

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

PRESENT:

Mr. Justice Shamsuddin Abbasi

Mr. Justice Ali Haider 'Ada'

Cr. Acquittal Appeal No. D- 18 of 2022

(Waheed Ali Khokhar v. Syed Bakar Ali Shah & others)

Appellant: Waheed Ali son of Muhammad Essa by
caste Khokhar.
Through, Mr. Safdar Ali Ghouri, Advocate

Respondents: 1. Syed Bakar Shah.
2. Syed Ali Taqi Shah, both son of Noor
Muhammad Shah.
Through M/s Athar Abbas Solangi and
Farhat Ali Bugti, Advocates

The State: Through, Mr. Aitbar Ali Bullo, D.P.G.

Cr. Jail Appeal No. S- 17 of 2022

(Tania Khokhar v. The State)

Appellant: Tania D/O Waheed Ali @ Faqir
Muhammad Khokhar,
Through, Mr. Rafique Ahmed K. Abro,
Advocate

The State: Through, Mr. Aitbar Ali Bullo, D.P.G.

Complainant: Waheed Ali
Through, Mr. Safdar Ali Ghouri, Advocate

Date of hearing: 30.09.2025.
Date of Decision: 30.09.2025.
Date of Reasons: 07.10.2025.

JUDGMENT

Ali Haider 'Ada'.J:- The complainant, Waheed Ali, through the instant Criminal Acquittal Appeal, has assailed the judgment dated 14.04.2022 passed by the learned Additional Sessions Judge-I, Larkana (trial Court) in Sessions Case No. 471 of 2019, arising out of FIR No. 27 of 2019, registered at Police Station Dokri, for offences punishable under Sections 302, 120-B, and 34 PPC.

By the said judgment, the learned trial Court acquitted co-accused Baqir Shah and Ali Taqi Shah, against which the complainant, being aggrieved, preferred the present criminal acquittal appeal. In the same judgment, co-accused Mst. Tania was convicted and sentenced to rigorous imprisonment for life, along with a direction to pay an amount of Rs. 300,000/- as compensation under Section 544-A Cr.P.C. to the legal heirs of the deceased. In default of payment, she was ordered to undergo further imprisonment for six months. However, the benefit of Section 382-B Cr.P.C. was extended to her. Accused Mst. Tania also challenged her conviction by filing a Criminal Jail Appeal before this Court.

2. As both the appeals, Criminal Acquittal Appeal filed by the complainant and Criminal Jail Appeal filed by accused Mst. Tania arise out of the same judgment and facts, they were tagged together vide order of this Court dated 20.10.2022, , and are being decided through this common judgment.

3. The precise facts, briefly stated, are that the deceased Saeed Ahmed was the real brother of the complainant, while accused Mst. Tania was the adopted daughter of their father. It is alleged that Mst. Tania had illicit relations with co-accused Baqir Shah, which came to the knowledge of the deceased. Upon learning of this, the accused persons became annoyed with him. On 06.06.2019 at about 12:30 a.m. (midnight), the complainant along with his relatives, namely Abdul Rasheed and Ayaz Ali, was present at a flour mill, while the deceased Saeed Ahmed was at a nearby potato chips shop. In the meantime, the complainant party saw accused Baqir Shah, Ali Taqi Shah, and Mst. Tania armed with chhuris (knives) along with two unknown persons (armed with pistols), who could be identified upon being seen again. The armed persons overpowered the complainant party, while accused Baqir Shah, Ali Taqi Shah, and Mst. Tania inflicted multiple chhuri blows upon the deceased. The injuries were sustained near the heart, on the right side of the rib cage, and on the left flank. The entire incident was witnessed under electric light from nearby bulbs. Thereafter, the accused fled the scene. The injured Saeed Ahmed was first taken to the police station, where a medical letter was obtained, and then shifted to the hospital. However, he succumbed to his injuries and expired. After completing necessary formalities, the FIR was lodged on the same day at about 4:00 p.m.

4. Upon registration of the FIR, the investigation was conducted, and on 24.06.2019, the interim challan was submitted against the accused persons. During the investigation, the Investigating Officer declared accused Ali Taqi Shah innocent; however, the report to that effect was not accepted by the Magistrate having jurisdiction, who ordered that he be included in the case. Consequently, the final challan was submitted, and all accused were sent up for trial.

5. The learned trial court, after supplying the requisite documents to the accused, framed the charge against them on 14.11.2019, to which they all pleaded not guilty and claimed trial.

6. Before the commencement of evidence, the complainant Waheed Ali filed an application dated 11.09.2020, stating that one of the witness, namely Ayaz Ali, had been won over by the accused, and therefore, his evidence should not be recorded. On the basis of this application, the learned State Counsel filed a statement giving up the said witness, Ayaz Ali, who had originally been cited as an eyewitness to the incident.

7. Thereafter, the prosecution began its evidence by examining PW-1, complainant Waheed Ali, who produced a copy of the FIR during his deposition. PW-2, Abdul Rasheed, another eyewitness to the incident, was also examined. The prosecution then examined PW-3, Jhando Khan, a police official who had received the dead body for post-mortem; he produced the receipt thereof and specimen signatures. PW-4, ASI Roshan Ali, who authored the FIR, was examined and he produced the relevant roznamcha entry reflecting that the complainant had approached the police station at about 04:00 p.m. to lodge the FIR. PW-5, Nazeer Ahmed, the mashir, was examined. He produced several documents including: The memo of inspection of the dead body, prepared at about 04:50 p.m. on 06.06.2019; The Danishnama (inquest report); The memo of place of incident; The memo regarding recovery of blood-stained earth; the arrest memos of accused Mst. Tania and Ali Taqi Shah, showing their arrest on 07.06.2019; the arrest memo of accused Baqir Shah, showing his arrest on 10.06.2019; the memo of recovery of a knife, handbag, and clothes on the pointation of accused Mst. Tania, prepared on 18.06.2019; the memo of recovery of another knife on the pointation of accused Baqir Shah, dated 19.06.2019.

Subsequently, PW-6, the local Tapedar, was examined, who produced the official letter and the site sketch. PW-7, Khalid Ahmed, a dispatch rider, was also examined. He deposed that he had delivered the relevant articles to the chemical examiner and produced the covering letters as evidence. The prosecution further examined the Medical Officer, Dr. Saqib Nabi, who conducted the post-mortem examination. He exhibited the Lash Chakas Form and the post-mortem report of the deceased. Lastly, the prosecution examined the Investigating Officer, who produced various roznamcha entries, order of the Joint Investigation Team constituted by the DIG Police Larkana, and also produced the chemical examiner's reports. Upon completion of this evidence, the learned State Counsel closed the prosecution side. Thereafter, the trial court summoned one more police official, Gul Bahar, who produced the initial entry recorded at the police station when the complainant first approached to obtain a letter for medical treatment. This entry reflected the date and time of the incident as 06.06.2019 at about 12:50 a.m., along with the issuance of the letter for medical treatment.

8. After the completion of the prosecution evidence, the statements of the accused were recorded by the learned trial court under Section 342 Cr.P.C., wherein they professed their innocence and prayed for justice. Accused Ali Taqi Shah also examined two defence witnesses in support of his case. Upon conclusion of the trial and after hearing arguments from both sides, the learned trial court delivered the impugned judgment, whereby it convicted accused Mst. Tania, while acquitting co-accused Baqir Shah and Ali Taqi Shah. Being aggrieved by the acquittal of the co-accused, the complainant filed a Criminal Acquittal Appeal. Conversely, Mst. Tania, being dissatisfied with her conviction, preferred an Criminal Jail Appeal against the same. The impugned judgment is thus now under challenge from both sides.

9. Mr. safdar Ali Ghouri, learned counsel for the complainant submitted that the learned trial court erred in acquitting the co-accused by disregarding the prosecution evidence, which had fully established the case against them. He argued that the circumstantial evidence also supported the prosecution version. It was contended that the trial court, on the one hand, believed the evidence against accused Mst. Tania, resulting in her conviction, yet on the other hand acquitted the main accused persons, despite the fact that the recovery of the knife used in the commission of the offence was effected during the course of

investigation. In such circumstances, it was argued, the learned trial court committed a grave error in acquitting the co-accused. He further opposed the appeal filed by Mst. Tania against her conviction, arguing that she was rightly convicted, as the motive behind the offence curtailed from her alleged illicit relationship. Upon the deceased becoming aware of said relationship, he was allegedly murdered with the help of her paramour. Therefore, she is not entitled to the relief of acquittal, as prayed.

10. Conversely, Mr. Athar Abbas Solangi assisted by Mr. Farhat Ali Bugti, learned counsel appearing on behalf of the acquitted accused submitted that the trial court rightly disbelieved the evidence against them. He argued that there was no independent corroboration of the prosecution's case against accused. The alleged recovery of the weapon was made after a significant lapse of time, and was not satisfactorily explained, thereby rendering the recovery doubtful. Furthermore, it was argued that there was an unexplained delay in lodging the FIR, which casts serious doubt on the credibility of the prosecution version. He submitted that the complainant's presence at the crime scene is also doubtful in light of the circumstances, and as such, the trial court rightly extended the benefit of doubt to the accused.

11. Mr. Rafique Ahmed K. Abro, learned counsel for appellant Mst. Tania contended that the prosecution case is fraught with material contradictions and inconsistencies. It was argued that the entire case is based on doubtful circumstances. One of the alleged eye-witness Ayaz Ali was not examined by the prosecution, and it is presumed that had he been examined, he would have deposed against the prosecution version. Therefore, the adverse presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984, is attracted. He further submitted that the medical evidence contradicts the ocular account, and since the acquitted co-accused were given the benefit of doubt on the same set of evidence, Mst. Tania is also equally entitled to the same relief.

12. On the other hand, Mr. Aitbar Ali Bullo, learned Deputy Prosecutor General supported the impugned judgment to the extent of conviction of Mst. Tania. He argued that the judgment does not suffer from any illegality or material irregularity. It was further contended that Mst. Tania had, during the

proceedings, confessed her guilt, and therefore, she is not entitled to any leniency or the relief of acquittal as prayed for.

13. Arguments heard. Record perused.

14. In the present case, the trial court observed that the prosecution failed to establish its case against the acquitted accused, namely Baqar Shah and Ali Taqi Shah. Although the prosecution alleged that these accused, along with co-accused Tania, were involved in the murder of the deceased and duly reported the incident to the police, the trial court, after a thorough evaluation of the evidence, acquitted Baqar Shah and Ali Taqi Shah. It is a well-settled principle of criminal jurisprudence that an acquitted accused enjoys a double presumption of innocence. Firstly, every accused is presumed innocent until proven guilty. Secondly, once acquitted by a competent court, this presumption is further strengthened. Therefore, appellate courts exercise great restraint in interfering with judgments of acquittal, unless such judgments are found to be manifestly perverse, arbitrary, or suffer from gross misreading or non-reading of material evidence. As a result, the scope of interference in the appeal against acquittal is extremely narrow and limited, and the acquittal deserves to be sustained. Reliance is placed upon the case of **Sardaran Bibi vs the State and others 2024 SCMR 1116**. Further support is drawn from the case of **Al-Haaj Malik Muhammad Ashraf versus Javed Akhtar and another, 2025 S C M R 787**, as it was held that:

7. It is a well-settled principle that an acquitted accused enjoys a double presumption of innocence. An appellate court should exercise restraint in overturning an acquittal unless the judgment is manifestly perverse, arbitrary, or suffers from a glaring misreading or non-reading of material evidence, which is not evident in the present case. Reliance is placed on Muhammad Mansha Kausar v. Muhammad Asghar and others (2003 SCMR 477).

15. It is further pertinent to note that the trial court, on the same set of evidence, acquitted the co-accused and also came to the conclusion that the charges of criminal conspiracy and sharing of common intention in the commission of murder were not proved against any of the accused. Once the allegation of conspiracy has not been established by the prosecution, the entire narrative that Mst. Tania, in league with her alleged paramour, conceived and executed a criminal plan to murder the deceased based on the deceased's alleged knowledge of her relationship with the co-accused becomes highly doubtful.

16. The accused were charged with the murder of the deceased and causing injuries. The prosecution relied upon the ocular account furnished by eye-witnesses, who allegedly witnessed the occurrence and attributed injuries to the deceased at the hands of the appellant and his co-accused. However, it is an undisputed fact that two co-accused, who were attributed effective roles in causing injuries to the deceased, have already been acquitted of the charge. In such circumstances, a legal inconsistency arises: if the same set of eye-witnesses was found unreliable or insufficient to sustain conviction against co-accused who were said to have played similar active roles, then those witnesses cannot be selectively believed against the present appellant without independent corroboration. This selective reliance on ocular evidence violates the principle of consistent appreciation of testimony, especially when all accused are alleged to have acted in concert and played similar roles. Given these circumstances, it stands established that the prosecution has failed to prove its case against the appellant Mst. Tania beyond reasonable doubt. Reliance is placed upon the case of **Khizar Hayat vs The State 2025 SCMR 1339**.

17. The credibility of the prosecution's case is further undermined by material admissions made by the complainant (PW-1) during his cross-examination. He clearly admitted that: *"It is fact that I appeared before the SSP during investigation. It is fact that i disclosed before SSP that I have not seen the culprits at the time of infliction of injuries. However, I have disclosed him that in my vision accused Baqir Shah, Ali Taqi Shah and Tania Khokhar and two unknown culprits caused four injuries."* This statement is fatal to the prosecution's version, as it negates the claim of the complainant being an eye-witness to the occurrence. His attribution of the injuries to the accused persons is based not on direct observation, but on mere presumption, which has no legal value in criminal jurisprudence where proof beyond reasonable doubt is required. Moreover, the independent witness Gul Bahar, who was summoned by the court and had recorded the initial entry (roznamcha) of the complainant prior to the registration of the FIR, categorically confirmed that no names of any accused were mentioned in that first report. The complainant, at that stage, simply informed that: *"Some persons had fought with his brother (the deceased) and a letter was needed for medical treatment."* This omission is not a minor lapse. It is well-recognized in criminal law that when a person has actually witnessed the assailants, he would naturally name them at the earliest

opportunity, especially in a case of murder of a close family member. The failure to name the accused in the first version before the police raises serious doubt about the veracity and genuineness of the later-improved version presented in the FIR and during the trial.

18. The complainant's own admission that he did not witness the actual infliction of injuries, coupled with his failure to name the accused initially, breaks the chain of reliable ocular evidence, rendering the entire prosecution case highly doubtful and unworthy of reliance. It is also significant to note that the alleged incident occurred on 06.06.2019 at approximately 12:30 midnight, whereas the FIR was lodged much later on the same day, at about 4:00 p.m., after an unexplained delay of nearly 15 hours. Such an unjustified delay in registration of the FIR strongly suggests that the FIR was lodged after considerable lapse of time and possibly after deliberation or consultation, which seriously undermines the prosecution's case. In criminal jurisprudence, an unexplained or unreasonable delay in lodging the FIR is a strong ground for doubting the prosecution's story, as it raises the possibility of afterthoughts, concoction, or manipulation of the narrative. This principle was firmly reiterated in the case of **Waqas Ahmed v. The State (2025 SCMR 1087)**. Further support is drawn from the case of **Manzar Abbas vs The State 2025 SCMR 1024**.

19. Furthermore, although the incident allegedly occurred at night, it is on record that the electric bulb at the place of occurrence was switched on. However, the Investigating Officer failed to seize or record any source of light from the scene during the investigation, which raises serious doubts about the thoroughness and reliability of the investigation.

20. Moreover, the complainant himself admitted in his deposition that he wears glasses with a prescription of minus 15, indicating severely impaired eyesight. Considering the dim lighting conditions during the nighttime incident and the complainant's poor vision, it is highly questionable whether the complainant could have accurately and reliably identified the accused persons as the assailants. Minus 15.00 refers to a very strong nearsighted (myopic) prescription. Myopia is one type of refractive error where the parallel rays of light are brought into focus in front of the retina when accommodation is at rest. This is also called short sightedness or nearsightedness. Nearsightedness

is an error of visual focusing that makes distant objects appear blurred. Reference be made by Book of **Optics & Refraction, published by Aravind Eye Hospitals & Postgraduate Institute of Ophthalmology Madurai Tamilnadu, India**. In such circumstances, the identification of the accused is inherently doubtful, especially when the prosecution has failed to establish a credible and satisfactory source of light to enable clear vision. Support is drawn from the case of **Khizar Hayat (supra) and Ibrar Hussain and another vs The State 2020 S C M R 1850**.

21. There exists a significant contradiction between the ocular version of the incident and the medical/post-mortem findings, which casts serious doubt on the prosecution's case. According to the ocular account, the deceased received injuries on the left side of the chest near the heart a critical and vulnerable area. However, in contrast, the medical evidence, specifically the post-mortem report, clearly states that the thorax organs and regions were found healthy and unaffected. Such as Diaphragm-(The diaphragm is the primary respiratory muscle, a dome-shaped partition that forms the floor of the thorax (chest) and the roof of the abdomen.), Pleural cavities - (The pleural cavities are paired, fluid-filled spaces in the thorax, located on either side of the mediastinum (which contains the heart) and surrounding the lungs, Heart, Pericardial sac-(The pericardial sac, or pericardium, is a two-layered sac that encases the heart and great vessels in the thorax's mediastinum), Blood vessels-These vessels form the great vessels connected to the heart, the vessels within the thoracic wall, and the veins draining deoxygenated blood from organs and the periphery back to the heart.) Furthermore, the site of injuries, as recorded in the internal examination chart, is mentioned as the lower side of the chest and right lower chest, which again contradicts the ocular version that the injury was inflicted on the left side of the chest near the heart. This discrepancy between ocular testimony and medical findings is not a minor one, it goes to the root of the prosecution's version and creates a reasonable doubt regarding the actual seat of injury, direction of assault, and identity of the assailant. Reliance is placed upon the precedent laid down in **Imtiaz Hussain Shah alias Tajjay Shah and another vs The State (2025 SCMR 1110)** and case of **Muhammad Nawaz vs The State 2025 SCMR 1053**. Therefore, on the basis of this material contradiction and in light of

the authoritative precedent, the benefit of doubt must be extended to the accused.

22. A significant aspect to consider is that, according to the memo of recovery, the blood-stained earth was collected on 06-06-2019, but it was not sent to the Chemical Examiner until 11-06-2019, after a delay of four days. Similarly, the cloth and purse allegedly recovered on the pointation of accused Tania on 18-06-2019 despite the fact that she was arrested on 07-06-2019 and were sent for chemical examination on 21-06-2019. These delays have not been explained by the prosecution. Support for this contention is drawn from the case of **Muhammad Abras vs. The State (2025 SCMR 1145)**. Moreover, the group matching report also fails to support the prosecution's version, as no conclusive match was established to link the accused with the crime.

23. In addition, the alleged recovery of the knife from the co-accused Baqir Shah was shown to have been effected on his pointation during police custody. However, this recovery is fraught with serious legal infirmities and lacks evidentiary value in terms of the requirements under **Article 40 of the Qanun-e-Shahadat Order, 1984**. The record reflects that Baqir Shah was arrested on 10.06.2019, while the alleged recovery was shown to have been effected on 19.06.2019, i.e., nine days after his arrest. There is no material on record indicating that during this period he had made any disclosure statement, nor is there any period writing showing that he furnished any such information to the police that led to the discovery of the knife. In order to bring such recovery within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, it is a settled principle of law that the prosecution must establish that a person accused of any offence and in custody of a police officer; made a statement or gave information to the police; which led to the discovery of a new fact; and such discovery must relate to the offence, and not be within the prior knowledge of the police; the disclosure and recovery must be documented, preferably in the presence of witnesses. In absence of such incriminating statement or information from the accused leading to discovery, the mere recovery of a physical object, such as a knife, does not fall within the protective umbrella of Article 40. This view finds authoritative support in the case of **Zafar Ali Abbasi and another v. The State reported as 2024 SCMR 1773**.

24. Furthermore, even if the recovery is presumed to be valid, the mere recovery of the knife, allegedly being the weapon of offence, cannot form the sole basis for conviction in absence of other substantive and credible evidence linking the accused to the commission of the crime. In this context, reliance is placed on the case of **Muhammad Aslam v. The State** reported as **2025 SCMR 1240**.

25. It is an established principle of criminal jurisprudence that the prosecution has the discretion to produce witnesses. However, where material or marginal witnesses, who were cited in the calendar of witnesses, are withheld without any plausible explanation or substantiating evidence of threats or inducements, a strong adverse inference may be drawn against the prosecution under Article 129(g) of the Qanun-e-Shahadat Order, 1984. . In this context, reliance is placed on the judgment of the Hon'ble Supreme Court in **Waqas Ahmad v. The State**, reported as **2025 SCMR 1087**.

26. It is a cardinal principle of criminal jurisprudence that in cases where the prosecution evidence is flawed by contradictions, discrepancies, or reasonable doubt, the benefit of such doubt must always be extended to the accused, as the burden squarely lies upon the prosecution to prove the charge beyond any shadow of reasonable doubt. This foundational doctrine has been reiterated by the Hon'ble Supreme Court of Pakistan in the case titled **Qurban Ali v. The State** reported as **2025 SCMR 1344**. As, the benefit of doubt, arising from these legal and factual infirmities, must go to the accused as per the cardinal principle of criminal law: "It is better that ten guilty persons escape than that one innocent suffer."

27. For the foregoing reasons, detailed discussion, and upon careful appraisal of the entire record, we are of the considered view that the prosecution has completely failed to establish the charge against the accused persons in accordance with the settled principles of criminal law. The prosecution evidence is insufficient, uncorroborated, and riddled with material contradictions and legal infirmities, rendering it unworthy of reliance. Accordingly, we find no justification to interfere with the acquittal of co-accused Baqir Shah and Ali Taqi Shah. The Criminal Acquittal Appeal filed against them is hereby dismissed. As far as the case of accused Mst. Tania is concerned, the benefit of doubt arising from the prosecution's failure to prove the charge beyond a reasonable doubt

also entitles her to acquittal. Consequently, the impugned judgment, whereby she was convicted and sentenced, is set aside to her extent. She shall be released forthwith, if not required in any other case. These are the detailed reasons in support of the short order announced on 30.09.2025.

JUDGE

JUDGE