

## 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-39 of 2022

Cr. Conf. Case No.D-21 of 2022

Appellants : 1. Bakht Ali  
2. Rustam Ali  
3. Himat Ali @ Dhole  
4. Raza Muhammad  
All sons of Muhammad Saleh Depar  
5. Muhammad Saleh s/o Karam Khan Depar  
Through M/s. Mumtaz Ali Panhwar and  
Imtiaz Ali Panhwar, Advocates.

Respondent : The State  
Through Mr. Ali Anwar Kandhro, Addl. P.G

Date of hearing : 15-07-2025  
Date of Decision : 22-07-2025

### **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J**—This Criminal Jail Appeal, bearing No.D-39 of 2022, has been preferred by the appellants, namely Bakhat Ali, Saleh Depar, Rustam Ali Depar, Himat Ali @ Dhole Depar, and Raza Muhammad Depar, through their learned counsel. It seeks to challenge the legality and propriety of the judgment dated November 12, 2022, passed by the learned Additional Sessions Judge-I/MCTC, Dadu, in Sessions Case No.31/2014, whereby the appellants were convicted for offences under Sections 302(b), 324, 147, 148, 149, 504, 337-H(ii), and 114 of PPC. Accused Bakhat Ali was sentenced to death as Ta'zir for the murder of Mst. Zaib-u-Nisa, while the co-accused were sentenced to rigorous imprisonment for life, along with various other punishments including compensation and fines. The death sentence awarded to Bakhat Ali was also submitted to this Court for confirmation under Section 374 Cr.P.C.

2. The genesis of the trial stems from FIR No. 189/2013, lodged on October 12, 2013, at PS K.N.Shah, by Mst. Rubina, daughter of Ali Akbar, caste Leghari. The prosecution's case, as unfolded during the trial, alleged that on October 10, 2013, at 7:00 am, within the house of complainant Mst. Rubina (situated at Rehmatullah Colony K.N.Shah), the accused persons, armed with pistols and a *danda*, formed an unlawful assembly. The alleged motive behind the incident was a matrimonial dispute arising from exchange marriages between the families: Mst. Sonia (sister of accused Bakhat Depar) married Abdul Lateef (complainant's brother), and Mst. Fozia (daughter of Abdul Lateef and niece of complainant) married accused Bakhat Depar. It was contended that Bakhat Depar had previously ousted Mst. Fozia and taken his sister Mst. Sonia, leading to both parties filing "Khulla" suits. On the day of the incident, accused Saleh allegedly initiated the confrontation with abusive language, instigating co-accused Bakhat and Himat @ Dhol. Subsequently, it was alleged that accused Bakhat Ali fired a pistol at Mst. Zaib-u-Nisa (wife of Abdul Lateef, and complainant's brother's wife), hitting her in the chest and legs, causing her death. Simultaneously, accused Himat @ Dhol allegedly fired a pistol at Mst. Fozia, hitting her right thigh and causing injuries. The accused then allegedly left the scene, using abusive language and resorting to aerial firing. The injured Mst. Fozia and deceased Mst. Zaib-u-Nisa were initially shifted to Taluka Hospital K.N.Shah, and then referred to Civil Hospital Dadu. Mst. Zaib-u-Nisa succumbed to injuries en route. The FIR was lodged two days after the alleged incident. Post-mortem was conducted by Dr. Zaib-u-Nisa, who found multiple firearm injuries on the deceased and a *Ghayr-Jaifah Munnaqillah* injury on Mst. Fozia.

3. The police conducted investigation, collected blood-stained earth and empty shells from the scene. Subsequently, a charge sheet was submitted, leading to the trial. The learned trial court, after recording evidence from various prosecution witnesses including the complainant (PW-01 Mst. Rubina), the injured eyewitness (PW-02 Mst. Fozia), the medical officers (PW-01/08 Dr. Zaib-u-Nisa), and the investigating officers (PW-03 ASI Manzoor Ali, PW-05 ASI Imtiaz Ali Kalhoro), along with mashirs (PW-06 Allahdino @ Qamaruddin) and the Tapedar (PW-07 Adam Khan), ultimately convicted the appellants as detailed above.

4. The learned counsel for the appellants vehemently argued for the innocence of the appellants, contending that the prosecution's case is riddled with fatal contradictions, omissions, and discrepancies, which render the entire evidence untrustworthy and the convictions unsustainable. It was first submitted that the FIR, despite purporting to be based on an incident of October 10, 2013, was lodged on October 12, 2013, indicating a two-day delay. Such a delay, if unexplained or unsatisfactorily explained, is always viewed with suspicion in criminal jurisprudence, particularly as statements recorded by police after delay and without explanation are to be ruled out of consideration, as established in *Syed Saeed Muhammad Shah & others Vs the State (1993 SCMR 550)*. Furthermore, a glaring inconsistency in the identification of accused persons arose from the amended charge sheet, which mentions "Ali Akbar" as an accused, an individual neither named in the FIR nor in the final charge sheet, and who was neither acquitted nor convicted, thus creating an unacceptable ambiguity regarding the parties to the alleged crime. The learned counsel strenuously challenged the reliability of the ocular evidence. It was highlighted that the complainant, Mst. Rubina (PW-01), in her cross-examination, expressly admitted that she saw

the accused running from behind and did not clearly see their faces. Similarly, the injured eyewitness, Mst. Fozia (PW-02), conceded in her cross-examination that the faces of the accused were muffled and that she could not identify them properly after sustaining injuries. She further failed to mention the precise number of accused persons. These admissions from the primary ocular witnesses directly contradict the prosecution's reliance on their testimony for the identification of the assailants, thereby gravely undermining the very foundation of the prosecution's case. A critical lapse was identified in the prosecution's failure to prove the alleged motive. While a matrimonial dispute involving "Khulla" suits was advanced as the driving force behind the incident, no documentary evidence, such as memos or court orders pertaining to these suits, was produced. The absence of corroborative evidence for the alleged motive, particularly when it forms the very basis of the animosity, certainly generates doubt. Furthermore, the prosecution's decision to withhold crucial witnesses was underscored as fatal. Abdul Lateef, the deceased's husband and injured's father, who was undeniably present throughout the initial medical and police proceedings (a fact conceded by PW-01 Mst. Rubina), was given up by the prosecution. His testimony would have been indispensable for corroborating the events from the outset. Equally prejudicial was the non-examination of PW Ranjhan, the first informant to the police, who initiated the police action and possessed direct knowledge of the immediate post-incident events. Such omissions raise an adverse inference, suggesting that their testimony might not have supported the prosecution's narrative. The learned counsel pointed out a significant contradiction between the medical and ocular evidence. The Post-Mortem Report did not align coherently with the ocular accounts regarding the nature and direction of injuries, and the medical officer (Dr. Zaib-u-Nisa) could not conclusively rule out the possibility of

different weapons having been used. Grave procedural irregularities in documentation were also presented. It was revealed that the Danistnama (inquest report), dated October 10, 2013, conspicuously bore a crime number, 189/2013, which was only registered two days later, on October 12, 2013. This ante-dating of the FIR number on a document purportedly prepared prior to the FIR's actual registration creates a profound suspicion regarding the authenticity and integrity of the investigation. Compounding this, the Post-Mortem Report, initiated at 09:30 AM and concluded at 11:15 am on October 10, 2013, was startlingly juxtaposed with the memo of dead body/inquest report, which was also prepared at 09:45 am on October 10, 2013. This compressed timeline strongly suggests that the post-mortem commenced either before or almost concurrently with the formal procedural documentation of the dead body examination, a clear procedural flaw that casts considerable doubt on the veracity of both medical and police proceedings. Furthermore, it was asserted that the medical letters issued by the police for treatment and medico-legal purposes differed from the actual medical evidence. Material inconsistencies regarding the exact place of incident were also highlighted. The complainant, Mst. Rubina, stated the incident occurred in her house. The prosecution's general assertion placed it in the house of the deceased. Mashir Allah Dino testified that the place of incident was the house of Abdul Lateef, while the injured Mst. Fozia claimed it took place in her house. Such fundamental discrepancies regarding the crime scene itself indicate a lack of a clear and consistent narrative from the prosecution. The unreliability of the mashir evidence was a significant point of contention. Mashir Allah Dino (PW-06), a signatory to various memos, admitted under cross-examination that he was actually available in Hyderabad at the precise time when key proceedings, including injuries examination and dead body examination, were

being carried out in K.N.Shah, Dadu. This admission fundamentally undermines the credibility of the mashirnama and the entire evidence collection process. He further admitted that the empty shells and blood-stained earth were not secured in his presence, and that police merely obtained his thumb impressions (LTIs), indicating he was a passive signatory rather than an active observer. The co-mashir, Abdul Karim, was even described as "not in proper sense," further weakening the probative value of the mashirnama. Lastly, severe flaws in property sealing and forensics were exposed. The Investigating Officer (IO) stated that the recovered property was sealed in plastic jars, yet upon de-sealing in court, it was found to be in a tin jar. This raises serious questions about the integrity of the chain of custody and whether the property presented in court was indeed the same as originally recovered. More critically, the four empty shells recovered from the complainant's house (not Abdul Lateef's, as initially implied) were not sent for FSL (Forensic Science Laboratory) analysis. This crucial omission deprives the court of indispensable scientific evidence to connect the weapon to the crime and, by extension, to the accused, leaving a critical evidentiary void that cannot be compensated for by other means. Ultimately, the learned counsel emphasized the pervasive lack of independent, trustworthy corroboration for the key aspects of the prosecution story, particularly regarding the identification of the accused and the recovery of crime-related articles.

5. The learned Addl. P.G for the State vehemently opposed the appeal, asserting that the prosecution successfully proved its case beyond a reasonable doubt before the learned trial court. He contended that minor discrepancies in witness statements are natural and should not be used to discard an otherwise consistent and confidence-inspiring prosecution story, especially when material

particulars are supported. He relied on the findings of the trial court that the delay in FIR was adequately explained, the relationship of witnesses did not inherently render them unreliable, and the defense had failed to effectively impeach the credibility of the witnesses. He submitted that the convictions were based on a sound appreciation of evidence and called for the dismissal of the appeal and confirmation of the death sentence.

6. We have meticulously perused the entire record, including the impugned judgment, the evidence of the prosecution witnesses, and the arguments advanced by the learned counsel for both parties. Our careful reappraisal of the evidence reveals a multitude of grave inconsistencies, omissions, and procedural irregularities that cumulatively, and individually, cast serious doubt on the prosecution's narrative and the guilt of the appellants.

7. Upon a thorough examination of the record, it becomes undeniably clear that the prosecution's case suffers from fundamental weaknesses. The most critical aspect, the identification of the accused, remains deeply problematic. Both the complainant, Mst. Rubina, and the injured eyewitness, Mst. Fozia, candidly admitted under cross-examination that they could not properly identify the assailants, either due to seeing them from behind or because their faces were muffled. Such an inherent weakness in direct identification, from the very individuals who were present at the scene, creates an insurmountable doubt concerning the identity of the perpetrators. Furthermore, the unexplained and prejudicial omissions of key witnesses, particularly Abdul Lateef and Ranjhan, cannot be condoned. These individuals were central to the immediate post-incident events and initial police actions. Their absence from the witness box, without compelling justification, raises a strong adverse inference against the prosecution, suggesting

that their testimony might not have supported the narrative presented. This Court reiterates the principle that such deliberate withholding of vital evidence, when readily available, undermines the credibility of the prosecution's entire edifice.

8. The procedural infirmities surrounding the Danistnama and the Post-Mortem Report are profoundly troubling. The ante-dating of the FIR number on the Danistnama, indicates its preparation prior to the actual FIR registration, points to either a severe lack of diligence or a deliberate attempt to manipulate records. Similarly, the almost simultaneous timing of the commencement of the post-mortem and the formal preparation of the dead body examination memo suggests a departure from standard operating procedures, casting a shadow of doubt over the authenticity and regularity of these crucial documents. These are not mere minor technicalities; they go to the root of the investigation's integrity. The unreliable testimony of Mashir Allah Dino further erodes confidence in the prosecution's case. His admission that he was in Hyderabad while key memos were being prepared in K.N.Shah, Dadu, coupled with his statement that evidence was not secured in his presence, renders the mashirnama's entirely suspect. The role of a mashir is to lend credence to the recovery and documentation process through independent observation; when a mashir's presence at the scene is itself questionable, the authenticity of the recoveries becomes doubtful.

9. Moreover, the material contradictions regarding the precise location of the incident among the prosecution witnesses, each offering a different version (complainant's house, deceased's house, Abdul Lateef's house, Fozia's house), reflect a fundamental uncertainty about the very scene of the crime. Such a basic



inconsistency in the prosecution's narrative cannot be brushed aside as a trivial discrepancy.

10. Finally, the failure to send the recovered empty shells for Forensic Science Laboratory (FSL) analysis constitutes a colossal investigative oversight. In a case involving firearm injuries, ballistic evidence is paramount. The absence of such crucial scientific corroboration deprives the Court of an indispensable tool to connect the weapon to the crime and, potentially, to the accused. This significant evidentiary void leaves a critical gap in the prosecution's ability to prove its case beyond reasonable doubt.

11. While the learned trial court may have found certain explanations acceptable, or deemed discrepancies minor, this Court, upon an independent and thorough reappraisal of the evidence, finds that the cumulative effect of these glaring contradictions, material omissions, and serious procedural flaws creates an insurmountable reasonable doubt regarding the guilt of the appellants. It is a settled principle of criminal jurisprudence that the benefit of doubt, no matter how slight, must always go to the accused. The prosecution has demonstrably failed to discharge its heavy burden of proving its case beyond a reasonable doubt.

12. For the foregoing reasons, we are of the firm view that the convictions recorded against the appellants cannot be sustained in law. The prosecution has failed to establish the charges against them beyond the pale of doubt. Accordingly, the present Criminal Jail Appeal No. D-39 of 2022 is allowed. The impugned judgment dated November 12, 2022, passed by the learned Additional Sessions Judge-I/MCTC, Dadu, in Sessions Case No. 31/2014, convicting the appellants, is hereby set aside. The appellants, namely Bakhat Ali, Saleh Depar, Rustam Ali Depar, Himat Ali @ Dhole Depar, and Raza Muhammad Depar, are hereby acquitted of the charges leveled

against them. Consequently, the confirmation of the death sentence awarded to appellant Bakhat Ali S/o Muhammad Saleh Depar, referred to this Court under Section 374 Cr.P.C., is hereby revoked and rejected. The appellants shall be released from judicial custody forthwith, if not required in any other case. The office is directed to communicate this judgment to the learned trial court for necessary action and compliance.

**JUDGE**

**J U D G E**

Asghar Altaf/P.A