

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Criminal Appeal No.S-89 of 2019

Appellant : Abdul Qayoom @ Abdul Ghaffar,  
Through Mr. Farhat Ali Bugti, Advocate

Complainant : Through Mr. Habibullah G. Ghouri, Advocate

The State : Through Mr. Nazeer Ahmed Bhangwar, DPG

Date of hearing : 28.07.2025  
Date of Judgment : 01.08.2025

### J U D G M E N T

**KHALID HUSSAIN SHAHANI, J.** –Appellant Abdul Qayum, challenges the legality and propriety of the judgment dated 10.10.2019, passed by the learned Sessions Judge (MCTC), Jacobabad, whereby appellant was convicted for offence under Section 302(b) as *Ta'zir* read with Section 149 PPC and sentenced to imprisonment for life, coupled with a compensation of Rs.100,000/-, to be paid to the legal heirs of deceased, and in case of default thereof to undergo S.I for 06 months more. A concurrent sentence of one-year R.I. for offence under section 148 PPC was also awarded, with the benefit of Section 382-B, Cr.P.C.

2. The genesis of this case lies in an incident that occurred over a decade before the appellant's conviction. FIR No. 34/2009 was registered on 07.03.2009, implicating a total of seven named and two unknown individuals. The trial process that followed was fragmented and staggered. Initially, only co-accused Muhammad Mithal was arrested and faced trial, resulting in his conviction by the trial court on 27.07.2010; however, it is an admitted position that he was subsequently acquitted in appeal, a fact of profound significance.

3. Thereafter, co-accused Umedo @ Umed Ali, Sheral @ Sheruo, Bhagio, and Bilawal were arrested at different intervals and

were ultimately acquitted under Section 345(6) Cr.P.C. on the basis of a compromise with the legal heirs of the deceased. The case against the present appellant, Abdul Qayoom, and the still absconding accused Qadir Bux, was kept on the dormant file. The appellant was eventually arrested in 2019, and a supplementary challan was submitted, leading to the trial that culminated in the impugned judgment. This protracted and disjointed trial history forms a critical backdrop against which the principles of evidence appreciation and judicial consistency must be evaluated.

**4.** The prosecution's narrative, as encapsulated in the FIR lodged by complainant Haji Arbab, is that on 07.03.2009 at 0630 hours, the appellant and his co-accused, armed with lethal weapons including Kalashnikovs, guns, and a rifle, formed an unlawful assembly. Motivated by an old enmity, they collectively fired upon the deceased Muhammad Thaheem, brother of the complainant, resulting in his instantaneous death. The appellant, Abdul Qayoom, was specifically alleged to have been armed with a Kalashnikov and to have fired upon the deceased.

**5.** The learned counsel for the appellant has assailed the impugned judgment on a plethora of grounds. It is vehemently contended that the learned trial court failed to appreciate the evidence in its true perspective, resulting in a grave miscarriage of justice. The crux of his arguments is that the prosecution case is riddled with material contradictions, inconsistencies, and fatal procedural lapses. He argued that the ocular evidence is furnished by witnesses who are not only closely related to the deceased but also admittedly inimical towards the appellant, thus classifying them as highly "interested witnesses" whose testimony cannot be relied upon without strong independent corroboration, which is conspicuously absent. He pointed out that PW Khamiso, a cited eyewitness, was

withheld by the prosecution, warranting an adverse inference under Article 129(g) of the Qanoon-e-Shahadat Order, 1984. The counsel highlighted stark improvements made by eyewitness Abdul Sattar in his testimony compared to the initial FIR. He further argued that there is a fatal conflict between the ocular and medical evidence regarding the time of death. The investigation, it is argued, was perfunctory and flawed, demonstrated by the failure to secure the blood-stained cot and 'Rilhi' (sheet), the non-examination of the independent Datsun driver, and the failure to send all recovered empties for forensic analysis. He submitted that the acquittal of co-accused Muhammad Mithal in appeal, and others on compromise, makes the appellant's conviction a classic case of a violation of the rule of consistency. The learned counsel placed reliance on *2024 SCMR 929*, *2024 SCMR 1579*, *2024 SCMR 1490*, *2025 SCMR 1024*, *2024 SCMR 1449*, *2024 SCMR 1608* and *1995 SCMR 1345*.

6. Conversely, the learned counsel for the complainant, duly supported by the learned Deputy Prosecutor General, has controverted these arguments. They submitted that the ocular testimony is clear, consistent, and confidence-inspiring. They maintained that relationship is not a ground to discard credible testimony and that minor discrepancies are bound to occur after a lapse of 10 years. It was emphatically argued that the appellant's guilt is established by his prolonged abscondence for nearly a decade, which is a strong piece of corroborative evidence of a guilty mind. They prayed for the dismissal of the appeal.

7. The prosecution case hinges entirely on the ocular evidence of PW Haji Arbab and PW Abdul Sattar. It is an admitted fact that both are the closest relatives of the deceased (brother and son) and harbor a pre-existing, deep-rooted enmity with the appellant's party. They are, in the truest sense of the term, "*interested witnesses*".

The rule of prudence dictates that the evidence of such witnesses must be scrutinized with extraordinary care. It cannot be accepted without independent corroboration from an unimpeachable source. The learned trial court, while acknowledging the enmity, failed to apply this cautionary principle and accepted their testimony at face value. The eyewitnesses are firm that the incident occurred at 06:30 am. However, Dr. Abdul Karim (PW-2), in his expert medical opinion, stated the probable time between death and his post-mortem examination (which began at 9:10 pm) was merely "2 to 3 hours." This places the time of death in the evening, creating an irreconcilable 12 hours gap. This is not a minor discrepancy but a fatal flaw that invalidates the core facts of the prosecution's story. The crime scene layout is a direct and material contradiction regarding the place of the incident. PW Haji Arbab described a compound of "five houses," and PW Abdul Sattar mentioned "four houses." In stark contrast, the official Tapedar, PW Illahi Bux, an independent witness, testified that it was a "single house." This contradiction is material because it directly impacts the plausibility of the witnesses' stated vantage points and their ability to have seen the incident as they described.

8. Moving further, a comparative reading of the FIR (Exh. 7-A) and the subsequent court depositions reveals significant omissions and later improvements. The FIR contains general, omnibus allegations. However, in court, ten years later, PW Abdul Sattar embellished his account by attempting to assign specific fire-shot roles to individual accused. This belated addition of crucial details, which was omitted from the earliest report, is a classic example of a calculated improvement designed to bolster a weak case and amounts to a contradiction. PW Haji Arbab contradicted himself by stating the deceased was standing and also that he was sitting when fired upon.

Both the eye witnesses even gave conflicting names for the Datsun driver (Moula Bux vs. Master Malook).

9. The story does not end here, both the eye witnesses gave conflicting accounts of whether the FIR was lodged before or after the police inquest of the body. The investigation was conducted in a perfunctory, partial, and legally flawed manner, which has made the entire prosecution case suspect. The recovery of empty bullet casings from the crime scene, a crucial piece of corroboration, was rendered legally infirm. The sole *mashir* (witness) to this recovery was PW Wali Muhammad, the son of the deceased. Investigating Officer, PW Bashir Ahmad Magsi admitted in his cross-examination that “...*None else excepting Wali Muhammad and Qaim were found ready to act as mashir... We did not ask anyone else to act as mashir*”. This is a flagrant violation of the principles of Section 103 Cr.P.C., which mandates the use of respectable and independent inhabitants of the locality for such proceedings. Using a close relative of the deceased as a recovery witness makes the entire process partial and dubious.

10. Investigating officer failed to secure the blood-stained Rilhi (sheet) and the cot on which the body was transported. This is a grave investigative flaw, as these items could have provided crucial forensic evidence. There is no evidence to show that all seven recovered empties were sent to the Forensic Science Laboratory for a ballistics report. Without this, the prosecution's claim that multiple distinct weapons were fired remains a mere assertion, uncorroborated by scientific evidence. The facts of this case directly attract the principles laid down in Articles 47 and 129(g) of the Qanoon-e-Shahadat Order, 1984. This Court is mindful of the fact that Article 129(g) of QSO allows a court to presume that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. The prosecution cited PW Khamiso as an eyewitness

in the FIR but never produced him in court. Furthermore, the independent Datsun driver, who could have testified about the state of the witnesses immediately after the incident, was also withheld. This deliberate withholding of material witnesses compels the court to draw an adverse inference against the prosecution that had these witnesses been produced, they would not have supported the prosecution's narrative. Article 47 of Qanun-e-Shahadat Order, 1984 deals with the relevancy of previous judgments. In this case, it is on record that co-accused Muhammad Mithal, who was implicated by the same set of eyewitnesses, was acquitted in appeal. This judgment of acquittal is a highly relevant fact. Under the cherished judicial principle of the rule of consistency, a person cannot be convicted on evidence that has already been disbelieved and found insufficient by a higher court for an identically placed co-accused. The case of the present appellant is in no way distinguishable from that of the acquitted co-accused. Applying a different standard to him would be a gross violation of justice and equity.

**11.** In light of the foregoing discussion, the ocular account, furnished by interested and inimical witnesses, is not only uncorroborated but is also riddled with dishonest improvements, embellishments, and material contradictions regarding the crime scene and post-incident events, rendering it wholly unreliable. This already fragile testimony is conclusively demolished by the fatal and incurable conflict with the medical evidence concerning the time of death. Furthermore, the case is plagued by a litany of procedural illegalities and investigative flaws, including the withholding of material witnesses which attracts an adverse inference under Article 129(g) of the QSO, the use of a tainted mashir for recoveries, the failure to secure crucial evidence, and a legally defective examination of the appellant under Section 342 Cr.P.C. The appellant's prolonged

abscondence cannot substitute for the lack of substantive proof, nor can it cure these deep-rooted infirmities. Crucially, the acquittal of an identically placed co-accused on the same set of evidence by a higher court makes the appellant's conviction an untenable violation of the cherished rule of consistency. Therefore, due to the cumulative effect of these numerous doubts, the prosecution has miserably failed to prove its case beyond a reasonable doubt.

**12.** In the final analysis, the prosecution case is a house of cards built on the shifting sands of interested testimony, demolished by the cyclone of medical contradictions, and undermined by a foundation of defective investigation. The conviction rests on evidence that is neither believable nor legally admissible. The chain of circumstances has numerous missing links, and the benefit of every doubt, which is manifold in this case, must be given to the accused.

**13.** For the foregoing reasons, this Criminal Appeal is allowed. The impugned judgment dated 10.10.2019, passed by the learned Sessions Judge (MCTC), Jacobabad, is hereby set aside. The appellant Abdul Qayoom @ Abdul Ghaffar son of Soomar Bangulani is acquitted of the charges leveled against him. He shall be released from prison forthwith if not required in connection with any other case.

**J U D G E**

Asgar Altaf/P.A