

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

***Criminal Acquittal Appeal.No.D-13 of 2012***

**Before:**

***Mr. Justice Amjad Ali Sahito,  
Mr. Justice Ali Haider 'Ada'***

Appellant : Aijaz Ali s/o. Ali Muhammad Abbasi  
through Mr. Rafique Ahmed K. Abro,  
Advocate.

Respondents : Khadim Hussain, through Mr. Safdar Ali  
Ghouri, Advocate.  
Kamran @ Kami, through Mr.  
Habibullah Ghouri, Advcoate and Ali  
Murad in person.

The State through Mr. Aitbar Ali Bullo,  
Deputy Prosecutor General, Sindh

**Criminal Acquittal Appeal.No.D-36 of 2021**

Appellant : Aijaz Ali s/o. Ali Muhammad Abbasi  
through Mr. Rafique Ahmed K. Abro,  
Advocate.

Respondents : Mitho alias Ali Akbar, ( Nemo)

The State through Mr. Aitbar Ali Bullo,  
Deputy Prosecutor General, Sindh

Date of Hearing : 22.10.2025.

Date of Decision : 22.10.2025.

Date of Reasons : 04.11.2025.

**JUDGMENT**

**Ali Haider 'Ada'.J:-** By this single judgment, both Criminal Acquittal Appeals, as captioned above, are being disposed of together. These appeals have been filed by the complainant/appellant, Aijaz Ali, against

the set of accused persons arrayed as respondents, who were acquitted by the learned Sessions Judge, Larkana, in Sessions Case No. 474 of 2008. Through the impugned judgment, the learned trial Court acquitted the respondents/accused, namely Khadim Hussain, Ali Murad, and Kamran alias Kami, of the offences punishable under sections 302, 147, 148, and 149, P.P.C., arising out of Crime No. 144 of 2008, registered at Police Station Dari. Subsequently, another accused, Mithoo alias Ali Akbar, who had joined the trial proceedings at a later stage, was also acquitted by the learned 1st Additional Sessions Judge, Larkana, in the same Sessions Case No. 474 of 2008, vide judgment dated 24.08.2021. Being aggrieved by the aforesaid acquittals, the complainant has preferred the present Criminal Acquittal Appeals.

2. The brief facts of the case are that the complainant reported the incident on 29.09.2008 at about 1:45 p.m., alleging that the occurrence had taken place on the same day at around 1:00 p.m. According to the complainant, the deceased had earlier restrained the accused persons from committing certain wrongful acts, which caused annoyance to them. On the said date, i.e., 29.09.2008, when the complainant along with his deceased brother returned home at about 1:00 a.m., they saw the accused persons namely, Ali Murad, Mithoo, and Khadim, accompanied by two unidentified persons. It is alleged that accused Ali Murad challenged the deceased, stating that he had insulted them and that they intended to take revenge. Thereafter, the unidentified persons caught hold of the complainant, while accused Mithoo and Khadim threw the deceased, Zulfiqar, to the ground. Accused Ali Murad then sat on the chest of the deceased and started throttling him. On the complainant's cries, witnesses Aamir and Ghulam Murtaza, along with other neighbours, arrived at the spot, whereupon the accused persons fled away. The complainant immediately took the deceased to the hospital, but at about 1:25 p.m., Zulfiqar was declared dead. Leaving other persons over the dead body, the complainant proceeded to lodge the FIR, which was recorded at about 1:45 a.m. Thereafter, the investigation was conducted, and upon completion of the investigation, the challan was submitted by the investigating agency, where after the accused faced trial.

3. The learned trial Court framed charges against the accused persons, and thereafter, recorded the statements of the prosecution witnesses in two phases. Upon conclusion of the trial, the learned trial Courts delivered their respective judgments, whereby the accused persons were acquitted. Being aggrieved by such judgments, the complainant has called the same into question through the present appeals.

4. Mr. Rafique Ahmed K. Abro, learned counsel for the appellant/complainant, contended that the entire evidence is consistent and corroborated by the medical evidence, which fully supports the prosecution's case. He submitted that there are no material contradictions in the testimony of the witnesses; however, the learned trial Court acquitted the accused persons without properly appreciating the evidence available on record and extended the benefit of doubt on flimsy grounds, despite there being sufficient material to connect the accused with the commission of the offence.

5. Conversely, Mr. Safdar Ali Ghouri and Mr. Habibullah G. Ghouri, learned counsel for Respondents, argued that there are material inconsistencies on record, and the learned trial Court has rightly appreciated the major contradictions between the ocular and medical evidence. He submitted that the impugned judgment is well-reasoned and does not call for any interference.

6. On the other hand, Mr. Aitbar Ali Bullo, learned Deputy Prosecutor General, supported the impugned judgments and submitted that no illegality or irregularity has been pointed out. He further argued that the scope of an acquittal appeal is limited in nature, and once an accused has been acquitted, he enjoys a double presumption of innocence under the law.

7. Heard the learned counsel for the respective parties as well as the learned Deputy Prosecutor General, and perused the material available on record.

8. According to the prosecution, the two unidentified persons caught hold of the complainant, while accused Mithoo and Khadim also

overpowered the deceased and threw him to the ground. Thereafter, accused Ali Murad sat on the chest of the deceased and throttled him, as a result of which the deceased lost his life. The medical officer opined that the cause of death was throttling and further confirmed that it resulted from asphyxia.

9. The F.I.R. was registered on 29.09.2008, whereas the prosecution witnesses were examined after a lapse of about twenty days, and their statements under section 161, Cr.P.C. were recorded on 18.10.2008. Such delay in recording the statements of the witnesses has not been plausibly explained by the prosecution. In this context, reliance is placed upon the case of *Fateh Khan v. The State* (2025 SCMR 1408).

10. Furthermore, no independent witness was cited by the prosecution, despite the fact that the place of incident was surrounded by residential houses. The prosecution thus failed to establish any independent link connecting the accused with the commission of the offence of murder. Reliance in this regard is placed upon the case of *Usman Ahmed v. The State* (2025 SCMR 1442).

11. It appears rather astonishing to believe that the accused persons were allegedly empty-handed, and yet the complainant neither offered any resistance to save himself nor made any effort to rescue his brother during the occurrence. Such conduct, on the part of the complainant, creates serious doubt regarding the veracity of the prosecution version. Reference may be made to the case of *Muhammad Bilal v. The State* (2025 SCMR 1580), wherein it was held that –

*"....Filial duty would naturally cause the complainant to intervene, however, him and the eye-witnesses who were also close to the deceased did not even launch an abortive attempt at preventing the appellant's alleged grievous assault. Equally important is the fact that the appellant was not armed with a formidable weapon, having only a wooden stick measuring 1 foot 4 inches. The eye-witnesses' conduct is then manifestly unnatural and this failure to intervene raises serious doubts regarding both the veracity of their account as well as their presence at the scene. A similar situation was decisively dealt with by this Court in the case of Pathan v. The State (2015 SCMR 315) wherein it was held that:*

*"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. In similar circumstances, the evidence of such eye-witnesses was disbelieved by this Court in the case of Masood Ahmed and Muhammad Ashraf v. The State (1994 SCMR 6)."*

*Reliance may also be placed upon the cases of Zafar v. The State (2018 SCMR 326) and Liaqat Ali v. The State (2009 SCMR 95) in this regard. The further aspect that the eye-witnesses failed to apprehend the appellant after he had allegedly murdered the deceased again raises serious doubts about their presence at the scene. The complainant explained during cross-examination that the eye-witnesses had made an attempt to apprehend the appellant but he was able to escape. Moreover, the complainant admitted that the eye-witnesses were well-built in contrast to the weaker appellant. Here, once more, it could reasonably be expected that eye-witnesses should have overpowered the appellant. Surprisingly, however, the appellant managed to slip away from the eye-witnesses, making his way out of the room where the deceased was murdered despite there being only one doorway and the site map describing the eye-witnesses as standing in that doorway.<sup>3</sup>*

12. From a perusal of the record, it reveals that the incident is alleged to have taken place at about 1:00 a.m., and, as per the complainant, the deceased expired within 25 minutes, i.e., at about 1:25 a.m. However, the medical officer did not agree with this version and opined that the time between the infliction of the injuries and the death of the deceased was approximately two to three hours. Such inconsistency between the ocular and medical evidence creates serious doubt regarding the prosecution case.

13. The medical evidence is also totally silent regarding the presence of any fingerprints on the body of the deceased. So far as the aspect of medical jurisprudence is concerned, reference may be made to ***Modi's Medical Jurisprudence and Toxicology, 26th Edition, Chapter 20, titled "Death from Asphyxia,"*** which prescribes that:

*(2) If fingers are used (throttling), marks of pressure by the thumb and the fingertips are usually found on either side of the windpipe. The thumb mark ordinarily higher and wider on one side of the front of the neck, and*

*the finger marks are situated on its other side obliquely downwards and outwards, and one below the other. However, the marks are sometimes found clustered together, so that they cannot be distinguished separately. These fingertip bruises, each disc-shaped and 1-2 cm in diameter, look like red bruises (six penny bruises) if examined soon after death, but they look brown, dry and parchment-like sometimes after death.*

14. The medical evidence is also silent with regard to the presence of any symptoms indicative of strangulation. In the aforesaid chapter, ***Modi’s Medical Jurisprudence and Toxicology***, strangulation is defined, for ready reference, as under:

STRANGULATION

*Definition. Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation.*

*Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling.*

SYMPTOMS.

*If the windpipe is compressed so suddenly as to occlude the passage of air altogether, the individual is rendered powerless to call for assistance, becomes insensible, and may die instantly. If the windpipe is not completely closed, the face. becomes cyanosed, bleeding occurs from the mouth, nostrils and ears, the hands are clenched and convulsions precede delayed death. As in hanging, insensibility is very rapid, and death is quite painless.*

15. Furthermore, the medical evidence does not indicate that the floor of the mouth was jammed against its root; hence, on this aspect, the medical testimony cannot be safely relied upon. Moreover, there exists a well-recognized distinction between *hanging* and *strangulation*. The doctor opined that the hyoid bone was intact and showed no fracture; however, according to ***Modi’s Medical Jurisprudence and Toxicology***, the characteristics and findings in cases of hanging and strangulation differ considerably. For ready reference, the differences between hanging and strangulation are reproduced below in tabulated form:

Hanging	Strangulation
1. Mostly suicidal.	1. Mostly Homicidal.

<p>2. Face-Usually pale and petechiae rare.</p> <p>3. Saliva-Dribbling out of the mouth down on the chin and chest.</p> <p>4. Neck-Stretched and elongated in fresh bodies.</p> <p>5. External signs of sphryxia, usually 5 not well marked.</p> <p>6. Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</p> <p>7. Abrasions and ecchymosis round about the edges of the ligature mark, rare.</p> <p>8. Subcutaneous tissues under the mark-White, hard and glistening.</p> <p>9. Injury to the muscles of the neck- Rare.</p> <p>10. Carotid arteries, internal coats ruptured in violent cases of a long drop.</p> <p>11. Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.</p> <p>12. Fracture-dislocation of the cervical vertebrae Common in judicial hanging.</p> <p>13. Scratches, abrasions and bruises on the face, neck and other parts of the body- Usually not present.</p> <p>14. No evidence of sexual assault.</p>	<p>2. Face ----Congested, livid and marked with petechiae.</p> <p>3. Saliva-No such dribbling.</p> <p>4 .Neck-Not so.</p> <p>5. External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).</p> <p>6. Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</p> <p>7. Abrasions and ecchymosis round about the edges of the ligature mark, common.</p> <p>8. Subcutaneous tissues under the mark- Ecchymosed.</p> <p>9. Injury to the muscles of the neck----- Common.</p> <p>10. Carotid arteries, internal coats ordinarily ruptured</p> <p>11. Fracture of the larynx trachea and hyoid bone.</p> <p>12. Fracture-dislocation of the cervical vertebrae-Rare.</p> <p>13. Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-Usually present.</p> <p>14. Sometimes evidence of sexual assault.</p>
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15. Emphysematous bullae on the surface of the lungs- May be present.	15. Emphysematous bullae on the surface of the lungs-Not present.
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16. As discussed above, there exist major inconsistencies in the medical evidence that stand in direct contradiction to the ocular account. Such discrepancies, particularly in the medical findings, create serious doubt regarding the veracity of the prosecution's case. Reliance in this regard may be placed upon the cases of *Muhammad Riaz v. The State* (2024 SCMR 1839) and *Obaidullah and 2 others v. The State and others* (2025 SCMR 1558), wherein it was held that when material contradictions are found between the ocular and medical evidence, the benefit of such doubt must necessarily go to the accused.

17. It is a settled and golden principle of criminal jurisprudence that the benefit of doubt, if arising from the circumstances of the case, must always be extended to the accused, as even a single reasonable doubt is sufficient to vitiate the prosecution’s case. Reliance in this respect is also placed upon *Qurban Ali v. The State* (2025 SCMR 1344).

18. It is a well-settled principle of law that the scope of interference in an acquittal appeal is extremely narrow. Once an accused has been acquitted by a competent court of law, the presumption of innocence in his favour stands further reinforced, and the prosecution bears a heavy burden to displace such presumption. Nothing substantial has been pointed out to persuade this Court that the findings recorded by the learned trial Court, are either perverse, arbitrary, or based on a gross misreading or non-reading of the evidence. We, therefore, find no reason to interfere with the well-reasoned findings of the learned courts below, which appear to be unexceptionable in law and fact. Reliance in regard upon the case of *Fida Hussain alias Saboo Versus The State* 2025 SCMR 993, wherein it had held that: “It is settled law that the scope of interference with acquittal is narrow. There is a heavy burden on the prosecution because there is a presumption of double innocence. Nothing could be pointed out to persuade us that the findings of the High Court are perverse or passed in gross



*violation of law. We are, therefore, not inclined to interfere with the findings of the High Court, which have been found to be unexceptionable.*

19. In view of the foregoing discussion and the material inconsistencies pointed out in the prosecution case, no ground has been made out to justify interference with the judgments passed by the learned court below. Consequently, these Criminal Acquittal Appeals are hereby dismissed, and the judgments of the learned trial Court are maintained. These are the detailed reasons of short order Dated 22.10.2025.

***JUDGE***

***JUDGE***

*S.Ashfaq/-*