IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No.S-49 of 2024

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Appellant:	Imamdino Sheedi son of Ghulam Hyder Sheedi through Mr. Rao Faisal Ali, Advocate.
Respondent:	The State through Mr. Shahzado Saleem Nahiyoon, Additional Prosecutor General (Sindh).
Date of hearing:	**12.11.2025**
Date of Judgment:	**26.11.2025**

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JUDGMENT

Shamsuddin Abbasi, J. Imamdino Sheedi son of Ghulam Hyder Sheedi, appellant, alongwith Muhammad Ramzan @ Papu son of Jani Khan Kapri was tried by learned Additional Sessions Judge-X (Inside Trial Court @ Central Prison, Hyderabad), in Sessions Case No.662 of 2016 (FIR No.50 of 2012) registered at Police Station Kot Ghulam Muhammad, District Mirpurkhas. By a judgment dated 18.03.2024 co-accused Muhammad Ramzan was exonerated of the charge, but the appellant was held guilty of the offence under Section 302(b), PPC, and sentenced rigorous imprisonment for life and to pay a sum of Rs.200,000/- as compensation to the "Walis" of deceased and to suffer simple imprisonment for a further period of six months in lieu of amount of compensation, however, the benefit in terms of Section 382-B, Cr.P.C. was extended to the appellant while the case pertaining to absconding accused Ghulam Hyder son of Muhammad Ramzan Sheedi was consigned to dormant file.

2. Complainant Natho Khan is Hari by profession. He, together with his sons Nim and Mustafa and one Mehboob Leghari, was engaged in cultivating the leased land of Ashraf Leghari, who is a Zamindar. They were allegedly restrained by Imamdino Sheedi, Ghulam Hyder and Ramzan @ Papu, who repeatedly threatened them with dire consequences, including death, if they continued to cultivate the land of Ashraf Leghari. The complainant party while rebutting the aforesaid threats stated that the cultivation of the land is their only means of income. On 21.04.2012 the complainant together with his sons Nim and Mustafa and Mehboob Leghari was present at the land situated at Deh 261, Taluka Kot Ghulam Muhammad, attending to their routine work. It was about 3:30 pm when Imamdino, armed with repeater, Ghulam Hyder, armed with pistol, and Muhammad Ramzan @ Paul came

there. They used abusive language. The complainant party resisted and asked them to refrain from using such language, whereupon Imamdino having become annoyed fired directly from his repeater, causing a shot injury to the right eye of Nim, who fell down on the ground. Ghulam Hyder also opened direct fire with his pistol, the shot hitting Mustafa on his right hand as a result of which he became injured. Nim succumbed to his injuries and died at spot. The complainant shifted his dead body as well as his injured son Mustafa to hospital and then appeared at P.S. and lodged FIR on the same day (21.04.20212) at 6:00 pm.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction against accused Imamdino and Muhammad Ramzan @ Papu. They were indicted under Sections 302, 324, 337-F(iii), 504 and 34, PPC, which allegations they denied. Thereafter, absconding accused Ghulam Hyder was also brought before the Court. Subsequently, the Court framed an amended charge. The three accused pleaded not guilty to the charged offence and opted to be tried. Worth to mention here that after framing amended charge, Ghulam Hyder absconded away and after initiating all legal proceedings against him he was declared proclaimed offender.

4. At trial, the prosecution has examined as many as eight witnesses. The gist of evidence, adduced by the prosecution, in support of its case, is as under:-

5. Dr. Muhammad Ali Shah appeared as witness No.1 Ex.9, Booto Mal as witness No.2 Ex.10, Complainant Natho Khan as witness No.3 Ex.11, eye-witness Mehboob as witness No.4 Ex.12, eye-witness /injured Ghulam Mustafa as witness No.5 Ex.13, Munawar Ali as witness No.6 Ex.14, Abdul Khaliq as witness No.7 Ex.15 and Inspector Muhammad Shahmir as witness No.8 Ex.16. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.17.

6. Statements under Section 342, Cr.P.C. of appellant and co-accused Muhammad Ramzan @ Papu were recorded at Ex.18 and Ex.19 respectively. They have denied the allegations imputed upon them by the prosecution, professed their innocence and stated their false implication by the complainant on account of personal animosity premised on the allegation

of threats. They, however, opted not to make a statement on Oath under Section 340(2), Cr.P.C. and did not produce any witness in their defence.

7. Upon conclusion of the proceedings, the learned Trial Court acquitted co-accused Muhammad Ramzan @ Papu, however, the appellant was held guilty of the offence charged with and was, thus, awarded conviction and sentence as mentioned in para-1 (supra), leading to the filing of the instant appeal.

8. It is contented on behalf of the appellant that he has been falsely implicated in this case by the complainant on account of previous enmity; that no independent witness has been produced by the prosecution in support of its case and the witnesses who have been examined are interested and related to complainant as well deceased, hence their testimony cannot be termed as trustworthy and confidence inspiring; that they were inconsistent with each other rather contradicted on crucial points; that the ocular account furnished by the prosecution is not in consonance with the medical evidence; that nothing incriminating has been recovered from the possession of the appellant and the alleged recovery of the repeater is foisted one, moreover this alleged recovery does not advance the prosecution's case as the appellant stands exonerated by a competent Court from the charge of recovery of the repeater and such an order has attained finality as no appeal has filed either by the State or the complainant; that the learned trial Court on the same set of evidence has acquitted co-accused Muhammad Ramzan @ Papu and such order of acquittal has attained finality; that the learned trial Court did not appreciate the evidence adduced by the prosecution and defence taken by the appellant in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and awarded conviction without application of a conscious judicial mind, hence the conviction and sentence awarded to the appellant, based on such findings, are not sustainable in law and liable to be set-aside and the appellant deserves to be acquitted of the charge and prayed accordingly.

9. The learned Additional Prosecutor General (Sindh) while controverting the submissions of learned counsel for the applicant has supported the impugned judgment to be based on fair evaluation of evidence and documents brought on record; that the witnesses while appearing before the learned trial Court remained consistent on each and every material point; they were subjected to lengthy cross-examination but nothing adverse to the

prosecution story has been extracted; that the medical evidence is in line with the ocular account which fully corroborates the version of complainant as set-forth in the FIR; that the prosecution in support of its case has produced ocular evidence supported by the medical and circumstantial evidence, which has rightly been relied upon; that the prosecution has successfully proved its case against the appellant beyond shadow of reasonable doubt, thus, the appeal filed by the appellant warrants dismissal and his conviction and sentence recorded by the learned trial Court is liable to be upheld and prayed for dismissal of the instant appeal.

10. I have heard the learned counsel for both the sides, given my anxious consideration to their submissions, and also scanned the entire record carefully with their able assistance.

11. Deceased Nim and injured Ghulam Mustafa are sons of complainant Natho Khan. The complainant in his FIR has stated that they are "Haris" by profession and cultivating the land of Zamindar Ashraf Leghari. Imamdino Sheedi, Ghulam Hyder and Ramzan @ Papu had been restraining the complainant party from cultivating the land of Ashraf Leghari. On the day of the incident, the complainant together with his sons Nim and Mustafa and one Mehboob Leghari was present at the land and engaged in their routine work when Imamdino Sheedi, armed with a repeater and Ghulam Hyder, armed with a pistol, arrived there accompanied by Ramzan @ Papu. They used abusive language and opened fire with the intention to kill the complainant party. The shot fired by Imamdino Sheedi struck Nim, who died on the spot whereas Mustafa became injured due to firing of Ghulam Hyder. The complainant arranged a vehicle and transported the dead body as well as the injured to the hospital and thereafter proceeded to the Police Station and lodged the FIR.

12. The incident in this case is shown to have taken place at 3:30 pm on 21.04.2012, yet the fact remains that post-mortem examination on the dead body was conducted at 7:00 pm with a delay of about three and half hours. PW.1 Dr. Muhammad Ali Shah (Ex.9) while appearing before the learned trial Court has deposed that on 21.04.2012 he was posted as Senior Medical Officer at Taluka Hospital Kot Ghulam Muhammad, District Mirpurkhas. It was about 6:30 pm SHO Leghari of P.S. Kot Ghulam Muhammad brought an injured namely Mustafa as well as a dead body of deceased Nim. He started post-mortem at 7:00 pm and completed it at 8:00 pm. On the other hand, the complainant in his deposition has stated that soon after departure of

accused persons, he arranged a vehicle and directly brought dead body as well as injured to Taluka Hospital Kot Ghulam Muhammad and soon thereafter proceeded to P.S. leaving Mehboob and others at the hospital. He further deposed that after registration of the FIR police gave him letter for treatment of injured and for autopsy of deceased and then he returned back to hospital where doctor conducted post-mortem and provided treatment to the injured. The time of registration of FIR is 6:00 pm and the complainant did not utter a single word that while proceeding to hospital from police station, SHO or any police official was accompanied by him. The eye-witness Mehboob Leghari in his cross-examination has stated that complainant left hospital and proceeded to P.S. at 5:45 pm and returned back to hospital within 10 to 15 minutes. It appears highly improbably that the complainant could have traveled to the police station, lodged the FIR, and returned to hospital within a shortest period of merely 15 minutes. PW.8 Inspector Muhammad Shahmir has deposed that after registration of FIR, he went to hospital, accompanied by the complainant, and handed over letter to Medical Officer for autopsy and treatment whereas according to complainant he obtained police letter and went to hospital and thereafter police also arrived there and after completing legal proceedings handed over the dead body to him. On the other hand, eye-witness Mehboob Leghari in his cross-examination has stated that police reached the hospital after 10 minutes whereas according to second eye-witness Ghulam Mustafa the police arrived at hospital at 6:30 pm. The Investigating Officer Inspector Shahmir has further deposed that soon after his arrival at hospital, he inspected the dead body, prepared memo of injuries as well as lash chakas and Danishnama and then gave police letter to Medical Officer. It is to be noted that per testimony of Investigating Officer he left P.S. at 6:20 pm for hospital, accompanied by complainant, and on reaching there completed the proceedings under Section 174, Cr.P.C. and thereafter handed over letter to Medical Officer for conducting autopsy. This statement of Investigating Officer has been belied by eye-witness Mehboob Leghari, who in his cross-examination has stated that complainant returned to hospital at 6:00 pm and handed over police letter to Medical Officer. This statement of eye-witness Mehboob has further been denied by the second eye-witness who while appearing before the learned trial Court has stated that his father (complainant) returned to hospital at 6:30 pm. It is beyond the comprehension that how the Investigating Officer, within a span of only ten minutes could have lawfully completed all procedural requirement of Section 174, Cr.P.C. and subsequently furnished the autopsy letter to Medical Officer. The contradictions and discrepancies, referred herein above, as well as apparent

delay in conducting the post-mortem shows that the incident has not been taken place at the time mentioned in the FIR and time has been consumed in planting the evidence. Reliance in this behalf may well be made to the case of *Irshad Ahmed v The State* (2011 SCMR 1190) wherein it has been held as under:-

> *"We have further observed that the post-mortem examination of the dead body of Shehzad Ahmed deceased had been conducted with a noticeable delay and such delay is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses and in cooking up a story for the prosecution before preparing police papers necessary for getting a post-mortem examination of the dead body conducted."*

13. Admittedly, the incident has taken place on 21.04.20212 at 3:30 pm at the land of Ashraf Leghari, situated at Deh 261, Taluka Kot Ghulam Muhammad, yet the FIR was chalked out at 6:00 pm and the post-mortem examination on the dead body was conducted at 7:00 pm with the delay of two hours and thirty minutes after the occurrence, therefore, possibility of consultation and due deliberation for fabricating a story cannot be ruled out. Reliance in this behalf may well be made to the case of *Muhammad Adnan and another v The State and others* (2021 SCMR 16), wherein the Hon'ble apex Court has held as follows:-

> *"….the matter was reported to police on the same night at 09:45 p.m. whereas the FIR was registered at 10:30 p.m. Surprisingly, post-mortem examination on the dead body of Muhammad Tayyab was conducted on 19-09-20018 at 6:30 a.m. Dr. Muhammad Sharif (PW6) who conducted autopsy stated in his cross-examination that at THQ, Hospital, Depalpur, the arrangements for conducting posts-mortem examination are available at night; that he was on duty in the hospital on that night; that his duty started from 8:00 p.m. on 18-09-2008 till 08.00 a.m. on 19-09-2008; that he received the police papers at 6.30 a.m. on 19.09.2008. There is no explanation on record why the autopsy on the dead body of Muhammad Tayyab was conducted with delay of more than nine hours."*

14. The ocular account in this case has been furnished by PW.2 complainant Natho Khan (Ex.11), PW.4 Mehboob (Ex.12) and PW.5 Ghulam Mustafa (Ex.13), alleged to be supported by medical evidence adduced by PW.1 Dr. Muhammad Ali Shah (Ex.9). Before analyzing their evidence, it would be appropriate to first go through the FIR because the entire prosecution machinery came into motion when complainant lodged FIR regarding an incident wherein his son Nim was done to death by inflicting injuries with repeater and his another son Ghulam Mustafa sustained injuries due to firing with pistol. The complainant has claimed that appellant alongwith his two companions namely Ghulam Hyder and Ramzan @ Papu committed murder of his son Nim and caused injuries to his another son

Ghulam Mustafa in his presence and in presence of his son Ghulam Mustafa and Mehboob Leghari, who at the relevant point of time were present at the scene of offence and identified all accused, who came at the scene of offence with open faces and previously known to them.

15. Since this is a case of awarding capital punishment, therefore, it would be appropriate to reassess and reexamine the evidence adduced by the complainant, eye-witnesses and Medical Officer. Admittedly, the complainant is father of eye-witness Ghulam Mustafa and paternal uncle of second eye-witness Mehboob Leghari, therefore, they seem to be interested witnesses particularly when viewed in the light of previous animosity between the parties, during which the complainant side was being prevented from cultivating the land belonging to Ashraf Leghari. A detailed examination of their evidence reveals that they have contradicted each other on crucial points and made certain improvements. The complainant has deposed that accused were at a distance of 15 feet from them when the incident occurred whereas according to eye-witness Mehboob the accused were about one and half acre away from them. This statement of Mehboob has been denied by second eye-witness Ghulam Mustafa, who in his cross-examination has stated that accused were at a distance of 15 /20 feet from them. **It is matter of record that P.W No.2 Booto Mal (Tapedar) prepared sketch of crime scene in presence of complainant Natho Khan and I.O/SIP Muhammad Shahmir Alyani on their direction, wherein he disclosed the distance of 48 feet where from accused fired at deceased and injured. Moreover, presence of blackening around wound of deceased as well as on the wound of injured disclosed the close range between accused and deceased and injured. This aspect created serious doubt in the prosecution story. It is settled that person can lie but medical evidence cannot lie. More particularly when P.W/eye-witness alleged that injured Mustafa sustained fire arm injury caused by co-accused Ghulam Mustafa due to pistol shot but final medical certificated issued by M.L.O available at page No.123 of paper book shows that fire arm injury sustained by P.W Mustafa was caused by gun shot.** Per complainant the police remained at hospital for 2 /3 hours whereas according to eye-witness Mehboob the police remained there for about one hour and then went away. The complainant has stated that he alongwith Haji Khan went to P.S. for lodgment of FIR whereas per eye-witness Mehboob the complainant was alone while proceeding to P.S. Per the complainant's statement, he claims to have gone on foot to arrange a vehicle, which further casts doubt on the

timeline furnished by him. This version of the complainant has been clearly falsified by the eye-witness Mehboob, who unequivocally stated that the complainant went on a motorcycle to arrange the vehicle, thereby creating a material contradiction in the prosecution case. The version furnished by Mehboob is squarely denied by the second eye-witness, Nim, who categorically stated that his father proceeded on foot to arrange a vehicle, thereby creating a material and irreconcilable contradiction within the prosecution evidence. He in his examination-in-chief has deposed that accused Imamdino Sheedi fired one shot from his repeater which hit to Nim whereas the fire shot of Ghulam Qadir from pistol hit to him. This witness has clearly resiled from his earlier statement and in cross-examination has clearly stated that accused Imamdino Sheet fired five shots.

16. A comparison of the evidence furnished by the complainant and the eye-witnesses with the deposition of the Medical Officer PW.1 Dr. Muhammad Ali Shah (Ex.9), demonstrates that they have put-forth an altogether different and contradictory version, thereby shaking the foundation of the prosecution case. The witnesses of ocular witnesses have testified that a repeater and a pistol were used in the commission of the offence, yet the Medical Officer has opined that the injuries were caused by firearm that could be gunshot wounds, thus reflecting a significant contradiction between the ocular version and medical evidence. As per the ocular witnesses, the injuries were caused from a distance of 15 to 20 feet, hence the Medical Officer's assertion regarding blackening around the wounds is inconsistent with the alleged distance, rendering the prosecution version doubtful. For the sake of clarity and convenience, the injuries sustained by the deceased and the injured, as formally noted by the Medical Officer, are reproduced herein below:-

Injured Mustafa:-

(i) *Entrance wound:* *Lacerated wound 1.4cm x 1/2cm, oval in shape. Inverted margins, blackening around wound seen on lateral aspect near right wrist joint.*

(ii) *Exit wound:-* *Lacerated wound 1cm x 1/2cm, round in shape. Everted margins on between right little finder and ring finder.*

Kind of weapon used: Gun Shot.

Deceased Nim:-

(i) *Entry wound:-* *1/½cm x 1 cm. Inverted margins. Blackening around wound on medial side of right upper eye lid. Circular to shape.*

(ii) *Exit wound:-* *2cm x 1cm, inverted margins. Lacerated circular shaped wound on border of the vertex and upper forehead".*

17. The Medical Officer has given cause of death as a result of cardio respiratory failure due to head injury caused with firearm. He has not categorically stated that as to from which object the said injuries were caused, but simply stated that such injuries were caused with fire-arm, which at the most could prove the cause of death of deceased but could not be specifically attributed to the appellant. Even otherwise, if the injuries observed by the Medical Officer on the body of deceased in the post-mortem are in consonance with the injuries deposed by the prosecution witnesses, the same could not prop up or advance the case of the prosecution. Reliance in this behalf may well be made to the case of *Sajjan Solangi v The State* (2019 SCMR 872), wherein the Hon'ble Supreme held as follows:-

> *"The medical evidence at the most could be supportive evidence to the ocular account and by itself cannot identify the assailant but as already discussed in this case there is no ocular account, hence medical evidence is also not helpful to the prosecution.*

18. Issue of blackening over the wound of deceased and injured Mustafa has denied the ocular version of PWs who disclosed the distance between accused and deceased would be 15/20 ft. It is a case of prosecution that injured sustained pistol shot at the hands of co-accused Ghulam Haider but final medical certificate shows that P.W/injured sustained gunshot injury available at page No.123 of the paper book. The comparison of the evidence of prosecution witnesses, referred to above, established that they have not only contradicted each other, but altogether narrated a conflicting story. It is, thus, difficult for a prudent mind to ascertain that who was deposing true facts, when otherwise under the facts and circumstances of the case, they are the star witnesses of the prosecution and being the central figures, the entire prosecution case revolves upon their testimony, but due to glaring contradictions and discrepancies and improvements etc., their testimony cannot be termed to be worth credence. Thus, their testimonies are of no assistance to the prosecution, on the contrary, they have inflicted a substantial and irreparable dent to the prosecution case, which entails capital punishment.

19. The prosecution has claimed that the deceased, Nim, was allegedly killed by three assailants, two armed with firearms and one unarmed in the presence of three relatives, including his father, his real brother and cousin, on the basis of previous animosity premised on personal grudge. The question arises why they were let off unhurt by the accused party

particularly when none of them could easily escape alive and carrying no fire-arm and the accused party was well within knowledge that they would became witnesses against them in time to come. Such a behavior of accused party does not appeal to a prudent mind that when they could easily wipe out the entire evidence against them why they have not done so. Guidance is taken from the case of *Mst. Rukhsana Begum & others v Sajjad & others* (2017 SCMR 596).

20. Another abnormal behavior on the part of complainant and two eye-witnesses is that the complainant is real father of deceased Nim whereas the two eye-witnesses are his brother and cousin and in their presence accused party killed deceased, but none from the eye-witnesses made any attempt to save the deceased; even complainant being real father of deceased neither attempted nor tried to save his son or to catch hold any of the accused particularly when they were near to him. Such a conduct of complainant and eye-witnesses does not appeal to a prudent mind that while in their presence the accused party used abusive language and then made firing and despite their presence none of them resisted or tried their level best to save the deceased from the accused party, but no such action/ reaction has arisen from the circumstances of the case to believe their statements as such the conduct of complainant and eye-witnesses is itself creating doubt in the case of the prosecution. It does not appeal to the logic that by killing a person in presence of his father, brother and close relative, they did not attempt to save the deceased from the accused. The aforementioned conduct since runs contrary to the natural human response, hence, caused a big dent to the prosecution case and also question marked the presence of complainant and eye witnesses at the scene of offence. In such a situation, the explanation furnished by the prosecution that the complainant party was empty handed and made no resistance due to fear of weapons and threats is not helpful to the prosecution case. In somewhat similar circumstances, the Hon'ble Supreme Court of Pakistan expressed in the case of *Pathan v. The State* (2015 SCMR 315) to the following effect:-

> *"The presence of witnesses on the crime spot due to their unnatural conduct has become highly doubtful, therefore, no explicit reliance can be placed on their testimony. They had only given photogenic/photographic narration of the occurrence but did nothing nor took a single step to rescue the deceased. The causing of that much of stab wounds on the deceased loudly speaks that if these three witnesses were present on the spot, being close blood relatives including the son, they would have definitely intervened, preventing the accused from causing further damage to the deceased rather strong presumption operates that the deceased was done to death in a merciless manner by the culprit when he was at the mercy of the latter and no one was there for his rescue."*

Likewise, in the case of *Zafar v The State and others* (2018 SCMR 326), it has been held as under:-

> *"The conduct of the witnesses of ocular account also deserves some attention. According to complainant, he along with Umer Daraz and Riaz {given up PW} witnessed the whole occurrence when their father was being murdered. It is against the normal human conduct that the complainant, Umer Daraz and Riaz {PW since given up} did not make even an abortive attempt to catch hold of the appellant and his co-accused particularly when the complainant himself has stated in the FIR and before the learned trial Court that when they raised alarm, the accused fled away. Had they been present at the relevant time, they would not have waited for the murder of their deceased father and would have raised alarm the moment they saw the appellant and his co-accused standing near the cot of their father".*

21. The meticulous examination of record gives a lead that the acclaimed presence of complainant and eye-witnesses is a sheer coincidence. It needs no elaboration that presence of complainant and eye-witnesses at the spot is not to be inferred rather is to be proved by prosecution beyond scintilla of doubt. I have also took note of the fact that in an occurrence, wherein a man lost his live owning to previous animosity, the complainant and eye-witnesses remained unhurt. In absence of any confidence inspiring explanation regarding their presence at crime scene, the complainant and two eye-witnesses are seems to be chance and interested witnesses and their testimony can safely be termed as suspect evidence. Reference in this behalf may well be made to the case of *Mst. Sughra Begum and another v. Qaiser Pervez and others* (2015 SCMR 1142) wherein the Hon'ble Supreme Court while dealing with a case of chance witness observed as under:-

> *"A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt."*

Similar view is reiterated in the cases of *Muhammad Irshad v. Allah*

Ditta and others (2017 SCMR 142), *Muhammad Asif v. The State* (2017 SCMR 486) *Sufyan Nawaz and another v. The State and others* (2020 SCMR 192) and *Naveed Asghar v. The State* (PLD 2021 SC 600).

22. As to the contention of learned APG that medical evidence, adduced by PW.1 Dr. Muhammad Ali Shah, is in line with the ocular account furnished by the complainant Natho Khan and two eye-witnesses namely, Mehboob Leghari and Ghulam Mustafa is concerned, suffice to observe that there is inconsistency between medical and ocular version of P.Ws on the point of distance between accused and deceased and injured. They disclosed range between 15/20 feet but medical evidence shows blackening over wounds which suggests that the fired received by deceased and injured were from close range of within 5 to 6 ft. It is well settled principle that once a single loophole is observed in a case presented by the prosecution much less glaring contradictions in the ocular account or for that matter where presence of complainant and eye-witnesses is not free from doubt, the benefit of such loophole/ lacuna in the prosecution case automatically goes in favour of the accused.

23. As regards the recovery of the repeater, purportedly used in the commission of offence, from the possession of appellant, it suffices to point out that the appellant is shown arrested on 22.04.2012, the very next day of the incident, in the presence of mashirs Munawar Ali and Muhammad Sharif, who are closely related to the complainant, thereby raising questions regarding the credibility and impartiality of the recovery proceedings. The recovery is, thus, inadmissible in view of the fact that the Investigating Officer had prior information about the presence of appellant, despite he did not join an independent person either from the place of receiving information or from the place of recovery. Thus, the contention of learned counsel for the appellant that the recovery has not been proved through reliable evidence and the conviction and sentence awarded to the appellant relying on doubtful evidence is illegal, remains firmed. There should be some plausible explanation on the part of the prosecution that actually attempts were made to associate an independent witness, when otherwise under the circumstances of the case the appellant has denied the recovery in particular, hence association of an independent witness was necessary to attest the recovery proceedings more particularly when there had been sufficient opportunities to join an independent person to witness the recovery, but no attempt was made either to persuade any person from the locality or for that matter the public was asked to become a witness

as such there is obvious violation of Section 103 Cr.P.C. The plea taken by the appellant that the recovery of the alleged crime weapon i.e. the repeater carries no evidentiary worth due to non-compliance with the mandatory requirements of Section 103, Cr.P.C. seems to be well-founded. It is also of paramount importance that the appellant has already been acquitted in the proceedings concerning the alleged recovery of the repeater by a Court of competent jurisdiction and as no appeal has been filed either by the complainant or the State, the said acquittal has attained judicial finality, thereby diminishing the prosecution's reliance on the alleged recovery. Guidance is taken from the case of *Tayyab Hussain Shah v The State* (2000 SCMR 683), wherein the Hon'ble Supreme Court has held as under:-

> *"The plea of the accused was that the gun had been planted on him and this fake recovery was proved by the police witnesses namely, the Investigating Officer alongwith the Foot Constable. The plea is that the said recovery is of no evidentiary value as the same was made in violation of requirements of section 103, Cr.P.C. In the case of State through Advocate General, Sindh v. Bashir and others (PLD 1997 SC 408) Ajmal Mian, J., as he then was, later Chief Justice of Pakistan, observed that requirements of section 103, 'Cr.P.C. namely that the two members of the public of the locality should be Mashirs to the recovery, is mandatory unless it is shown E by the prosecution that in the circumstances of a particular case it was not possible to have two Mashirs from the public. If, however, the statement of the police officer indicated that no effort was made by him to secure two Mashirs from public, the recoveries would be doubtful. In the instant case, from the statement of the Investigating Officer it is apparent that no efforts were made to join any member of the public to witness the said recovery. In F the overall circumstances of the case, we do not find it safe to rely on the said recovery. Once recovery of gun is considered doubtful the report of the fire-arm expert that the empty statedly recovered from the spot matched with the gun loses its significance".*

24. The prosecution further placed reliance on the positive Forensic Division report, which confirms that the empties collected from the crime scene had been discharged from the repeater purportedly recovered from the appellant. It is sufficient to note that although the appellant was shown arrested on 22.04.2012, the day following the incident, along with the alleged crime weapon. However, the weapon together with the crime empties secured from the scene was sent to the Forensic Division only on 07.05.2012, after an unexplained delay of 15 days, without furnishing any plausible or justifiable reason. In such background of the matter, serious question arises with regard to safe and secure custody of the case property from the date of recovery till the date of its dispatch to the office of Forensic Division for examination. The prosecution has failed to place on record any inspiring evidence showing that soon after the recovery of weapon the same was dispatched to the concerned office for examination and report. In such

eventuality, two interpretations are possible, one that the case property had not been tampered and the other that the same was not in safe hand and had been tampered. It is settled law that when two interpretations of evidence are possible, the one favouring the accused shall be taken into consideration. Thus, the positive report being delayed without furnishing any plausible explanation, would not advance the prosecution case, therefore, has wrongly been relied upon by the learned trial Court.

25. The prosecution has also claimed that appellant, besides the present case, is also involved in a case of recovery of unlicensed arm, therefore, he is not entitled to be dealt with any leniency. No doubt, a case under Section 13-D of Arms Ordinance was registered against the appellant, which was tried and ended into his acquittal. Furthermore, the involvement of appellant in other case on no count could be made basis for maintaining conviction in the instant case more particularly when the ocular account and other material put forth by the prosecution has already been disbelieved. It is a well settled that each and every criminal case is to be decided on its own facts and circumstances and involvement of an accused in other case is of little help to the prosecution.

26. The prosecution has also relied on earth secured from the crime scene coupled with the clothes of deceased, which are stated to be stained with human blood. It is considerable importance that such type of evidence is consistently treated as a weak type of circumstantial evidence in criminal jurisprudence and such kind of evidence by itself is not sufficient to bring home the charges against an accused especially when the direct evidence and other material put-forward by the prosecution in respect of his guilt has been disbelieved. Guidance in this behalf is taken from the case cited as 2001 SCMR 424 *(Imran Ashraf and 7 others v The State)* in the following manner:-

> *"Recovery of incriminating articles is used for the purpose of providing corroboration to the ocular testimony. Ocular evidence and recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion."*

Likewise, if any other judgment is needed on the same analogy, reference can be made to the case of *Dr. Israr-ul-Haq v. Muhammad Fayyaz and another* reported as 2007 SCMR 1427, wherein the relevant citation (c) enunciates:-

> *"Direct evidence having failed, corroborative evidence was of no help. When ocular evidence is disbelieved in a criminal case then the*

> *recovery of an incriminating article in the nature of weapon of offence does not by itself prove the prosecution case.*

27. Another aspect of paramount importance is the plea raised by the appellant that his implication in the case is at the instigation of Ashraf Leghari, on whose land the complainant party was engaged in cultivation, thereby suggesting a motive for his false involvement. The witnesses, in their depositions before the learned trial Court unequivocally acknowledged that a prior FIR was registered by Younis Leghari, brother of Ashraf Leghari, against appellant and others, which has concluded in the appellant's acquittal, thereby lending support to the defence plea of prior hostility and false implication of the appellant.

28. The prosecution has alleged that the motive behind the occurrence was personal animosity, premised on the allegation that the accused party had repeatedly threatened the complainant side not to cultivate the land belonging to Ashraf Leghari. To substantiate the motive the prosecution has neither examined any witness nor produced any other material to establish the motive set-forth in the FIR. On the contrary, the complainant and the prosecution witnesses have unequivocally admitted that they never filed any complaint or lodged FIR in respect of the alleged threats attributed to the accused party, thereby undermining the motive set-forth in the FIR. No doubt, the prosecution is not required to disclose/ setup a motive, but once it chooses to do so, then it becomes its obligation to prove it by cogent evidence and failure to do so shall not only damage the credibility of the prosecution case beyond repair, but it would also be fatal for the prosecution case.

29. It is a well-settled principle of law that involvement of an accused in heinous nature of offence is not sufficient to convict him as the accused continues with presumption of innocence until found guilty at the end of the trial. All that may be necessary for the accused is to offer some explanation of the prosecution evidence against him and if this appears to be reasonable even though not beyond doubt and to be consistent with the innocence of accused, he should be given the benefit of it. The proof of the case against accused must depend for its support not upon the absence or want of any explanation on the part of the accused but upon the positive and affirmative evidence of the guilt that is led by the prosecution to substantiate accusation.

30. In like cases involving capital punishment, the evidence produced by the prosecution should be in chain and if the chain is not complete or any doubt which occurred in the prosecution's case that is sufficient to demolish the structure of evidence the benefit thereof must go to the accused especially when the accused had taken a specific stance of his false implication at the instance of an influential person, which cannot be brushed aside in view of contradictions and discrepancies, referred herein above. In appeal against conviction, the Court is under heavy obligation to assess by thinking and rethinking, lest an innocent person fall a prey to my ignorance of facts and ignorance of law. The Court must not close its eyes to human conducts and behaviours while deciding criminal cases, failing which the result will be drastic and impacts will be far from repair. The cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of innocent persons along with guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme Court in the case of Riaz Masih alias Mithoo v. The State (1995 SCMR 1730) and Sardar Ali v Hameedullah and others (2019 PCr.LJ 186). Likewise, it is a well settled principle of law that involvement of an accused in heinous nature of offence is not sufficient to convict him as the accused continues with presumption of innocence until found guilty at the end of the trial, for which the prosecution is bound to establish its case against the accused beyond shadow of any reasonable doubt by producing confidence inspiring and trustworthy evidence. It is a cardinal principle of administration of justice that in criminal cases the burden to prove its case rests entirely on the prosecution. The prosecution is duty bound to prove the case against accused beyond reasonable doubt and this duty does not change or vary in the case in which no defence plea is either taken or established by the accused and no benefit would occur to the prosecution on that account and its duty to prove its case beyond reasonable doubt would not diminish. The prosecution has not been able to bring on record any convincing evidence against appellant to establish his involvement in the commission of offence charged with beyond shadow of reasonable doubt. Rather, there are so many circumstances, discussed above creating doubts in the prosecution case and according to golden principle of benefit of doubt one

substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent". Reliance in this behalf may well be made to the case of *Najaf Ali Shah v The State* {2021 SCMR 736} wherein in paragraph No.13 of page 236 the Hon'ble Supreme Court has observed as follows:-

> *"Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to Murder Reference No. 58 of 2016 34 cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."*

31. The epitome of whole discussion gives rise to a situation that the appellant has been convicted without appreciating the evidence in its true perspective rather the prosecution case is packed with various discrepancies, irregularities, improvements and lacunas, which resulted into a benefit of doubt to be extended in favour of the appellant. Accordingly, the conviction and sentence awarded to the appellant through judgment dated 18.03.2024, impugned herein, is set-aside and the appellant is acquitted of the charge by extending him the benefit of doubt. He shall be

released forthwith if not required to be detained in connection with any other case.

32. The Criminal Appeal No.S-49 of 2024 stands allowed in the foregoing terms.

JUDGE