

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT
MIRPURKHAS**

Criminal Appeal No. S-119 of 2024

Appellant : Sikandar son of Piyaro
Through Mr. Muzaffar Ali Laghari, Advocate.

Complainant : Mst Hajran wife of Ameer Bux.
Through Haji Qalandar Bux Laghari, Advocate.

The State : *Through* Mr. Ghulam Abbas Dalwani, D.P.G.

Date of hearing : **10.07.2026**
Date of judgment : **31.07.2026**

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.- By means of the instant criminal appeal, the appellant Sikandar assails the judgment dated 21-08-2021 rendered by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas, in Sessions Case No.388 of 2020, arising out of Crime No.70 of 2020 registered at Police Station Mirwah Gorchani for an offence punishable under section 302 P.P.C. By the impugned judgment, the appellant stood convicted and was sentenced to imprisonment for life as tazir, coupled with a direction to pay compensation of Rs.500,000/- to the legal heirs of the deceased Mst. Mariyam pursuant to section 544-A Cr.P.C., in default whereof to undergo simple imprisonment for a further term of one year, with the benefit of section 382-B Cr.P.C. extended to him.

2. The prosecution narrative, as unfolded in the FIR, is that the complainant Mst. Hajran lodged FIR No.70 of 2020 on 26-08-2020 at 1710 hours at Police Station Mirwah Gorchani, alleging that her daughter Mst. Mariyam had been given in marriage to the appellant about seven years prior to the occurrence, and that two children were born of the wedlock. It was further averred that the deceased had repeatedly complained to the complainant of maltreatment and death threats at the hands of the appellant, and that on 24-08-2020 the deceased telephoned the complainant to report that the appellant was assaulting her at the house of Ghulam Shabbir, urging that she be rescued therefrom. The FIR proceeds to allege that the complainant, accompanied by one Abdullah, travelled to the said location aboard a Chinchhi Rickshaw, and that as she attempted to extricate the deceased, the appellant inflicted a fatal hatchet blow with its sharp edge upon the back of Mst. Mariyam's head, killing

her instantaneously, before fleeing the scene with the weapon. The police, upon receiving information, are alleged to have reached the spot, transported the body to RHC Mirwah for postmortem examination, and following the burial, the complainant proceeded to lodge the FIR on 26-08-2020.

3. Upon completion of investigation, the challan was submitted before the learned Judicial Magistrate, who committed the matter to the Court of Sessions, whereupon it was entrusted to the learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas, for trial in accordance with law. The charge was duly framed against the appellant, and in support thereof, the prosecution arrayed as many as nine witnesses before closing its case. Thereafter, the appellant's statement under section 342 Cr.P.C. was recorded, wherein he categorically denied the allegations, asserting that the deceased had obtained divorce from him nearly a year prior to the incident and had subsequently entered into wedlock with one Chanesar Burfat, residing with him at Tando Allahyar, while the children remained in the appellant's custody; he further contended that he had been falsely implicated at the instance of the complainant party. The appellant declined to record a statement on oath under section 340(2) Cr.P.C. and led no defence evidence.

4. Learned counsel for the appellant, with considerable force, contended that the prosecution case is fabricated and afflicted with unexplained delay; that the FIR is belated and the product of deliberation; that the purported eyewitnesses are interested and closely related to the complainant party; that no independent resident of the locality was associated with the investigation despite their admitted availability; that the recovery of the hatchet is steeped in doubt; and that the prosecution witnesses have introduced material improvements and contradicted themselves on matters of vital significance. He submitted that although the occurrence is alleged to have taken place on 24-08-2020 at 0930 hours, the FIR was not lodged until 26-08-2020 at 1710 hours, notwithstanding that the postmortem examination had already been conducted on 24-08-2020 itself. He pointed out that the postmortem, conducted by the WMLO, made no reference to the hospital, omitted the time of arrival, and departed from the prescribed proforma. He further submitted that PW-2 Madad Ali, the Tapedar, deposed in a purely formal capacity; that PW Abdul Sattar, the mashir, was similarly formal in his testimony; that no witness was examined from the household of Ghulam Shabbir, where the occurrence is said to have transpired; and that the

Datsun driver was never produced. He additionally emphasized that the complainant's residence lies some 22 kilometres from the site of occurrence, and that Mashooq, the brother of the deceased, though examined, was not an eyewitness. He drew particular attention to the testimony of the purported eyewitness Abdullah, who admitted that while he witnessed the appellant fleeing with the hatchet, he did not witness the actual infliction of injury upon the deceased. He observed further that PC Ali Muhammad, mashir of recovery and arrest, deposed in a merely formal fashion, and that the Investigating Officer's testimony was riddled with glaring omissions. In fortification of his submissions, learned counsel placed reliance upon *Rasheed Ahmed alias Sheeda*¹, *Abdul Latif and another*², *Rizwan Abdul Kalam and 2 others*³, *Kewal and 3 others*⁴, *Muhammad Riaz alias Baddi*⁵, *The State through Advocate General Khyber Pakhtunkhwa*⁶, *Saeed Akhtar and another*⁷, and *Abdul Qayoom and another*⁸.

5. Conversely, learned DPG for the State, duly assisted by learned counsel for the complainant, resisted these submissions and argued that the prosecution had squarely nominated the appellant with a specific role in the commission of the offence, that the medical evidence lent corroboration to the ocular account, and that the recovery of the hatchet, coupled with a positive serology report, furnished further corroborative strength to the prosecution's case.

6. I have heard learned counsel for the respective parties at considerable length and have meticulously scrutinized the entire record with their able assistance. The pivotal question that falls for determination is whether the prosecution has discharged its burden of proving, beyond reasonable doubt, that the appellant committed the murder of Mst. Mariyam in the manner alleged.

7. PW-1 Dr. Hameeda, Chief Women Medical Officer, testified that on 24-08-2020 at 12:15 noon, the dead body of Mst. Mariyam was brought to RHC Mirwah Gorchani by ASI Muhammad Hussain for postmortem examination; that she conducted the said examination between 1:00 p.m. and 2:00 p.m.; that she found an incised injury on the back of the head involving the skull bone with oozing brain matter; and that death, in her

¹ *Rasheed Ahmed alias Sheeda v. The State* (2026 SCMR 798).

² *Abdul Latif and another v. The State* (2026 YLR 500).

³ *Rizwan Abdul Kalam and 2 others v. The State* (2025 MLD 488).

⁴ *Kewal and 3 others v. The State* (2020 YLR Note 158).

⁵ *Muhammad Riaz alias Baddi v. The State and others* (2026 P Cr. L J 362).

⁶ *The State through Advocate General Khyber Pakhtunkhwa v. Faizullah and 3 others* (2021 YLR 163).

⁷ *Saeed Akhter and another v. The State and another* (2026 P Cr. L J 105).

⁸ *Abdul Qayoom and another v. The State* (2018 P Cr. L J 229).

opinion, resulted from massive haemorrhage, severance of vessels, irreversible shock, and neurogenic shock consequent upon brain trauma. PW-2 Tapedar Madad Ali produced the police letter authorizing preparation of the sketch and map of the vardat, but conceded in cross-examination that he had not visited the site on the pointing of the complainant or any witness, and had instead prepared the map upon the instructions of W/SI Muhammad Rafique. PW-3 Abdul Sattar acted as mashir for inspection of the dead body, preparation of the Lash Chakas Form and Danistnama, securing of the deceased's clothing, and inspection of the site, yet admitted in cross-examination that upon his arrival, the body was already lying in a Datsun, and that the police merely obtained his signatures on the relevant papers there. PW-4 ASI Muhammad Hussain, the first Investigating Officer, claimed to have received telephonic information at about 10:00 hours on 24-08-2020, proceeded to the site, inspected the body, collected blood-stained earth, dispatched the body for postmortem, and thereafter registered the FIR on 26-08-2020, once the complainant appeared at the police station following the burial. PW-5, the complainant Mst. Hajran, appeared as the principal witness to the occurrence; PW-6 Mashooque Ali, son of the complainant and brother of the deceased; PW-7 Abdullah, projected as an eyewitness accompanying the complainant; PW-8 PC Ali Muhammad, mashir of the recovery of the hatchet and the appellant's arrest; and PW-9 SIP Aftab Ahmed Abbasi, the second Investigating Officer, who conducted further investigation, secured the sketch, effected recovery of the hatchet upon spy information, and submitted the challan.

8. That Mst. Mariyam met an unnatural death admits of no serious controversy. The postmortem report, corroborated by the testimony of PW-1 Dr. Hameeda, establishes that the deceased sustained a single incised wound to the back of her head, penetrating the skull and exposing brain matter, and that this injury constituted the cause of death. It must, however, be emphasized that the mere establishment of homicidal death, without more, cannot fasten criminal liability upon the appellant; his complicity in the occurrence must independently be established through evidence that is trustworthy, confidence-inspiring, and legally sustainable.

9. The prosecution's case regarding the appellant's involvement rests substantially upon the testimony of the complainant Mst. Hajran and PW Abdullah, the remaining witnesses being either formal or purely investigative in character. Close examination of this evidence reveals that

the prosecution version is riddled with material contradictions and grave infirmities. Although the occurrence is alleged to have taken place on 24-08-2020 at about 0930 hours, and although the police reportedly reached the scene the very same day upon telephonic intimation, completed initial proceedings, dispatched the body for postmortem, and released it to the complainant for burial, the FIR itself was not registered until 26-08-2020 at 1710 hours. PW-4 ASI Muhammad Hussain stated that he had directed the complainant to appear for registration of the FIR only after the burial, while PW-5 candidly conceded that she lodged the FIR only after consultation with her son Mashooque Ali. This delay of nearly two days in setting the criminal law into motion, despite immediate police presence and the complainant's ready availability remains materially unexplained, and opens the door to inference of consultation, deliberation, and embellishment.

10. The very foundation of the prosecution's narrative rests upon the alleged telephonic call purportedly made by the deceased to the complainant; yet the complainant herself admitted in cross-examination that the deceased possessed no mobile phone of her own and had placed the call from the phone of Ghulam Shabbir, whose number, notably, finds no mention in the FIR. No call data record, subscriber detail, or any other independent evidence was adduced to substantiate either this alleged call, the complainant's subsequent call to Abdullah, or the telephonic information said to have been conveyed to the police station. Even PW-4 admitted that neither the informant's phone number nor that of the recipient at the police station finds mention in Roznamcha entry No.09. These omissions strike at the very genesis of the prosecution's narrative and gravely impair its intrinsic evidentiary worth.

11. The prosecution has equally failed to maintain consistency regarding the place of occurrence. While the FIR situates the incident at the house of Ghulam Shabbir, the complainant, in her examination-in-chief, deposed that she and Abdullah proceeded to the appellant's house, where the incident occurred. PW-6 Mashooque Ali, in cross-examination, admitted that his sister was not murdered at the appellant's house or village, volunteering instead that she was murdered at the house of the appellant's sister's husband. PW-9 SIP Aftab Ahmed further confirmed that the incident occurred at the house of Ghulam Shabbir, where Ghulam Shabbir and his family resided, and where the deceased had been living following a quarrel with her husband. Even the charge specifically identifies the place of occurrence as the house of Ghulam

Shabbir Chandani, situated in village Khuda Bux Chandani, Deh-380, Taluka Shujaabad, District Mirpurkhas. This inconsistency is no trifling discrepancy, it strikes at the very root of the prosecution's reconstruction of events.

12. The ocular account is further eroded by the testimony of PW Abdullah, projected by the prosecution as an eyewitness. In cross-examination, he candidly admitted that the house of Ghulam Shabbir was enclosed by a hedge some four feet in height, without a door, that he stood outside this hedge, and that he did not witness the appellant inflicting the hatchet blow upon the deceased, adding, by way of a voluntary explanation, that he entered only upon hearing the complainant's cries after the incident had already occurred. PW-4 ASI Muhammad Hussain corroborated this account, admitting that visibility from outside was obstructed by the Devi bush hedge. With PW Abdullah's own admission that he did not witness the assault, and the first Investigating Officer's confirmation of obstructed visibility, the prosecution is left to rest almost entirely upon the solitary testimony of the complainant.

13. It bears noting that the complainant is the mother of the deceased, PW-6 Mashooque Ali is her son, and PW Abdullah stands connected to the complainant party, having admitted that PW Mashooque is his sister's husband and the complainant his sister's mother-in-law. Mere relationship, standing alone, is no ground for discarding testimony; but where the case otherwise suffers from serious infirmities, the Court is duty-bound to seek independent corroboration. In the present matter, the complainant herself conceded that Ghulam Shabbir and his family were present in the house at the time of occurrence, that four or five houses shared the same hedge, and that ten to fifteen villagers gathered at the scene, yet not a single villager was cited or examined. More tellingly, PW-9 SIP Aftab Ahmed conceded that he never recorded the statement of Ghulam Shabbir or any member of his family, despite the incident having occurred, by his own account, within their residence. The withholding of the most natural and independent witnesses available to the prosecution warrants an adverse inference against it.

14. The evidence concerning the mashirs and the preparation of documents is likewise clouded by doubt. PW-3 Abdul Sattar, though stating in his examination-in-chief that the police inspected the body at 1050 hours and prepared the relevant mashirnamas in his presence at the spot, admitted in cross-examination that upon his arrival, the body

already lay in a Datsun, and that the police merely secured his signatures on certain papers. This admission renders highly suspect the prosecution's version of transparent and contemporaneous documentation.

15. The site plan offers no relief to the prosecution's case. PW-2 Tapedar Madad Ali categorically admitted that he never visited the site upon the pointing of the complainant or any witness, and that he prepared the sketch solely upon the instructions of W/SI Muhammad Rafique. The sketch, prepared on 01-10-2020, more than a month after the occurrence and not upon the direct pointing of an eyewitness, carries scant corroborative weight in the face of an already fragile evidentiary edifice.

16. The medical evidence, while confirming homicidal death, discloses discrepancies that remain unexplained. PW-1 Dr. Hameeda deposed that the interval between injury and death was approximately four to five hours, and between death and postmortem approximately twenty to thirty minutes, whereas the postmortem report itself records the interval between injury and death as twenty to thirty minutes, and the time since death as approximately four to five hours. She further admitted in cross-examination that the postmortem report departed from the prescribed proforma, made no mention of handing over the body and clothes to the police, and that the deceased's clothing was handed over without a seal parcel, a version that directly conflicts with PW-4's testimony that the WMO had sealed the clothes herself before handing them over. Such inconsistency in the medico-legal chain and the custody of case property gravely undermines the sanctity of the prosecution's evidence.

17. The alleged recovery of the hatchet fares no better under scrutiny. PW-7 Abdullah, in his examination-in-chief, deposed that the appellant fled the scene with the hatchet in hand. Yet PW-5, the complainant, testified that the police summoned her to Belaro Shakh seven to ten days after the incident and thereafter escorted her to the house of Ghulam Shabbir, where the hatchet was recovered lying within the hedge, notwithstanding that heavy rain had fallen on the date of the incident, and light rain even at the time of recovery. Juxtaposed, these two accounts diverge markedly, casting reasonable doubt upon the veracity of the recovery. PW-8 PC Ali Muhammad stated that the hatchet was recovered on 04-09-2020 upon spy information from the hedge of Ghulam Shabbir's house, that the site of recovery was surrounded by dwellings, and that no local resident was present at the time, further

admitting that District Mirpurkhas had experienced flooding during August and September 2020. PW-9 SIP Aftab Ahmed similarly confirmed that the recovery was effected upon spy information from the same hedge, that the complainant was summoned only after recovery to identify the weapon by its dried blood, and that heavy rain and flooding had indeed afflicted the district during the relevant period. It thus emerges that the weapon was neither recovered from the appellant's possession nor upon his pointing out, but from an open, accessible location, days after the occurrence, under circumstances of heavy rainfall and flooding, without the association of any independent mashir. Such a recovery cannot, in the eye of law, be regarded as safe or reliable corroboration.

18. It further bears mention that the forensic serology report merely establishes the presence of human blood on the deceased's clothing, the hatchet, and the soil collected from the site, without establishing, through grouping or DNA analysis, any nexus between the blood on the hatchet and that of the deceased. Compounding this deficiency, the forensic report describes item No.4 as the "hatchet recovered from Sikander," directly contradicting the collective testimony of PW-5, PW-8, and PW-9, all of whom stated that the hatchet was recovered from the hedge of Ghulam Shabbir's house and not from the appellant's possession. This discrepancy further erodes the reliability of the prosecution's case.

19. The defence plea raised by the appellant in his statement under section 342 Cr.P.C. that the deceased had already divorced him roughly a year before the occurrence and had entered into marriage with one Chanesar Burfat, was never effectively rebutted by the prosecution. The complainant admitted she did not know whether the deceased had married Chanesar Burfat in 2019 following her marriage to the appellant. PW-6 Mashooque Ali similarly professed ignorance as to whether his deceased sister had gone away with Chanesar in 2019 and never returned to the appellant. PW-7 Abdullah likewise disclaimed knowledge of any subsequent marriage between the deceased and Chanesar Burfat. These admissions assume considerable significance, for they betray uncertainty within the prosecution's own camp regarding the very background of the relationship between the deceased and the appellant at the material time.

20. It is axiomatic that a conviction in a criminal trial cannot rest upon conjecture or upon evidence that remains doubtful on material particulars. The cumulative weight of the delayed FIR, the absence of corroborative call records, the contradictory accounts of the place of

occurrence, PW Abdullah's admission that he did not witness the actual assault, the non-examination of natural witnesses readily available at the scene, the doubtful preparation of the mashirnamas, the defective sketch, the inconsistencies pervading the medical and custody-chain evidence, and the highly suspect recovery of the hatchet from an open location after considerable delay, compels the conclusion that the prosecution's case fails to inspire confidence. The learned trial Court, with the utmost respect, did not adequately appreciate these infirmities, and proceeded to convict the appellant upon evidence that falls demonstrably short of the exacting standard demanded by criminal jurisprudence.

21. For the reasons discussed above, I am of the considered view that the prosecution has failed to establish the charge against the appellant beyond reasonable doubt. The appellant is, therefore, entitled, as a matter of right, to the benefit of doubt. In this respect, reliance can be placed upon the case of Muhammad Mansha v. The State reported in 2018 SCMR 772, wherein the Hon'ble Supreme Court of Pakistan has held that:-

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 Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).

22. Consequently, the appeal is allowed. The judgment dated 21-08-2021, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas, in Sessions Case No.388 of 2020 arising out of Crime No.70 of 2020 registered at Police Station Mirwah Gorchani under section 302 P.P.C., is hereby set aside, and the appellant Sikandar son of Piyaro is acquitted of the charge, the benefit of doubt being extended to him. He shall be released forthwith, unless required in connection with any other custody case.

JUDGE

Adnan Ashraf Nizamani