

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Criminal Jail Appeal No.D-10 of 2020

Appellant : Rasool Bux @ Rasoolo
s/o Gul Muhammad Seelro
Through Mr. Ahsan Ahmed Qureshi,
Advocate

Respondents : The State
Through Mr. Ali Anwar Kandhro
Additional Prosecutor General, Sindh.

Date of Hearing : 15.07.2025
Date of Judgment : 22.07.2025

J U D G M E N T

Khalid Hussain Shahani, J:- The Criminal Jail Appeal is directed against the impugned judgment dated February 8, 2020, delivered by the learned Judge Anti-Terrorism, Larkana, in Special Case No. 3 of 2012, emanating from FIR No.11 of 2012, Police Station "B" Section Shahdadt, for offence under Sections 302, 324, 353, 337-F(vi), 337-F(i), 148, 149 P.P.C read with Section 7(a) and (c) of the Anti-Terrorism Act, 1997.

2. The prosecution's case originated from an FIR lodged by Inspector Kareem Bux Bhayo at P.S. "B" Section Shahdadt on February 14, 2012. He stated that while on patrolling duty with his subordinate staff, they received intelligence about the movement of accomplices of accused Sajjad Ali Seelro, including Rasool Bux, on two motorcycles towards Shahdadt. Upon reaching near Mastoi Petrol Pump at about 7:15 pm, the police party spotted two motorcycles. One, on the southern side of the road, was ridden by an unidentified person with a Kalashnikov, while Rasool Bux, armed with a Kalashnikov, sat on the back. Another motorcycle on the northern side carried three unidentified armed individuals. When challenged by the

police, the motorcycle on the northern side reportedly turned back and fled. Accused Rasool Bux Seelro allegedly dismounted, challenged the police by stating they would not be spared due to Sajjad Seelro's arrest, and along with the other accused, opened fire on the police party to deter them from performing their duty. The police retaliated, and in the ensuing ten minutes encounter, HC Zakaullah Ghanghro sustained multiple bullet wounds and died on the spot. Inspector Kareem Bux Bhayo and PC Rehmatullah also reportedly sustained bullet injuries. A motorcycle, bearing registration No.SKR-6501, allegedly abandoned by the accused, was secured and later identified as stolen property from Crime No. 6/2012 of P.S. "B" Section Shahdadkot. A mashirnama was prepared on the spot in the presence of mashirs PC Muhammad Arshad and DPC Rehmatullah. The injured and the deceased were taken to Taluka Hospital Shahdadkot. The complainant, after receiving first-aid, lodged the FIR, claiming he and his witnesses had clearly seen the unknown accused whose faces were uncovered and could be identified again.

3. Following the FIR, police investigation led to the submission of a challan. Accused Muhammad Ali S/O Lal Muhammad Brohi was shown in custody, while Rasool Bux @ Rasoolo, Ameen, Gul Jan, and Manzoor were shown as absconders. During the pendency of the case, accused Ameen Brohi was arrested but later disappeared and was declared a Proclaimed Offender after due process. All accused, including those initially absconding, were convicted by the Anti-Terrorism Court vide judgment dated July 25, 2014. Subsequently, Muhammad Ali Brohi, who was in custody, challenged his conviction through Criminal Jail Appeal No.D-35 of 2014 before this court, which was allowed and appellant was acquitted vide judgment dated June 19, 2018. Accused Muhammad Ameen and Gul Jan also filed Jail Appeals No.60/2015 and 75/2016, respectively, before this Court,

challenging their convictions awarded in absentia. Both appeals were disposed of through a common judgment dated May 25, 2017, setting aside their convictions and remanding the case for re-trial. After re-trial, Muhammad Ameen and Gul Jan were acquitted under Section 265-H(1) Cr.P.C. vide judgment dated October 20, 2018 by the learned trial court.

4. The present appellant, Rasool Bux @ Rasoolo, was produced by the police on March 19, 2019, challenging his conviction awarded in absentia. This court, set aside his conviction vide judgment dated August 7, 2019, passed in Criminal Appeal No.D-40/2019, remanding the case for re-trial. After the re-trial, the learned Anti-Terrorism Court, Larkana, again convicted Rasool Bux @ Rasoolo on February 8, 2020. It is worth mentioning, Co-accused Manzoor was also arrested. He too challenged the judgment in which he was convicted in his absentia. During pendency of instant appeal, this court vide judgment dated 18-04-2023, set aside the impugned judgment and remanded the case with the directions to learned trial court to proceeded case against co-accused Manzoor afresh.

5. During the re-trial proceedings, requisite papers were supplied to the accused in pursuance of section 265(c) Cr.P.C and formal charge was framed. The prosecution examined several witnesses, including PW-1 Inspector Kareem Bux Bhayo (complainant), PW-2 PC Rehmatullah Leghari (eyewitness), PW-3 PC Muhammad Arshad Gadehi (eyewitness), along with various police officials and medical officers who testified regarding the incident, post-mortem, and injuries. Upon closure of the prosecution side, the accused was examined under Section 342 Cr.P.C., where he professed his innocence and opted not to give a statement on oath or produce defense witnesses.

6. The learned counsel for the appellant, vigorously contended that his client was innocent and had been falsely implicated. His arguments centered on several critical points, many of which echoed the grounds for acquittal of co-accused in the same case. He emphatically argued for the application of the rule of consistency, given that co-accused Muhammad Ali was acquitted in Criminal Jail Appeal No.D-35 of 2014 by this very Court, and co-accused Muhammad Ameen and Gul Jan were subsequently acquitted by the trial court. The finality of these unchallenged acquittals, he asserted, should extend a similar benefit to the present appellant, as the evidence against him is largely identical to what was disbelieved in the co-accused's cases. A significant challenge was leveled against the identification of the appellant. Counsel pointed out that the complainant's evidence failed to disclose any source of light during the alleged incident, which occurred at 7:15 pm. This contradicted PC Rehmatullah's claim of identification by vehicle headlight and torch, and PC Arshad's assertion of only the headlight. Such inconsistencies, it was argued, rendered the identification highly doubtful. Further, contradictions in the distance of the encounter were highlighted: PC Rehmatullah stated 10 to 15 paces, while PC Muhammad Arshad claimed 20 to 25 paces. The inconsistent arrival time at the scene, PC Rehmatullah stating 6:15 pm against the general prosecution claim of 7:15 pm also cast doubt on the reliability of the narrative. The defense also raised concerns about the injuries sustained by PC Muhammad Arshad. The incident memo was silent on these injuries, and his medical certificate curiously attributed them to a "hard and blunt substance" rather than firearms in an alleged gun battle. The complainant's conduct after being injured also came under scrutiny; despite sustaining arm injuries, he purportedly prepared a three pages memo of arrest and recovery that showed no bloodstains, which seemed improbable. Discrepancies were noted in the deceased's post-

mortem report, indicating three injuries, while the prosecution's theory suggested five assailants. The defense found it illogical that no accused sustained injuries during a ten minutes encounter, while multiple police personnel were injured or killed. The varying hospital arrival times of the injured police officials, despite allegedly being removed together, further suggested unexplained delays and inconsistencies. Additionally, the defense argued that the motive stated in the FIR was unproven by any documentary evidence. The dual role of the complainant as both the author of the FIR and the investigating officer was presented as evidence of potential malafide intent or personal grudge. It was also highlighted that no recovery was affected after the appellant's arrest, and the prosecution failed to produce the alleged motorcycle, a crucial piece of evidence. Finally, the defense pointed to defects in the appellant's statement recorded under Section 342 Cr.P.C., arguing that any incriminating evidence not explicitly put to the accused during this examination could not be used against him for conviction.

7. Conversely, the learned Additional Prosecutor General for the State primarily distinguished the appellant's case by arguing that the co-accused who were acquitted were not named in the FIR, implying a stronger case against appellant Rasool Bux.

8. Upon a comprehensive and meticulous review of the entire record, the arguments presented by both sides, and particularly considering the binding precedent established by Criminal Jail Appeal No. D-35 of 2014 (Muhammad Ali son of Lal Muhammad @ Laloo Brohi vs. The State), this Court finds itself unable to uphold the conviction of the appellant, Rasool Bux @ Rasoolo. The prosecution, in this case, has unequivocally failed to prove its allegations beyond a reasonable doubt.

9. The rule of consistency emerges as a paramount consideration. The acquittal of co-accused Muhammad Ali in the same incident by this very Court, and the subsequent acquittals of Muhammad Ameen and Gul Jan, rest on grounds remarkably similar to those now advanced by the present appellant. As articulated in case of PLD 2025 Supreme Court 383 (Re: Ishtiaq Ibrahim Vs. The State), wherein the Honorable Supreme Court was pleased to observe as under; -

“6. It is not disputed that three co-accused of the appellant were attributed effective firing and specific injuries to Nizamuddin, Nasurullah, Muharram Ali and Ubaidullah deceased had been acquitted by the Trial Court in subsequent proceedings. The law is settled that if the eye-witnesses have been disbelieved against some accused persons who were attributed effective roles, then the same eye-witnesses cannot be believed against another accused person attributed a similar role unless such eye-witnesses received independent corroboration qua the other accused person and a reference in this respect may be made to the case of Iftikhar Hussain v. State (2004 SCMR 1185). In the case at hand no independent corroboration to the ocular account furnished by the three eye-witnesses produced by the prosecution was forthcoming.

7. The burden of proof lies with the prosecution and it is required to prove its case beyond a reasonable doubt. In this case, there is reasonable doubt regarding the credibility of the witnesses, primarily due to physical impossibility of observing the incident from the stated distance, given the acknowledged limitations of human vision.”

10. The Supreme Court's decision in Ameeruddin's case unequivocally underscores two pivotal principles directly relevant to the acquittal of Rasool Bux. Firstly, it delves into the limitations of human vision and the physical impossibility of discerning minute details from significant distances. The judgment in Ameeruddin's appeal (Supra) explicitly states that at a distance of 500 meters (half a kilometer), "even individuals with excellent visual acuity would struggle to discern specific details of an event, particularly when the

incident involves rapid moments, or if it occurs in an area that is not well lit or has obstructions that could hinder vision." It further emphasizes that "the eyesight of a man, even under optimal conditions, is not designed for sustained observations of minute details at such a distance," branding the witnesses' claims as "not only a tall claim but also one that was too far-fetched to be accepted by a prudent mind." This finding, supported by a study from the Journal of Law and Human Behavior (Nyman, Lampinen, Antfolk, Korkman, and Santtila, 2019) indicating that even a person with 20x20 vision can only accurately recognize facial features up to a maximum of 40 meters, directly validates the concerns raised by the defense in Rasool Bux and Manzoor's appeals regarding the highly doubtful identification and contradictory accounts of visibility and distance during the incident. The encounter in the present case also occurred in the evening at 7:15 pm, further compounding the issue of poor lighting and hindering clear observation. The varying claims by police witnesses about the distance of the encounter (10-15 paces vs. 20-25 paces) and their conflicting statements on the source of light (none, headlight only, or headlight and torch) starkly mirror the "physical impossibility of observing the incident from the stated distance" that led to acquittal in Ameeruddin (Supra). Secondly, the Supreme Court in Ameeruddin's case reaffirmed the settled legal position concerning the effect of disbelieved eyewitness testimony against co-accused. It was categorically held that "if eye-witnesses are disbelieved against some accused persons who were attributed effective roles, then same eye-witnesses cannot be believed against another accused person attributed a similar role unless such eye-witnesses receive independent corroboration regarding the other accused person." This principle, citing *Iftikhar Hussain v. State (2004 SCMR 1185)*, provides direct and strong judicial backing to the "rule of consistency" that was a cornerstone of the defense's arguments in Rasool Bux appeal. The fact that co-accused

Muhammad Ali was acquitted in Criminal Jail Appeal No. D-35 of 2014, and Muhammad Ameen and Gul Jan were subsequently acquitted by the trial court, all stemming from the same incident and relying on the same set of prosecution witnesses, means that the credibility of these witnesses was already found wanting to the extent of their co-accused. In the absence of "independent corroboration" against Rasool Bux, the testimony of the very same eyewitnesses cannot be believed against him. The prosecution's only distinguishing factor, that Rasool Bux was named in the FIR, is insufficient to overcome the pervasive doubts cast on the eyewitness accounts themselves, especially when their ability to observe the incident from any significant distance with accuracy is seriously compromised by the human visual limitations highlighted by the Supreme Court. Therefore, the theory emerging from PLD 2025 Supreme Court 383 strongly reinforces the acquittal in the present appeal. It provides a robust legal and scientific basis for discounting eyewitness testimony when claims of observation exceed the physiological capabilities of human vision, especially under less than optimal conditions. More crucially, it solidifies the principle that once eyewitnesses are disbelieved for some co-accused performing similar roles, their testimony against others in the same incident requires independent and strong corroboration, which was demonstrably lacking in the case of appellant. The Supreme Court's judgment serves as a powerful validation of the "series of dents" in the prosecution's case and the "reasonable doubt" that ultimately necessitated the acquittal of Rasool Bux.

11. In case of Munir Ahmed and another v. The State (2010 SCMR 79), while the principle of *falsus in uno falsus in omnibus* may not be strictly applied in our criminal justice system, if the same set of witnesses, whose testimony was disbelieved in the context of acquitted co-accused due to lack of independent and strong

corroboration, is relied upon against the remaining accused, it inevitably creates grave doubts. The fact that the judgments leading to the acquittals of Muhammad Ali, Muhammad Ameen, and Gul Jan attained finality, having not been challenged further, lends significant weight to this principle. Furthermore, a multitude of inconsistencies and fundamental flaws pervade the prosecution's narrative, casting an irretrievable shadow of doubt on its veracity. The contradictory accounts of identification by the police witnesses, coupled with the absence of a clearly disclosed light source during an evening incident, are highly problematic. This directly correlates with the judicial observation in 1995 SCMR 127, which noted that medical evidence alone could not establish the identity of the accused. The discrepancies in the stated distance of the encounter and the inconsistent timelines provided by prosecution witnesses further undermine their credibility.

12. The evidence concerning PC Muhammad Arshad's injuries is particularly troubling, as the medical report contradicts the nature of an alleged firearm encounter, indicating injuries from a "hard and blunt substance." The highly improbable scenario of the injured complainant meticulously preparing a three pages un-bloodstained memo immediately after being shot defies common sense and raises serious questions about the authenticity of the "on-the-spot" documentation. The unexplained phenomenon of no injuries to the accused despite a prolonged exchange of fire, and the disparate hospital arrival times of the injured police personnel, despite their alleged collective removal from the scene, add to the pervasive inconsistencies. The non-production of the alleged motorcycle, a material piece of circumstantial evidence, further weakens the prosecution's case, a point buttressed by the precedent in 2003 SCMR 1466 (Shamim & 2 others v. State & another), which stated that the non-production of a vehicle central to the incident casts a serious

cloud over the prosecution story. Additionally, the delay in sending crime empties to the Forensic Science Laboratory, a crucial piece of forensic evidence, loses its evidential value, as highlighted in 2008 S.C.M.R 707 (Ali Sher and others vs. The State). The dual role of the complainant as both the author of the FIR and the investigating officer introduces an inherent potential for bias and renders the investigation suspect from its inception. A critical procedural deficiency noted in the prior acquittal of Muhammad Ali, and potentially applicable here, relates to the examination of the accused under Section 342 Cr.P.C. As firmly established by the Honourable Supreme Court in Muhammad Nawaz and others Versus The State and others (2016 SCMR 267), and reiterated in Imtiaz alias Taj versus the State and others (2018 SCMR 344), Qaddn versus the State (2017 SCMR 184), and Muhammad Shah versus the State (2010 SCMR 1009), any incriminating evidence not put to an accused during their examination under Section 342 Cr.P.C. cannot be used against them for conviction. This fundamental safeguard ensures that the accused has a fair opportunity to explain or rebut any evidence that might be used against him.

13. While the learned Addl. P.G sought to differentiate the present appellant's case by noting that the previously acquitted co-accused were not named in the FIR, this distinction pales in comparison to the sheer volume and gravity of the other inconsistencies and serious doubts that permeate the prosecution's case. These collective defects, rather than isolated anomalies, point towards a fundamentally flawed narrative that cannot withstand judicial scrutiny. In conclusion, this Court is firmly of the opinion that the impugned judgment of the learned Anti-Terrorism Court suffers from grave material defects and cannot be sustained. The prosecution has utterly failed to discharge its onerous burden of proving the guilt of the appellant beyond all reasonable doubt. As per the dictum of

Tariq Pervez v. The State (1995 SCMR 1345), even a single circumstance creating a reasonable doubt in the prudent mind about the guilt of the accused is sufficient to discard the evidence of the prosecution. Here, multiple such circumstances exist.

14. Therefore, the Criminal Jail Appeal is allowed. The impugned judgment dated February 8, 2020 is set aside. The appellant, Rasool Bux @ Rasool S/O Gul Muhammad Seelro, is hereby acquitted of the charges leveled against him. He shall be released from judicial custody forthwith, unless required in any other case.

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Asghar Altaf/P.A