

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

**Criminal Appeal No.S-19 of 2024
Old Criminal Appeal No.S-274 of 2018.**

Appellants : 1. Walho s/o Malho.
2. Sahu s/o Bhugro.
3. Kanji s/o Khango.
4. Rajo s/o Walho
Through Mian Taj Muhammad Keerio advocate

The State : Through Mr. Shahzado Saleem Nahiyoona,
Additional P.G

Complainant : Sameero s/o Roopo Bheel
Through Mr. Rasheed Ahmed Panhwer advocate
(called absent)

Date of hearing : 25-09-2025.

Date of decision : 25-09-2025

J U D G M E N T

Amjad Ali Sahito, J:- This judgment shall decide the fate of the captioned Appeal preferred by the appellants named above, impugning the judgment dated 27-11-2018, passed by learned Sessions Judge, Tharparkar @ Mithi, in Sessions Case No.73/ 2017 (Re. St.Vs.Walho and others), vide F.I.R Crime No.56/2017, registered for offence punishable under Sections 302, 114, 34 PPC at Police Station Mithi, whereby they, for having committed the murder of complainant's wife Shr. Walho, were sentenced to suffer imprisonment for life under Section 302(b) PPC, with compensation of Rs.200,000/=, each to be paid to the legal heirs of the deceased as provided under section 544-A Cr.P.C. However, benefit of section 382-B Cr.P.C was extended to the appellants.

2. Briefly stated facts of the prosecution case as narrated in the F.I.R lodged on 05.07.2017 at 1545 hours by complainant Sameero at P.S Mithi are that he dwells on sandy-dune (Bhit) by erecting house, situated on the Northern side of his field. He and Sahu Bheel party are at old dispute over the agricultural lands. On the same day i.e. 05.07.2017 at 0600 hours, he went to his land for cleaning it while his wife started cutting bushes in the

field at some distance, where at that time accused Sahu s/o Bhugro, Kanji s/o Khengo, Walho s/o Malho and Rajo s/o Walho, all by caste Bheel, resident of Achanak Ji Dhani, came there and accused Kanji by putting a rope in the neck of wife of complainant, started dragging her and on the instigation of accused Sahu; accused Walho caused straight hatchet blow on the neck of wife of complainant with intention to kill her while accused Rajo jostled her, then accused Walho inflicted another blow of hatchet on her forehead, due to which she fell on the earth. On the cries of complainant, his sons Pancho & Kheto came there and on seeing them, the accused persons went away. The complainant then saw that his wife Sht. Walho had succumbed to her injuries at the spot. He then by leaving P.Ws Kheto and Pancho over the dead body, went to police station, obtained letter for postmortem and then again went to P.S Mithi where he lodged the present FIR.

3. After completion of the usual investigation, the I.O submitted a police report under section 173 Cr.P.C before the concerned Magistrate, showing appellant Walhu in custody while remaining accused Sahu, Kanji and Rajo as absconders. The learned Magistrate carried out formalities as required U/S 87 & 88 Cr.PC against the above three absconding appellants/accused, declared them proclaimed offenders and proceedings of their case in their absensia as provided U/S 512 Cr.P.C vide order passed at Ex:03. Since the alleged offence is exclusively triable by the court of Sessions, hence learned Magistrate sent the case to the learned Sessions Judge, Tharparkar. After obtaining pre arrest bail, appellants Sahu, Kanji and Rajo surrendered before the trial court, where after supplying copies of necessary documents to the appellants, charge was framed against them, to which they pleaded not guilty and claimed trial.

4. Prosecution to prove its case examined complainant Samero at Ex.14, he produced FIR at Ex:14-A, receipt of dead body at Ex:14-B and receipt of receiving clothes of his wife at Ex:14-C, P.W.2 (witness cum Mashir) Kheto at Ex:15, he produced Mashirnama of inspection of dead body, mashirnama of

inspection of place of incident at Ex:15-A, mashirnama of arrest of accused Walho at Ex:15-B and Lash-Chakas Form at Ex:15-C. P.W.3 Pancho was examined at Ex:16, P.W.4 I.O SIP Arbab Ali Rajar at Ex:17. P.W.5 PC Naraindas at Ex:18, he produced copy of letter addressed to the Chemical Examiner for analysis of the case property viz. Plastic 'Bumri' (Jan) and clothes of deceased at Ex:18-A. P.W.6 ASI Khushiram at Ex:19, he produced entries No.3 & 9 at Ex:19-A and P.W.7 Dr. Bhavna, WMO, Civil Hospital, Mithi at Ex:20, she produced postmortem report at Ex:20-A and Lash Chakas Form at Ex:20-B. Then learned ADPP on behalf of State closed the prosecution side vide statement at Ex:21.

5. The statements of the appellants/ accused persons U/S 342 Cr.P.C were recorded, wherein they denied the prosecution allegation, claimed to be innocent and pleaded false implication. Appellant Sahu, Kanji and Rajo opted not to examine themselves on oath and to lead evidence in defence, however, appellant Walho examined himself on oath U/S 340(2) Cr.P.C and so also examined D.Ws Maheso and Muhammad Urs in his defence; appellant Sahu also examined D.Ws Bhuro Bheel and Basro Bheel in his defence. Thereafter, learned defence counsel closed the side of defence evidence by filing such statement. After hearing the parties' counsel, the trial Court convicted and sentenced the appellants as mentioned above.

6. It is mainly argued by learned counsel for the appellants that there are material contradictions in the evidence of prosecution witnesses but same were ignored by learned trial court; that no independent witness is cited in this case and both the P.Ws namely Pancho and Kheto are real sons of the complainant; that complainant is Hari of one Dilshad Samejo, with whom there is enmity of the appellants on landed property and such complaint under Illegal Dispossession Act bearing No. 39/ 2014 Re: Dilshad vs. Walho and others is pending before the Court of learned Sessions Judge, Tharparkar @ Mithi and instant case was registered at the instance of said Dilshad with the help of ASI Asghar Samejo and ASI Ashraf Samejo, who are real cousins of Dilshad Samejo; that deceased committed suicide and

after her death the dead body was brought at the alleged place of incident and then complainant party themselves inflicted hatchet blows to her in order to involve the appellants in this false case due to enmity; that I.O in the interim challan has stated that during investigation he came to know that there is doubt in injuries caused to deceased whether same were inflicted after or before her death and he requested to the S.S.P Tharparkar @ Mithi for conducting re-post mortem of the dead body of deceased Shr. Walho and SSP, Tharparkar @ Mithi made such request to the learned Sessions Judge, Tharparkar @ Mithi; that complainant has lodged instant FIR with a delay of 09 hours without any plausible explanation; that on the day of alleged incident the appellants Walho, Saho and Kanji were present before the court of learned Sessions Judge, Tharparkar @ Mithi in I.D Compliant No. 39/ 2014; that trial court has failed to appreciate that statement of PWs were recorded at belated stage; that impugned judgment is result of misreading and non-reading of evidence available on record; hence he prayed for setting aside the impugned judgment.

7. On the other hand, learned Additional P.G while opposing the contentions raised by learned counsel for the appellants and supporting the impugned judgment contended that the prosecution has fully established its case against the appellants beyond reasonable doubt by producing consistent/convincing and reliable evidence and the contradictions whatever on record are of minor in nature and are not fatal to the prosecution case; hence he prayed for dismissal of instant Criminal Appeal.

8. I have heard the learned counsel for the appellants and the learned Additional Prosecutor General for the State at considerable length, and have examined the available record with their valuable assistance.

9. After hearing the learned counsel for the respective parties and upon careful consideration and meticulous examination of the available record and evidence, it is observed that it is a well-established principle of criminal jurisprudence that the burden of proving the allegations invariably lies upon the prosecution,

which is required to establish its case beyond reasonable doubt. In light of this cardinal principle of criminal justice, a perusal of the prosecution's evidence reveals that the entire case is founded upon the testimony of the sole eyewitness to the alleged incident, namely, the complainant Samero, husband of the deceased Shri. Walho.

10. The complainant, Sameero (PW-1), deposed that on 05.07.2017 at about 6:00 a.m., he along with his wife had left their house for the purpose of cutting trees and bushes on their land situated towards the southern side. He further stated that they had an existing enmity with the accused persons, namely Sahu s/o Bhugro, armed with a lathi; Kanji s/o Khengo, armed with a rope; Walho s/o Malhi, armed with a hatchet; and Rajo s/o Walho, armed with a lathi, all by caste Bheel and residents of village Achanak Ji Wandh, arrived at the spot. The complainant alleged that accused Kanji placed a rope around the neck of his wife, Smt. Walhu, and dragged her, while accused Sahu instigated the others. Thereupon, accused Walho inflicted a hatchet blow on the neck of his wife, whereas accused Wagho pushed her and assaulted her with kicks and fists. It was further stated that accused Walho repeated the hatchet blow on her forehead, causing her to fall to the ground. Upon his hue and cry, witnesses Pancho and Kheto arrived at the scene, whereupon the accused fled towards their homes. On reaching his wife, the complainant found that she had succumbed to her injuries and died on the spot.

11. In cross-examination, however, the complainant admitted that "my wife was at a distance of about one acre away from me." The conduct of the complainant, therefore, appears to be unnatural, as it is difficult to comprehend that while accused Kanji was allegedly dragging his wife with a rope around her neck and accused Walho was assaulting her with a hatchet, the complainant remained a silent spectator without making any attempt to rescue her. Notably, neither in the First Information Report (FIR) nor in his deposition has the complainant stated that he made any effort to save his wife from the assailants.

12. Moreover, according to the prosecution, both sons of the complainant, namely PWs Pancho and Kheto, arrived at the place of occurrence upon hearing his cries and witnessed the accused fleeing from the scene. However, it is quite surprising that although both sons were young men, and their mother was being fatally assaulted by the accused who were not armed with any formidable firearms but only with a hatchet and lathis, neither they nor the complainant attempted to apprehend the accused.

13. Furthermore, there exists a material contradiction regarding the distance between the place of occurrence and the complainant's house. The complainant stated in his cross-examination that his house was situated adjacent to his land, whereas PW Kheto deposed that their land was at a distance of about three kilometers from their residence. In ordinary human experience, it is implausible for a person to hear cries from a distance of three kilometers. Had the complainant and his sons been genuinely present at the place of occurrence, as claimed, they could have either attempted to rescue the deceased or apprehended the accused immediately after the occurrence. Their conduct, being inconsistent with normal human behavior, renders their testimony unreliable and creates serious doubt regarding their presence at the scene of the incident at the relevant time.

14. There is also contradiction in the time of alleged incident because as per prosecution case alleged incident took place on 05-07-2017 at 6:00 a.m, whereas complainant in his evidence deposed that on 05-07-2017 at 6:00 a.m he alongwith his wife left their house for cutting trees and bushes in the land situated towards South; when they started cutting trees and bushes, in the meantime accused persons arrived there and committed the alleged offence and then on his hue and cries his sons PWs Pancho and Kheto reached there.

15. As per the version of the complainant Sameero, after leaving his sons PWs Pancho and Kheto near the dead body, he proceeded to Police Station Mithi and narrated the facts of the incident to the police. However, this version is not supported by the documentary record. The initial Roznamcha

entry No.02 (Ex.19/A), dated 05.07.2017 at 08:05 hours, maintained by PW ASI Khushiram, reflects that the police were informed telephonically that a fight had taken place in village Doori, upon which he, along with his subordinate staff, left the police station vide entry No.03 at 08:10 hours. Further, entry No.09, recorded at 15:45 hours, shows that the said ASI returned to the police station when the complainant appeared and lodged the instant FIR.

16. The contents of the initial entry No.02 substantially undermine the prosecution's version, as it specifically mentions that information was received regarding a "fight" in village Doori, whereas, according to the prosecution case, no fight had occurred; rather, it was alleged that the appellants/accused had committed the murder of the complainant's wife while she was cutting trees on the complainant's land. Additionally, the mashirnama of the place of incident indicates that the occurrence took place on the complainant's land situated in Deh Chammo near village Sameero Ji Dhani, and not in village Doori, as reflected in the said entry.

17. As per the prosecution's case, the appellant Walho allegedly caused direct hatchet blows to the neck and forehead of the deceased, Smt. Walho. However, the post-mortem report reveals that the deceased sustained a lacerated wound measuring 5 cm x 4 cm, muscle-deep, on the left side of the neck, about 6 cm below the mandible, with lacerated muscles. PW ASI Khushiram, who inspected the dead body, deposed during cross-examination that the second injury on the neck of the deceased could have been caused by a hard and blunt substance. The complainant, in his testimony, did not clarify whether the accused Walho used the sharp or blunt side of the hatchet, which suggests a deliberate omission aimed at aligning his statement with the post-mortem report.

18. Such conduct of the complainant demonstrates that he made material improvements in his testimony, thereby impairing his own credibility. Moreover, although the

prosecution asserts that the appellant Walho inflicted sharp-edged hatchet blows on the forehead and neck of the deceased, it is noteworthy that, at the time of the inspection of the dead body by PW ASI Khushiram, the deceased's clothes were found unstained with blood, and there was also no blood observed on the forehead injury.

19. It has been observed that the alleged incident occurred on 05.07.2017 at 0600 hours, whereas the First Information Report (F.I.R.) was lodged on the same date at 1545 hours, reflecting an unexplained delay of approximately 09 hours and 45 minutes. As per the contents of the F.I.R., the complainant stated that after obtaining a letter for post-mortem examination, he transported the dead body to the hospital and thereafter proceeded to the police station to lodge the instant F.I.R. However, this version of the complainant is not supported by any oral or documentary evidence. On the contrary, the record reflects that the dead body was transported from the place of occurrence to the hospital by a police party headed by ASI Khushiram. This fact stands corroborated by P.W. W.M.O. Dr. Bhavna, who deposed that on 05.07.2017, the dead body of the deceased was brought to the hospital by the police at 10:45 a.m. The prosecution has failed to provide any plausible explanation for the delay in lodging the F.I.R., which reflects mala fide intention and lack of bona fides on the part of the complainant. In view of the admitted enmity between the parties, it can reasonably be inferred that the F.I.R. was lodged after due deliberation and consultation. The august Supreme Court of Pakistan in the case of *"G.M. Niaz v. The State"* (2018 SCMR 506), was pleased to hold as under:

"An FIR in respect of the alleged occurrence had been lodged after about seven hours and forty minutes which by itself was a circumstance doubting the claimed availability of the above mentioned eye-witnesses with the deceased at the time of occurrence."

20. Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of *Zafar v. The*

State and others (2018 SCMR 326), where the august Supreme Court of Pakistan was pleased to hold as under:

“It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 3.00 a.m. (later half of night) and the matter was reported to the police on the same day at 8:30 am. i.e. after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and the police station is 09 miles. The post-mortem on the dead body of deceased was conducted on the same day at 2.00 p.m. i.e. After 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW-5) and Umer Daraz (PW6) in the FIR or while appearing before the learned trial Court qua the delay ill lodging the FIR or for that matter the belated post-mortem of the deceased.”

21. It is pertinent to mention that the statements of prosecution witnesses, namely P.Ws Pancho and Kheto, under Section 161, Cr.P.C., were recorded after an unexplained delay of nine (09) days, i.e., on 16.07.2017. No justification or plausible explanation for such delay has been brought on record by the prosecution. This unexplained lapse renders the prosecution case highly doubtful. It is well-settled law that even a delay of one or two days in recording the statements of witnesses, if not satisfactorily explained, is considered fatal to the prosecution case and adversely affects its credibility. Reliance in this regard is placed on the judgment of the Hon’ble Supreme Court of Pakistan in the case of *Muhammad Asif v. The State* (2017 SCMR 486), wherein it was held as under:

“There is a long line of authorities/precedents of this Court and the High Courts that even one or two days unexplained delay in recording the Statement of eye-witnesses would be fatal and testimony of such witnesses Cannot be safely relied upon.”

22. In this regard, reliance can also be placed on “*Muhammad Sadiq v. The State* (PLD 1960 SC 223), *Tariq Gul v. Ziarat Gul* (1976 SCMR 236), *Muhammad Iqbal v. The State* (1984 SCMR 930) and *Haroon alias Harooni v. The State and another* (1995 SCMR 1627). Similarly, it has been settled by the august Supreme Court of Pakistan in *Muhammad Khan vs. Maula Bakhshah* (1998 SCMR 570) that:

“It is settled law that credibility of a witness is looked with serious suspicion if his statement under Section 161, Cr.P.C. is recorded with delay without offering any plausible explanation.”

23. Another significant aspect of the case is that although the appellant, Walho, who allegedly inflicted hatchet injuries upon the deceased, Mst. Shr. Walho, was arrested during the course of investigation, the alleged crime weapon, i.e., the hatchet, was neither recovered from his possession at the time of arrest nor on his pointation during investigation. Furthermore, the consistent stance of the appellants from the very inception has been that the deceased, Mst. Shr. Walho, committed suicide as a consequence of maltreatment by the complainant, and that after her death, the complainant party caused injuries to her dead body with the mala fide intention of falsely implicating them in the case, owing to the admitted dispute over landed property between the parties.

24. This defence version, when examined in juxtaposition with the prosecution case, appears to carry weight, particularly in view of the deposition of the Investigating Officer, SIP Arbab Ali Rajar, who, during cross-examination, stated that *“It is correct that Walho s/o Bhemo, Amro s/o Rajo, Bhuro s/o Somji, Jumoon s/o Kessro Bheel have stated before me that wife of complainant had committed suicide. They further stated that due to enmity over landed property complainant lodged false F.I.R against present accused. I also recommended to the S.S.P for re-postmortem of dead body of deceased and S.S.P wrote a letter vide No.PB-1828/ 2017 dated 21-07-2017 to this court for re-postmortem. It is correct that in our investigation it has come on record that deceased has committed suicide. There were chances of disposal of case under “B” class as recommended dead body was exhumed and was re-postmortem”*.

25. The appellant, Walho, in his statement recorded under Section 342, Cr.P.C., produced a certified copy of the order sheet dated 05.07.2017 in Sessions Case No.133/2014 titled *Dilshad v. Walho, Narain, Sahoo, Kanji, Anbo and Basro*, arising out of a complaint under Sections 3 and 4 of the Illegal Dispossession Act,

2005. The said document reflects that on the mentioned date, all the accused persons were present before the Court on bail, except accused Sahoo. An application was moved by co-accused Walho seeking exemption for the absence of accused Sahoo, which was duly allowed by the learned Court.

26. As per the post-mortem report of the deceased, Mst. Shr. Walho, the estimated time between the infliction of injuries and death was within half an hour, while the time between death and commencement of the post-mortem examination was between four (04) to twelve (12) hours. If the time of the alleged incident is calculated in light of the said medical evidence, it would fall around 7:45 a.m., rather than 6:00 a.m. In such circumstances, it appears improbable that the accused could have reached the Court of the learned Sessions Judge, Tharparkar at Mithi, within forty-five (45) minutes, considering that their village is situated at a distance of approximately 30 to 35 kilometers.

27. As highlighted above, the material contradictions in the evidence of the prosecution witnesses have undermined the credibility of their testimonies, rendering the prosecution case highly doubtful. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court of Pakistan in the case of *Zafar v. The State* (2018 SCMR 326), wherein it was held that:–

11. Having discussed all the aforesaid aspects 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 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.

28. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellants beyond reasonable doubt and it is a settled proposition of law that for giving the benefit of the doubt to an accused there doesn't need to be many circumstances creating doubts if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. 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:-

*“4. 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 v. The State (2008 SCMR 1221)**, **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Zaman v. The State (2014 SCMR 749)**.*

29. By taking the guideline from the case laws cited at (supra), I am of the view that in the present case, the prosecution story is overwhelmed under the thick clouds of doubt and the learned trial court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellants guilty of the offence. Thus, the instant Criminal Appeal was allowed vide short order dated **25.09.2025**. Consequently, the conviction and sentence awarded to the appellants by learned trial court vide impugned judgment dated 27-11-2018 were set aside. They were acquitted of the charge by extending the benefit of doubt. Further order was passed that they shall be released forthwith in the present crime/case if they are not required in any other custody case/crime.

30. These are the reasons of my short order dated **25-09-2025**.

JUDGE