

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

Criminal Appeal No.S-34 of 2024

(Ali Hassan @ Ali Khan v. The State)

Appellant: Ali Hassan @ Ali Khan through Mr. Asif
Ali Abdul Razak Soomro, Advocate.

Complainant: Ghulam Mustafa Buledi through
Mr.Mujahid Ali Jatoi, Advocate.

Respondent: The State through Mr. Sardar Ali Solangi,
D.P.G. Sindh.

Date of hearing: 08.06.2026.

Date of Judgment: 24.06.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- The appellant namely, Ali Hassan @ Ali Khan has assailed the legality and propriety of the judgment dated 22.05.2024, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Jacobabad in Sessions Case No.323 of 2023, arising out of Crime No.85 of 2023, registered at Police Station PS Mouladad for the offence punishable under sections 302, 34, P.P.C, whereby, the learned trial Court after full-fledged trial, convicted the appellant and sentenced him to suffer imprisonment for life with order to pay Rs.500,000/ (Rupees Five Hundred Thousand only) to the legal heirs of the deceased Manzoor Ahmed as mandated by section 544-A, Cr.P.C; and, in case of default whereof, he was ordered to undergo simple imprisonment for a period of one year. However, benefit of section 382-B, Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case are that complainant Ghulam Mustafa Buledi registered FIR at Police Station Mouladad on 23.12.2022 at about 5:00 p.m., stating that on 19.12.2022 he, accompanied by his uncle Ghulam Rasool and cousin Leemon Khan, was proceeding towards Jacobabad, while his brother Manzoor Ahmed was travelling ahead of them on a separate motorcycle. Upon reaching the bank of Raheemabad Shakh, they allegedly found accused Hasul Buledi, the present appellant Ali Hassan @ Ali Khan and two unknown persons standing near parked motorcycles. According to the prosecution, accused Hasul, armed with a T.T. pistol, intercepted Manzoor Ahmed and fired at him on the allegation of "Karo" with his sister Mst. Shareefan, resulting in his death at the spot, whereas the present appellant was alleged to be armed with a K.K. rifle and to have pointed the same towards the complainant party.

3. After registration of the case, the police conducted investigation and initially submitted challan against the accused for offences punishable under Sections 302 and 34, PPC showing the appellant/accused Ali Hassan and co-accused Hasul as absconders. However, subsequently upon arrest of the appellant a supplementary challan was submitted against him.

4. Charge was framed against the appellant, who pleaded not guilty and claimed to be tried. At the trial, the prosecution examined nine witnesses, as under:-

i) (PW-01) Ghulam Mustafa Buledi (complainant) at Ex.14. He produced the FIR No.85/2022 of P.S. Mouladad at Ex.14/A.

ii) (PW-02) Leemon Khan Buledi (eye witness & mashir) at Ex.15. He produced (i) Danistnama (ii) Mashirnama of inspection of dead body (iii) Mashirnama of sealing of blood stained clothes of deceased Manzoor Ahmed and (iv) Mashirnama of visiting place of wardat & recovery of blood stained earth and empties at Ex.15/A to 15/D.

iii) (PW-03) Tapedar Abid Hussain Jakhrani (author of sketch of wardat) at Ex. 16. He produced sketch of wardat at Ex.16/A.

iv) (PW-04) ASI Abdullah Muhammadani [author of (i) dead body of inspection form, (ii) Danistnama (iii) inspection of dead body of

deceased Manzoor Ahmed and (iv) FIR] at Ex. 17. He produced DD Entries No.12.13.15 &16 (two sheets) at Ex.17/A&17/B.

v) (PW-05) Dr. Aijaz Ahmed Dahar (Medical Officer) at Ex. 18. He produced (i) Lash Chakas Form and (ii) Postmortem Report No.615, dated.03.01.2023 of deceased Manzoor Ahmed at Ex.18/A & 18/B.

vi) (PW-06) PC/2070 Abdul Kareem Bhayo at Ex. 19. He produced receipt regarding delivery of dead body of the deceased Manzoor Ahmed to the complainant Ghulam Mustafa at Ex.19/A.

vii) (PW-07) SIP Muhammad Saifal Jakhro (second investigation officer) at Ex.20. He produced (i) Report of Chemical Examiner Sukkur @ Rohri bearing No.310/2023, dated.26.01.2023 (ii) DD Entries No.20&27 (one sheet) (iii) Mashirnama of arrest & recovery of accused Ali Hassan alias Ali Khan Buledi, at Ex.20/A to 20/C.

viii) (PW-08) ASI Altaf Hussain Tunio (mashir of arrest of accused Ali Hassan alias Ali Khan Buledi) at Ex.21.

ix) (PW-09) SHO/Inspector Saeed Ahmed Jumani (first investigation officer) at Ex.22. He produced (i) DD Entries No.25 & 6 (one sheet) (ii) Letter No.CR.85-22, dated 28.12.2022 wrote to SSP for obtaining permission to send recovered blood stained earth for chemical examination (iii) Letter No.6612, dated 28.12.2022 of SSP Jacobabad for granting permission to send recovered blood stained earth to Chemical Examiner and (iv) DD Entry No.2&16 (one sheet) at Ex.22/A to 22/D.

Thereafter, the learned State counsel concluded the presentation of prosecution evidence with a statement filed at Ex.23.

5. Statement of the appellant/accused was recorded under Section 342, Cr.P.C, wherein he denied the allegations and claimed innocence. However, the appellant/accused neither examined himself on oath in terms of section 340(2), Cr.P.C. nor any witness in his defense.

6. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant through impugned judgment. Hence, the appellant against the said judgment has preferred instant appeal.

7. Learned counsel for the appellant contended that the impugned judgment is contrary to law and facts available on

record. He contended that the alleged occurrence took place on 19.12.2022 whereas the FIR was lodged after an unexplained delay of four days i.e. on 23.12.2022, which afforded sufficient time to the complainant for deliberation, consultation and false implication. He further contended that the earliest information regarding the occurrence was reflected in Roznamcha Entries Nos.12 and 13 recorded on the very date of occurrence, yet no accused was named therein, rendering the subsequent nomination of the appellant doubtful. Learned counsel contended that even according to the ocular account of the complainant and eyewitness Leemon Khan, the sole allegation against the appellant is that he was present at the place of incident armed with a K.K. rifle and pointed the same towards the complainant party; no injury, firing, exhortation, instigation, facilitation or any overt act whatsoever has been attributed to him and the fatal shots admittedly were fired by absconding co-accused Hasul. He further contended that neither any weapon was recovered from the appellant nor any empty shell of K.K. rifle was secured from the place of occurrence. He contended that no motive was alleged against the appellant and no evidence was produced to establish any prior meeting of minds or pre-arranged plan between him and the principal accused. Learned counsel further pointed out that the statements of prosecution witnesses under Section 161, Cr.P.C. were recorded after delay and that substantial investigative proceeding, including preparation of inquest report, mashirnamas and postmortem proceedings, had already commenced before registration of the FIR, thereby creating serious doubts regarding the authenticity of the prosecution version. He contended that mere presence at the scene of occurrence, without proof of active participation or common intention, is insufficient to attract vicarious liability under Section 34, PPC. He also pointed out that it is settled principle that where a single circumstance creates reasonable doubt, the accused is entitled to its benefit as of right and not as a matter of grace.

Learned counsel, therefore, prayed for acquittal of the appellant. In support of his contentions, he has relied upon the decision in the case reported as ***GHULAM MUSTAFA alias Raja Buledi v. The STATE*** [2025 SCMR 1633].

8. Learned Deputy Prosecutor General, Sindh while supporting the impugned judgment, submitted that the prosecution succeeded in proving its case through confidence-inspiring ocular evidence furnished by the complainant and eyewitness, both of whom consistently nominated the appellant. He contended that the appellant was present at the place of occurrence armed with a deadly weapon and his conduct clearly demonstrated his association with the principal offender. According to the learned D.P.G., the appellant facilitated the commission of the offence, thereby sharing common intention with co-accused Hasul. He further submitted that the medical evidence fully corroborated the ocular account and that minor discrepancies pointed out by the defence are natural and inconsequential. He, therefore, prayed for dismissal of the appeal and maintenance of conviction.

9. Learned counsel for the complainant adopted the arguments advanced by the learned D.P.G. and further added that the appellant was specifically nominated in the FIR and was known to the complainant party prior to the occurrence; therefore, there was no possibility of mistaken identity. According to him, the occurrence took place in broad daylight and the appellant was duly identified by the complainant and eyewitness. He contended that the appellant was armed with a K.K. rifle and remained present alongside the principal offender during the entire occurrence, thereby facilitating commission of the crime and creating fear among the witnesses. Learned counsel contended that the role attributed to the appellant clearly attracted the principle of common intention embodied in Section 34, PPC, as the accused persons acted in concert and in furtherance of a shared design. He maintained that the evidence

of the prosecution witnesses remained unshaken despite lengthy cross-examination and was sufficiently corroborated by medical evidence. Learned counsel further contended that mere absence of recovery from the appellant would not absolve him of criminal liability when reliable ocular testimony was available on record. He contended that the learned trial Court rightly appreciated the evidence and recorded conviction after a proper assessment of the material brought on record. He, therefore, prayed that the appeal be dismissed and the conviction and sentence awarded to the appellant be maintained. In support of his contentions, he has relied upon the decisions in the cases reported as **RAB NAWAZ and 2 others v. The STATE [2015 P.Cr.L.J 1531]** and **RAZAULLAH v. The STATE and others [2016 P.Cr.L.J Note 15]**.

10. I have heard learned counsel for the parties at considerable length and have carefully examined the entire evidence available on record including the cases cited at the bar.

11. The admitted position emerging from the record is that the fatal firearm injuries causing death of deceased Manzoor Ahmed were attributed exclusively to absconding co-accused Hasul. Neither the complainant nor eyewitness Leemon Khan alleged that the present appellant fired any shot at the deceased. The allegation against the appellant is confined to his alleged presence at the scene while armed with a K.K. rifle and his having pointed the same towards the complainant party.

12. A careful scrutiny of the prosecution evidence reveals that no overt act has been assigned to the appellant. He neither caused any injury to the deceased nor fired any shot, nor did he exhort, instigate or facilitate the principal accused in any tangible manner. Significantly, no K.K. rifle was recovered from him and no empty shell of such weapon was secured from the place of occurrence. The mashirnama of inspection of the scene reflects recovery of only 30-bore empties, which allegedly

correspond to the weapon allegedly used by co-accused Hasul. Consequently, there exists no forensic or circumstantial evidence connecting the appellant with the actual commission of the offence.

13. Another significant circumstance creating doubt in the prosecution case is the delay of four days in registration of the FIR. The occurrence admittedly took place on 19.12.2022 whereas the FIR was lodged on 23.12.2022. Although, the prosecution attempted to explain the delay by reference to funeral ceremonies and condolence gatherings, the record shows that police machinery had already been set in motion immediately after the occurrence. Inquest proceedings, inspection of the dead body, seizure of blood-stained clothes and postmortem examination had all been conducted prior to registration of the FIR.

14. The conviction of the appellant has essentially been based upon the application of Section 34, PPC. However, it is settled law that before constructive liability can be fastened upon an accused under Section 34, PPC, the prosecution must establish through independent and reliable evidence that the accused shared a common intention with the principal offender and participated in the commission of the crime pursuant to a pre-arranged plan. Mere presence at the place of occurrence, without proof of active participation or prior concert, does not attract the mischief of Section 34, PPC. In the present case, the prosecution has failed to produce any evidence showing prior meeting of minds between the appellant and co-accused Hasul. No motive has been attributed to the appellant. The alleged motive of "Siyah-Kari" was personal to co-accused Hasul and not to the appellant. The record is completely silent as to why the appellant would join in the alleged plan to eliminate the deceased. In the absence of any motive, overt act, recovery or corroborative circumstance, the appellant's mere presence at the place of occurrence cannot automatically be construed as

proof of common intention. The evidence further reflects that the complainant and eyewitness remained at a distance from the deceased at the time of occurrence and their role attribution against the appellant is of a generalized nature. Such evidence, viewed in conjunction with the delayed FIR and absence of independent corroboration connecting the appellant with the commission of offence to have joined the principal offender with common intention pursuant to a pre-arranged plan, does not inspire confidence sufficient to sustain a conviction carrying a sentence of life imprisonment.

15. It is a basic principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. The benefit of every reasonable doubt must accrue to the accused. It is equally well settled that a single circumstance creating reasonable doubt in a prudent mind is sufficient to extend benefit of doubt to an accused person and entitles an accused to acquittal; several authorities have reiterated that formulation, including *Tariq Pervez v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230), *Muhammad Mansha v. The State* (2018 SCMR 772), and *Muhammad Hassan and another v. The State and others* (2024 SCMR 1427). In the present matter, the cumulative effect of the unexplained delay in FIR, absence of any overt act, lack of recovery, absence of motive, non-recovery of K.K. empties from the scene and failure of the prosecution to establish common intention beyond reasonable doubt creates serious infirmities in the prosecution case. These circumstances are not merely technical defects but go to the very root of the prosecution story.

16. For what has been discussed above, I am of the considered view that the prosecution has failed to prove beyond reasonable doubt that the appellant Ali Hassan @ Ali Khan shared common intention with absconding co-accused Hasul in the commission of murder of deceased Manzoor Ahmed. The

evidence brought on record establishes, at the highest, his alleged presence at the place of occurrence. Mere presence, without proof of active participation, facilitation or prior concert, is insufficient to sustain a conviction under Section 302(b) read with Section 34, PPC. The learned trial Court appears to have proceeded on the assumption that presence of the appellant at the scene was by itself sufficient to attract constructive liability. Such an approach is not supported by settled principles governing Section 34, PPC. Before vicarious liability can be imposed, the prosecution must establish conscious sharing of common intention through reliable and convincing evidence. The prosecution has failed to discharge that burden in the present case. In such circumstances, I am unable to subscribe to the findings recorded by the learned trial Court. The evidence available on record falls short of the standard required for maintaining a conviction in a capital offence. The appellant is, therefore, entitled to the benefit of doubt as a matter of right. Consequently, this Criminal Appeal is **allowed** and the impugned judgment is **set aside**. The conviction and sentence awarded to appellant Ali Hassan @ Ali Khan are hereby vacated. He is acquitted of the charge by extending him the benefit of doubt. The appellant shall be released forthwith, if not required to be detained in any other case.

J U D G E