

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.S-505 of 2023.
(*Shahrukh v. The State*)

&

Criminal Jail Appeal No.S-745 of 2024.
(*Arbabuddin alias Chama alias Abrar v. The State*)

Appellants: 1. Shahrukh *through* Mr. Amir Mansoob Qureshi,
Advocate.
2. Arbabuddin alias Chama alias Abrar, *through* Dr. M.
Shahrukh Shahnawaz, Advocate.

The State: *through* Mr. Khadim Hussain Khuharo, Additional
Prosecutor General, along with Mr. Shah Imroze Khan,
Advocate for Witness Naqeebullah.

Date of hearing: 08.12.2025.
Date of Decision: 08.12.2025.
Date of reasoning: 24.02.2026.

JUDGMENT

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Ali Haider "Ada" J. The appellant, namely Shah Rukh, *through* Criminal Appeal No. 505 of 2023, and appellant Arbabuddin alias Chama alias Abrar, *through* Criminal Jail Appeal No. 745 of 2024, have assailed the judgment dated 16.09.2023, passed by the learned Additional Sessions Judge-I, Karachi East (Trial Court), in Sessions Case No. 123 of 2021, arising out of FIR No. 307 of 2020, registered at Police Station Gulshan-e-Iqbal, for offences punishable under Sections 334, 337-A(i), 504, 324, 336-B, 365, 302 and 34, P.P.C. Vide the impugned judgment, the learned trial Court convicted both the appellants and sentenced them to imprisonment for life. Each appellant was further directed to pay compensation in the sum of Rs. 700,000/- (Rupees Seven Hundred Thousand only) to the legal heirs of the deceased, and in default thereof, to suffer simple imprisonment for six months. The benefit of Section 382-B, Cr.P.C, was also extended to both the appellants.

2. Briefly stated, the FIR was lodged on 23.05.2020 at about 0400 hours, whereas the incident is stated to have occurred on 22.05.2020 at about 2200 hours. As per the contents of the FIR, the crux of the prosecution case is that the deceased/complainant had a monetary dispute regarding a vehicle with appellant Shah Rukh. On the pretext of payment of the remaining amount, both appellants allegedly took the deceased in a car. During the drive, while the deceased was seated on the front passenger seat, both appellants allegedly threw acid upon him. As a result, the deceased managed to escape from the vehicle by opening the door and was immediately shifted to the hospital. At the hospital, the statement of the injured (later deceased) was recorded by the duty officer of the concerned police station, who had reached there upon receiving information of the incident. The said statement was treated as the FIR under Section 154, Cr.P.C. Subsequently, on 29.05.2020, the injured succumbed to his injuries. During the investigation, appellant Shah Rukh was arrested on 29.05.2020, whereas appellant Arbabuddin was arrested on 09.06.2020. After completion of the usual investigation, a challan was submitted before the Anti-Terrorism Court-XVI, Karachi, where the requisite documents were supplied to the accused, and a charge was framed on 21.07.2020, to which both appellants pleaded not guilty and claimed trial.

3. The prosecution examined PW-01 Muhammad Saad Siddiqui, ASI/Duty Officer, who deposed regarding receipt of information, relevant roznamcha entries, letter to the Medical Legal Officer, and the statement/dying declaration of the deceased. He also produced a copy of the FIR and the memo of the place of incident. Thereafter, the prosecution examined Naqibullah (brother of the deceased), who produced the memo of arrest of appellant Shah Rukh dated 29.05.2020, memo of examination of the dead body, Form 25.35(1), memo of arrest of appellant Arbabuddin dated 09.06.2020, and memo of recovery of the car along with seat cover dated 12.06.2020.

4. Subsequently, the matter was transferred to the ordinary Court. After the supply of documents, the charge was again framed on 09.06.2021, to which the appellants once again pleaded not guilty and claimed trial. The learned trial Court then proceeded to record the prosecution's evidence.

5. The prosecution examined Naqibullah (already examined), Uzair Iqbal, Muhammad Yaseen, Wali Umar, Mavaiz Haider, and Iftikhar Ali Shah. The ASI

Muhammad Saad was again examined for the production of additional documents about the Police Station Record Management System. The medical evidence was led through Dr. Abid Haroon (who examined appellant Arbabuddin), Dr. Abdul Jabbar (who examined the injured/deceased and produced medical documents), Dr. Sohail Yar Khan (who examined appellant Shah Rukh), and Dr. Tarique Ali (who produced the burn centre record and death certificate). From the investigation wing, Raza Abbas was examined, who produced a memo of CDR along with call data records, a memo of seizure of CCTV footage, and a WhatsApp chat record. The prosecution also examined watchman Ameer Bux and the Judicial Magistrate, who recorded the statement of appellant Arbabuddin under Section 164, Cr.P.C., and produced the relevant proceedings and remand papers. The Investigating Officer, Akhtar Javed, was also examined, who produced relevant roznamcha entries regarding movement, analysis report of audio-visual material along with translation letters, correspondence with the In-charge Industrial Analytical Centre, University of Karachi, and CDR data report. Upon conclusion of the prosecution evidence, the learned State Counsel closed the prosecution side on 17.03.2023. During the course of the trial, a video clip of the alleged dying declaration was also produced and exhibited by the trial Court.

6. Then, after, the statements of the appellants were recorded under Section 342, Cr.P.C, wherein they denied the allegations, professed their innocence, and prayed for justice. They did not examine themselves on oath under Section 340(2), Cr.P.C., nor did they produce any defence evidence. Thereafter, the learned trial Court passed the impugned judgment, which is under challenge in the present appeals.

7. Learned counsel for the appellants contended that the prosecution's case suffers from material contradictions and inherent flaws; that the chain of circumstances has not been established; and that mere collection of evidence is not sufficient unless it inspires confidence and is legally admissible. Reliance was placed upon the case law reported as 2017 P.Cr.LJ Note 119, 2021 SCMR 522, 2017 MLD 105, and 2001 SCMR 94.

8. Conversely, learned State Counsel as well as learned counsel for the witness argued that the prosecution has successfully established its case beyond a reasonable doubt; that minor discrepancies are natural and do not affect the

core of the prosecution's case; and that the conviction recorded by the learned trial Court calls for interference subject to enhancement of sentence from life to death penalty.

9. It is pertinent to note that on 16.10.2025, a Division Bench of this Court passed an order in Criminal Revision Application No. 208 of 2023, filed by PW Naqeebullah seeking enhancement of sentence from life imprisonment to death penalty. The Division Bench observed that the said revision application was clubbed with the instant appeals and directed that the revision be treated as sine die and that the appeals be heard first by a learned Single Bench. Consequently, the revision was delisted, and the present appeals were fixed for hearing before this Bench.

10. Arguments heard. Record perused.

11. The prosecution's case primarily rests upon the alleged dying declaration of the deceased, which was recorded by the duty officer of the concerned police station upon receipt of information. However, the said declaration is neither corroborated by any independent or material piece of evidence nor supported by other reliable circumstances available on record. Furthermore, it has also been observed that, in view of the medical evidence and the prevailing condition of the injured at the relevant time, serious doubt arises as to whether the deceased was in a fit and coherent state of mind to make such a statement. It has further come on record that the deceased had sustained 61% burn injuries. Whether, in such a risky condition, he was physically and mentally fit to make a coherent and voluntary dying declaration was a matter which the prosecution was bound to establish through cogent and confidence-inspiring evidence. Significantly, the medical officer who examined the deceased did not depose that he was conscious, oriented, and in a fit state to make such a statement at the relevant time. This omission constitutes a material lacuna in the prosecution's case. Moreover, the video recording of the alleged dying declaration was never sent to the Forensic Science Laboratory for examination to determine its authenticity and genuineness. In the absence of such forensic verification, it would be unsafe to place reliance upon the said recording. When these infirmities are considered cumulatively and in juxtaposition with one another, the prosecution's case cannot be said to be free from doubt and surmise. In such circumstances, the benefit of doubt must essentially go to the accused. Reliance in this regard is

placed upon the judgment reported as **2025 SCMR 1876**, titled **RAJESH alias Rajoo Versus The STATE**.

12. Furthermore, Rule 25.21 of the Police Rules, 1934, relating to the recording of dying declarations, though not binding in character, nevertheless embodies a procedural safeguard intended to eliminate all reasonable possibilities of fabrication or manipulation. In the case of **FAQIR ALI Versus THE STATE**, reported as **1997 P Cr. L J 1453**, a Division Bench of the Peshawar High Court observed that, to wash off all possible tampering or fabrication on the part of the investigating agency, the legislature has prescribed precautionary measures and laid down a specific procedure for recording a dying declaration. For ready reference, the same is reproduced as under:

"25-21 Dying declarations.--- (1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, if possible, be examined by a Medical Officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no Magistrate can be obtained, the declaration shall when a gazetted Police Officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the Police Department and with the parties concerned in the case.

(4) If no such witnesses can be obtained without risk of the inured person dying before his statement can be recorded, it shall be recorded in the presence of two or more Police Officers.

(5) A dying declaration made to a Police Officer should, under section 162. Code of Criminal Procedure, be signed by the person making it. "

In the case of **Abdul Majid alias Majha v. The State**, reported as **1976 P.Cr. L.J 545 (Lahore)**, a similar situation had arisen. In that matter, the statement of the deceased was neither recorded in the presence of a medical officer nor was any effort made to have it recorded by a Magistrate or any other independent official. It was held that such a statement could not be accorded the status of a dying declaration and, at best, amounted to a statement under section 161, Cr.P.C.

Further reliance may be placed upon **Mst. FAZLAN BIBI Versus THE STATE**, reported as **2004 P Cr. L J 578**, wherein similar principles governing the evidentiary value and procedural sanctity of a dying declaration were reiterated.

13. Moreover, there is an unexplained and material delay in the recording of the statement of the brother of the deceased under section 161, Cr.P.C. The record reflects that he had been present at the hospital from the very first day and was even accompanied by the police; yet, his statement under section 161, Cr.P.C., was recorded after a delay of three days, without any plausible explanation furnished by the prosecution. Not only this, he subsequently improved and altered his stance by making another statement under section 161, Cr.P.C. on 12-06-2020, i.e., almost twenty days after the registration of the FIR. Such belated recording of statements and subsequent improvements cast a serious doubt upon the veracity and reliability of the witness. It is well settled that an unexplained delay in recording statements of material witnesses reduces their evidentiary value and renders the testimony liable to deliberation and consultation. In these circumstances, it would not be safe to place implicit reliance upon such evidence. Support in this regard is drawn from the judgment of the august **Supreme Court of Pakistan** in **Fateh Khan v. The State**, reported as **2025 SCMR 1408**.

14. Furthermore, PW-2 Naqeebullah, the brother of the deceased, deposed that he received a call on his mobile phone from a person who informed him that his brother had been injured due to acid being thrown. However, the investigation record is entirely silent regarding any effort to trace or join such a person, although the witness disclosed the caller's name as "Sherry" and had the relevant cell number. Moreover, other relatives and persons present at the hospital were neither examined nor recorded by the investigation team. There is also no evidence on record to suggest that the dying declaration of the deceased was recorded in the presence of any independent witnesses. Such omissions significantly undermine the prosecution's case, particularly in light of **Article 129(g) of the Qanun-e-Shahadat**, which emphasizes the requirement of independent verification to respond to any possible fabrication or dispute regarding evidence. Reliance in this regard is placed upon the judgment of the august **Supreme Court of Pakistan** in **AZHAR IQBAL and 3 others Versus The STATE through P.G Punjab, Lahore and others**, reported as **2026 SCMR 182**.

15. In Addition, on 29-05-2020, the car involved in the incident was secured under memo. However, the seat covers of the same car were secured on 12-06-2020, i.e., after a delay of almost thirteen days. These seat covers were

subsequently sent for chemical analysis, and according to the laboratory report, they were received on 15-06-2020. Such an inordinate delay in securing and sending the material evidence raises serious questions regarding the reliability of the investigation. Reliance in this regard is placed upon the judgment of the Division Bench of this Court titled **Abdul Sattar vs Ishaque and 3 others**, reported as **2025 PCr. L J 280**.

16. The prosecution's attempt to strengthen the testimony of its witnesses failed, as none could substantiate the facts or figures concerning the disputed motive. Each witness presented their account from their own perspective. Notably, the owner of the vehicle, Yaseen Ansari, was not produced, and yet, unnecessary evidence was recorded despite the absence of a proper chain of custody. In effect, the stance taken based on the dying declaration was undermined. As stated above, the ocular account provided by these prosecution-interested witnesses is not only materially contradictory but also uncorroborated by other available evidence. Reliance in this regard may be placed on the following decisions: **Mst Shazia Parveen v. The State (2014 SCMR 1197)**, **Muhammad Rafique v. The State (2014 SCMR 1698)**, **Naveed Asghar and 2 others v. The State (PLD 2021 SC 600)**, and **Abdul Khaliq v. The State (2021 SCMR 325)**.

17. Admittedly, no clothes of the deceased were secured or produced by the Investigating Officer. Had they been sent to the Chemical Examiner for examination, they would have provided the strongest corroboration of the testimony. This omission strikes at the very roots of the prosecution's case. Reliance in this regard is placed upon the cases reported as **Mst. Mir Zalai v. Ghazi Khan and others (2020 SCMR 319)** and **Mst. Sughra Begum and another v. Qaiser Pervez and others (2015 SCMR 1142)**.

18. In the present case, the appellant, namely Arbabuddin, had recorded his judicial confession under Section 164 of the Cr.P.C. His statement was exculpatory, as he alleged that. The Section 164 Cr.P.C statement of the co-appellant was recorded by the Magistrate, but it did not provide any corroboration. To claim that it substantiates the material evidence is untenable, as it stands on an entirely different footing and, therefore, cannot be safely relied upon against the accused. Further, the accused remained in police custody for a considerable time, having been arrested on 09-06-2020, while his confessional

statement was recorded on 17-06-2020. Nothing on record explains this delay. A delayed confessional statement loses its evidentiary value, particularly the longer an accused remains in police custody. The circumstances clearly establish that the prosecution failed to prove the case against the appellants beyond a reasonable doubt. Reliance is placed upon **Sher Ahmed and another v. The State and another (2025 SCMR 1717)**.

19. Further, the prosecution relied upon some Call Data Records (CDR) reflecting conversations between the deceased, the witnesses, and the accused. However, the record does not disclose whether the recovered mobile phones were in the possession of the deceased or the accused. The record also does not mention which SIMs were recovered or in whose name the corresponding mobile numbers were issued. Importantly, the CDR is a standard computerized document that can be printed and prepared on any computer. Therefore, it must bear the endorsement or authentication of the issuing cellular/telecom company. A bare CDR without the signature of the concerned officer, company seal, or authentication letter cannot be relied upon for trial purposes. Reliance is placed on **Azeem Khan v. Mujahid Khan (2016 SCMR 274)**, **Khalid Pervaiz v. State (2021 SCMR 522)**, **Rehmatullah and others v. The State (2024 SCMR 1782)**, **Asmat Ullah Khan v. The State (PLD 2024 SC 1119)**, and **Khair Muhammad and another v. The State (2025 SCMR 1599)**.

20. Keeping in view the foregoing discussion and reasons, it is manifest that the prosecution has failed to establish its case against the appellants beyond a reasonable doubt. It is a settled principle of criminal jurisprudence that if a single reasonable doubt arises in the prosecution's case, the benefit thereof must go to the accused. Reliance in this regard is placed upon the dictum laid down by the Hon'ble Supreme Court of Pakistan in **Qurban Ali v. The State, 2025 SCMR 1344**. In the present case, the prosecution's evidence suffers from material infirmities and dents, creating serious doubt about the veracity of the allegations. Consequently, the appellants are entitled to the benefit of such doubt.

21. Accordingly, vide short order dated 08.12.2025, both the appeals were allowed; the appellants were acquitted of the charge; and the impugned judgment passed by the learned trial Court was set aside. The jail authorities were directed to release the appellants forthwith, if not required in any other custody case.

22. The above constitutes the detailed reasons in support of the short order.

JUDGE