accuracy or completeness of the post-mortem examination.

15. Now, even proceeding further on the medical aspect, it is noteworthy that no hole or tear was observed in the clothes of the deceased**,** despite the alleged firearm injury. The medical officer specifically stated that she did not note any hole marks on the cloths of the deceased, which raises serious doubts regarding the origin and nature of the injuries. In this context, reliance is placed upon the judgment in ***Asjad Mehmood v. The State,*** **(2024 YLR 1892)**, wherein held that "Even the Female Medical Officer had not observed corresponding holes on the shirt". Further refernce is made to the case of

Zahoor Ahmed and others vs The State and others, **(2022 YLR 189)**, as held that:

> *---Medical Officer held the autopsy and observed three injuries including two entry wounds and the other was exit of injury---During the cross-examination, the Medical Officer admitted that he observed no corresponding holes on the clothes of the deceased---Had he seen any hole, he would have definitely mentioned the same in post-mortem examination report---Statement of said witness further reflected that it was possible that fire shots strike the body of the deceased in naked condition---Medical evidence, therefore, contradicted the ocular account---Circumstances established that the prosecution had failed to prove its case against the accused beyond reasonable doubt---Appeal against conviction was allowed, in circumstances. Muhammad Akram v. The State and others 2016 SCMR 2081; Nasrullah alias Nasro v. The State 2017 SCMR 724; Nadeem alias Kala v. The State 2018 SCMR 153 and Najaf Ali Shah v. The State 2021 SCMR 736.*
>
> ***(underline mine)***

16. According to the memo of site inspection, the recovery of empty cartridges and the securing of blood-stained earth were noted. The police also claimed to have observed footprints of the accused party at the scene. However, these footprints were not preserved or recorded in accordance with the Police Rules, 1934**,** thereby violating established protocols for the preservation of such evidence. For ready refernce the ***Rule 25.26 of Police Rules 1934,*** is read as under:

> ***25-26. Importance of foot-prints and track evidence.*** *– (1) Footprints are of the first importance in the investigation of crime. For this reason all officers in charge of police stations shall instruct their subordinates as well as all lambardars and chaukidars that, when any crime occurs all footprints and other marks existing on the scene of the crime should be carefully preserved and a watch set to see that as few persons as possible are permitted to visit the scene of the crime.*
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> *When it desired to produce evidence of the identity of tracks found at the scene of or in connection with a crime, the procedure for securing the record of such evidence shall be similar to that prescribed in rule 26.32 for the identification of suspects. The attendance of a Magistrate of the highest available status, shall be secured, but if no Magistrate is available and the case is of great urgency, independent and literate witnesses of reliable character like Sarpanches or Panches or Lambardars, shall be requested to conduct proceedings, but before they hold the parade, the rule regarding the holding of parades shall be explained to them. In the presence of the Magistrate or other person conducting the test and in conformity with any reasonable directions which they may give, ground shall be prepared for the tests. On this ground the suspect or suspects and not less than five other persons, for each suspect, shall be required to walk. The Magistrate or the person conducting the test shall record the names of all these person and the order in which they enter the test ground. The suspect shall, of course, be given option to take any place of his choice in the Parade and a note to this effect shall be recorded in the Memo of proceedings which will also indicate whether he has availed of this option. While these preparations are*

proceeding the tracker of other witness who is to be asked to identify the tracks shall be prevented from approaching the place or seeing any foot-prints of the persons joining the test parade. When all preparations are complete, the tracker or the identifying witness shall be called up and required to examine both the original tracks whether lifted on the moulds or otherwise and those on the test ground and hereafter to make his statement. The Magistrate or the person conducting the test, shall record the statement of the tracker or the identifying witness as to the grounds of his claim to identify the tracks, and shall put such other questions as he may deem proper to test his bona-fides. Neither any Police Officer nor any person connected with the case shall be allowed to take any part in the conduct of the test. The person other than the Magistrate conducting the test may, however, associate with them one or more independent witnesses of reliable character.

If the tracks of culprits found at the scene of crime are shodfooted, the Magistrate or the other person conducting the parade, shall be requested to take the shoes into possession, paste their signed paper slip on the shoes and seal them after the parade.

When admitting the accused or suspect whose track parade is to be held in Jail a request in writing shall be made to the Jail authorities to see that the accused or suspect does not change the shoes. At the time of arrest in such cases, the Police Officer making or ordering the arrest will take the shoes of the accused in possession, paste a chit signed by himself and witness on it and seal them. The parcel will be opened by the Magistrate or other person conducting the parade and resealed after the parade as above.

If however, the tracker, for any reason such as inefficiency, careless confusion or adverse influence of the suspect, fails to correctly identify the tracks, the mater should not be left there. It is still open to the Investigator, if another more efficient and reliable tracker is not available, to get the moulds for foot-prints found at the scene of crime and those prepared and duly initialled by the Magistrate or other person holding the parade at the time of the track identification parade, compared by the Director, CID, Scientific Laboratory, Phillaur, and obtain his expert opinion as to whether the foot impressions in both the mounds tally.

Tracks which it is desired to test by comparison as above, shall be protected immediately on discovery, and their nature, measurements and peculiarities shall be recorded at the time in the case diary of the investigating officer.

The details of the preparation of the test ground and the actions required of the suspect and those with whom his tracks are mixed must vary according to the circumstances of the case. The person conducting the test shall so arrange that the identifying witness nay be given a fair chance, but under the strictest safeguards, of comparing the original tracks with other track, made on similar ground and in similar conditions.

Before inviting person other than the Magistrate to conduct the proceeding, the Police Officer concerned will ensure that he is not interested in or against the suspect or accused.

(3) The evidence of a tracker or other experts described in the foregoing rule can be substantiated by the preparation of moulds of other footprints of the criminal or criminals found at the scene of the crime. The method of making moulds of footprints by means of plaster of Paris or a composition of two parts of resin to

one part of wax or parafin is taught to all students at the Police Training School but requires practice before an officer can become proficient. The only advantage in the first method (plaster of Paris) is the quickness with which the material sets. Resin and wax are cheap and can be used more than once.

In making mounds for production as evidence the following precautions should be observed:---

(a) The footprints found on the scene of the crime must be pointed out to realise witnesses at the time and these same witnesses must be present during the preparation of the mounds.

(b) The later must also be signed or marked by the witnesses and the officer preparing them while still setting.

(c) After the procedure described in sub-rule (2) above has been completed a mould should be prepared in the presence of the magistrate or witnessed of one of the foot-prints of the suspect made in their presence. This mould should be signed by the magistrate or witnesses when still setting.

(d) Both mounds should be carefully preserved for production in court for identification by witnesses and comparison by the court.

Methods of recording footprints-(1) by tracing through glass footprints found on the ground or other surface, and (2) by taking impressions of feet direct on to paper, as in the case of finger impressions, are taught at the Police Training School. Such records at the scene of offence. They may also be used to check the reliability of local trackers.

17. Furthermore, discrepancies are evident regarding the timeline of the incident. The FIR was lodged on 25.09.2017 at 12:30 a.m., whereas the FIR mentions the incident occurred on 24.09.2017 at about 2240 hours (10:40 p.m.). Contrarily, the complainant in his deposition stated that he reached the alleged scene at about 1240 hours (12:40 p.m.) the following day and at that time saw the accused party coming out of the house of Nazar Ali.

18. The Investigation Officer was also examined during the trial. In his deposition, he stated that he recorded the statement of one Muhammad Shahan at the place of the incident. However, this witness was not produced by the prosecution during the trial. Given the significance of Muhammad Shahan's statement as an independent and corroborative source, his absence from the witness list is a serious omission. So, when a witness, whose evidence is crucial and material, is not produced by the prosecution without sufficient explanation, an adverse inference can be drawn against the prosecution's case. Reliance is placed upon the case of ***Muhammad Ramzan vs The State*** **(2025 SCMR 762),** as it has been held that:

At the trial, the prosecution has not produced Matloob Hussain, the owner of the

house as witness. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above witness been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of "Mst Saima Noreen v. The State" (2024 SCMR 1310).

19. The Chemical Examiner submitted a report after analyzing the blood-stained earth and the last clothes of the deceased**,** opining that both were stained with human blood**.** However, a critical observation must be made regarding the report, the Chemical Examiner did not compare or match the blood-stained earth with the blood on the clothes of the deceased**.** It is the prime duty of the prosecution and the Investigating agency to establish an unbroken chain of evidence. Reference is made to case of ***Khalid Javed vs The State*** **(2003 SCMR 1419)** and ***Naveed Asghar and 2 others vs The State*** (**PLD 2021 Supreme Court 600)** as held that:

> *Statement of the investigating officer that the seat-cover of the recovered motorcycle was bloodstained and such fact suggested that it was the same motorcycle that was used in the crime was not found confidence inspiring; had the seat-cover of the motorcycle been really bloodstained, the investigating officer would have sent the same for examination by the Chemical Examiner for ascertaining whether the bloodstain was that of human blood and whether that bloodstain matched with the blood of any of the deceased persons or the accused persons---In absence of the reports of the Chemical Examiner and the Serologist on these facts, the assertion of the investigating officer as to use of the said motorcycle in commission of the crime carried no legal worth---Failure on part of the investigating officer to ascertain registration number and name of the registered owner of the motorcycle was also fatal to his assertion that the recovered motorcycle belonged to one of the accused persons---* (*underline mine)*

20. Now, coming to the point regarding the recovery of the weapon, it is submitted that the prosecution has failed to establish the recovery as a credible piece of evidence in support of its case, the complainant deposed that he saw the accused party armed with weapons. However, he failed to specifically identify or describe the weapons in a manner that would corroborate the prosecution's case.

21. Now, turning to the aspect of the **B**allistic Expert Report**,** which is of importance in the instant case, especially given that no eyewitness has identified who actually committed the murder of the deceased. In such circumstances, ballistic evidence assumes a pivotal role in corroborating the prosecution's case. The ballistic expert examined two empty cartridges, marked as C-1 and C-2**,** which were recovered from the crime scene. According to the report, these cartridges were not fired from the single barrel gun that was

allegedly recovered from the accused. This finding indicates a negative ballistic opinion**,** meaning that the weapon linked to the accused cannot be positively connected to the cartridges found at the scene. Such a negative report seriously weakens the prosecution's case, as it fails to establish a direct forensic link between the accused and the firearm used in the commission of the offence. In this regard, reliance is placed upon the judgment of the Honourable Supreme Court in ***Pervaiz Khan and another v. The State***, **(2022 SCMR 393),** wherein it was held that a negative FSL report creates serious doubt regarding the prosecution's case, particularly in circumstances where recovery is the main incriminating evidence. Further, support is drawn from the case of ***Irfan Ali vs The State*** **(2015 SCMR 840).** Further in case of ***Naveed Asghar vs The State*** *(as mentioned supra)* also held that:

> *---Recovery of weapon of offence was only a corroborative piece of evidence; and in absence of substantive evidence, it was not considered sufficient to hold the accused person guilty of the offence charged---When substantive evidence failed to connect the accused person with the commission of offence or was disbelieved, corroborative evidence was of no help to the prosecution as the corroborative evidence could not by itself prove the prosecution case. Saifullah v. State 1985 SCMR 410; Ali Muhammad v. Bashir Ahmed 2003 SCMR 868; Israr-ul-Haq v. Muhammad Fayyaz 2007 SCMR 1427; Hayatullah v. State 2018 SCMR 2092; PLD 1956 FC 123 and 1985 SCMR 410 ref.*

22. So far as the question of safe custody of the recovery is concerned, the prosecution did not prove the safe custody and secure transmission of the recovered weapon. This is evident from the fact that the Incharge Malkhana of the concerned police station was not examined before the learned trial Court, which creates a serious gap in the chain of custody and raises doubt regarding the integrity of the recovered item. Further reliance is placed upon the case of ***Zubair Ahmed and another v. The State***, **(2025 YLR 499)**, wherein the Honourable Court held that:

> *Safe custody and safe transmission of the recovered pistol had not been established before the trial Court, for the reason that prosecution failed to examine Incharge Malkhana of concerned police station-*

23. The Investigation Officer exhibited the statement of Mst Rabia, recorded under section 161 Cr.P.C on 9-10-2017, after the lapse of 14 days, the mother of the deceased, she alleged that the accused Nazar Ali Narejo (appellant) and co-accused Shahzado were responsible for the murder of her daughter. However, during her testimony before the trial Court, Mst Rabia completely recanted her earlier statement and stated that neither the appellant nor the

co-accused Shahzado were the real culprits behind the incident. In light of this, her Court testimony must be preferred over the earlier statement recorded under Section 161 Cr.P.C., which was made during the course of investigation and without the safeguards of cross-examination. It is a well-established that a statement under Section 161 Cr.P.C. holds no evidentiary value unless the person who made the statement is produced as a witness and the statement is proved through examination and cross-examination. In the present case, since Mst Rabia has denied the contents of her earlier statement during her examination-in-chief and no explanation was provided for the contradiction, the uncorroborated statement under Section 161 Cr.P.C. cannot be relied upon to convict the accused. Conviction cannot be based solely on a statement recorded under section 161 Cr.P.C, which remains unproved and has been disowned by the maker. On the point of delay, the recoding of the statement of witness under section 161 Cr.P.C, the Honourable Apex Court in case of ***Bashir Muhammad Khan vs The State*** (**2022 SCMR 986),** observed that the Delayed recording of statement of witness under section 161, Cr.P.C, Such delay reduces value of the statement to nil unless and until it is explained with justifiable reasonings

24. Regarding the proof of the case, the prosecution examined Nasarullah**,** a police official and member of the police party. In his deposition, he stated that upon receiving spy information about a conspiracy to murder the deceased lady, the police party proceeded to the location. However, upon arrival, he testified that they only identified two accused persons, namely Mazhar and Shahzado, while the identities of the other persons present remained unknown**.** Furthermore, Nasarullah deposed that, apart from the dead body and blood-stained earth**,** no other items or evidence were secured from the place of the incident. Notably, he did not mention the recovery or securing of any empty cartridges or other material evidence at the crime scene. This testimony indicates a lack of substantial and concrete recovery of evidence from the crime scene. In case of ***Mst. Saima Noreen and another vs The State*****, (2024 SCMR 1310),** that no one witness during evidence disclosed that who had informed the police about the occurance, as it has been held that:

> *---According to the statements of alleged eye-witnesses recorded at the trial, they both did not inform the police about the occurrence---None of the prosecution witness had disclosed at the trial as to who had informed the police about the occurrence or how the police reached at the place of occurrence when neither any*

relative of deceased nor any inhabitant of the area had informed the police about the occurrence.

25. The case of ***Mehrab Bangulani v. The State*****, (2025 PCrLJ 369,**) further reinforces the position and is relied upon for consideration , as it has been held that:

Accused was charged that he along with his co-accused person committed murder of the deceased lady by firing on the allegation of kari--- Admittedly, the evidence of all the prosecution witnesses was merely hearsay, and none of the prosecution witnesses claimed to have seen the appellant while committing the murder of deceased---In legal proceedings, hearsay evidence was generally regarded as lacking probative value unless accompanied by corroborative evidence that substantiated its credibility---As such, the admissibility of hearsay evidence hinged on the presence of additional corroborative material that reinforced its validity and enhanced its trustworthiness---Without such corroboration, hearsay evidence failed to meet the legal standards necessary to impact the outcome of the case, as it did not sufficiently establish the facts it purported to support---Appeal against conviction was allowed, in circumstances.

26. That, the learned trial Court, on the same set of evidence**,** acquitted the co-accused Shazado while convicting the appellant. The evidence available on record is identical in nature against both the appellant and the acquitted co-accused. No prosecution witness has categorically stated that they saw the appellant committing the murder of deceased. Furthermore, the circumstantial evidence produced by the prosecution fails to establish a coherent and unbroken chain leading to the guilt of the appellant. The alleged recovery, which is the cornerstone of the prosecution's case, is itself inconsistent and insufficient to connect the appellant with the commission of the offence. In this regard, reliance is placed upon the judgment of the Honourable Supreme Court in the case of ***Pervaiz Khan and another v. The State***, **(2022 SCMR 393)**, wherein it was observed that evidence has been found doubtful to the extent of acquitted co-accused, not sustainable to convict the accused.

27. It is settled principle of Law that the benefit of doubt must be extended to an accused if there exists even a single circumstance that creates reasonable doubt regarding his guilt in prudent mind. It is not necessary that there be a multitude of doubts or inconsistencies. A solitary, credible doubt is sufficient to entitle the accused to an acquittal. Reliance in this regard is placed upon the authoritative judgments of the Hon'ble Supreme Court in ***Sajjad Hussain v. The State*** **(2022 SCMR 1540),** ***Abdul Ghafoor v. The State*** **(2022 SCMR 1527)** and

the judgment of the Division Bench of this Court in ***Nadir Hussain v. The State*** **(2025 YLR 487).**

28. For the foregoing reasons; and in view of the discussion made hereinabove, it is evident that the prosecution has failed to prove its cases against the appellant beyond the shadow of reasonable doubt. Accordingly, both instant Criminal Appeals are allowed**.** The impugned judgment dated 05.05.2023**,** passed by the learned trial Court in Sessions Case No. 728 of 2017 (under Section 302(b), P.P.C.) and in Sessions Case No. 729 of 2017 (under Section 23(1)(a) of the Sindh Arms Act, 2013) are hereby set aside to the extent of the appellant. Consequently, the appellant is acquitted of the charge in both cases. He shall be released forthwith**,** if not required in any other case**.**

JUDGE