# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.D-15 of 2025
Cr. Confirmation Case No.D-06 of 2025
Criminal Appeal No.S-19 of 2025

| Date | Order with signature of Judge |
|---|---|

***Before;***
*Mr. Justice Abdul Mobeen Lakho;*
*Mr. Justice Abdul Hamid Bhurgri.*

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| Appellant | : | Gulzar @ Supari son of Ali Dino Shar, through Mr. Ashfaque Hussain Abro, Advocate. |
| Respondent | : | The State, through Mr. Aitbar Ali Bullo, D.P.G. |
| ***Date of Hearing*** | : | ***01.04.2026.*** |
| ***Date of Judgment*** | : | ***20.05.2026.*** |

***J U D G M E N T***

***ABDUL HAMID BHURGRI, J.-*** Through these Criminal Appeals, the appellant, Gulzar @ Supari son of Ali Dino Shar, has assailed the judgments both dated 14.05.2025, passed by the learned III-Additional Sessions Judge, Shikarpur. By one judgment passed in Sessions Case No.470 of 2022 (Re: The State v. Gulzar @ Supari), arising out of Crime No.51 of 2022 registered at Police Station Garhi Yasin, District Shikarpur, for offences punishable under Sections 302 and 311, P.P.C., the appellant was convicted under Section 302(b), P.P.C for committing Qatl-i-Amd of Mst. Zahida and was sentenced to death as Ta'zir with compensation, while he was acquitted of the charge under Section 311, P.P.C. Through another judgment passed in Sessions Case No.389 of 2022, arising out of Crime No.52 of 2022 registered at the same Police Station for offence punishable under Section 25 of the Sindh Arms Act, 2013, the appellant was convicted under Section 265-H(ii), Cr.P.C. and sentenced to suffer Rigorous Imprisonment for ten (10) years with fine; benefit of Section 382-B, Cr.P.C. was extended in his favour. The learned trial Court also submitted Murder Reference under Section 374, Cr.P.C. for confirmation of death sentence.

2. Briefly, the prosecution case as set out in the F.I.R is that on 04.07.2022 at about 1800 hours, complainant ASI Abdul Hameed Luhur along with subordinate staff left the police station for patrolling and, during such patrol, allegedly received spy information at about 2200/2230 hours

regarding imminent honour killing of Mst. Zahida by the accused Gulzar @ Supari. Acting upon such information, the police party proceeded towards the pointed place and, according to the prosecution, at about 0030/0130 hours reached outside the house of Muhammad Ameen Shar, where they allegedly saw the accused present inside the house armed with a T.T pistol, who after declaring the deceased as "Kari" made straight firing at her, resulting in her death, and thereafter fled away.

3. After completion of investigation, challan was submitted against the accused. The charge was framed, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined complainant ASI Abdul Hameed (Ex.5), PW PC Saifullah (Ex.6), medical officer Dr. Nadia (Ex.7), alleged natural witnesses Mst. Naz Pari and Mst. Fatima (Ex.8 & 9), Tapedar Jan Muhammad (Ex.10), Investigating Officer SIP Allah Dino (Ex.11), and PW/WHC Muhammad Pariyal (Ex.12), and thereafter closed its side.

5. The statement of the accused/appellant under Section 342, Cr.P.C was recorded, wherein he denied the allegations and did not opt to examine himself on oath, nor did he lead any defence evidence. After hearing and evaluation of evidence, the learned trial Court convicted and sentenced the appellant as stated above.

6. As far as the offshoot case under the Sindh Arms Act, 2013 is concerned, the learned trial Court framed charge against the accused/appellant, to which he pleaded not guilty and claimed trial. The prosecution, in order to prove its case, examined the complainant SIP Allah Dino Mangrio, mashir PC Hafeezullah, and WHC Muhammad Pariyal, and then closed its side. Subsequently, statement of the accused under Section 342, Cr.P.C. was recorded, wherein he denied the allegations, claiming false implication, and did not opt to examine himself on oath, nor did he lead

any defence evidence. After hearing the learned trial Court has convicted and sentenced the appellant/accused as stated above.

7. Learned counsel for the appellant contended that the prosecution case is fraught with material contradictions; that the presence of police witnesses at the place of occurrence is doubtful; that identification of the accused is not reliable; that the most natural witnesses have not supported the prosecution case; and that the prosecution has failed to establish its case beyond reasonable doubt. He next contended that the crime weapon was foisted upon the appellant/ accused in order to strengthen the main murder case and nothing was recovered from possession of the accused. Lastly, he prayed for acquittal of the appellant in both cases on benefit of doubt.

8. Conversely, learned Deputy Prosecutor General supported the impugned judgments. He contended that all the material witnesses have been examined, who have fully implicated the accused in the commission of offence and that the version of the complainant and PWs is supported by the circumstantial as well as medical evidence. He next contended that the crime weapon was also recovered from possession of the accused on his pointation, which also supports the prosecution case. He submitted that there is no material contradiction in the evidence and, therefore, no interference is required in the impugned judgments.

9. We have heard learned counsel for the parties and have examined the entire record with their assistance as well as scrutinized the evidence adduced.

10. The point which requires determination is whether, on the basis of the evidence adduced, the convictions in both cases awarded by the impugned judgments respectively can be sustained.

11. The point is answered in the Negative.

12. The prosecution case is that the complainant received spy information at about 2200/2230 hours regarding imminent occurrence;

however, the police party allegedly reached the place of occurrence at about 0030/0130 hours. No plausible explanation has been furnished for such delay of approximately two hours despite the alleged urgency of the information. This unexplained delay assumes critical significance inasmuch as the police claimed prior information of the occurrence yet failed to act with promptitude and despite such delay claims to have witnessed the occurrence itself. Such conduct appears to be unnatural in ordinary course of human conduct and renders the presence of the police party at the relevant time highly doubtful. Reliance is placed on ***Muhammad Bilal versus the State (2025 SCMR 1580)***. Further reliance may also be placed upon the cases of ***Zafar v. the State (2018 SCMR 326) and Liaqat Ali v. the State (2009 SCMR 95)***. A similar situation was examined by the Hon'ble Supreme Court in ***Pathan v. the State (2015 SCMR 315)***, wherein it was held that:-

> *"the presence of witnesses on the crime spot due to their unnatural conduct has become highly doubtful, therefore, no explicit reliance can be placed on their testimony. They had only given photogenic/photographic narration of the occurrence but did nothing nor took a single step to rescue the deceased. The causing of that much of stab wounds on the deceased loudly speaks that if these three witnesses were present on the spot, being close blood relatives including the son, they Would have definitely intervened, preventing the accused from causing further damage to the deceased rather strong presumption operates that the deceased was done to death in a merciless manner by the culprit when he was at the mercy of the latter and no one was there for his rescue. In similar circumstances, the evidence of such eye-witnesses was disbelieved by this Court in the case of Masood Ahmed and Muhammad Ashraf v. the State (1994 SCMR 6)."*

13. The ocular account furnished by the complainant ASI Abdul Hameed and PW PC Saifullah loses its worth and does not inspire confidence as it suffers from material contradictions on vital aspects of the case. There are inconsistencies regarding the manner and route of patrolling as well as the mode and timing of receipt of spy information. The prosecution witnesses have also contradicted each other with regard to the time of reaching the place of occurrence, the condition and structure of the

house, and the distance from which the accused was allegedly seen. Although the F.I.R. suggests that the accused was seen committing the offence, both witnesses admitted in their cross-examination that they reached the spot after hearing fire shots and saw the accused only from his backside while escaping. There are further contradictions regarding the presence of persons at the place of occurrence, the number of people who gathered, and the circumstances under which the name of the accused surfaced. Even the timings relating to shifting of the dead body, return to the police station and lodging of the F.I.R. are not consistent. The description of the clothes of the deceased also differs from the documentary record.

14. The manner of identification of the accused is also highly doubtful. The occurrence admittedly took place during night hours in a village where there was no electricity, and identification is alleged to have been made in the light of a torch, which was neither secured nor produced during trial. Furthermore, both the complainant and PW Saifullah candidly admitted that they saw the accused only from his backside. In such circumstances, the identity of the accused remains shrouded in doubt and cannot be safely relied upon.

15. In such circumstances, where the ocular account is neither consistent nor confidence-inspiring and stands contradicted on material particulars, it would be highly unsafe to base conviction, particularly in a capital case, upon such infirm evidence.

16. The most natural witnesses, namely, Mst. Naz Pari and Mst. Fatima, who were statedly available at the scene of offence and according to the complainant disclosed to him the name of the accused, have not supported the prosecution case and have categorically deposed that the accused is innocent and the deceased was killed by their enemies over a dispute relating to a plot. Despite being declared hostile, nothing favourable

to the prosecution could be elicited from them, which further weakens the prosecution case.

17. Insofar as the circumstantial evidence is concerned, SIP Allah Dino, the Investigating Officer, deposed in his examination-in-chief that on 05.07.2022 he received police papers of this case for investigation and on the same date ASI Abdul Hameed produced bloodstained clothes of the deceased before him and at about 1340 hours he prepared such mashirnama in presence of mashirs; however, the complainant and mashir PC Saifullah did not depose even a single word in this regard. The Investigating Officer further deposed that he collected bloodstained earth and sealed the same in one pocket and also recovered three empty cartridges from the place of wardat, but in this respect the entire evidence of complainant and mashir is silent. More importantly, the Investigating Officer deposed that on 06.07.2022 he arrested accused Gulzar @ Supari from link road Rakhiyal Ji Wandh in presence of mashirs and such memo was produced at Ex.11/B, but surprisingly, mashir PC Saifullah also did not depose a single word regarding arrest of accused during his entire evidence in the main murder case. The prosecution neither declared him hostile nor examined the second mashir in this regard.

18. Additionally, there exists a material inconsistency between the medical evidence and the ocular account of the occurrence. The complainant during his cross-examination deposed that he himself inspected the dead body of the deceased in presence of Mst. Pari and Mst. Fatima and only one fire shot injury was available on the body of the deceased and he prepared memo of inspection of dead body, whereas such memo reflects three firearm injuries through and through available on the body of the deceased. The complainant's version is contradicted by the Medical Officer Dr. Nadia and according to her, the deceased had sustained three firearm injuries i.e. at left thigh above knee joint and its exit was at lateral side of thigh, second injury at later side of right breast and its exit

was at the medial side of right breast and third was behind the right ear and its exit was at left temporal area. Such contradiction renders the prosecution version unsafe for reliance. This glaring conflict casts serious doubt on the credibility of the prosecution case and raises questions regarding the accuracy and truthfulness of its evidence. Reliance in this regard may be placed on ***Muhammad Riaz v. the State (2024 SCMR 1839), and Obaidullah and 2 others v. the State and others (2025 SCMR 1558).***

19. The alleged motive of honour killing (Karo-Kari) has not been substantiated through any independent or reliable evidence and, therefore, remains unproved. In this respect, reliance is placed on ***Tariq Mehmood v. the State (2025 SCMR 780)***. A similar view was taken in ***Muhammad Ashraf v. The State (2025 SCMR 1082)***.

20. Furthermore, the prosecution's reliance upon the alleged recovery of empties and the weapon of offence is also highly doubtful. The record reveals that the empties were secured by the Investigation Officer from the place of incident on 05.07.2022, whereas the accused was arrested the next day i.e. on 06.07.2022. Subsequently, on 08.07.2022 during interrogation, an unlicensed 30 bore pistol along with its magazine containing two live bullets thereof was allegedly recovered on the pointation of the accused. However, the Forensic Report indicates that all the material i.e. recovered 30 bore pistol with magazine and two 30 bore live bullets and three 30 bore crime empties were dispatched to the Forensic Science Laboratory (FSL) on 18.07.2022 after unexplained delay of about ten days after recovery of crime weapon and thirteen days after recovery of empties. This sequence of events clearly shows that the empties were sent to the laboratory only after the arrest of the accused. Such unexplained delay in sending the crime empties and weapon to the FSL creates serious doubt regarding the sanctity of the recovery proceedings. As such, the retrieval of the pistol from the possession of the accused bears no legal significance,

and the positive report of the FSL, having been based on belatedly dispatched samples, loses its evidentiary worth. Such omission violates settled principles of fair investigation and materially affects the credibility of the prosecution's version. Consequently, the alleged recovery cannot be safely relied upon and the manner in which it was preserved or produced before the Forensic Science Laboratory. Reliance is placed upon the case of ***Muhammad Abras v. the State (2025 SCMR 1145).*** A similar view was expressed in ***Nasrullah v. the State (2017 SCMR 724)***.

21. Besides, the prosecution has relied upon the alleged recovery of a pistol said to have been effected on the pointation of the accused during interrogation. However, the record is completely silent as to whether any such disclosure statement of the accused was formally recorded in writing. The absence of any record of the alleged pointation renders the recovery proceedings highly doubtful and devoid of legal sanctity. In this regard, guidance may be taken from the judgment of the Hon'ble Supreme Court in ***Zafar Ali Abbasi and another v. Zafar Ali Abbasi and others (2024 SCMR 1773)***.

22. Besides, prosecution evidence in the case of recovery of alleged crime weapon i.e. an unlicensed 30-bore pistol along with its magazine containing two live bullets, does not inspire confidence. The witnesses are not unanimous on material points. The complainant SIP Allah Dino, who is also the Investigating Officer in both cases, deposed that near the land of Siraj Shar, the accused pointed towards the eastern side and voluntarily produced the weapon from bushes after digging the land, whereas mashir PC Hafeezullah stated that the accused pointed towards the northern side and produced the same from bushes of a tree. During cross-examination, the complainant deposed that at the time of interrogation the accused was wearing black clothes, while the mashir stated that he was wearing white clothes. The complainant stated that the accused was handcuffed when they left the police station and that the investigation bag was with him at

the time of recovery, whereas the mashir denied that the accused was handcuffed and stated that the investigation bag was brought later from the police mobile. The complainant deposed that they went to the place of recovery through link road, whereas the mashir stated that they went through main Larkana road. The complainant stated that many persons gathered and were asked to act as mashirs but refused, whereas the mashir deposed that no one came there. Both also contradicted each other regarding the four corners of the place of recovery and the duration of proceedings. No independent witness was associated. Under such circumstances, it cannot be ruled out that the alleged recovery was foisted upon the accused and the same cannot be safely relied upon as corroborative evidence.

23. In the present facts, the Arms case being founded upon the same doubtful investigation and unsupported recovery evidence, the conviction recorded therein also cannot be sustained.

24. Insofar as the recovery of the pistol and the positive report of the Forensic Science Laboratory (FSL) are concerned, it is significant to note that once the direct prosecution evidence has been disbelieved, the conviction and sentence of the accused cannot be maintained merely on the basis of such recovery and the corresponding FSL report. Without delving into the merits or demerits of these pieces of evidence, it is well settled that recovery alone, even if proven, cannot form the sole basis for conviction when the primary ocular account stands discredited. In this context, reliance may be placed on the judgments of the Hon'ble Supreme Court in ***Dr. Israr-ul-Haq v. Muhammad Fayyaz (2007 SCMR 1427), Muhammad Afzal alias Abdullah & others v. the State & others (2009 SCMR 436), Abdul Mateen v. Sahib Khan & others (PLD 2006 SC 538), & Nek Muhammad & another v. the State (PLD 1995 SC 516).***

25. What appears from the evidence discussed above is that the charge in both cases remained unproved against the accused/appellant

beyond reasonable doubt. It is settled law that the prosecution must stand on its own legs and cannot derive benefit from weakness of the defence, if any.

26. It is by now a well-settled principle of criminal jurisprudence that "It is an axiomatic principle of criminal law that in case of doubt, the benefit thereof must accrue in favour of the accused. It is not necessary that there should be many circumstances creating doubt. If a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, he will be entitled to the benefit of doubt as a matter of right and not as a matter of grace." Reliance in this regard is placed upon the case of ***Tariq Pervez v. The State (1995 SCMR 1345)***.

Likewise, in ***Muhammad Akram v. the State (2009 SCMR 230)***, the Honourable Supreme Court has held that where the prosecution evidence is not confidence-inspiring & suffers from material infirmities, the accused cannot be convicted on such shaky evidence.

Similarly, in ***Muhammad Mansha v. The State (2018 SCMR 772)***, it has been reiterated that if there exists any doubt arising from the prosecution case, the accused is entitled to the benefit thereof as a matter of right.

27. Applying the above settled principles to the facts of the present case, we are of the considered view that the prosecution has failed to prove its cases against the appellant beyond reasonable doubt and, therefore, the impugned judgments cannot be sustained. Consequently, both the appeals are allowed and, by setting aside both the impugned judgments, the appellant is acquitted of the charge. He shall be released forthwith, if not required in any other case. The Murder Reference under Section 374, Cr.P.C. is answered in the NEGATIVE.

*JUDGE*

*JUDGE*

*Irshad Ali M/ Steno*