JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No. S-04 of 2025
Ameer Ali & others v The State

Appellants:	Ameer Ali, Sajjad Ali, Ali Akbar, Muhammad Hashim and Aari through Mr. Muhammad Hashim Laghari, Advocate.
Respondent:	The State through Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.
Complainant:	Ghulam Mustafa through Mian Taj Muhammad Keerio and Mr. Dhirau Mal, Advocates for complainant.
Date of Hearing:	23.10.2026
Date of Judgment:	30.10.2026

JUDGMENT

MUHAMMAD HUMAYON KHAN, J: - Through this appeal, the appellants Ameer Ali, Sajjad Ali, Ali Akbar, Muhammad Hashim and Aari challenge the judgment of the learned 1st Additional Sessions Judge/MCTC, Tando Allahyar, in Sessions Case No.56 of 2020. That case arose out of the FIR of Police Station Umar Sand, Tando Allahyar, lodged by the complainant Ghulam Mustafa. By that judgment each appellant was convicted and sentenced, with the sentences to run concurrently and with the benefit of section 382-B Cr.P.C., as follows:

- under section 302(b) read with section 149 PPC, for the qatl-i-amd of Ghulam Qadir, to imprisonment for life and compensation of Rs.500,000/- under section 544-A Cr.P.C.;

- under section 324 read with section 149 PPC, to rigorous imprisonment for seven years and a fine of Rs.50,000/-; and

- under sections 337-A(i), 337-F(i), 337-F(ii) and 337-F(vi) read with section 149 PPC, to rigorous imprisonment of one to three years with daman payable to each injured person.

2. The background, in chronological order, is as follows.

- 2016 to 2017: an earlier criminal case between the same families ended in the acquittal of the present appellants by judgment

dated 26.07.2017. The complainant party challenged that acquittal in this Court.

- 29.10.2019, about 0600 hours: according to the FIR, the complainant, his brothers Abdullah, Mehmood and Ghulam Qadir, his son Junaid and his mother Mst. Saleha were asleep in their house. Eight named persons, including the appellants, and some twenty-three unknown persons entered the house. They were armed with hatchets, lathis, an iron rod and pistols, and they assaulted the occupants. The motive alleged was that the complainant party had refused to withdraw the pending case.

- The same morning: the injured were taken to Police Station Umar Sand, where letters for treatment were issued. At Civil Hospital, Tando Allahyar they were given first aid and referred to Hyderabad.

- 30.10.2019: Ghulam Qadir died during treatment at Hyderabad. The post-mortem examination was conducted at Civil Hospital, Tando Allahyar at 11:20 hours. At 2200 hours the complainant lodged the FIR, about forty hours after the occurrence.

- Investigation: Ameer Ali, Sajjad Ali and Ali Akbar were arrested, and a lathi was said to have been recovered at Ameer Ali's instance. Muhammad Hashim was arrested on 26.06.2021 and Aari later, each sent up by supplementary challan.

- Trial: the charge was amended as each accused was joined, and finally framed against all five appellants (Ex. 17). The prosecution examined twelve witnesses, and gave up Abdul Saboor, Junaid and Mst. Saleha. The appellants denied the charge, claimed false implication over the earlier litigation, and led no defence evidence. The trial Court convicted them as stated above, and this appeal followed.

3. PW-1 Ghulam Mustafa, complainant and injured. He repeated the account in the FIR and produced the documents relating to the dead body and photographs of the deceased and the injured. In cross-examination he admitted the following:

- the FIR was lodged about forty hours after the occurrence;

- people of other communities live in the village, but no one from outside his family is a witness; and
- the appellants had been acquitted in the earlier case, against which an appeal is pending.

He denied that it was dark at the time, that the FIR was lodged after consultation, and that the appellants had been falsely implicated.

4. **PW-2 Abdullah, injured.** He supported the complainant's account and described his own hatchet injuries. In cross-examination he said that two women of the family also went to the police station, although neither is shown in the record or produced as a witness. He denied that it was dark.

5. **PW-3 Mehmood, injured.** He gave the same account and described a hatchet injury to his forehead and a cut finger. He accepted that the parties had earlier litigation. He said it was not completely dark at the time of the occurrence.

6. **PW-4 Muhammad Usman, injured and mashir.** He said he arrived on hearing cries, was himself injured, and took the injured to the police station. He also produced the various memos. He admitted that the appellants had lodged a counter-FIR against the complainant party.

7. **PW-5 Dr. Waqar Ahmed, Medical Officer.** He conducted the post-mortem examination on 30.10.2019. He found multiple abrasions on the left forehead and the left side of the face, with bleeding from the nose, and nothing abnormal in the chest or abdomen. He reserved his opinion pending the reports on the viscera and histopathology. He then opined that death was caused by brain haemorrhage from head injury, attributing it to injuries Nos. 1 and 2, which were caused by a hard and blunt substance. In cross-examination he accepted that bleeding from the nose may have many causes, such as high blood pressure. He also said he could not say that the injuries he saw could have been the cause of death.

8. **PW-6 Dr. Sana Mujtaba, Woman Medical Officer.** She produced the final medical certificate of Mst. Saleha, recording one abrasion.

9. **PW-7 Dr. Muzakkir Toseef, Medical Officer.** He examined the injured at Civil Hospital, Tando Allahyar on 29.10.2019, including Ghulam Qadir, and referred them to Hyderabad. In cross-examination he made three admissions:

- he had not seen any visible injury on Ghulam Qadir;
- the nature of the injury and the kind of weapon are left blank in Ghulam Qadir's final certificate; and
- he issued Muhammad Usman's certificate some three months later, on the basis of an affidavit.

10. **PW-8 ASI Mukhtiar Ahmed.** He prepared the memos of injuries. He admitted that he did not see Mst. Saleha's injuries himself, as no lady constable was present.

11. **PW-9 Muhammad Saleem, Tapedar.** He prepared the sketch on 04.11.2019. He admitted that no police official accompanied him, that only the complainant was present, and that the sketch does not show the blood-stained earth or the surrounding houses.

12. **PW-10 Inspector Aftab Ahmed, second Investigating Officer.** He produced correspondence and the call data record of Muhammad Hashim. He admitted the following:

- the initial investigation was conducted by an ASI who could not investigate a murder;
- the lathi produced in Court is not blood-stained;
- no woman's clothes were taken into possession; and
- he did not obtain a Magistrate's permission for the call data records.

13. **PW-11 Inspector Miskeen Gahelo (third Investigating Officer), PW-12 HC Ameer Bux and HC Muhammad Bux.** These formal witnesses produced the Roznamcha entries and the letters forwarding the case property to the Chemical Examiner and to the laboratory at Jamshoro.

14. Mr. Muhammad Hashim Laghari, learned counsel for the appellants, contended that the appellants were falsely implicated

because of long-standing enmity and earlier litigation, in which they had been acquitted. He made the following submissions:

- The FIR was lodged after an unexplained delay of about forty hours, after consultation, and named almost every male member of the appellants' family.

- The occurrence took place at 0600 hours in late October, before full daylight, and no source of light was proved.

- The best evidence was withheld: the injured Mst. Saleha and Junaid, and Abdul Saboor, were given up, attracting an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984.

- Muhammad Usman's medical certificate was issued three months later on his own affidavit.

- The sketch was prepared at the complainant's dictation, and the recovered lathi bore no blood.

- The medical evidence does not prove that Ghulam Qadir died of any injury caused by the appellants. The first doctor saw no visible injury on him, and the final certificate leaves the nature of the injury and the weapon blank. The post-mortem doctor found only abrasions, accepted that nasal bleeding may have other causes, and could not say that the injuries caused death.

  Learned counsel filed a statement of authorities, relying in particular on Mst. Asia Bibi v The State PLD 2019 SC 64, Abdul Jabbar v The State 2019 SCMR 129, Imran Ashraf v The State 2001 SCMR 424 and Ayub Masih v The State PLD 2002 SC 1048. He also relied on the judgments reported as 2025 SCMR 1087, 2025 SCMR 944, 2025 SCMR 1053, 2025 SCMR 1742, 2025 SCMR 1887, 2024 SCMR 51, 2019 SCMR 1045 and PLD 2017 SC 681, among others.

15. Conversely, Mr. Rameshan Oad, the learned Deputy Prosecutor General and Mr. Taj Muhammad keerio and Mr. Dhirau Mal, learned counsels for the complainant supported the impugned judgment. They contended that the eye-witnesses are injured members of the same household, attacked in their own house, whose presence cannot be doubted. They argued that the witnesses' injuries are

medically certified and their account consistent. They submitted that 0600 hours in October is dawn, when persons long known to each other can be recognised. In their submission, the incident was reported at the police station the same morning, when letters for treatment were issued, and the formal FIR followed the death and the funeral. They added that the post-mortem doctor gave his final opinion that death resulted from head injury after receiving the laboratory reports, and that the motive, the pending litigation, was established.

16. Heard. Perused. This being an appeal against conviction, I am bound to reappraise the whole evidence for myself and not merely to test the reasons of the trial Court. On that reappraisal, the appeal raises two distinct questions, which the trial Court treated as one. The first is whether the appellants, with others, attacked the complainant's household on the morning of 29.10.2019. The second is whether that attack was proved to have caused the death of Ghulam Qadir. The evidence answers the first question in favour of the prosecution, and the second in favour of the appellants.

17. The ocular account comes from three injured witnesses who live in the house where the attack took place: the complainant Ghulam Mustafa (PW-1), his brother Abdullah (PW-2) and his brother Mehmood (PW-3). Their presence there at 0600 hours, when the family was asleep, needs no explanation. They were not passers-by or chance witnesses who had to account for being at the scene. The house was their home and the hour was the hour of sleep.

18. Their presence is also proved independently of their own word. PW-7, Dr. Muzakkir Toseef, examined them at Civil Hospital, Tando Allahyar on the morning of the occurrence, under police letters issued the same day. As noted in the impugned judgment, he recorded the following injuries:

- **Abdullah:** diffuse swelling and a lacerated wound measuring 4 cm x 2 cm on the right leg;
- **Mehmood:** a lacerated wound 2 cm x 0.5 cm muscle-deep above the right eyebrow, an incised wound 1.5 cm x 0.5 cm muscle-deep above the left elbow, a lacerated wound on the tip of the right ring finger, and multiple bruises on the left hand; and

- **The complainant:** diffuse swelling with two abrasions on the right arm, pain in the left shoulder, and pain in the back.

19. These injuries correspond in kind and location with the witnesses' description of blows from hatchets, lathis and an iron rod. They were also recorded within hours, before there was any opportunity to fabricate them. An injury of this kind, certified on the day, is strong evidence that the witness was present and was attacked. It does not by itself prove who the attackers were, so the witnesses' testimony on that point must be examined on its own merits.

20. Learned counsel's principal criticism is that the witnesses are related to each other and hostile to the appellants because of the earlier litigation. Neither circumstance justifies rejecting their evidence. An interested witness, in the sense that calls for caution, is one with a motive of his own to implicate the accused falsely. A witness is not interested merely because he is related to the victim or is himself a victim: *Feroze Khan v The State 2002 SCMR 99*. In *Ijaz Ahmad v The State 2009 SCMR 99,* the Supreme Court held that relationship alone is no ground to discard a witness, and that even the evidence of an interested witness is not rejected but scrutinized with care.

21. Prior enmity cuts both ways. The pending appeal against the appellants' acquittal in the earlier case gives the complainant party a reason to dislike them. It equally gives the appellants a reason to attack the complainant party in order to force a withdrawal, which is the motive the prosecution alleges. Enmity alone cannot be treated as a reason to disbelieve injured witnesses whose wounds were certified on the day of the occurrence. It would be unusual for persons who have just been attacked in their own home to let their real assailants go and substitute others.

22. I have examined the cross-examination of each of these witnesses for contradictions on material matters. They agree with each other on the time of the attack, the fact that the family was asleep, the number and identity of the named assailants, the weapons each carried, and the parts of the body on which each injured person was struck. They also agree that the injured were taken to the police station and then to hospital.

23. The discrepancies pointed out by learned counsel are of a different order. One is whether the injuries were first inspected in the vehicle or at the police station. Another is which of the witnesses was standing next to which of the injured. A third is whether two women of the family went to the police station. These are differences of recollection about events immediately following a traumatic attack, recorded years later. They do not touch the core of the account: that the appellants entered the house and assaulted its occupants. The law distinguishes such discrepancies from contradictions that go to the root of the case, and these are of the first kind.

24. The occurrence took place at 0600 hours on 29 October. Learned counsel argued that it was then dark and that no source of light was proved. The complainant and his witnesses denied that it was dark, and PW-3 said that it was not completely dark. At that hour, at the end of October in lower Sindh, first light has broken even if the sun has not fully risen.

25. More importantly, this was not a case of identifying strangers. The appellants belong to the same family and the same village as the witnesses, and the two sides have been in litigation with one another for years. The witnesses recognized persons they had known all their lives, at close quarters, inside their own house, during an assault that lasted long enough for several members of the family to be injured. Recognition in such circumstances does not depend on artificial light, and the absence of a torch or lamp in the case property does not create a reasonable doubt about it.

26. The FIR was recorded at 2200 hours on 30.10.2019, about forty hours after the occurrence. Delay in reporting a crime is significant when it is unexplained, because it creates room for deliberation and the false implication of persons not involved. The question is therefore whether the delay here was explained, and whether it in fact gave such an opportunity.

The record shows the following sequence:

- The injured were taken to Police Station Umar Sand on the morning of the occurrence.

- The police noted their injuries there and issued letters for their treatment, and the Medical Officer examined them at Civil Hospital, Tando Allahyar under those letters.
- They were referred to Hyderabad, where Ghulam Qadir died.
- The family brought his body back, the post-mortem examination was conducted at 11:20 hours on 30.10.2019, and the funeral was held.
- The complainant then lodged the FIR the same night.

The police were thus aware of the occurrence, and of the identity of the injured, from the morning of 29.10.2019. The failure to record the FIR at that stage was a failure of the duty that section 154 Cr.P.C. imposes on the officer in charge of the police station. The Supreme Court emphasized the importance of that duty in Imran Ashraf v The State 2001 SCMR 424, and its breach cannot be held against the complainant.

The interval that followed was occupied by the medical treatment of six injured persons, a death, a post-mortem examination and a funeral. That explanation is natural and plausible. This case is therefore distinguishable from Muhammad Asif v The State 2008 SCMR 1001, where the Supreme Court held that an unexplained delay in lodging the FIR seriously undermined the prosecution case.

27. The prosecution did not produce the injured Mst. Saleha and Junaid, or Abdul Saboor. Learned counsel invoked Article 129 (g) of the Qanun-e-Shahadat Order, 1984. The presumption under that Article is permissive, not mandatory, and its application depends on the circumstances. The complainant filed a statement during the trial (Ex. 08) that Mst. Saleha was seriously ill and unable to appear. Junaid and Abdul Saboor would have repeated an account already given by three injured eye-witnesses. The prosecution is required to prove its case, not to produce every person who could speak to it. The quality of the evidence produced, not the number of witnesses, is what matters. The non-production of these witnesses is a lapse, but it does not, in these circumstances, displace the consistent evidence of three injured eye-witnesses.

28. The position of Muhammad Usman (PW-4) is different. His medical certificate was issued some three months after the occurrence,

on the basis of his own affidavit rather than any examination at the time. His claim to have been injured is therefore not reliably proved, and I do not rely on his evidence for any finding against the appellants. The convictions that I maintain do not depend on him.

29. Several defects in the investigation were pointed out:

- the initial investigation was conducted by an Assistant Sub-Inspector not competent to investigate a murder;
- the sketch was prepared on the complainant's pointation, without the Investigating Officer, and does not show blood-stained earth or neighbouring houses;
- the lathi said to have been recovered from Ameer Ali carries no blood; and
- the call data records were obtained without a Magistrate's permission.

30. These lapses reflect poorly on the investigation. The Supreme Court held in *Sheraz Asghar v The State 1995 SCMR 1365*, however, that defects in investigation do not affect the result unless they uproot the structure of the prosecution case. They do not do so here, because the case against the appellants for the assault rests on the direct evidence of injured witnesses and the contemporaneous medical record, not on the sketch, the recovery or the call data records. I exclude the recovery from consideration altogether.

31. The witnesses named the appellants as members of a group of more than five persons, together with the absconding accused and others, who entered the house together, armed with hatchets, lathis and an iron rod, and attacked its sleeping occupants. That is an unlawful assembly within section 141 PPC. Its common object, to attack the household in order to compel the withdrawal of the pending case, appears from the manner of the attack and from the words the witnesses attributed to the assailants. Each appellant is named as present and armed. Each is therefore liable under section 149 PPC for the offences committed in prosecution of that common object.

32. The question under section 324 PPC is whether the assault was made with the intention or knowledge required for murder. That intention may be inferred from the weapons used, the number of

assailants, the part of the body targeted and the manner of the attack. Here, a large armed group attacked sleeping persons in their own home with hatchets and an iron rod, and inflicted, among other injuries, an incised and a lacerated wound to Mehmood's head and arm. The trial Court was entitled to infer the intention required by section 324 PPC, and I see no reason to differ.

33. The conviction for murder stands on a different footing. It requires proof, beyond reasonable doubt, that Ghulam Qadir died of injuries caused in the attack. Proof that he was present and was struck is not enough. On the question of causation, the evidence of the two Medical Officers is not merely incomplete but internally inconsistent.

34. PW-7, Dr. Muzakkir Toseef, examined Ghulam Qadir on the morning of the occurrence. He was the only doctor to examine him alive, close to the time of the alleged injuries, and he admitted that he saw no visible injury on him. In the final medical certificate he issued for Ghulam Qadir, the columns for the nature of the injury and the kind of weapon are left blank. The eye-witnesses described hatchet, lathi and iron-rod blows to Ghulam Qadir's face, head and back. If such blows had been struck, they would ordinarily have left visible marks on the morning of the attack.

35. PW-5, Dr. Waqar Ahmed, conducted the post-mortem examination the next day. He recorded multiple abrasions on the left forehead and the left side of the face, with bleeding from the nose, and nothing abnormal in the chest or abdomen. He did not give an opinion as to the cause of death at the time, but reserved it pending the results of the viscera and histopathology reports. After receiving those reports, he opined that death had resulted from brain haemorrhage due to head injury, attributing it to injuries Nos. 1 and 2, which he said were caused by a hard and blunt substance.

36. However, in cross-examination the same witness accepted that bleeding from the nose may have many causes, such as high blood pressure. He also stated in terms that he could not say that the injuries he had seen could have been the cause of death. That answer is not a peripheral concession. It goes directly to the only question on which the expert's evidence was needed, and it cannot be reconciled with his final opinion. When the expert himself cannot say that the injuries caused

death, the Court cannot supply that conclusion by preferring one of his answers over the other.

37. The trial Court treated the medical evidence as corroborating the ocular account. In doing so it did not address PW-7's evidence that there was no visible injury, the blank columns in the final certificate, or PW-5's admission in cross-examination. That was a misreading of the medical evidence on the decisive question of causation.

38. It is settled that a single circumstance creating reasonable doubt in a prudent mind entitles the accused to its benefit, not as a matter of grace or concession, but as of right: *Tariq Pervez v The State 1995 SCMR 1345*; *Muhammad Mansha v The State 2018 SCMR 772*. In *Abdul Jabbar v The State 2019 SCMR 129*, the Supreme Court held that once a single loophole is found in the prosecution case, its benefit must go to the accused. It reaffirmed the same principle in *Mst. Asia Bibi v The State PLD 2019 SC 64*, and it had earlier observed in *Ayub Masih v The State PLD 2002 SC 1048* that it is better for ten guilty persons to be acquitted than for one innocent person to be convicted. Learned counsel relied on these authorities.

39. Here the doubt is not about whether the appellants took part in the attack. It is about whether the death was caused by it. That doubt is enough to set aside the conviction under section 302(b) PPC.

40. The convictions under section 324 and the hurt provisions, read with section 149 PPC, rest on the reliable evidence of the injured witnesses and the contemporaneous medical record, and are maintained. The sentences on those counts are within the limits prescribed by law and are not excessive for an armed attack on a sleeping family. The trial Court ordered them to run concurrently and extended the benefit of section 382-B Cr.P.C. The compensation awarded under section 544-A Cr.P.C. to the heirs of Ghulam Qadir was consequential on the conviction for murder, and falls with it.

41. Criminal Appeal No. S-04 of 2025 is **partly allowed**, as follows:

- The conviction of the appellants Ameer Ali, Sajjad Ali, Ali Akbar, Muhammad Hashim and Aari under section 302(b) read with section 149 PPC, and the sentence of imprisonment for life and

compensation under section 544-A Cr.P.C., are **set aside**. They are acquitted of the charge of the qatl-i-amd of Ghulam Qadir by extending them the benefit of doubt.

- Their convictions and sentences under section 324 and sections 337-A(i), 337-F(i), 337-F(ii) and 337-F(vi), each read with section 149 PPC, are **maintained**, to run concurrently with the benefit of section 382-B Cr.P.C.

- Any appellant who has served the substantive sentences so maintained shall be released, if not required in any other case, on payment of the fine. He shall also pay the Daman awarded, or furnish security for it in accordance with section 337-Y PPC. Any appellant who has not yet served the substantive sentences shall serve the remainder.

JUDGE