

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 382 of 2024

Applicant : Sajid Khan @Kalo through Mr. Karim Nawaz Qureshi, Advocate.

Complainant : Adalat Khan through Mr. Mushtaq Ahmed, Advocate.

Respondent : The State through Ms. Rubina Qadir, Addl. P.G.

Date of Hearing : 27.11.2025.

Date of Order : 11.12.2025.

JUDGMENT

TASNEEM SULTANA-J.- The instant appeal is directed against the impugned judgment dated 15.05.2024, passed by the learned Additional Sessions Judge-VII, Malir, Karachi, in Sessions Case No. 877 of 2012, Re State Vs. Sajid Khan @ Kalo for the offence punishable under Sections 302(b) read with Section 34, P.P.C., arising out of FIR No. 572 of 2012, registered at Police Station Shah Latif Town, Karachi, whereby the appellant was convicted under Section 302(b), P.P.C. and sentenced to suffer rigorous imprisonment for life along with payment of compensation amounting to Rs.100,000/- to the legal heirs of the deceased Mirza Khan and in case of default in payment of compensation, to suffer S. I for six months more. However, the benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case are that the complainant Adalat Khan alleged that his father, Mirza Khan, was residing at a buffalo farm situated on PMTF Road, Karachi, where he was engaged in milk supply business, and that although an earlier dispute between the deceased and Ghulam Mustafa Gujjar and others in their native village had been resolved, resentment persisted; it was alleged that the sons of Ghulam Mustafa Gujjar, namely Sajid, Jahangir and Sagheer, who were employed in the Buffalo Colony, had been following the deceased and that on 20.09.2012 the deceased telephonically informed the complainant of apprehension of danger to his life, stating that in case of his death they would be responsible, whereupon he was advised to leave Karachi, which he did not do; it was further alleged that on 22.09.2012 the complainant was informed by his cousin Jehanzeb that at about 0615 hours the deceased had been murdered at Al-Asif Hotel,

Shah Latif Town, Karachi, allegedly in collusion by the accused persons in the presence of Jehanzeb and the complainant's paternal uncle Muhammad Sharif, whereafter upon instructions the police was informed and after completion of legal formalities the dead body was brought to the village on 23.09.2012 and buried there, and subsequently the complainant came to Karachi, alleged that the accused had caused the death of his father by inflicting blows with iron-rods, requested legal action against them and also sought association of Niaz, at whose buffalo farm the deceased had been residing, in the investigation.

3. After usual investigation, the police submitted charge-sheet against the appellant showing him in custody as well as against absconding accused namely Jahangir, Saghir @ Naseer under section 512 Cr.P.C. Having been supplied the requisite documents as envisaged under section 265-C, Cr.P.C., the trial court framed a formal charge against the appellant on 18.03.2023, to which he pleaded not guilty and claimed trial.

4. In order to substantiate the charge, the prosecution examined **P.W-1** Khan Wez at Exh.6 he produced memo of inspection of dead body at Exh.06/A, **P.W-2** complainant Adalat Khan at Exh.7 he produced statement under section 154 Cr.P.C, carbon copy of FIR No.572/2012, memo of site inspection, an application to SHO of police Shah Latif Town, Malir, Karachi and memo of arrest and recovery at Exh.7/A to Exh.7/E respectively. **P.W-3** SIP Muhammad Arshad Awan at Exh.8 he produced letter dated 13.10.2012 and permission letter and chemical examiner report at Exh.8/A to Exh.8/C respectively. **P.W-4** SIP Muhammad Mithal at Exh.9 he produced memo of sketch of place of incident and departure and arrival entries at Exh.9/A to Exh.9/C respectively. **P.W-5** SIP Tariq Mehmood at Exh.11 he produced memo of inspection of dead body under section 174 Cr.P.C, letter to MLO, receipt to hand over the dead body and an entry No.19 at Exh.11/A to Exh.11/D respectively. **P.W-6** Dr. Abdul Razzaq at Exh.12 he produced police letter and postmortem examination report at Exh.12/A to Exh.12/B. **P.W-7** SIP Irshad Ahmed at Exh.13 he produced letter for permission to arrest of the accused from KPK along with entry, letters for approval regarding despatch of police party out of province, departure and arrival entries, remand paper, interrogation report of accused, remand order and P.R bond and copy of proceedings, issued under section 87/88 Cr.P.C at Exh.13/A to

Exh.13/V respectively. P.W-8 Muhammad Sharif at Exh.14.Later-on the side of prosecution was closed vide statement at Exh.15.

5. The statement of appellant \ accused Sajid @ Kalo was recorded under section 342 Cr.P.C., at Exh.16. Wherein he denied the allegations leveled against him by the prosecution and claimed to be innocent. However, he did not lead evidence in his defense nor examined himself on Oath under section 340(2) Cr.P.C.

6. On conclusion of the trial, after hearing learned counsel for the appellant \accused and DDP for the state, learned trial convicted and sentenced the appellant vide judgment dated 15.05.2024 which is impugned through this appeal.

7. Learned counsel for the appellant contended that the impugned judgment is the result of misreading and non-reading of evidence; that the complainant is admittedly not an eye-witness and his testimony is based on hearsay and suspicion; that the prosecution case rests mainly upon a related witness whose presence at the place of occurrence is doubtful and unnatural; that the conduct attributed to the said witness is inconsistent with normal human behavior; that there is an unexplained delay of about six days in lodging the FIR which creates serious doubt and affords room for consultation and false implication; that the prosecution failed to collect independent corroborative evidence; that the investigation suffers from serious defects, omissions and contradictions; that the identity of the deceased itself is doubtful due to severe disfigurement of face and absence of reliable proof; that the appellant raised a plea of alibi which was not disproved by the prosecution; and that, in these circumstances, the appellant is entitled to benefit of doubt as a matter of right and the impugned judgment is liable to be set aside.

8. Conversely, learned Addl. Prosecutor General assisted by learned counsel for the complainant supported the impugned judgment; contended that the prosecution proved its case beyond reasonable doubt through reliable ocular account duly corroborated by medical evidence; that mere relationship of a witness with the deceased does not render his testimony unreliable; that the evidence on record was properly appreciated by the learned trial Court; that minor discrepancies are natural and do not affect the substratum of the prosecution case; that delay in lodging the FIR stands sufficiently explained; that non-recovery of the crime weapon is not fatal where ocular evidence is confidence-inspiring; that the motive was

established and the appellant was nominated with a specific role; that the plea of alibi is weak and unsubstantiated; and prayed that the appeal may be dismissed.

9. Heard. Record perused.

10. On the assessment of material brought on record it appears that **P.W-2** Adalat Khan, the complainant and son of the deceased, is not an eyewitness to the occurrence. His testimony is founded entirely on information allegedly received through telephonic calls from his relatives, namely Jehanzeb and P.W-8 Muhammad Sharif. According to him, the incident allegedly occurred on 22.09.2012 at about 0615 hours at Al-Asif Hotel, Shah Latif Town, and was witnessed by the said relatives along with other persons. Upon receiving such information, he instructed Muhammad Sharif (PW-8) to inform the police and, after completion of legal formalities, to arrange transportation of the dead body to the village for burial. The complainant himself stated that he came to know of the incident at about 07:30 p.m. while present in his village at Haripur and thereafter requested his relatives in Karachi to bring the dead body for burial. His assertion regarding the involvement of the accused is expressly couched in terms of suspicion rather than direct knowledge. Such a version, by its very nature, lacks probative force. It is well-settled that suspicion, however grave, cannot substitute proof.

11. During cross-examination, the complainant conceded that one Niaz was arrested during investigation but was released the following day without recording his statement. He further admitted that statements under Section 161 Cr.P.C. of the hotel owner, its employees and the alleged Qari present at the spot were never recorded. These admissions unmistakably demonstrate that natural and independent witnesses were neither examined nor associated at the very inception of the case. Although he denied suggestions regarding the unidentifiable condition of the deceased, the presence of Sultan as sole eyewitness, or any obstruction on his part in lodging the FIR, such bare denials are of no legal consequence in the face of admitted omissions which strike at the root of the prosecution version.

12. The prosecution, therefore, sought to build its case primarily upon the testimony of P.W-8 Muhammad Sharif, examined at Exh.14, who was treated by the learned trial Court as the sole eyewitness; however, his evidence does not inspire confidence and is fraught with material infirmities. He attempted to justify his presence at the place

of occurrence at about 0615 hours by asserting that he, along with Jehanzeb, was returning to Bhains Colony after dropping relatives at the Quaidabad bus terminal in a Datsun vehicle, and that upon reaching Al-Asif Hotel he saw the deceased seated there and the accused persons assaulting him with iron rods, thereafter fleeing in a black-and-yellow taxi. He further stated that the complainant was in Islamabad at the relevant time and that Jehanzeb later informed him of the occurrence. Significantly, during cross-examination, he admitted that his permanent residence was Haripur, Hazara, KPK, and that he failed to produce any documentary proof before the Investigating Officer to substantiate his alleged employment as a munshi for one Sikander, thereby rendering his presence at the scene doubtful.

13. More importantly, implausible, rendering him a classic “chance witness.” Although he claimed that the incident occurred in his and Jahanzeb’s presence, neither of them made any attempt to rescue the deceased or apprehend the assailants, this despite the fact that the occurrence allegedly took place at a hotel, where the presence of other persons has not been disputed by the prosecution witnesses. During cross-examination, he admitted that “Injured Mirza Khan had fallen on the ground, and leaving him on the ground/earth, I went to inform Sikander.” It is indeed strange that, being a paternal cousin, he abandoned the injured at the spot to inform Sikander, instead of attempting to shift him to a hospital. He even purported to declare the deceased dead, conduct that is wholly inconsistent with normal human behavior and casts serious doubt on his presence at the scene. Although PW-8 asserted that he and Jahanzeb attempted to rescue the deceased, no assailant was apprehended, nor was any effort made to pursue or identify the taxi in which the accused allegedly fled. His statement under Section 161, Cr.P.C. was recorded belatedly on 28.09.2012, six days after the incident an unexplained delay that significantly diminishes the evidentiary worth of his testimony. Reliance may be placed on the principles enunciated in *Amir Muhammad Khan v. The State (2023 SCMR 566)*, wherein delayed and uncorroborated statements were held to be unworthy of reliance.

14. The prosecution has further failed to examine material witnesses whose presence, according to its own version, was natural, probable and expected. The most glaring omission is the non-examination of Sultan, who allegedly made the initial phone call to the duty officer regarding the occurrence. Being the first informant, his testimony was

vital to unfold the genesis of the case and to lend independent corroboration to the prosecution story. Likewise, Jehanzeb, who was named as an accompanying eyewitness of P.W-8 Muhammad Sharif and was allegedly present at the scene throughout the occurrence, was also withheld without any plausible explanation. The prosecution has offered no justification for keeping back these witnesses, whose evidence would have been decisive in either supporting or demolishing the prosecution version. Such unexplained non-examination of material witnesses creates a serious dent in the prosecution case and renders the alleged occurrence itself doubtful. The deliberate withholding of the aforesaid material and independent witnesses attracts an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984. It is a settled principle of law that where the prosecution fails to produce the best available evidence without furnishing any reasonable explanation, the Court is justified in presuming that such evidence, if produced, would have gone against the prosecution. In the present case, where the prosecution story otherwise rests upon related and interested testimony, the non-production of independent and natural witnesses further erodes the credibility of the prosecution version and substantially strengthens the defence plea.

15. Equally significant is the unexplained delay of approximately six days in the registration of the FIR. The occurrence is alleged to have taken place on 22.09.2012 at about 0615 hours, whereas the FIR was lodged on 27.09.2012 at 0015 hours, despite the availability of legal heirs in Karachi. Such delay, in the absence of plausible explanation, assumes critical importance as it affords sufficient time for consultation, deliberation and embellishment. The learned trial Court failed to address this aspect in its proper legal perspective, notwithstanding settled law that unexplained delay in lodging the FIR strikes at the root of the prosecution case. The Hon'ble Supreme Court has consistently held that unexplained delay in FIR registration casts serious doubt on the prosecution case and provides opportunity for fabrication. Reliance is placed on the case of ***Muhammad Hassan and another v. The State and others (2024 SCMR 1427)***.

16. The earliest police action when examined on the touchstone of testimony of P.W-5 SIP Tariq Mehmood, the duty officer, does not inspire confidence, as his evidence is marred by material and irreconcilable contradictions. While asserting that the dead body was identified at the spot, he simultaneously admitted that the face of the

deceased was badly damaged and unidentifiable due to injuries and that no CNIC or any other identification document was recovered. He further conceded that although blood was present on the bench and on the ground beneath, the same was neither secured nor taken into possession. More importantly, his statement recorded under section 161 Cr.P.C. contradicts his deposition before the Court regarding the condition of the deceased's face, thereby casting serious doubt upon the credibility and reliability of the earliest police action and the manner in which the initial proceedings were conducted.

17. The prosecution version is further shaken by the testimony of P.W-1 Khan Waiz, the mashir, who was declared hostile by the prosecution itself. He categorically denied his presence at the place of occurrence and refuted the suggestion that he had disclosed the names of any accused to the police. He further admitted that the complainant and the accused are related inter se. His testimony demolishes the claim of prompt nomination and identification of the accused and creates serious doubt regarding the genuineness of the prosecution story from its inception, particularly when such admission comes from a witness produced by the prosecution itself.

18. The investigation, as borne out from the record is riddled with glaring, and incurable defects which demolish the basic at the very root of substratum of the prosecution case. P.W-3 SIP Muhammad Arshad Khan, the third Investigating Officer, candidly admitted during cross-examination that he neither inspected the place of occurrence nor recorded the statements of any witnesses under section 161 Cr.P.C., thereby rendering his investigation wholly superficial. He further acknowledged that the case property was sent to the Chemical Examiner after an unexplained delay of more than one month from the date of occurrence, a lapse which seriously diminishes its evidentiary value and raises legitimate doubts regarding the integrity of the collected material. Likewise, P.W-4 SIP Muhammad Mithal, the second Investigating Officer, conceded that despite the complainant having expressed suspicion regarding the involvement of Niaz, the bara owner situated directly opposite the place of occurrence, no meaningful or effective investigation was conducted against him. He admitted that Niaz was arrested and released without recording his statement or preparing any investigation report. He further acknowledged that no Call Data Records were obtained, no blood-stained articles were secured, no CCTV footage was collected, and no statements under section 161 Cr.P.C. of the hotel owner, staff, or customers were

recorded. He also conceded that even the duty officer failed to record any roznamcha entry regarding the phone call allegedly made by Sultan, the initial informant. These admissions unmistakably demonstrate that the investigation was conducted in a careless, perfunctory and non-serious manner.

19. Admittedly, the alleged crime weapon was never recovered; the blood-stained clothes of the alleged rescuers were not taken into possession; the blood-stained bench and soil from the place of occurrence were neither secured nor sent for forensic examination; no forensic linkage between the recovered articles and the appellant was established; and the report of the Chemical Examiner merely confirmed the presence of human blood without connecting the same to the appellant or the alleged offence. In such circumstances, the prosecution has failed to establish any corroborative nexus between the appellant and the commission of the crime. Reliance in this regard is placed on **Noor Elahi v. Zafarul Haque (PLD 1976 SC 537)**.

20. Moreover, considerable doubt emerges with regard to the identification of the deceased. Multiple witnesses admitted that the face of the deceased was severely disfigured and unidentifiable due to the injuries sustained; no CNIC or other identification document was recovered from the body; the proceedings under section 174 Cr.P.C. described the deceased as a "young and healthy person," whereas the prosecution claimed that he was 57 years old; and the body was identified only by interested relatives who themselves did not promptly nominate any accused. These inconsistencies are not minor in nature but go to very foundation of the prosecution case and seriously undermine the credibility of the identification process. **Reliance is placed on Zulfiqar Ahmad and others v. The State (2011 SCMR 492)**.

21. The prosecution case further collapses on the questions of motive and alibi. Although the learned trial Court held that motive stood proved, the record does not support such a conclusion, as no previous FIR, compromise deed, or contemporaneous document was produced to substantiate the alleged enmity dating back to the year 1994, and no evidence of prior threats or harassment was brought on record. Even otherwise, the unexplained lapse of nearly eighteen years between the alleged enmity and the occurrence renders the suggested motive highly implausible. In these circumstances, it cannot be safely concluded that the prosecution proved motive beyond reasonable

doubt. Reliance is placed on **Hayatullah v. The State (2018 SCMR 2092)**.

22. Conversely, the plea of alibi taken by the appellant that he was present in Haripur, KPK, at the relevant time was never rebutted by the prosecution. The fact that the appellant was ultimately arrested from Haripur, while already in custody there in connection with another case, lends further support to his plea. The prosecution failed to produce any independent material to establish his presence in Karachi on the date of occurrence, such as travel record, witness of movement, or contemporaneous documentary evidence. When a plea of alibi is raised, the burden lies upon the prosecution to disprove it beyond reasonable doubt, which burden has not been discharged in the present case.

23. The material contradictions emerging from the testimonies of the prosecution witnesses substantially erode the credibility of their statements and cast grave doubt up on their presence at the scene of the occurrence. Such inconsistencies are sufficient to render the prosecution's case highly doubtful. In this regard, reliance is placed on the case of **Zaffar v. The State [2018 SCMR 326]**, wherein the Hon'ble Supreme Court of Pakistan held that:

“Having discussed all the aforesaid aspect of the case, it has been observed by us that, medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/corroborative piece of evidence and presence of eyewitnesses at the place of occurrence at the relevant time Criminal Appeal No.S-254 of 2019 13 has been found by us to be doubtful, no reliance can be placed on the supportive/corroborative piece of evidence to convict the appellant on capital charge.”

In another case, **Mst. Shazia Parveen v. The State (2014 SCMR 1197)**, the Hon'ble Supreme Court of Pakistan held as under:

“Such related witnesses had failed to receive any independent corroboration inasmuch as there was no independent evidence produced regarding the alleged motive, alleged recovery of rope was legally inconsequential and the medical evidence had gone long away in contradicting the eyewitnesses in many ways. The duration of the injuries and death recorded by the doctor in the postmortem examination report had rendered the time of death allegedly by the eye witness quite doubtful, the stomach contains belied the eyewitnesses regarding the time of occurrence”.

24. It is a well-settled principle of law that, to extend the benefit of doubt to an accused, it is not necessary that there be numerous circumstances creating doubt. Even a single circumstance raising a reasonable doubt in the mind of a prudent person regarding the guilt

of the accused is sufficient for granting such benefit. This benefit is not to be extended as a matter of grace or concession, but as a matter of right. It is also a well-recognized legal maxim that “it is better that ten guilty persons be acquitted than one innocent person be convicted.” In this respect, reliance is placed on the case of ***Muhammad Hassan and Another v. The State (2024 SCMR 1427)***, wherein the Honourable Apex Court held:

“According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused.”

Similarly, in ***Mohammad Mansha v. The State (2018 SCMR 772)***, the Honourable Supreme Court of Pakistan held as under:

“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, ‘it is better that ten guilty persons be acquitted rather than one innocent person be convicted’. Reliance in this behalf can be made upon the cases of *Tariq Parvez v. The State (1995 SCMR 1345)*, *Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)*, *Mohammad Akram v. The State (2009 SCMR 230)* and *Mohammad Zaman v. The State (2014 SCMR 749)*.”

25. After carefully examining the entire evidence and considering the material brought on record, I find that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The Six-day unexplained delay in FIR registration, non-examination of crucial witnesses including the original informant and alleged co-eyewitness, hostile witness declared by prosecution itself, sole eyewitness testimony riddled with contradictions and unnatural conduct, complete absence of corroborative evidence, dubious identification of the deceased, material defects in investigation, unproved motive, prosecution having been failed to disprove alibi defense and total reliance on interested witnesses without independent corroboration, conjointly renders the prosecution case against the appellant highly doubtful. The cumulative effect of the above fatal defects erodes the conviction and sentence awarded to the appellant by learned trial Court and thus impugned judgment is not sustainable.

26. For the foregoing reasons, this appeal was **ALLOWED**, impugned judgment dated 15.05.2024 passed by learned Additional Sessions Judge-VII, Malir, Karachi in Sessions Case No. 877/2012

was set aside and appellant Sajid Khan @ Kalo son of Ghulam Mustafa was acquitted of the charges under Section 302(b) read with Section 34 PPC and ordered to be released forthwith if not required in any other case by my short order dated 11.12.2025, these are the reasons thereof.

JUDGE

Shabir/PS