

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S-75 of 2023

Applicant : Ghulam Mustafa son of Gul Muhammad Mari,
Through Mr. Achar Khan Gabol, advocate.

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 22.09.2025
Date of decision : 02.10.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.– Appellant Ghulam Mustafa Mari has impugned judgment dated 10th August 2023, passed by the learned Additional Sessions Judge Moro in Sessions Case No.343/2018, whereby he was convicted for offences under Sections 302, 337-H(2), 403, 148 and 149 PPC for the double murder of Manzoor Ali Leghari and Suleman Leghari and sentenced to imprisonment for life on two counts along with compensation of Rs.200,000 to the legal heirs of each deceased in pursuance of Section 544-A of the Code of Criminal Procedure.

2. The prosecution case as detailed in the FIR lodged by complainant Ayaz Ali Leghari on 21st June 2017 at 2200 hours, about twenty-four hours after the alleged occurrence, establishes that on 20th June 2017 at about 1700 hours, the deceased persons Manzoor Ali and Suleman, both relatives of the complainant, were proceeding on their motorcycle from Moro city towards their village when they reached the *katcha* path adjacent to village Bhongar Machi leading from Bacha Band (protective embankment) towards village Laghari Bijarani. According to the prosecution narrative, eight armed persons riding on four motorcycles intercepted their path and surrounded the deceased persons, whereupon the complainant allegedly identified the accused as Ghulam Mustafa armed with Kalashnikov, Jangoo armed with pistol both sons of Gul Muhammad Mari, Ali Muhammad and Liaqat armed with pistols both sons of Ghous Bux Mari, and Mir alias Chakar armed with Kalashnikov along with three unidentified persons armed with pistols. The prosecution alleges that these accused persons made indiscriminate firing upon the deceased persons causing their instantaneous death, thereafter taking away the licensed weapons of the deceased and escaping from the scene while raising slogans and making aerial firing.

3. The genesis of this criminal prosecution traces its roots to a previous murder case wherein Ali Muhammad Mari had lodged FIR against the deceased Manzoor Ali for the murder of one Khadim Hussain Mari; however, the deceased was subsequently acquitted from those charges by the court of competent jurisdiction. This acquittal allegedly created animosity between the Mari community and the deceased persons, resulting in repeated threats of dire consequences including murder. The complainant maintained that despite these threats, no formal complaint was lodged with the police authorities regarding such intimidation.

4. The factual matrix reveals that this case has undergone a complex procedural history involving multiple trials and appellate proceedings. Initially, the appellant had been convicted vide judgment dated 11th January 2021; however, upon appeal preferred as Criminal Appeal No. S-03/2021, this Court set aside the earlier conviction through its judgment dated 13th February 2023 and remanded the case back to the learned trial court with specific directions to recall and re-examine the complainant and witnesses afresh without being influenced by the earlier findings. Subsequently, the learned trial court conducted fresh proceedings and passed the impugned judgment dated 10th August 2023, which forms the subject matter of the present appeal.

5. The prosecution examined eight witnesses during the trial proceedings to establish its case. The complainant Ayaz Ali Leghari appeared as P.W-2 and reiterated the contents of the FIR while maintaining his identification of all the accused persons despite the incident occurring during evening hours. P.W-4, Ghulam Mustafa Leghari, claimed to be an eye-witness to the occurrence and supported the complainant's version regarding the identification of the accused persons and the manner of commission of the offense. The medical evidence was led through Dr. Zulfiqar Ali Buriro who appeared as P.W-5 and conducted post-mortem examinations of both deceased persons. His testimony revealed that deceased Manzoor Ali had sustained fourteen firearm injuries on various parts of his body including head, chest, arms and other vital organs, while deceased Suleman had received eight firearm injuries. The medical officer opined that death in both cases was caused due to shock and hemorrhage, resulting from firearm injuries to vital organs including heart, lungs and brain, and all injuries were ante-mortem in nature caused by firearms from a distance of about 15-20 feet.

6. The circumstantial evidence included the recovery of ten empty shells of Kalashnikov and seven empty bullets of pistol from the place of incident, which were secured by the Investigating Officer Inspector Muhammad Essa Dahri during his inspection on 22nd June 2017. Additionally, recovery of a Kalashnikov rifle along with ammunition was allegedly made on the confession of the appellant, though significantly, the appellant was subsequently acquitted in the separate recovery case filed for the same weapon, casting serious doubt on the veracity of this evidence.

7. The learned counsel for the appellant presented comprehensive arguments challenging the prosecution case on multiple legal and factual grounds. The primary contention advanced was that the appellant has been falsely implicated in this case due to his relationship with the co-accused persons and the pre-existing enmity between the complainant party and the Mari community, particularly with absconding accused Ali Muhammad Mari. It was vehemently argued that the appellant was not present at the place of incident at the time of occurrence and that no specific role has been attributed to him in the commission of the offense. Learned counsel emphasized the significant delay of twenty-four hours in the registration of the FIR, arguing that no cogent explanation has been furnished for this delay which provides ample opportunity for consultation and deliberation leading to false implication of innocent persons. The explanation offered regarding night hours and burial formalities was challenged as insufficient and unconvincing, particularly when the incident allegedly occurred in broad daylight at 1700 hours.

8. A fundamental pillar of the defense case centered on the contradictory nature of the recovery evidence. It was forcefully contended that the appellant had already been acquitted in the recovery case involving the same Kalashnikov rifle allegedly used in the murders, thereby establishing that the weapon recovery was fabricated and unreliable. This acquittal in the connected case creates an insurmountable contradiction in the prosecution's narrative and undermines the entire basis of circumstantial evidence sought to be relied upon. The defense highlighted the interested nature of the prosecution witnesses, particularly the complainant who is the nephew of deceased Manzoor Ali and P.W Ghulam Mustafa who is the cousin of the deceased. It was argued that all prosecution witnesses belong to the same family and reside at a considerable distance of seventy eight kilometers from the place of incident, making their presence at the remote location questionable. Moreover, these witnesses had

made material improvements in their statements during trial which were inconsistent with their initial statements recorded under Section 161 Cr.P.C.

9. Specific attention was drawn to the material contradictions in the testimony of prosecution witnesses regarding crucial aspects of the case including the distances between motorcycles, details of vehicles used by accused persons, and the specific threats allegedly issued. It was contended that witnesses had failed to provide specific details about the motorcycles used by the accused despite claiming clear identification, and significantly, no specific threats were attributed to the present appellant as distinguished from the co-accused. The defense further argued that no direct evidence establishes any personal enmity between the appellant and the deceased persons, as the primary animosity existed between the complainant party and co-accused Ali Muhammad Mari arising from the previous murder case. The appellant's role appears to be based merely on guilt by association rather than any concrete evidence of participation in the offense. It was emphasized that complainant Ayaz Ali in his testimony admitted by saying *“It is fact that I had not alleged in the FIR or in my statement about the specific role of accused. Co-villagers gathered soon after the arrival of police. Though police made request to the villagers to become as mashirs/witnesses but we themselves produced our own mashirs to the police. We called the mashirs on cell phone. It is fact that police did not record the statement of inhabitant of locality.”*

10. Learned counsel argued that as per prosecution theory, all the accused were being armed with lethal weapons, as such the complainant, the prosecution witnesses and the two deceased were at their mercy thus, the apparent object was, none should be escaped, hence the complainant and the eye witnesses were supposed to be prime target, but no harm is caused to them; such unbelievable courtesy extended by accused persons to the complainant and witnesses, knowing well that they would depose against them, created serious doubts in the prosecution case. The reference was made on case of *Mst. Rukhsana Begum & others versus Sajjad & others* (2017 SCMR 596). Reference was also made to several landmark judgments of the superior courts establishing the principles governing criminal prosecution. Particular reliance was placed on the case law regarding interested witnesses, delay in FIR registration, benefit of doubt, and the standard of proof required in criminal cases. The defense cited the well-established principle that it is better for ten guilty persons to escape than for one innocent to be wrongly convicted,

emphasizing that any reasonable doubt must benefit the accused as a matter of right rather than grace.

11. The learned Deputy Prosecutor General representing the State defended the prosecution case by maintaining that the evidence led by the prosecution witnesses is consistent and reliable despite their relationship to the deceased. It was argued that mere relationship does not automatically disqualify witnesses and that their testimony, if found truthful and inspiring confidence, can form the basis of conviction. The prosecution maintained that the identification of accused persons was clear and unambiguous as the incident occurred during daylight hours, allowing the witnesses to properly identify all perpetrators. Regarding the delay in FIR registration, the prosecution contended that the explanation provided regarding night hours and the necessity of completing burial formalities is reasonable and acceptable. It was argued that the complainant and witnesses were naturally distraught after witnessing the brutal murder of their relatives and needed time to compose themselves and complete the necessary religious obligations before approaching the police. The prosecution sought to distinguish the acquittal in the recovery case by arguing that different standards of proof apply in different proceedings and that the acquittal in one case does not automatically create reasonable doubt in another case involving the same weapon. It was contended that the recovery was properly conducted with due observance of legal formalities and in the presence of independent witnesses. The State's counsel emphasized that the medical evidence fully corroborates the prosecution version regarding the cause and manner of death, and that the firearm injuries found on both deceased persons are consistent with the prosecution narrative. It was argued that the circumstantial evidence in the form of empty shells recovered from the place of incident provides additional support to the eye-witness testimony. The prosecution maintained that the motive for the offense has been clearly established through evidence regarding the previous enmity arising from the murder case of Khadim Hussain Mari, and that the threats issued by the accused persons provide sufficient basis for the commission of the offense. It was argued that the principle of common intention under Section 149 of the Pakistan Penal Code is clearly applicable as all accused persons acted in concert with a common object of committing murder.

12. Having carefully considered the submissions advanced by both sides, examined the entire record of the case including the impugned judgment,

and analyzed the legal precedents cited by the parties, this Court finds itself confronted with a prosecution case that, while establishing the occurrence of the tragic murders beyond any doubt, suffers from material deficiencies and contradictions that create reasonable doubt regarding the specific guilt of the present appellant.

13. The law regarding evaluation of evidence in criminal cases is well-settled and has been consistently reiterated by the superior courts. In the landmark case of *Tariq Pervez versus The State* reported in 1995 SCMR 1345, the Honorable Supreme Court observed that the concept of benefit of doubt to an accused person is deep-rooted in our jurisprudence, and for giving benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

14. This principle was further reinforced in *Muhammad Akram versus The State* (2009 SCMR 230), where the Supreme Court held that it is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favor of the accused as a matter of right and not of grace, reiterating that if there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt.

15. Regarding interested witnesses, the law has evolved through various judicial pronouncements including the case of *Raqib Khan versus The State* (2000 SCMR 163), wherein the Supreme Court held that the evidence of interested witnesses is not per se inadmissible but requires careful scrutiny and independent corroboration. The Court emphasized that mere relationship does not disqualify a witness, but such testimony must inspire confidence and be free from material contradictions. More recently, in *Imran Mehmood versus The State* (2023 SCMR 795), the Supreme Court reiterated that while evidence of related witnesses is admissible, it must be scrutinized with great care and caution, particularly when such witnesses are the sole source of evidence against the accused. The Court emphasized that in cases where interested witnesses are the primary evidence, any material contradiction or improvement in their testimony assumes greater significance. Reliance is placed on (2015 SCMR 840).

16. Applying these well-established legal principles to the facts and circumstances of the present case, several critical aspects emerge that collectively create reasonable doubt about the appellant's guilt. The delay of twenty-four hours in the registration of the FIR, while explained by the prosecution as being due to night hours and burial formalities, assumes greater significance when viewed in conjunction with other suspicious circumstances. The explanation appears particularly unconvincing given that the incident allegedly occurred at 1700 hours in daylight, and modern communication facilities would have permitted immediate reporting to the police authorities. The interested nature of all prosecution witnesses, while not automatically fatal to the prosecution case, requires their testimony to be subjected to the most careful scrutiny. The complainant Ayaz Ali being the nephew of deceased Manzoor Ali and P.W Ghulam Mustafa being his cousin creates a situation where the entire prosecution case rests on the testimony of closely related individuals who have a natural inclination to seek justice for their deceased relative. This relationship, combined with the pre-existing enmity with the Mari community, provides a strong motive for false implication.

17. The material contradictions in the testimony of prosecution witnesses regarding crucial aspects of the case cannot be dismissed as minor discrepancies. The witnesses' failure to provide consistent details about the distances between motorcycles, the specific vehicles used by accused persons, and the exact manner of commission of the offense creates doubt about the reliability of their identification and recollection of events. These contradictions become particularly significant when considering that the witnesses claim to have had a clear view of the incident and were able to identify all accused persons.

18. The most damaging aspect of the prosecution case lies in the recovery evidence, which forms a crucial link in the chain of circumstantial evidence. The fact that the appellant was subsequently acquitted in the recovery case involving the same Kalashnikov rifle allegedly used in the murders creates an irreconcilable contradiction in the prosecution narrative. If the weapon recovery was found to be fabricated or unreliable in separate judicial proceedings, it cannot serve as corroborative evidence in the present case. This acquittal suggests that the confession allegedly leading to the recovery was either fabricated or obtained through improper means, thereby undermining the entire recovery evidence.

19. Furthermore, the prosecution has failed to establish any specific personal enmity between the appellant and the deceased persons. The evidence reveals that the primary animosity existed between the deceased and co-accused Ali Muhammad Mari arising from the previous murder case. The appellant's involvement appears to be based merely on his relationship with the co-accused rather than any concrete evidence of his participation in planning or execution of the offense. The principle of common intention under Section 149 PPC requires proof that each accused shared the common object and actively participated in its furtherance. The prosecution has failed to establish the appellant's specific role in the commission of the offense or demonstrate how he contributed to the common object. The mere presence of the appellant at the scene, even if established, would not be sufficient to invoke the principle of common intention without proof of his active participation in the criminal act.

20. The medical evidence, while clearly establishing that both deceased persons died due to firearm injuries, does not specifically link the appellant to the commission of the offense. The post-mortem reports confirm the cause of death but do not provide any indication about the identity of the perpetrators or the specific weapon used by each accused person. The circumstantial evidence in the form of empty shells recovered from the place of incident, while relevant to establish the use of firearms, does not conclusively implicate the appellant in the absence of reliable recovery evidence linking him to any specific weapon. The forensic examination of these empties and their comparison with weapons allegedly recovered from accused persons would have been crucial evidence, but the prosecution has failed to establish this link convincingly. Rather, it has come on record that empties recovered from venue of occurrence after three days of incident on June 22, 2017, appellant was arrested on June 23, 2017, recovery of Kalashnikov was affected on his pointing on June 29, 2017 and property including empties and weapons was sent for ballistic expert opinion on July 7, 2017. Not only this, but mashir Talib Hussain in his testimony deposed *“Weapon was lying in khabhar trees when same was produced by the accused before the I.O. The weapon was not concealed in the land. The weapon was sealed at police station. I.O obtained signature/LTI on seal of weapon at police station.”* This piece of evidence negates the claim of prosecution that recovery of weapon was affected on pointing of appellant and sealed at venue of recovery. Therefore, safe custody and safe transmission of the weapons was compromised. The August Supreme Court in numerous judgments held that

delayed sending crime empties to FSL along with recovered weapons are of less or no significance. In case of *Muneer Malik & others Vs. The state* (2022 SCMR 1494), it is held that empties recovered from scene of occurrence on same day through recovery memo but the said crime empties were neither kept in safe custody nor sent to Chemical Examiner immediately after recovery. Weapons of offence and crime empties were jointly sent to the office of Chemical Examiner after a delay of more than two months for which no plausible explanation had been given by the prosecution. In these circumstances the recoveries were inadmissible in evidence and could not be relied upon to sustain conviction of the accused persons. Such dictum is also laid down in the case of *Javed Khan @ Bacha & another Vs. the State and another* (2017 SCMR 524) and case of *Ali Sher & others versus the State* (2008 SCMR 707).

21. The conduct of the investigation also raises several questions about its thoroughness and impartiality. The fact that the place of incident was visited by the Investigating Officer three days after the occurrence, the failure to collect adequate forensic evidence from the scene, and the reliance primarily on interested witnesses without attempting to locate independent witnesses from the vicinity all point towards a deficient investigation that falls short of the standards required in a case involving capital punishment. The previous appellate history of this case, wherein this Court had set aside the earlier conviction and remanded the matter for fresh trial, indicates judicial recognition of deficiencies in the original proceedings. The specific direction to re-examine witnesses without being influenced by earlier findings suggests that the previous trial suffered from material irregularities that affected the fairness of the proceedings.

22. The totality of circumstances, when viewed collectively, creates a web of doubt that permeates the entire prosecution case. While individual aspects might be explained away in isolation, their cumulative effect creates reasonable doubt about the appellant's guilt that cannot be resolved in favor of the prosecution. The prosecution has failed to establish its case against the appellant beyond reasonable doubt, which is the cardinal requirement in criminal cases. The principle enshrined in our jurisprudence that it is better for ten guilty persons to escape than for one innocent to be wrongly convicted reflects the paramount importance of ensuring that criminal convictions are based on cogent, reliable and unimpeachable evidence. In the present case, the prosecution evidence falls short of this standard due to the material

contradictions, procedural deficiencies, and evidentiary gaps that have been highlighted above.

23. The case of *Irfan Ali versus The State* (2015 SCMR 840) emphasizes that, to award a capital punishment in murders crime, it was imperative for the prosecution to lead unimpeachable evidence of a first degree, which ordinarily must get strong corroboration from other independent evidence if the witnesses were interested or inimical towards the accused. Similarly, in case of *Shah Behram & another versus the state and another* (2019 P.Cr.L.J 1743), the police had not associated residents of the locality in the investigation for the purpose of recovery. Recovery proceedings were concluded in violation of Section 103 Cr.P.C. and thus, it was hit by exclusionary rule of evidence and could not be considered.

24. The doctrine of benefit of doubt is not merely a legal technicality but represents a fundamental principle of criminal jurisprudence designed to protect innocent persons from wrongful conviction. This doctrine recognizes that human evidence is fallible and that the consequences of wrongful conviction are so severe that it is preferable to err on the side of caution rather than risk punishing the innocent. In the present case, the appellant's conviction appears to be based more on suspicion and circumstantial possibilities rather than concrete evidence establishing his guilt beyond reasonable doubt. The prosecution has failed to exclude other reasonable possibilities that are consistent with the appellant's innocence, which is a mandatory requirement in cases based on circumstantial evidence.

25. The recovery evidence, being the most crucial link connecting the appellant to the offense, has been severely compromised by his subsequent acquittal in the connected recovery case. This creates a situation where the prosecution seeks to rely on evidence that has been judicially determined to be unreliable or fabricated in separate proceedings, which cannot be permitted in law. Moreover, the failure of prosecution witnesses to provide consistent and credible testimony regarding material aspects of the case raises serious questions about their reliability. The improvements and embellishments made during trial proceedings suggest a deliberate attempt to strengthen the prosecution case rather than an honest recollection of events. The principle of common intention requires proof that all accused persons shared a common object and actively participated in its furtherance. The prosecution has failed to establish how the appellant contributed to the alleged common object or what

specific role he played in the commission of the offense. The mere allegation that he was armed with a Kalashnikov, without more, is insufficient to establish his guilt, particularly when the recovery evidence relating to this weapon has been found unreliable.

26. The medical evidence, while establishing the cause of death, does not provide any specific indication linking the appellant to the commission of the offense. The firearm injuries found on the deceased could have been caused by any of the alleged accused or even by unknown persons, and there is no evidence to establish which specific injury was caused by which accused persons. In this respect, even the Medical Officer Dr. Zulfiqar Ali in his testimony deposed deceased had received injuries from the distance of 15-20 feet in sitting position and the angle of injuries of both deceased were straight from same distance, therefore, there seems force in the arguments advanced by learned defense counsel that all fires would have been fired by one or same person causing fatal injuries to both the deceased. The circumstantial evidence must form a complete chain that excludes every reasonable possibility of innocence, and any weak link in this chain is sufficient to break the prosecution case. In the present case, the recovery evidence constitutes a crucial link that has been compromised, thereby breaking the chain of circumstances relied upon by the prosecution. Furthermore, the delay in registration of the FIR, when viewed alongside other suspicious circumstances including the interested nature of witnesses and their material contradictions, creates additional doubt about the prosecution version. The explanation offered for this delay appears to be an afterthought rather than a genuine reason, particularly when considering the gravity of the offense and the availability of modern communication facilities.

27. The investigation conducted in this case appears to be superficial and oriented towards confirming a predetermined conclusion rather than an impartial inquiry aimed at discovering the truth. The failure to properly examine the scene of crime, collect adequate forensic evidence, and locate independent witnesses reflects a casual approach that falls short of the standards required in capital cases. The previous judicial history of this case, including the setting aside of the original conviction by this Court, indicates recognition of fundamental defects in the prosecution case that could not be cured merely by re-recording the testimony of the same witnesses. The defects appear to be inherent in the prosecution case rather than procedural irregularities that could be rectified through fresh proceedings.

28. After a thorough and careful consideration of all aspects of the case, including the evidence led by the prosecution, the arguments advanced by both sides, and the applicable legal principles, this Court has reached the firm conclusion that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The material contradictions in witness testimony, the compromised nature of recovery evidence, its safe custody and safe transmission for FSL, the delay in FIR registration, and the overall deficiencies in the investigation create reasonable doubt that must be resolved in favor of the appellant.

29. The conviction of the appellant appears to be based on suspicion rather than legal evidence, and suspicion, however strong, cannot take the place of proof. The prosecution must prove its case to the hilt, excluding every reasonable possibility of innocence, which has not been achieved in the present case.

30. Accordingly, this Criminal Appeal is allowed. The impugned judgment dated 10th August 2023 passed by the learned Additional Sessions Judge Moro in Sessions Case No.343/2018 is hereby set aside. The appellant Ghulam Mustafa Mari is acquitted of all charges leveled against him under Sections 302, 337-H (2), 403 148 and 149 PPC. He shall be released forthwith if not required in another custody case.

J U D G E