

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S-95 of 2021

Appellant : Sache Dino son of Ali Dino, Kubar  
Through Mr. Achar Khan Gabol, Advocate

Complainant : Ahmed Ali s/o Hadi Bux, Kubar  
Through Mr. Abdul Qadir Bhatti, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 30.10.2025  
Date of Judgment : 07.11.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.—** Appellant Sache Dino, assails the judgment dated 16<sup>th</sup> November 2021 rendered by the learned Additional Sessions Judge-I/MCTC, Khairpur in Sessions Case No.27 of 2018, emanating from FIR No.88/2017, for offences under Sections 302, 337-A(i), 337-L(ii), 337-F(v), 337-H(ii), 504, 147, 148, and 149 PPC, registered at Police Station Mirwah, whereby he has been convicted for offence under Section 302 PPC and sentenced to life imprisonment; besides, to pay compensation of Rs.500,000 to the legal heirs of the deceased Karim Bux, with benefit of section 382-B Cr.P.C.

2. The prosecution case, as documented in the FIR lodged on 12.04.2017 by complainant Ahmed Ali Kubar at P.S Mirwah, pertains to an incident occurring on 04.04.2017 at about 2330 hours. According to the complaint, the complainant, along with his cousins Karim Bux, Aamir Khan, and Farooque Ahmed, were engaged in threshing wheat crops on their agricultural land when they were attacked by an unlawful assembly comprising accused Qurban Ali, Sache Dino, Ali Dino, Hussain Bux, Sudheer, Amir Ali, and two unidentified persons. The assailants were armed with firearms, hatchets, iron rods, and *lathis*, acting with a common criminal objective to commit rioting and violence. During the assault, accused Qurban Ali inflicted lathi blows upon the complainant's arm and head. Accused Umed Ali similarly inflicted *lathi* blows upon Aamir Ali (cousin of complainant) targeting his head and shoulder. Accused Sudheer delivered hatchet blows to Farooque Ahmed (cousin of complainant) with the intent to cause *qatl-i-amd*

(premeditated murder). Accused Ali Dino, Sache Dino, and Hussain Bux collectively perpetrated the murder of Karim Bux (cousin of complainant) by inflicting fatal hatchet and iron rod blows to his head. Following the assault, all accused persons absconded from the scene while abusing members of the complainant's party and discharging firearms into the air. The alleged motive for the offense is attributed to a dispute over the ownership and possession of landed property.

3. In compliance with Section 265-C Cr.P.C, case documents were furnished to the accused persons (Ex.4). Formal charges were subsequently framed against accused Qurban Ali, Sache Dino, and Ali Dino (Ex.5), each of whom pleaded not guilty and claimed trial as recorded in their respective pleas (Ex.6 to 8). It is noteworthy that during the course of trial proceedings, co-accused Ali Dino absconded; consequently, appropriate legal procedures were initiated and he was declared an absconder. Co-accused Hussain Bux, Sudheer, and Amir Ali remained absconders throughout the proceedings. To establish the charges against the accused persons, the prosecution examined the following witnesses:

- PW-1: Complainant Ahmed Ali produced the FIR (Ex.11-A), C.T scan (computed tomography scan) of the deceased Karim Bux (Ex.11-B), and corresponding receipt (Ex.11-C)
- PW-2: Eye witness Farooque Ahmed
- PW-3: Eye witness Aamir Khan
- PW-4: Mashir Ghulam Asghar produced memos documenting injury examination (Ex.14-A), postmortem examination of the deceased (Ex.14-B), property recovery (Ex.14-C), securing of the deceased's final worn garments (Ex.14-D), arrest of accused Qurban (Ex.14-E), and further recovery documentation (Ex.14-F)
- PW-5: Dr. Abdul Sattar produced medical correspondence (Ex.15-A), Medical Legal Certificate (MLC) of injured Karim Bux (Ex.15-B), radiological report (Ex.15-C), final MLC of injured Kareem Bux (Ex.15-D), final MLC of injured Farooque Ahmed (Ex.15-E), provisional MLC of injured Ahmed Ali (Ex.15-F), radiologist opinion (Ex.15-G), final MLC of injured Ahmed Ali (Ex.15-H), provisional MLC of injured Aamir Khan (Ex.15-I), radiological report (Ex.15-J), and final MLC of injured Aamir Khan (Ex.15-K)
- PW-6: ASI Ghulam Nabi (FIR author)

- PW-7: Investigation Officer SIP Abdul Haque produced official correspondence (Ex.17-A), postmortem inspection memo (Ex.17-B), additional correspondence (Ex.17-C), authorization letter for chemical analysis of materials (Ex.17-D), letter to the Revenue Officer for site inspection (Ex.17-E), injury examination memo (Ex.17-F), daily diary entries (Ex.17-G to 17-I), further correspondence (Ex.17-J), and chemical examination report (Ex.17-K)
- PW-8: Dr. Nasarullah produced inquest report (Ex.18-A), postmortem report (Ex.18-B), and final postmortem report (Ex.18-C)
- PW-9: Constable Nadir Ali, who facilitated the delivery of the deceased's body to legal heirs following postmortem procedures.
- PW-10: Tapedar Muhammad Bux produced site plan documentation (Ex. 20-A).

4. The learned Assistant District Public Prosecutor for the State submitted an application requesting permission to produce the chemical examiner's report (Ex.21). The prosecution concluded its case vide statement recorded at Ex.22. The accused persons, in their respective statements recorded under Section 342 Cr.P.C (Ex.23 and Ex.24), categorically denied all allegations preferred against them by the prosecution and asserted their innocence. Accused Qurban Ali, in his statement under Section 342 Cr.P.C, produced certified true copies of Form VII-B comprising three sheets (Ex.23-A/1 to 23-A/3), certified copies of multiple FIRs (Ex.23-B to 23-E), civil suit documents (Ex.23-F and 23-G), complaints from various proceedings (Ex.23-H and 23-I), miscellaneous application (Ex.23-J), complaint from Civil Suit No.141/2016 (Ex.23-K), criminal miscellaneous application (Ex.23-L), and copies of additional applications (Ex.23-L/1 to 23-L/13). However, neither of the accused persons testified under oath, nor did they examine any witnesses in their defense. Subsequently, both accused persons appealed for justice.

5. Mr. Gabole, learned counsel for appellant has raised numerous grounds challenging both the factual findings and legal conclusions reached by the learned trial court. He has presented elaborate arguments spanning multiple dimensions of the case, attacking the credibility of the prosecution witnesses, highlighting contradictions and omissions in the evidence, questioning the delay in registration of the FIR, challenging the authenticity and reliability of the recovery proceedings, pointing out material irregularities in the investigation, and submitting that the medical evidence does not support

the ocular account but rather creates serious doubt regarding the causation of death. The learned counsel commenced his arguments by drawing the attention of this Court to the fundamental infirmity of an eight-day delay in the registration of the FIR despite the admitted fact that the complainant and the injured persons had appeared at Police Station Thari Mirwah on the very day of the alleged incident, that is 4<sup>th</sup> April, 2017 and had obtained letters for medical treatment from the police station. The learned counsel emphasized that this admitted fact is borne out from the cross-examination of the complainant himself, wherein he has conceded that he and the injured persons went to the police station on 4<sup>th</sup> April, 2017 and remained there for about ten minutes, during which time they obtained medical referral letters. The learned counsel submitted that if the complainant and injured persons were present at the police station within hours of the alleged incident, there is absolutely no plausible or satisfactory explanation as to why the FIR was not registered immediately on 4<sup>th</sup> April, 2017. The learned counsel argued that the prosecution's explanation that the FIR was lodged only after the death of Karim Bux on 12<sup>th</sup> April, 2017 is wholly inadequate and fails to account for the glaring question as to why a report regarding the alleged murderous assault, which had taken place just hours earlier, was not registered when the victims were present at the police station itself. In support of his contention regarding the significance of delayed FIR registration, the learned counsel for the appellant placed reliance on the celebrated judgment of the Supreme Court of Pakistan in *Akhtar Ali and others versus The State*, (2008 SCMR 6), wherein Apex court held that unexplained delay in the lodgment of the FIR provides ample opportunity for deliberation, consultation, and embellishment of facts, thereby casting serious doubt on the authenticity and genuineness of the prosecution case. The learned counsel further cited the case of *Sajid Mehmood versus The State* (2022 SCMR 1882), wherein the Honourable Supreme Court reiterated the settled principle that delayed FIR, when inadequately explained, tarnishes the credibility of the entire prosecution story. The learned counsel also referred to (2023 SCMR 900), wherein similar observations were made regarding the adverse inference to be drawn from unexplained delay in reporting a criminal occurrence.

6. The learned counsel for the appellant further submitted that all three eyewitnesses examined by the prosecution, namely PW-1 Ahmed Ali

(complainant), PW-2 Farooque Ahmed, and PW-3 Aamir Khan, are not only closely related to the deceased Karim Bux, but all are also deeply interested parties having direct pecuniary interest in the outcome of the case by virtue of the compensation amount awarded by the trial court. The learned counsel pointed out that all these witnesses are parties to the long-standing and bitter land dispute with the accused persons regarding ownership of the very Survey No.694 where the alleged incident is said to have taken place. The learned counsel produced before this Court extensive documentary evidence in the form of civil suits filed by the complainant Ahmed Ali and deceased Karim Bux against the accused persons and their family members, including F.C Suit No.113/2011, F.C Suit No.8/2011, and Suit No.22/2013, all relating to disputes over Survey Nos.693, 694, 696, and 697 situated in *Deh Bago Dhoru*. The learned counsel emphasized that the complainant himself was the plaintiff in these civil suits seeking specific performance of contract, declaration, and permanent injunction against the accused persons and their family members regarding the same land where the alleged incident occurred. The learned counsel submitted that in such circumstances where all eyewitnesses are interested parties with strong motive for false implication arising from the admitted land dispute, their testimony requires substantial and credible independent corroboration from disinterested sources, which is completely absent in the present case. The learned counsel placed reliance on the judgment reported in (2019 SCMR 1309), which holds that when witnesses are related to the deceased and have enmity with the accused, their testimony must be scrutinized with great caution and requires corroboration. The learned counsel also cited (2016 SCMR 2073), wherein it was held that testimony of interested witnesses, when not corroborated by independent evidence, cannot form the basis of conviction. Reference was also made to (2014 P.Cr.L.J 611), which emphasizes that interested witnesses having motive for false implication require independent corroboration. The learned counsel further referred to case of *Muhammad Mansha versus The State* (2018 SCMR 772), wherein it was observed that when witnesses make deliberate and dishonest improvements to strengthen the prosecution case, their credibility becomes highly doubtful. Citations were also made to (2010 SCMR 385) and (2010 SCMR 97), both emphasizing the principle that interested witnesses require careful scrutiny and independent corroboration.

7. The learned counsel for the appellant highlighted numerous material contradictions, omissions, and improvements in the testimony of the prosecution witnesses. First and foremost, the learned counsel pointed out that while the FIR was lodged on 12<sup>th</sup> April, 2017 all three eyewitnesses, in their examination-in-chief, stated that the deceased Karim Bux died on 12<sup>th</sup> April, 2017 at 1130 hours, and the FIR was lodged at 1600 hours on the same day. However, PW-1 in his cross-examination admitted that after the death of Karim Bux, they brought his dead body to Police Station Mirwah by government ambulance, whereupon police officials got the postmortem conducted. The postmortem, according to PW-8 Dr. Nasarullah, was conducted on 12<sup>th</sup> April, 2017. The learned counsel submitted that this sequence of events, when examined chronologically, reveals that between the death of Karim Bux at 1130 hours, transportation of the body to the police station, conducting the postmortem, and then lodging the FIR at 1600 hours, there was sufficient time for the complainant party to sit together, deliberate upon the facts, consult with each other, and carefully craft the version to be presented in the FIR. The learned counsel further submitted that material contradictions exist in the testimony of the eyewitnesses regarding the specific weapons used by each accused and the particular injuries inflicted. While PW-1 complainant Ahmed Ali stated in his examination-in-chief that accused Ali Dino gave handle of hatchet blow to Karim Bux on his right side of head, accused Sache Dino gave iron rod blow to Karim Bux which hit him on his head, and accused Hussain Bux gave back side hatchet blow to Karim Bux which hit him on his right side of head, there is no clarity in the evidence as to which specific blow caused the fatal injury. Moreover, PW-2 Farooque Ahmed and PW-3 Aamir Khan, while generally supporting the prosecution case, have given varying descriptions regarding the sequence of events and the identification of weapons. The learned counsel emphasized that the alleged incident took place at night at 2330 hours, and while the witnesses claim that the lights of the tractor were switched-on, the identification of seven to eight accused persons with specific weapons in their hands, that too during a violent assault lasting several minutes, strains credulity and appears to be an afterthought designed to fix specific roles on each accused. Most significantly, the learned counsel for the appellant drew the attention of this Court to the glaring fact that the operating surgeon, Dr. Safdar Ali Arain, who performed

the skull operation on deceased Karim Bux at his private Madina Medical Centre at Khairpur on 11<sup>th</sup> April, 2017 was never examined as a witness by the prosecution. The learned counsel submitted that this is a fatal omission that goes to the very root of the prosecution case and breaks the chain of causation between the alleged assault on 4<sup>th</sup> April, 2017 and the death on 12<sup>th</sup> April, 2017. The learned counsel pointed out that according to the story set forth in the FIR, accused Ali Dino and Hussain Bux caused hatchet blows to the deceased Karim Bux at his head, blood oozed out and accused Sache Dino alias Baboo caused iron bar blow to deceased Karim Dino; however, no such injuries if any caused by sharp cutting weapon were found by the Medical Officer on the head of deceased Karim Bux on one hand and on the other the ocular evidence is belied by medical evidence as Dr. Abdul Sattar in cross examination testified by admitting that *“It is correct to suggest that when injured came to me for their medical examination they all were in conscious. It is correct to suggest that bleedings were not found on the wounds of injured at the time of examination”* but the witnesses exaggerating improved the evidence in their testimony before the court. He highlighted that in the testimony of PW-1, the deceased Karim Bux was initially taken to Rural Health Centre Thari Mirwah on 4<sup>th</sup> April, 2017 where he was examined and discharged after a while having sustained simple injuries. Thereafter, on subsequent days, the deceased was treated privately by Dr. Abdul Sattar Shar at his private clinic. On 11<sup>th</sup> April, 2017 the deceased was referred to Taluka Hospital Gambat where his C.T scan was conducted. Following the C.T scan, which revealed a skull fracture, the deceased was taken to the private clinic of Dr. Safdar Ali Arain at Khairpur where he was admitted and a skull operation was performed. The deceased expired during or immediately after this operation on 12<sup>th</sup> April, 2017. The learned counsel submitted that in such circumstances where death occurred not immediately after the assault but eight days later during a surgical procedure, it becomes absolutely imperative for the prosecution to examine the operating surgeon to establish that in fact the death was caused by the original injury sustained on 4<sup>th</sup> April, 2017 and not by complications arising from the surgery, anesthesia, post-operative infection, or other intervening medical factors. The learned counsel placed strong reliance on *Muhammad Asif v. The State* (2017 SCMR 486), wherein it was held that non-examination of a material witness creates an adverse

inference against the prosecution under Article 129, Illustration (g) of the *Qanun-e-Shahadat* Order, 1984. The learned counsel also cited (2020 P.Cr.L.J 328) and (2020 YLR 676), which emphasize that failure to examine crucial witnesses whose testimony could have established the prosecution case creates reasonable doubt benefiting the accused.

8. The learned counsel for the appellant further submitted that even the medical evidence as it stands creates serious doubt regarding the direct causation of death. P.W-5 Dr. Abdul Sattar, who examined the deceased Karim Bux on 5<sup>th</sup> April, 2017 found four injuries on his person. During cross-examination, this witness candidly admitted that injuries No.2, 3, and 4 on the body of Karim Bux could not have caused death, thereby implicitly accepting that only injury No.1, described as a lacerated wound on the right temporal region with bone visible, was the potentially fatal injury. However, even this admission does not conclusively establish that injury No.1 would have independently caused death in the absence of surgical intervention eight days later. The learned counsel submitted that PW-8 Dr. Nasarullah, who conducted the postmortem, opined that the cause of death was cardio-pulmonary arrest secondary to head injury. However, this opinion, the learned counsel argued, does not rule out the possibility that the cardio-pulmonary arrest was precipitated by surgical complications, anesthesia-related factors, or post-operative shock rather than by the original injury alone. The learned counsel for the appellant also mounted a serious challenge to the recovery proceedings conducted by the Investigating Officer. According to the prosecution case, on 24<sup>th</sup> April, 2017 twenty full days after the alleged incident, the appellant Sachedino and co-accused Qurban Ali were arrested near Sui Gas CNG station, and during interrogation, they allegedly led the police to bushes from where an iron rod and a *lathi*, both allegedly stained with blood, were recovered. The learned counsel submitted that this belated recovery after twenty days is highly suspicious and creates grave doubt regarding its genuineness. The learned counsel pointed out that PW-4 Ghulam Asghar, who was examined as the mashir of the recovery, admitted in his cross-examination that neither in his examination-in-chief nor in the recovery memo itself is it mentioned that the alleged weapons were recovered on the pointation of the accused persons. More damningly, the learned counsel submitted, the mashir admitted that the defense counsel did not put any



suggestion to him during cross-examination that the weapons were not stained with blood or that they were not recovered from the accused, but the learned counsel argued that this silence cannot be interpreted as acceptance of the prosecution version when the recovery itself is so inherently improbable.

9. The learned counsel for the appellant further highlighted serious irregularities in the collection, preservation, and dispatch of forensic evidence. PW-4 mashir, during cross-examination, admitted that blood-stained earth was collected from the place of incident and placed in a polythene bag which was closed by tying a knot but was not sealed with any stamp in his presence. The mashir further admitted that he does not remember whether the polythene bag was of any particular color. Most significantly, when the case property was de-sealed in open court during the trial, the mashir admitted that the packet available in court was wrapped with white cloth and contained a small *burny* (earthen pot), but he had no recollection of blood-stained earth being collected in any *burny*. This glaring discrepancy between what the mashir claims was done during investigation and what was actually produced before the trial court completely destroys the evidentiary value of the alleged blood-stained earth. The learned counsel submitted that such material gaps in the chain of custody render the forensic evidence wholly unreliable and cannot be used to support a conviction. Strong reliance was placed on (2019 SCMR 1330), (2009 SCMR 1440), and (2019 P.Cr.L.J 442), which hold that recovery evidence falling within Article 40 of the *Qanun-e-Shahadat* Order, 1984 must be proved with proper chain of custody, and any gap in the chain of custody renders the evidence unsafe for conviction. The learned counsel for the appellant also placed on record the alternative defense theory which was suggested during cross-examination of prosecution witnesses but was never properly investigated by the Investigating Officer. During the cross-examination of PW-1 complainant Ahmed Ali, it was suggested that deceased Karim Bux had illicit relations with the wife of his brother PW-2 Farooque Ahmed, and due to this domestic dispute, Farooque Ahmed had caused injuries to Karim Bux about three days after the alleged incident of 4<sup>th</sup> April, 2017. It was further suggested that after the death of Karim Bux, Farooque Ahmed married the widow of deceased Karim Bux, who also received insurance proceeds from a policy held by the deceased. The complainant, while denying these suggestions, could not explain these circumstances

satisfactorily. The learned counsel submitted that this alternative theory provides a competing explanation for the injuries and subsequent death of Karim Bux, and the complete failure of the Investigating Officer to investigate this theory amounts to a serious dereliction of duty and indicates a one-sided and biased investigation designed to fix the blame on the present appellant and accused persons. The learned counsel for the appellant also drew this Court's attention to the fact that the deceased Karim Bux, after the alleged incident, was not referred to any government hospital for treatment but was consistently treated at private clinics and hospitals without any police letters or intimation to the police. The complainant admitted in cross-examination that the Medical Officer at Rural Health Centre Thari Mirwah, after examining all the injured including Karim Bux, discharged them with directions to get treatment from his private hospital, and did not refer any of them to a government hospital. Subsequently, all injured persons were treated daily at the private clinic of Dr. Abdul Sattar Shar from 5<sup>th</sup> April to 11<sup>th</sup> April, 2017 again without any police letter. Even the C.T scan at Taluka Hospital Gambat and the subsequent operation at the private clinic of Dr. Safdar Arain were conducted without police letters. The learned counsel submitted that this pattern of seeking private medical treatment without police intimation is highly unusual in a case involving alleged attempt to murder and murder, and lends credence to the defense theory that the family members of Karim Bux were deliberately avoiding government hospitals and police scrutiny because the injuries may have been caused in circumstances other than those narrated in the FIR. The learned counsel for the appellant further submitted that the prosecution has failed to examine any independent eyewitness despite the fact that the complainant in his testimony mentioned several persons who allegedly came to the place of incident on hearing cries, including Sobharo son of Ali Bux, Rizwan son of Shahban, Ghulam Fareed son of Ghulam Hyder, Ghulam Rasool son of Ghulam Hyder, Muhammad Paryal son of Hadi Bux, and Rasool Bux son of Hadi Bux. The complainant admitted in cross-examination that except Sobharo, none of the other persons gave statements to the police. Even Sobharo, though he gave a statement, was not examined as a witness. The learned counsel submitted that the deliberate withholding of independent witnesses and the exclusive reliance on interested witnesses who are parties to the civil litigation creates a strong adverse inference against the prosecution under Article 129, Illustration (g) of the *Qanun-e-Shahadat* Order, 1984.

10. In conclusion, the learned counsel for the appellant submitted that when the evidence is considered in its totality, multiple infirmities, contradictions, omissions, and improbabilities emerge which cumulatively create more than reasonable doubt regarding the guilt of the appellant. The learned counsel submitted that the eight-day unexplained delay in registration of FIR, the interested nature of all eyewitnesses with strong motive for false implication, material contradictions in their testimony, suspicious night-time identification of multiple accused with specific weapons, critical gap in medical causation due to non-examination of the operating surgeon, dubious recovery proceedings with broken chain of custody, failure to examine independent witnesses, and the uninvestigated alternative defense theory, all these factors when viewed together compel the conclusion that the prosecution has failed to discharge its burden of proving guilt beyond reasonable doubt. The learned counsel prayed that the appeal may be allowed, the conviction and sentence set aside, and the appellant acquitted of all charges.

11. On the other hand, the learned counsel for the complainant, Mr. Abdul Qadir Bhatti, supported by the learned Deputy Prosecutor General, strenuously opposed the appeal and defended the impugned judgment of the trial court. The learned counsel for the complainant commenced his arguments by submitting that the trial court has delivered a well-reasoned and well-founded judgment after carefully examining the evidence on record and giving due consideration to the defense pleas. The learned counsel submitted that all essential ingredients of the offense under Section 302 PPC have been proved by the prosecution through credible, reliable, and consistent testimony of eyewitnesses which is corroborated by medical evidence, recovery of crime weapons, and chemical examiner's report.

12. The learned counsel for the complainant submitted that the delay in registration of the FIR has been satisfactorily explained by the prosecution as the FIR was lodged only after the death of Karim Bux on 12<sup>th</sup> April, 2017. The learned counsel argued that it is a well-established principle of criminal jurisprudence that in cases where the injured person initially survives and is undergoing treatment, it is customary for the FIR to be registered after the death occurs, as was done in the present case. The learned counsel submitted that there is no hard and fast rule that an FIR must be registered immediately, and delayed FIR, if satisfactorily explained, does not vitiate the prosecution

case. The learned counsel placed reliance on (2023 SCMR 723), which holds that delayed FIR, when explained, does not create any doubt in the prosecution case.

13. Regarding the objection that all eyewitnesses are interested parties, the learned counsel for the complainant submitted that relationship of witnesses with the deceased or their presence as injured parties does not render their testimony unworthy of credence. The learned counsel argued that the witnesses were natural witnesses as they were present at the place of incident along with the deceased, and their presence is not only explained but is corroborated by the fact that they themselves sustained injuries which are medically proved. The learned counsel placed strong reliance on *Sajid Mehmood versus The State* (2022 SCMR 1882), wherein the Honourable Supreme Court held that mere relationship of prosecution witnesses with the deceased cannot be a ground to discard their testimony unless previous enmity or ill will is established on record to falsely implicate the accused. The learned counsel further relied on (2023 SCMR 1375), (2023 SCMR 1568), and (2023 SCMR 723), wherein it has been consistently held that interested witnesses, if found credible and reliable, can be relied upon, and their testimony requires careful scrutiny but not automatic rejection. The learned counsel also cited (2013 SCMR 831), (2013 SCMR 900), and (2013 SCMR 929), which lay down the principle that relationship with the deceased or complainant does not disqualify a witness from deposing, and conviction can be based on the testimony of related witnesses if they are found trustworthy.

14. The learned counsel for the complainant further submitted that minor discrepancies and variations in the testimony of witnesses are natural and do not go to the root of the case. The learned counsel argued that in violent incidents involving multiple accused and multiple victims, it is impossible to expect witnesses to recall every minute detail with mathematical precision, especially when several years have elapsed between the incident and the trial. The learned counsel submitted that what is important is the consistency in the core facts, namely that the accused persons attacked the complainant party, that the appellant Sachedino along with absconding accused inflicted fatal blows on the deceased Karim Bux, and that Karim Bux died as a result of those injuries. The learned counsel placed reliance on (2023 MLD 426), (2023 SCMR 527), and (2023 SCMR 117), wherein it has been held that minor

contradictions which do not shake the salient features of the prosecution case should be ignored, and accused cannot claim premium of such insignificant inconsistencies.

15. Regarding the non-examination of the operating surgeon Dr. Safdar Ali Arain, the learned counsel for the complainant submitted that this omission is not fatal to the prosecution case as the cause of death has been conclusively established by PW-8 Dr. Nasarullah, who conducted the postmortem and opined that death occurred due to cardio-pulmonary arrest secondary to head injury. The learned counsel submitted that the operating surgeon's testimony was not necessary as the postmortem examination clearly establishes that death resulted from the head injury sustained on 4<sup>th</sup> April, 2017 and the fact that death occurred during surgical intervention does not break the chain of causation. The learned counsel argued that the surgical operation was necessitated by the grievous head injury inflicted by the accused persons, and therefore the accused persons remain responsible for the death even though it occurred eight days after the assault. The learned counsel placed reliance on (2022 SCMR 1002) and (2023 SCMR 795), which hold that if the injury inflicted was sufficient in the ordinary course of nature to cause death, the accused cannot escape liability merely because death occurred after some interval or during medical treatment.

16. Regarding the recovery of weapons, the learned counsel for the complainant submitted that the recovery was made in the presence of independent mashirs whose testimony has been placed on record as PW-4. The learned counsel argued that the mashir has fully supported the recovery proceedings and has corroborated the testimony of the Investigating Officer. The learned counsel submitted that the defense counsel, during cross-examination of the mashir, did not suggest that the weapons were not recovered from the accused persons or that they were not stained with blood, and this failure to suggest the defense case amounts to acceptance of the prosecution version. The learned counsel placed reliance on (2019 SCMR 1330), (2009 SCMR 1440), and (2019 P.Cr.L.J 442), submitting that these cases hold that recovery made under Article 40 of the *Qanun-e-Shahadat* Order, 1984, on the pointation of the accused, is admissible in evidence and can form the basis of conviction if properly proved. The learned counsel further cited (2023 SCMR 1375), which holds that if recovery is proved

through mashirs and the recovered articles are sent for chemical examination which comes positive, it provides strong corroboration to the ocular account.

17. The learned counsel for the complainant further submitted that the chemical examiner's report confirms that the iron rod and lathi recovered from the accused persons were stained with human blood, thereby providing independent scientific corroboration to the prosecution case. The learned counsel submitted that the appellant has failed to explain how human blood came to be present on these weapons if they were not used in the commission of the offense. The learned counsel argued that the chemical examiner's report is a piece of substantive evidence and not merely corroborative evidence, and it strongly links the accused persons with the crime.

18. Regarding the alternative defense theory, the learned counsel for the complainant submitted that this is a bald suggestion made during cross-examination without any supporting evidence, and the complainant has categorically denied these suggestions. The learned counsel argued that it is not incumbent upon the prosecution or the Investigating Officer to investigate every wild theory floated by the defense, especially when such theories are inherently improbable and are raised as an afterthought merely to create confusion. The learned counsel submitted that the trial court has rightly rejected this defense theory as a desperate attempt to escape from the consequences of the crime.

19. In conclusion, the learned counsel for the complainant submitted that the prosecution has proved its case beyond reasonable doubt through reliable and credible evidence, and the trial court has correctly appreciated the evidence and arrived at a just conclusion. The learned counsel prayed that the appeal may be dismissed and the conviction and sentence maintained.

20. The learned Deputy Prosecutor General associated himself with the arguments of the learned counsel for the complainant and submitted that the prosecution has successfully discharged its burden of proving the guilt of the appellant beyond reasonable doubt. The learned DPG submitted that the evidence of eyewitnesses, when read with the medical evidence and recovery of crime weapons, leaves no manner of doubt that the appellant along with co-accused persons committed the murder of Karim Bux. The learned DPG prayed for dismissal of the appeal.

21. At the very outset, this Court observes that the eight-day delay in the registration of the FIR is a circumstance that cannot be lightly brushed aside. The admitted position, which emerges from the cross-examination of PW-1 complainant Ahmed Ali, is that the complainant along with the injured persons went to Police Station Thari Mirwah on the very day of the alleged incident, that is 4<sup>th</sup> April, 2017 and remained there for about ten minutes during which they obtained letters for medical treatment. The complainant has admitted this fact in his cross-examination. This admitted fact gives rise to the crucial question: if the complainant and injured persons were at the police station within hours of the alleged murderous assault, why was the FIR not registered immediately on 4<sup>th</sup> April, 2017? The explanation offered by the prosecution, that the FIR was registered only after the death of Karim Bux on 12<sup>th</sup> April, 2017 does not satisfactorily answer this question. Even if one were to accept that the formal FIR for murder could be registered only after the death occurred, there is no explanation whatsoever as to why at least a report regarding the alleged murderous assault, attempt to murder, and causing of grievous injuries was not registered on 4<sup>th</sup> April, 2017 when the victims were present at the police station itself.

22. The law on delayed FIR is well-settled. In the landmark judgment of *Akhtar Ali and others versus The State*, (2008 SCMR 6), the Honourable Supreme Court observed that unexplained delay in lodgment of FIR affords time and opportunity to the complainant party to deliberate upon the facts, consult with each other, embellish the story, and possibly falsely implicate innocent persons. Their Lordships held that such delay, unless satisfactorily explained, casts a serious cloud of doubt over the authenticity and genuineness of the prosecution case. Similar observations have been made in numerous subsequent judgments including *Sajid Mehmood v. The State* (2022 SCMR 1882) and *Ali Taj v. The State* (2023 SCMR 900). While it is true that delayed FIR, if adequately explained, may not vitiate the prosecution case, the crucial question in each case is whether the explanation offered for the delay is credible and satisfactory. In the present case, this Court is of the considered opinion that the explanation offered by the prosecution is inadequate and does not account for the fact that the complainant was at the police station on 4<sup>th</sup> April, 2017 but did not report the alleged attempt to murder and grievous assault.

23. What makes this delay even more suspicious is the fact that during this eight-day period, the deceased Karim Bux was being treated at various private hospitals and clinics without any police intimation or referral. The record reveals that after initial examination at Rural Health Centre Thari Mirwah on 4<sup>th</sup>/5<sup>th</sup> April, 2017 the deceased was consistently treated at the private clinic of Dr. Abdul Sattar Shar on a daily basis from 5<sup>th</sup> to 11<sup>th</sup> April, 2017 then referred to Taluka Hospital Gambat for C.T scan on 11<sup>th</sup> April, 2017 and finally taken to the private clinic of Dr. Safdar Arain at Khairpur for surgical operation, all without any police letters or intimation. This pattern of seeking exclusively private medical treatment while scrupulously avoiding government hospitals and police scrutiny creates a strong inference that the family members of the deceased were deliberately keeping the matter away from police investigation. This inference is strengthened by the fact that even when the C.T scan revealed a skull fracture requiring surgical intervention, the family chose to take the deceased to a private clinic rather than to a government hospital where such a serious case would automatically come under police purview. All these circumstances, when considered together, lead this Court to the conclusion that the eight-day delay in FIR registration was utilized by the complainant party to deliberate upon the facts, consult with each other, and craft a version that would suit their purpose of fixing blame on the accused persons with whom they had a long-standing bitter dispute over landed property.

24. The next aspect that requires careful consideration is the nature and credibility of the eyewitnesses examined by the prosecution. All three eyewitnesses, namely PW-1 Ahmed Ali (complainant), PW-2 Farooque Ahmed, and PW-3 Aamir Khan, are admittedly first cousins of the deceased Karim Bux. They are not merely related to the deceased but are themselves allegedly injured parties in the incident, thereby having a direct personal stake in the outcome of the case. More significantly, all three witnesses along with the deceased were parties to civil litigation with the accused persons and their family members over ownership of the very land, Survey No.694, where the alleged incident is said to have occurred. The record reveals that the complainant Ahmed Ali was plaintiff in F.C Suit No.113/2011 filed against Umed Ali, Mehar Ali, and Muhammad Panah, all family members of the accused persons, seeking specific performance of contract, possession, and



permanent injunction regarding land comprising Survey Nos.575, 693, 694, 696, and 697 in *Deh Bago Dhoru*. Similarly, deceased Karim Bux was plaintiff in Suit No.22/2013 against the same defendants regarding the same land. These civil suits were pending at the time of the alleged incident and demonstrate that there was an intense and bitter property dispute between the parties.

25. Now, the law regarding the testimony of interested witnesses is well-settled, but it requires proper understanding and application. It is true, as contended by the learned counsel for the complainant, that mere relationship with the deceased or complainant does not automatically disqualify a witness from deposing, and conviction can be based on the testimony of related witnesses if they are found credible and trustworthy. This principle has been consistently laid down in numerous judgments including *Sajid Mehmood v. The State* (2022 SCMR 1882), *Muhammad Ijaz v. The State* (2023 SCMR 1375), *Maskeen Ullah v. The State* (2023 SCMR 1568), and *Amanullah v. The State* (2023 SCMR 723). However, what these judgments also consistently emphasize is that testimony of interested witnesses requires careful scrutiny, must be examined with caution, and in appropriate circumstances requires independent corroboration. The degree of caution and the extent of corroboration required depends upon the facts and circumstances of each case, particularly the nature and extent of the interest that the witnesses have in the outcome of the case and the presence or absence of motive for false implication.

26. In the present case, the interest of the eyewitnesses is not merely that of relationship with the deceased. They are parties to the civil litigation over the same land where the incident allegedly occurred, they are beneficiaries of the compensation amount awarded by the trial court, and most importantly, there is an admitted motive for false implication arising from the property dispute. The complainant himself admitted in the FIR that the motive for the alleged incident was dispute over ownership of the land. This admission cuts both ways. While it provides a motive for the accused persons to commit the alleged offense, it equally provides a motive for the complainant party to falsely implicate the accused persons in a fabricated case. This is what is meant by the principle that motive is a double-edged sword. Reference in this regard may usefully be made to the case of *Muhammad Ashraf alias Acchu*

*versus The State* (2019 SCMR 652), wherein a Full Bench of the Honourable Supreme Court observed that motive is always a double-edged weapon, and admitted enmity can be a reason for the accused to commit the alleged offense but it can equally be a reason for the complainant to falsely implicate the accused. When all eyewitnesses are interested parties having strong motive for false implication arising from a property dispute, and when there is suspicious delay in registration of the FIR providing opportunity for deliberation and consultation, the requirement of independent corroboration becomes imperative. In the present case, the prosecution has failed to examine even a single independent eyewitness despite the fact that the complainant himself mentioned several persons who allegedly came to the place of incident on hearing cries. The non-examination of these independent witnesses, whose presence at or near the place of incident is not disputed, creates a strong adverse inference against the prosecution under Article 129, Illustration (g) of the *Qanun-e-Shahadat* Order, 1984. The said provision provides that the court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. In the present case, the reasonable inference to be drawn is that these independent witnesses, had they been examined, would not have supported the prosecution version, and that is precisely why the prosecution chose not to examine them. Judgments reported in *Muhammad Asif v. The State* (2017 SCMR 486), *Farooq v. Musavir Ahmed* (2020 P.Cr.L.J 328), and *Afaq Ahmed v. The State* (2020 YLR 676) support this proposition.

27. Furthermore, this Court finds that the testimony of the eyewitnesses contains material contradictions and improbabilities which go to the root of the case. The alleged incident took place at night at 2330 hours. While the witnesses claim that tractor lights were on, the identification of seven to eight accused persons, each armed with specific weapons, in the midst of a violent assault lasting several minutes, strains credulity. The fact that each witness has given specific details about which accused used which weapon and caused which injuries to which victim appears to be more of a carefully choreographed script rather than a spontaneous narration of events witnessed in the heat and confusion of a violent night-time assault. The learned counsel for the complainant has relied upon *Liaquat Ali v. The State* (2023 MLD 426), *Amanullah v. The State* (2023 SCMR 527), and *Qasim*

*Shahzad v. The State* (2023 SCMR 117) for the proposition that minor contradictions should be ignored. However, the contradictions and improbabilities in the present case are not minor or insignificant but go to the very credibility of the eyewitnesses.

28. The most serious infirmity in the prosecution case, in the considered opinion of this Court, relates to the medical evidence and the causation of death. The undisputed facts are that the alleged assault took place on 4<sup>th</sup> April, 2017 and the deceased Karim Bux died on 12<sup>th</sup> April, 2017 a full eight days later. The deceased did not die immediately from the injuries but died during or after a surgical operation performed by Dr. Safdar Ali Arain at his private Medina Medical Centre at Khairpur. Dr. Safdar Arain is not a witness in this case. The prosecution has not examined him. This non-examination of the operating surgeon is, in the opinion of this Court, a fatal omission that breaks the chain of causation between the assault on 4<sup>th</sup> April, 2017 and the death on 12<sup>th</sup> April, 2017.

29. The learned counsel for the complainant has argued that the postmortem report establishes the cause of death as cardio-pulmonary arrest secondary to head injury, and therefore the non-examination of the operating surgeon is not material. This Court is unable to accept this submission. When death occurs not immediately from the assault but several days later during or after a surgical procedure, it becomes essential for the prosecution to establish through cogent evidence that death was caused by the original injury and not by complications arising from the surgery, anesthesia, post-operative infection, medical negligence, or other intervening factors. The only person who can speak with authority on this aspect is the operating surgeon who performed the operation and was present when death occurred. His non-examination leaves a critical gap in the prosecution case which creates more than reasonable doubt regarding the direct causation of death.

30. This Court notes that PW-5 Dr. Abdul Sattar, who examined the deceased on 5<sup>th</sup> April, 2017 has admitted in his cross-examination that injuries No.2, 3, and 4 on the person of Karim Bux could not have caused death. This admission means that only injury No.1, the lacerated wound on the right temporal region with visible bone, had the potential to cause death. However, even this does not conclusively establish that injury No.1 would have independently and inevitably caused death in the absence of the surgical

intervention that took place eight days later. The C.T scan conducted at Taluka Hospital Gambat on 11<sup>th</sup> April, 2017 revealed a skull fracture, following which the decision was taken to perform a surgical operation. The operation was performed by Dr. Safdar Arain at his private clinic, and the deceased expired during or immediately after this operation. These facts raise several critical questions: What was the exact nature of the surgical procedure performed? What anesthesia was administered? Were there any complications during surgery? Was the surgical technique appropriate? Was there any post-operative bleeding, infection, or other complication? Did the deceased's general health condition contribute to the death? All these questions can only be answered by the operating surgeon, and his non-examination leaves these crucial questions unanswered.

31. The legal position regarding the necessity of examining the operating surgeon or treating doctor when death occurs during or after medical treatment has been settled by superior courts. In cases where death does not occur immediately from the assault but occurs after an interval during medical treatment or surgical intervention, the prosecution must establish through credible medical evidence that death was caused by the original injury and not by intervening factors. The failure to examine crucial medical witnesses creates doubt regarding causation. In the present case, the non-examination of Dr. Safdar Arain, who performed the operation and was present when death occurred, creates a critical gap in the chain of evidence which must be resolved in favor of the accused. The judgments cited by the learned counsel for the complainant, in case of *Noor Zaman v. The State* (2022 SCMR 1002) and *Imran Mehmood v. The State* (2023 SCMR 795), are distinguishable on facts as in those cases the treating doctors were examined and conclusively established the causation of death from the original injuries.

32. The next aspect that requires examination is the recovery of the alleged crime weapons. According to the prosecution case, on 24<sup>th</sup> April, 2017 twenty days after the alleged incident, the appellant and co-accused Qurban were arrested near Sui Gas CNG station, and upon interrogation, they allegedly led the police to bushes from where an iron rod and a lathi, both allegedly stained with blood, were recovered. This Court finds several serious infirmities in this recovery which render it highly suspicious and unreliable.

33. *First*, the recovery took place twenty full days after the alleged incident. No explanation has been offered by the prosecution as to why the accused persons remained at large for twenty days and why the investigation took so long to locate and arrest them. Second, it is highly improbable that the accused persons, after committing a heinous crime of murder, would keep the blood-stained weapons hidden in bushes for twenty days and would conveniently lead the police to recover them upon arrest. Third, PW-4 mashir Ghulam Asghar, who was examined as the witness of recovery, has made several damaging admissions in his cross-examination which cast serious doubt on the genuineness of the recovery. The mashir admitted that it is not mentioned in the recovery memo that the accused persons led the police to the place from where weapons were recovered. The mashir also admitted that the defense counsel did not suggest during cross-examination that the weapons were not stained with blood or that they were not recovered from the accused. While the learned counsel for the complainant has sought to interpret this absence of suggestion as acceptance of the prosecution version, this Court is of the view that the absence of specific suggestions does not cure the inherent improbabilities and suspicious circumstances surrounding the recovery.

34. Most significantly, this Court finds that there are serious gaps and irregularities in the collection, preservation, and dispatch of the forensic evidence to the chemical examiner. PW-4 mashir admitted in cross-examination that blood-stained earth was collected and placed in a polythene bag which was closed by tying a knot but was not sealed with any stamp in his presence. When the case property was de-sealed in open court, the mashir admitted that the packet was wrapped in white cloth and contained a small *burny* (earthen pot), but he could not say whether the same burny was used at the time of collection of blood-stained earth. These glaring discrepancies between what the mashir claims was done during investigation and what was actually found in the case property completely destroy the chain of custody and render the forensic evidence unreliable.

35. The law regarding recovery evidence under Article 40 of the *Qanun-e-Shahadat* Order, 1984 is well-settled. While it is true that recovery on the pointation of the accused is admissible in evidence and can form the basis of conviction if properly proved, as held in *Muhammad Azad v. The State* (2019 SCMR 1330), *Nazir Shehzad v. The State* (2009 SCMR 1440), and

*Abdul Baqi v. The State* (2019 P.Cr.L.J 442), the crucial requirement is that the recovery must be proved through credible evidence maintaining proper chain of custody. Any gap, discrepancy, or irregularity in the chain of custody casts doubt on the genuineness of the recovery and renders it unsafe to base a conviction thereon. In the present case, the belated recovery after twenty days, the failure to mention in the recovery memo that the accused led the police to the place of recovery, and the serious gaps in the chain of custody of blood-stained earth all combine to make this recovery highly suspicious and unreliable.

36. The learned counsel for the complainant has placed reliance on the chemical examiner's report which confirms that the recovered iron rod and lathi were stained with human blood. While this Court does not doubt the contents of the chemical examiner's report, the report is only as reliable as the process of collection, preservation, and transmission of the samples. When serious doubts exist regarding the chain of custody, the positive report of the chemical examiner loses its evidentiary value. Moreover, the chemical examiner's report only establishes that the weapons bore human blood, but it does not establish whose blood it was, when the blood came to be deposited on the weapons, or even whether the blood was from the deceased Karim Bux or from any other person. In the absence of DNA analysis or blood grouping matching the blood on the weapons with the blood of the deceased, the chemical examiner's report provides, at best, very weak corroboration which cannot cure the other fundamental defects in the prosecution case.

37. This Court further notes that the prosecution has completely failed to investigate the alternative defense theory that was put forward during cross-examination of the witnesses. During cross-examination of PW-1 complainant Ahmed Ali, specific suggestions were made that deceased Karim Bux had illicit relations with the wife of his brother PW-2 Farooque Ahmed, that Farooque had caused injuries to Karim Bux on account of this domestic dispute approximately three days after 4<sup>th</sup> April, 2017 that after the death of Karim Bux, Farooque married the widow of Karim Bux, and that the widow received substantial insurance proceeds from a policy held by the deceased. While the complainant denied these suggestions, the fact remains that these are serious allegations which cast doubt on the prosecution version and provide an alternative explanation for the injuries and death of Karim Bux. It

was incumbent upon the Investigating Officer to have investigated these allegations and either confirmed or refuted them through independent inquiry. The complete failure to investigate this alternative theory amounts to a one-sided and biased investigation which has proceeded on the assumption that the accused persons are guilty and has made no effort to examine other possibilities.

38. The judgments cited by the learned counsel for the appellant, namely 2019 SCMR 1309, 2016 SCMR 2073, 2014 P.Cr.L.J 611, 2018 SCMR 772, 2010 SCMR 385, 2010 SCMR 97, 2017 SCMR 486, 2020 P.Cr.L.J 328, and 2020 YLR 676, all support the proposition that when the prosecution case suffers from multiple infirmities including interested witnesses with motive for false implication, suspicious delay in FIR registration, material contradictions in evidence, non-examination of crucial witnesses, gaps in chain of custody of forensic evidence, and failure to investigate the defense case, the cumulative effect of these infirmities creates reasonable doubt which must be resolved in favor of the accused. The learned counsel for the complainant has cited several judgments including 2022 SCMR 1882, 2023 SCMR 1375, 2023 SCMR 1568, 2023 SCMR 723, 2023 MLD 426, 2023 SCMR 527, 2023 SCMR 117, 2022 SCMR 1002, and 2023 SCMR 795 in support of the prosecution case. However, upon careful perusal of these judgments, this Court finds that they are distinguishable on facts. Most of these judgments deal with cases where the prosecution case was otherwise strong and credible, and the courts held that minor discrepancies or the interested nature of witnesses alone should not lead to acquittal when the core prosecution case is proved. However, in the present case, the prosecution case is not otherwise strong or credible but suffers from multiple fundamental infirmities which go to the very root of the case.

39. Having carefully considered the entire evidence on record and the legal principles applicable to the facts of this case, this Court is of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubt. The eight-day delay in FIR registration providing opportunity for deliberation and consultation, the interested nature of all eyewitnesses having strong motive for false implication arising from property dispute, material contradictions and improbabilities in their testimony, the critical gap in medical causation due to non-examination of the operating

surgeon, the suspicious recovery of weapons after twenty days with broken chain of custody of forensic evidence, the non-examination of independent witnesses, and the failure to investigate the alternative defense theory, all these circumstances when viewed cumulatively create more than reasonable doubt regarding the guilt of the appellant. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt, and the benefit of doubt, howsoever slight, must be extended to the accused. In the present case, the doubt is not slight but substantial and arises from multiple sources.

40. This Court is mindful of the fact that the co-accused Qurban Ali has not preferred any appeal and his conviction has attained finality. However, that circumstance does not preclude this Court from examining the evidence against the present appellant on its own merits. Each accused is entitled to have his case examined independently, and the fact that a co-accused has chosen not to appeal does not bind the present appellant.

41. In the result, this Court is of the considered opinion that the impugned judgment dated 16<sup>th</sup> November, 2021 passed by the learned Additional Sessions Judge-I/MCTC, Khairpur in Sessions Case No.27 of 2018 cannot be sustained and is liable to be set aside. Consequently, this criminal appeal is allowed. The conviction of the appellant Sachedino son of Ali Dino Kubar under Section 302 PPC and the sentence of imprisonment for life alongwith the order to pay compensation of Rs.500,000 to the legal heirs of the deceased are hereby set aside. The appellant is acquitted of the charge on the principle of benefit of doubt arising from the multiple infirmities in the prosecution case and the failure to prove guilt beyond reasonable doubt. The appellant shall be released forthwith unless his detention is required in connection with any other case. This judgment be communicated to the concerned trial court and jail authorities for necessary compliance and implementation.

**J U D G E**