

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No. S-35 of 2024

Applicants : i. Sain Dad son of Rakhiyo Shar
ii. Sain Dino Shar
Through Mr. Asif Ali Abdul Razzak Soomro,
Advocate

Complainant : Through Mr. Abdul Rehman Bhutto,
Advocate.

The State : Mr. Nazeer Ahmed Bhangwar, DPG.

Date of hearing : 21-07-2025
Date of order : 30-07-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This criminal appeal, preferred under Section 410 of the Code of Criminal Procedure, 1898, seeks to set aside the judgment dated May 25, 2024, passed by the learned 1st Additional Sessions Judge/MCTC, Shikarpur, in Sessions Case No. 410 of 2019. The said Sessions Case arose from Crime No. 12 of 2019, registered at Police Station Raheemabad under Sections 302, 114, 337-H(ii), 148, and 149 of the Pakistan Penal Code, whereby the appellants were convicted and sentenced.

2. The prosecution's case, as unfolded during the trial, posited that the deceased succumbed to injuries allegedly inflicted by the appellants and co-accused. The First Information Report (FIR) was lodged by Mst. Ameeran who, along with other alleged eyewitnesses claimed to have witnessed the perpetration of the offense. The motive for the commission of the crime was attributed to land. Subsequent to the incident, police authorities were apprised, a site inspection was conducted, and various pieces of evidence were purportedly secured, culminating in the registration of the aforementioned FIR at Police Station Raheemabad.

3. Following the registration of Crime No. 12 of 2019, the investigative process culminated in the submission of a challan against the appellants. The trial was formally initiated before the learned 1st Additional Sessions Judge/MCTC, Shikarpur. During the course of the trial, the prosecution led evidence by examining various witnesses, including, inter alia, the complainant, alleged eyewitnesses, the Investigating Officer, and the Medical Officer. The defense vigorously assailed the prosecution's narrative through extensive cross-examination, aiming to expose what it contended were fundamental discrepancies and procedural irregularities in the prosecution's case. The appellants steadfastly denied the charges leveled against them, asserting that they had been falsely implicated on account of pre-existing enmity. Crucially, they opted neither to offer their own sworn testimony under oath nor to lead any evidence in their defense, confining their stance to a plea of innocence and a prayer for justice. Upon the conclusion of the arguments and an appraisal of the evidence presented, the learned trial court pronounced the impugned judgment dated May 25, 2024, convicting the appellants.

4. Learned counsel for the appellants commenced his submissions by contending that the appellants' implication in the instant case was entirely false, orchestrated as a consequence of a deeply entrenched enmity. He laid particular emphasis on the unexplained delay exceeding eighteen (18) hours in the lodging of the FIR, arguing strenuously that such a considerable lapse of time, without any plausible justification, unequivocally points towards prior consultation and deliberate fabrication of the prosecution's narrative. He meticulously drew the Court's attention to the initial police diary entry (Entry No. 19), which, having been recorded immediately following the incident, named only Sultan as the assailant, conspicuously omitting any mention of the appellants. This significant omission, counsel asserted, reflected a clear pattern of exaggeration

and over-implication, a notorious practice often observed in local feuds. Furthermore, it was forcefully contended that all investigative proceedings, including the recovery of empties, blood-stained earth, and the conduct of inquest proceedings, were meticulously completed prior to the formal registration of the FIR. This procedural anomaly, it was argued, unequivocally demonstrated a post-facto reconstruction of events, thereby vitiating the very foundation of the initial investigation. A central plank of the appellant's argument concerned the statements of all purported eyewitnesses recorded under Section 161 Cr.P.C.. Counsel highlighted that these statements were recorded after an inordinate and unexplained delay of seventeen (17) days subsequent to the incident. In support of this contention, learned counsel placed reliance on the authoritative pronouncement in *Syed Saeed Muhammad Shah & others v. The State* (1993 SCMR 550), which authoritatively held that statements recorded with unexplained delay are liable to be excluded from judicial consideration. Learned counsel additionally cited *Humayon v. The State* (2005 P Cr. LJ 337), to impress upon the Court that the sole testimony of an uncorroborated witness, particularly where the presence and credibility of such witness are inherently doubtful, cannot, as a matter of law, form the indispensable basis for a conviction in cases, especially those involving capital punishment. In the present case, he submitted, no independent corroboration was adduced by the prosecution to buttress the ocular account. It was further asserted that the inexplicable and inordinate delay in lodging the FIR, when viewed in its totality, renders the entire prosecution story susceptible to the inference of having been concocted through deliberate design. In this context, the precedent set in *Mohammad Ishaq v. The State* (2007 SCMR 108) was invoked, which unequivocally established that unexplained delay in the registration of an FIR, particularly when coupled with proven enmity between the parties, casts a serious and profound doubt on the

prosecution's case. Continuing his submissions, learned counsel contended that the ocular version, as presented by the prosecution, was fundamentally contradicted by the objective medical evidence. He further submitted that the prosecution's claim of identification of the accused through torchlight was not only inherently weak but also suffered from a glaring contradiction regarding the specific type of torchlight utilized. He pointed out that the supplementary report submitted by the SDPO, which conclusively found the FIR to be false and driven by enmity, was unjustly ignored by the learned trial court, thereby constituting a material omission in the appreciation of evidence. Lastly, he underscored the significant absence of any weapon or incriminating material recovered from the appellants, and the fact that all purported eyewitnesses were demonstrably related to the deceased, with no independent witness having been produced to lend credence to their testimony.

5. Conversely, the learned DPG for the State, ably assisted by the learned counsel for the complainant, vehemently resisted the appeal, contending that the appellants had been specifically named in the FIR and were duly identified by the eyewitnesses. It was submitted that any discrepancies in the prosecution's narrative were of a minor nature and, as such, did not fundamentally affect the core substance of the prosecution story. He argued that the conviction was appropriately recorded, predicated upon a consistent ocular account, which was purportedly buttressed by both medical and circumstantial evidence. He further advanced the argument that enmity, being a double-edged sword, is not per se a factor that invariably proves fatal to the prosecution's case. In support of this contention, reliance was placed on the judgment in *Takdir Samsuddin Sheikh v. State of Gujrat* and another (2012 SCMR 1869), which holds that only material contradictions and omissions are to be considered fatal to the

prosecution's case, and not those of a minor or inconsequential nature.

6. This Court has undertaken a meticulous and comprehensive reassessment of the entire record of the case, including the oral and documentary evidence adduced by both sides, and has given due consideration to the arguments advanced by the learned counsel for the appellants and the learned DPG for the State. Upon such critical appraisal, this Court is constrained to conclude that the prosecution has demonstrably failed to establish its case against the appellants beyond a reasonable doubt. The following material contradictions, fundamental flaws, and significant procedural irregularities have emerged, which, when considered in their totality, inevitably lead to this conclusion:

7. The FIR in the instant case was lodged after a substantial and unexplained delay of eighteen (18) hours from the time of the incident. This inordinate delay, devoid of any plausible justification, deeply impairs the spontaneity and credibility of the prosecution's narrative, rendering it highly suspect. As authoritatively pronounced by the apex Court in *Mohammad Ishaq v. The State* (2007 SCMR 108), such an unexplained delay in FIR registration, especially when coupled with the existence of proven enmity between the parties, casts a serious and profound doubt on the prosecution's entire case.

8. A critical flaw lies in the inconsistency between the FIR and the initial police diary entry (Entry No. 19). This entry, recorded immediately following the incident, named only Sultan as the assailant, conspicuously omitting any reference to the appellants. This un rebutted and contemporaneous police record directly contradicts the subsequent nomination of the appellants in the FIR, thereby fundamentally undermining the prosecution's claim of their early and consistent implication.

9. It is unequivocally established from the record that significant investigative steps, including the recovery of empties, blood-stained earth, and the conduct of inquest proceedings, were completed prior to the formal registration of the FIR. This chronological anomaly constitutes a grave procedural impropriety, leading to an inescapable inference of a post-facto reconstruction of events and a deliberate attempt to tailor the investigation to fit a preconceived narrative. Such a practice fundamentally compromises the integrity and objectivity of the initial investigative process.

10. The statements of all purported eyewitnesses under Section 161 Cr.P.C. were recorded after an inordinate and unexplained delay exceeding seventeen (17) days subsequent to the incident. This substantial and unjustified delay critically diminishes the probative value and inherent credibility of their testimony. The superior Courts have consistently held that such unexplained delays in recording witness statements severely impact their reliability and diminish their evidentiary worth, as elucidated in *Syed Saeed Muhammad Shah & others v. The State* (1993 SCMR 550) and *Mohammad Asif v. The State* (2017 SCMR 486).

11. The prosecution's assertion of identification of the accused through torchlight is not only inherently weak due to the transient nature of such illumination but is further undermined by a glaring contradiction regarding the specific type of torchlight utilized (a "big-cell torch" alleged by the complainant versus a "rechargeable torch" produced by the IO). Furthermore, the objective medical evidence provided by the medical officer, unequivocally stating that all injuries were caused by a single weapon, directly contradicts the prosecution's version which assigned different shots to different accused individuals, thereby fundamentally weakening the ocular account.

12. The learned trial court's unjustified disregard of the supplementary investigation report prepared by the Sub-Divisional Police Officer (SDPO), which conclusively found the FIR to be false and motivated by enmity, represents a material omission in the proper appreciation of evidence. Such a report from a senior police officer, highlighting a fabricated charge, ought to have been given due and serious consideration. A significant lacuna in the prosecution's case is the complete absence of any weapon or other incriminating material recovered from the possession of the appellants, which would have provided tangible corroboration. Moreover, the prosecution's reliance solely on eyewitnesses who are demonstrably related to the deceased, without the production of any independent witness from the locality, further renders the ocular account highly suspicious. The principle enunciated in *Humayon v. The State* (2005 P Cr. LJ 337) underscores the peril of basing a conviction solely on the uncorroborated testimony of a doubtful witness, particularly in cases involving capital punishment. The cumulative effect of these pervasive inconsistencies, glaring omissions, and fundamental procedural irregularities in the prosecution's case inevitably leads to the conclusion that the prosecution has failed to discharge its paramount burden of proving the guilt of the appellants beyond a reasonable doubt. In the realm of criminal jurisprudence, suspicion, no matter how strong, cannot, by any stretch of legal imagination, supplant the requirement of irrefutable proof. Where the evidence presented by the prosecution is riddled with such material contradictions and procedural infirmities that they demonstrably impeach the credibility of the witnesses and the authenticity of the investigative process, the benefit of doubt must unequivocally be extended to the accused. The rule of benefit of doubt is an imperative rule of prudence that cannot be ignored in the just dispensation of law, rooted in the revered maxim: "It is better that ten guilty persons be acquitted rather than one innocent person be

convicted." This Court is guided by the consistent pronouncements of the Hon'ble Supreme Court of Pakistan, which have steadfastly held that a single event that creates a reasonable doubt in the mind of a prudent person regarding an accused's guilt would, as a matter of right and not as clemency or grace, entitle him to acquittal, as reaffirmed in Tariq Pervez v. The State (1995 SCMR 1345) and Hashim Qasim and another v. The State (2017 SCMR 986). Indeed, it is a well-established principle that a single dent in the case of prosecution is sufficient for acquittal, as underscored in Rehmatullah vs. The State (2024 SCMR 1782).

13. In light of the foregoing comprehensive analysis and for the reasons articulated hereinabove, the present Criminal Appeal is hereby allowed. The conviction and sentence recorded against the appellants, Saindad s/o Rakhiyo and Sain Dino s/o Saindad, by the learned 1st Additional Sessions Judge/MCTC, Shikarpur, in Sessions Case No. 410 of 2019, vide judgment dated May 25, 2024, are hereby set aside. The appellants are accordingly acquitted of the charges leveled against them. They shall be released forthwith from judicial custody, unless their detention is lawfully required in any other case. The office is directed to communicate this judgment to the concerned jail authorities and the trial court for immediate and necessary compliance.

J U D G E

Asghar Altaf/P.A