

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

Criminal Jail Appeal No.S-07 of 2025

Appellants:	1). Sikandar Ali s/o Ghulam Hussain Arejo 2). Abdul Basit s/o Ali Akbar Choliyani, <i>Through</i> Mr. Noorullah G. Rind, Advocate.
The State:	<i>Through</i> Mr. Nazeer Ahmed Bhangwar, Deputy Prosecutor General, Sindh.
Complainant:	Altaf Ali son of Laila Khan by caste Rajput. (In person)
Date of Hearing	: 10.08.2026.
Date of Decision	: 10.08.2026.
Date of Reasons	: 17 .08.2026.

JUDGEMENT

Ali Haider 'Ada' J:-Through the instant Criminal Jail Appeal, the appellants have assailed the judgment dated 03.03.2025, passed by the learned 1st Additional Sessions Judge/MCTC, Kamber, in Sessions Case No.75 of 2022, arising out of FIR No.95 of 2021, registered at Police Station Waggan (P.P. Lalu Raunk), whereby they were tried for offences punishable under Sections 302, 324, 352, and 34 of the Pakistan Penal Code. Upon conclusion of the trial, they were convicted and sentenced as under:

- i. *Accused Sikandar Ali son of Ghulam Hussain by caste Arejo and accused Abdul Basit son of Ali Akbar by caste Choliyani are convicted for an offence punishable under Section 302 PPC R/W Section 34 PPC, and sentenced to imprisonment for life, for commission of murder of the deceased Rana Sakhawat Ali, and to pay the compensation of Rs. 20,00,000/- (Twenty Lac) each, to the legal heirs/bereaved family of the deceased, in terms of Section 544-A Cr.P.C, and*

in case of failure thereto, he shall suffer S.I for one year more.

- ii. *Accused Sikandar Ali son of Ghulam Hussain by caste Arejo and accused Abdul Basit son of Ali Akbar by caste Choliyani are also convicted for an offence punishable u/s 324 PPC R/W Section 34 PPC, and sentenced to undergo R.I for ten years, for causing firearm injury to PW Zubair Afaq, with further direction to pay the fine amount of Rs.100,000/- (Rupees One Lac) each, and in case of failure thereto, they shall suffer further S.I for six months more.*
- iii. *Accused Sikandar Ali son of Ghulam Hussain by caste Arejo and accused Abdul Basit son of Ali Akbar by caste Choliyani are convicted for an offence punishable U/S Section 452 PPC R/W Section 34 PPC, and sentenced to undergo R.I for seven years, for trespassing into rice mill of the complainant after having made preparation of causing hurt and assault to them, with further direction to pay the fine amount of Rs.50,000/- (Rupees Fifty Thousand) each, and in case of failure thereto, they shall suffer further S.I for six months more.*

The aforesaid sentences awarded to the accused shall run concurrently, however, the benefit of Section 382-B Cr.P.C is also extended to both accused.

2. The prosecution case, as set out in the FIR lodged by the complainant, Altaf Ali Rajput, is that he runs Al-Mehtab Rice Mill situated in Lalu Raunk Town. On 27.11.2021, at about 09:20 a.m., while he was sitting in his rice mill along with his brother, Rana Sakhawat, and his nephews, Zubair and Sarfraz, four unknown culprits arrived there on two motorcycles. Two of them remained outside while the remaining two entered the office. They allegedly took out pistols from the folds of their clothes, whereupon one of them fired at Rana Sakhawat, causing multiple firearm injuries. When Zubair attempted to overpower the assailant, the other accused also fired at him, causing firearm injury. Upon the cries and alarm raised by the complainant party, the assailants, along with their two companions waiting outside on motorcycles, fled from the

place of occurrence. The complainant party found Rana Sakhawat having sustained firearm injuries on his abdomen, right wrist, left thigh, right side of the mouth and the back of his head, whereas Zubair had sustained a firearm injury on his right thigh. Both the injured were immediately shifted to Larkana after arranging transportation; however, Rana Sakhawat succumbed to his injuries on the way, while injured Zubair was admitted to the hospital for treatment. After the post-mortem examination and funeral rites of the deceased, the complainant lodged the instant FIR against unknown persons.

3. The investigation commenced, during which the Investigating Officer recorded the further statement of the complainant and the statements of the eye-witnesses under Section 161 Cr.P.C. In those statements, the eye-witnesses disclosed the identities of the previously unknown assailants as Sikandar Ali, Abdul Basit, Asadullah alias Labaik and Aqib alias Ghulam Mehdi. Upon completion of the usual investigation, the final report (challan) was submitted before the learned Judicial Magistrate, who, after observing the requisite codal formalities, transmitted the case to the learned trial Court. Copies of the relevant documents were supplied to the accused in compliance with Section 265-C Cr.P.C. Thereafter, on 12.03.2022, a charge was framed against the present appellants along with co-accused Asadullah alias Labaik, to which they pleaded not guilty and claimed trial.

4. In order to substantiate the charge, the prosecution examined thirteen witnesses. PW-01, Inspector/Investigating Officer Abdul Ghafoor Chandio, produced the memo of inspection of the dead body, Danistnama, and memo of inspection of the place of vardat and recovery. PW-02, HC Zaffar Ali, the corpse bearer, produced the receipt regarding handing over of the dead body to the complainant. PW-03, Dr. Ameer Ahmed Patujo, Medical Officer, produced the Lash Chakas Form, post-mortem report of the deceased, letter

addressed to the SHO, Police Post Lalu Raunk, police referral letter relating to injured Zubair, and the provisional as well as final medical certificates of the injured. PW-04, Supervising Tapedar Muhammad Talib, produced the sketch of the place of occurrence. PW-05, complainant Altaf Ali Rajput, produced the FIR. PW-06, injured eye-witness Zubair Afaq Rajput, produced his statement recorded under Section 164 Cr.P.C. PW-07, eye-witness Sarfraz Rajput, also supported the prosecution case. PW-08, mashir Muhammad Iqbal Rajput, was examined. PW-09, SIP Zulfiqar Ali Jatoi, the first Investigating Officer, produced the Roznamcha entries, memo of inspection of injuries of injured Zubair, memo regarding collection of his blood-stained clothes, R.C. Nos.97, 99 and 107, memo of arrest of three accused persons and recovery of unlicensed weapons from them, copies of FIR Nos.98, 99 and 100 of 2021, FSL report, Ballistic Expert's report, photographs of the pistols, magazines and live cartridges, and letters addressed by the Superintendent of Police, Kamber-Shahdadkot, to the FSL, Larkana, and SFDL, Karachi, for examination of the case property. PW-10, HC Asghar Ali, and PW-11, PC Abdul Karim, were also examined. Subsequently, on the application of the learned State Counsel, PW-12, WHC/Malkhana In-charge Aslam Ali Wadho, produced the attested copy of Entry No.57 of Register No.19. Thereafter, PW-13, Mr. Faheem Hussain Rajpar, learned Judicial Magistrate, was examined through video link and produced the police letter dated 14.12.2021 along with the statement of PW Sarfraz recorded under Section 164 Cr.P.C. After examining the above witnesses, the learned State Counsel closed the prosecution evidence.

5. After the closure of the prosecution evidence, the statements of the appellants were recorded under Section 342 Cr.P.C., wherein they denied the prosecution allegations, professed their innocence and claimed false implication. They neither opted to examine themselves on oath under Section 340(2) Cr.P.C. nor did they produce any witness in defence. Upon completion of the trial, the

learned trial Court, vide the impugned judgment, acquitted co-accused Asadullah alias Labaik but convicted and sentenced the present appellants as stated herein above. Being aggrieved thereby, the appellants have preferred the instant Criminal Jail Appeal.

6. Learned counsel for the appellants contended that the prosecution evidence suffers from material contradictions and inherent inconsistencies, which create serious doubt regarding the truthfulness of the prosecution case. He argued that the ocular account is not in consonance with the medical evidence and that the prosecution has failed to establish its case beyond reasonable doubt. He, therefore, prayed for acquittal of the appellants by extending to them the benefit of doubt.

7. Conversely, the learned Deputy Prosecutor General, supported the impugned judgment and submitted that the learned trial Court has rightly appreciated the evidence available on record and has correctly convicted the appellants. According to him, the involvement of the appellants in the commission of the murder of deceased Rana Sakhawat and in causing firearm injuries to injured Zubair has been established through reliable and confidence-inspiring evidence, whereas the minor discrepancies pointed out by the defence are inconsequential and do not adversely affect the prosecution case. He, therefore, prayed for dismissal of the appeal and maintenance of the conviction and sentence. The complainant, who appeared in person before this Court, submitted that he had pardoned the appellants and, therefore, did not intend to engage any counsel or pursue the matter any further.

8. Heard the learned counsel for the appellants, the learned Deputy Prosecutor General, the complainant appearing in person, and have carefully examined the entire material available on the record.

9. The prosecution case, in a nutshell, is that four accused persons, riding on two motorcycles, arrived at a rice mill. Two of them allegedly entered the premises and resorted to indiscriminate firing, resulting in the death of one Rana Sakhawat, the brother of the complainant, and causing firearm injury to Zubair, the complainant's nephew, who was cited as an injured eyewitness. The alleged incident took place on 27.11.2021. Immediately after the occurrence, the police reached both the place of incident and the hospital on the same day. However, the complainant lodged the FIR on 28.11.2021 against unknown persons. Subsequently, through his further statement, he disclosed the names of the accused persons. The prosecution further alleged that the injured witness, Zubair, also disclosed the names of the accused in his statement recorded under section 164, Cr.P.C on 16.12.2021. During the course of investigation, both appellants were arrested, and the investigating agency claimed to have recovered the alleged crime weapon along with a hand grenade from their possession. Upon completion of the investigation, the prosecution submitted the challan before the trial Court.

10. Coming to the first aspect of the prosecution case, the prosecution examined PW-1, namely Abdul Ghafoor. In his examination-in-chief, he deposed that on 27.11.2021, at about 12:00 noon, he received information regarding the incident from the complainant. Admittedly, the alleged occurrence had taken place earlier that morning at about 9:20 a.m. The witness further admitted that the complainant remained with him after the occurrence; however, despite having ample opportunity, the complainant neither disclosed the commission of the offence by any identified person nor revealed the identity of the assailants. Nevertheless, the complainant lodged the FIR on 28.11.2021 at about 6:00 p.m., i.e., after an unexplained delay of more than 33 hours, against unknown persons without furnishing either the names or descriptions of the culprits. Subsequently, through his further statement recorded on

the same day, the complainant for the first time disclosed the names of the accused persons. The aforesaid unexplained delay of more than 33 hours in lodging the FIR strikes at the very root of the prosecution case. It is well established that an unexplained delay in reporting the occurrence provides sufficient time for deliberation, consultation, and fabrication, thereby seriously impairing the credibility of the prosecution version and rendering the presence of the alleged eyewitnesses at the scene of the occurrence doubtful. The complainant, in his deposition, admitted that the police station was situated at a distance of approximately 300 to 350 paces from the place of occurrence. Despite the close proximity of the police station, he failed to lodge the FIR promptly and instead reported the incident after an unexplained delay of more than 33 hours. Unexplained delay in the registration of the FIR is always considered fatal to the prosecution case, as it creates a serious dent in the truthfulness of the prosecution story. Reliance, in this regard, is placed upon the case of **Muhammad Siddique and another v. The State and others (2026 SCMR 783)**.

11. Furthermore, It is a settled principle of criminal jurisprudence that where information relating to the commission of a cognizable offence is received by the officer-in-charge of a police station, the registration of an FIR under section 154, Cr.P.C. is mandatory and cannot be refused or unnecessarily delayed. The registration of the FIR is the first and indispensable step for setting the criminal law into motion, whereafter the investigating officer is legally empowered to embark upon the investigation in accordance with the provisions of the Code of Criminal Procedure, 1898. Any investigation conducted prior to the registration of the FIR is alien to the scheme of the criminal justice system and carries no legal sanctity. It is further well settled that the maxim *Communi observantia non est recedendum* applies with full force, meaning thereby that where the law requires a thing to be done in a particular manner, it must be done in that manner alone; if the prescribed

procedure is not followed, it shall be presumed that the act has not been performed in accordance with law. Since every criminal case concluded in a police report under section 173, Cr.P.C after an investigation initiated upon the registration of an FIR, any divergence from this mandatory procedure seriously undermines the legality and credibility of the investigation. In the present case the Investigating Officer candidly admitted during his deposition that he had commenced the investigation prior to the registration of the FIR, Such an admission goes to the very root of the prosecution case. Reliance, in this regard, is placed upon the cases of **Seeta Ram v. The State (2025 SCMR 2028)** and **Jeehand v. The State (2025 SCMR 923)**.

12. The complainant initially lodged the FIR against unknown persons and only subsequently, through his further statement, disclosed the names of the accused. Significantly, he failed to disclose the source of his knowledge as to how he came to identify the accused after the registration of the FIR. The prosecution, in an attempt to overcome this serious deficiency, relied upon the testimony of the alleged eyewitness, Sarfaraz, the son of the deceased. However, his testimony proved to be more destructive than supportive of the prosecution case. During cross-examination, Sarfaraz categorically admitted that the accused persons were already known to him as well as to the complainant due to prior business transactions. He further deposed that he did not disclose the names of the accused to the complainant after the occurrence because, according to him, the complainant was already acquainted with them. More importantly, he admitted that even at the time when the FIR was lodged, he did not disclose the names of the accused to the complainant. This admission completely demolishes the prosecution's explanation for initially nominating unknown persons in the FIR and renders the complainant's subsequent disclosure of the names of the accused through his further statement wholly artificial and unbelievable. If, according to the prosecution's

own eyewitness, both he and the complainant already knew the accused, there was no plausible reason for withholding their names in the FIR. This unexplained omission creates a serious dent in the prosecution case and strongly suggests that the names of the accused were introduced after due deliberation and consultation. Reliance, in this regard, is placed upon the case of **Bijar alias Bijli v. The State (2024 YLR 2619) (Sindh High Court, D.B.)**, wherein it was held that:

9. The identity of the unknown accused is also under doubt. The complainant stated that he just came to know of the identity of these unknown assailants and got his further statement under section 162, Cr.P.C. recorded as Zameer, Attur and Muhammad Usman. He does not disclose the source of such information, and in that same 162, Cr.P.C. statement he discloses how he received the injuries to his own self. Suffice it to say that this statement was nothing short of an attempt to improve the prosecution case at the very stage because of the introduction of information for the very first time. Deliberate and dishonest improvements, taken with the assumption that they are to strengthen the prosecution case, cast serious doubts on the said witness' veracity which ultimately makes him unreliable; Naveed Asghar and 2 others v. The State, PLD 2021 SC 600. No test identification parade was conducted either and the police believed whatever source they had received their 'information from. Undoubtedly it is not a legal requirement to conduct a test identification parade, however in cases where the accused are not known by name or seen prior, it becomes a necessity in order to establish their identity; Inhaf Ullah v. The State (2021 SCMR 1725).

13. Another significant circumstance creating doubt in the prosecution case is the complete failure of the complainant to assign any motive or previous enmity between the deceased and the appellants. The complainant did not offer any cogent or plausible explanation as to why the appellants, with whom neither he nor the deceased allegedly had any hostility, would commit such a heinous offence. These collective infirmities create a reasonable doubt about the guilt of the appellants. Reliance, in this regard, is placed upon the cases of **Muhammad Siddique and another v. The State and others (2026 SCMR 783)** and **Saddam**

Kakar v. The State (2026 SCMR 1201).

14. The prosecution evidence also suffers from material contradictions regarding the movements of the complainant and the injured witness immediately after the occurrence. According to the complainant, when he reached the hospital, the injured Zubair and PW-Sarfaraz were with him. The prosecution witnesses further maintained that they had reached the hospital at about 12:00 noon on 27.11.2021. However, the medical record tells an entirely different story. The Medico-Legal Officer, who examined and treated the injured Zubair, recorded his time of arrival at the hospital as 6:00 p.m. on the same day, i.e., 27.11.2021. This documentary evidence materially contradicts the ocular account furnished by the complainant and the prosecution witnesses regarding the time at which the injured was brought to the hospital. No explanation whatsoever has been offered by the prosecution to reconcile this glaring inconsistency. The complainant's testimony is further contradicted by that of PW/I.O Abdul Ghafoor, the first police official who responded to the information regarding the occurrence. The complainant deposed that the police had reached the place of occurrence on their own and that he had not visited the police station prior to the registration of the FIR. He further stated that he was not present when the police visited the place of occurrence. This version, however, is inconsistent with the testimony of the investigating officer as well as the memo of inspection of the place of occurrence, which expressly records that the place of incident was inspected at the pointation of the complainant. The testimony of the injured witness, Zubair, also suffers from material contradictions, which substantially impair his credibility. In his deposition, he stated that after the occurrence he remained admitted in the hospital for four days. However, this assertion is contradicted by the testimony of PW Sarfaraz, who categorically deposed that Zubair remained admitted for only one day. More importantly, Zubair admitted during his cross-examination that, while speaking to the

media immediately after the occurrence, he had stated that the assailants had covered (muffled) their faces. This admission is in direct conflict with the prosecution's case. The complainant consistently maintained that the assailants had not concealed their faces, and it was on that basis that he subsequently claimed to have identified and nominated the appellants through his further statement. In the present case, the prosecution evidence suffers from material contradictions on vital particulars, such inconsistencies cannot be brushed aside as minor discrepancies. Reliance, in this regard, is placed upon the case of **Mustaq Ahmed v. The State (2026 SCMR 60)**.

15. A careful examination of the medical evidence reveals that the post-mortem report suffers from serious deficiencies. Under the heading "Head & Cranium," the medical officer failed to record any findings regarding the condition of the scalp, skull bones, meninges, or brain, although these particulars are required to be specifically noted in the prescribed proforma. More importantly, according to the prosecution, the deceased sustained firearm injuries on the abdominal region. However, in Column III of the post-mortem report relating to the abdomen, the medical officer recorded the condition of the abdominal wall, mouth, pharynx, oesophagus, stomach and its contents, spleen, bladder, pancreas, diaphragm, and peritoneum as "NAD" (No Abnormality Detected). If the deceased had indeed sustained firearm injuries to the abdomen, it was incumbent upon the medical officer to describe the nature of the internal damage, the organs affected, the trajectory of the projectile, and the corresponding pathological findings. The complete absence of any such observations renders the medical evidence highly doubtful and inconsistent with the prosecution's ocular version. Another disturbing aspect of the medical evidence is that although the post-mortem examination was admittedly conducted on 27.11.2021, the medical officer deposed before the trial Court that he prepared the post-mortem report on the following day. The

prosecution has failed to offer any explanation for this delay in preparing the post-mortem report. Standard medico-legal practice requires that the findings of a post-mortem examination be recorded during the examination itself. In this regard, **Modi's Medical Jurisprudence and Toxicology (26th Edition, Chapter 13, p. 296)** emphasizes that the medical officer should carefully record the details of the post-mortem examination at the spot or in a notebook during the examination itself and should not postpone the preparation of the report merely to avoid soiling the document. The unexplained delay in preparing the report, coupled with the material omissions therein, substantially diminishes its evidentiary value. Reliance, in this regard, is placed upon the case of **Said-ur-Rehman v. The State (2026 SCMR 955)**.

16. Another significant infirmity in the prosecution case is the withholding of independent witnesses. All the prosecution witnesses consistently deposed that 15 to 25 labourers were present and working in the rice mill at the time of the occurrence. They further admitted that these labourers had participated in shifting the deceased and the injured to the hospital immediately after the incident. Thus, the presence of independent witnesses at the place of occurrence was neither doubtful nor disputed. Despite the availability of such natural and independent witnesses, the prosecution failed to examine even a single labourer to corroborate its version. No explanation whatsoever has been furnished for withholding their testimony. It is a settled principle that where independent witnesses, who are readily available and are natural witnesses to the occurrence, are withheld without any plausible justification, the Court is entitled to draw an adverse inference against the prosecution under **Article 129(g) of the Qanun-e-Shahadat Order, 1984**. The failure to produce the best available evidence further weakens the prosecution case and creates an additional dent in its credibility. Reliance, in this regard, is placed

upon the case of **Rasheed Ahmad alias Sheeda v. The State (2026 SCMR 798)**.

17. Moreover, the Tapedar's report also fails to advance the prosecution case. A careful examination of the report reveals that it does not specify the exact location or position of the complainant or the other alleged eye witnesses at the time of the occurrence. The omission to identify their precise locations deprives the report of any corroborative value regarding their claimed presence at the scene of the incident. Reliance, in this regard, is placed upon the case of **Lal Dino alias Laloo v. The State (2018 YLR 2016)**.

18. The prosecution further alleged that both appellants were arrested on 08.12.2021 and that the alleged crime weapons, along with a hand grenade, were recovered from their possession. It is, however, an admitted position that the appellants were acquitted of the charge relating to the recovery of the hand grenade by the learned Special Judge, Anti-Terrorism Court, Larkana. This circumstance itself diminishes the evidentiary worth of the alleged recoveries relied upon by the prosecution. Furthermore, the prosecution secured the ten crime empties from the place of occurrence on 27.11.2021, yet those empties were not dispatched to the Forensic Science Laboratory until 31.12.2021, when they were sent along with the pistols allegedly recovered from the appellants. This unexplained delay of more than one month in transmitting the crime empties to the forensic laboratory creates a serious possibility of manipulation and strongly suggests that the investigating agency awaited the alleged recovery of the pistols before forwarding the exhibits for forensic examination. A further glaring deficiency is that the ballistic expert's report does not categorically state that all ten crime empties recovered from the place of occurrence had been fired from the pistols allegedly recovered from the appellants. Thus, even the forensic evidence falls short of conclusively connecting the appellants with the commission of the offence. Likewise, an

unexplained delay in dispatching crime empties and recovered weapons to the forensic laboratory substantially crush down the evidentiary value of the positive forensic report, as the possibility of tampering or fabrication cannot be ruled out. Reliance, in this regard, is placed upon the cases of **Muhammad Siddique and another v. The State and others (2026 SCMR 783)** and **MUHAMMAD ABRAS Versus The STATE 2025 SCMR 1145**.

19. Another material infirmity in the prosecution case relates to the statement of the injured witness recorded under section 164, Cr.P.C. Admittedly, the said statement was recorded after an unexplained delay of more than 17 days from the date of the occurrence. The prosecution has failed to furnish any plausible explanation for such delay. It is a settled principle of law that where a statement under section 164, Cr.P.C is recorded after an unexplained delay, its evidentiary value becomes substantially diminished, as the possibility of deliberation, consultation, tutoring, or subsequent improvement cannot safely be excluded. The record further reveals that the defence had specifically reserved its right to cross-examine the witness, whose statement under section 164, Cr.P.C was recorded. However, record revealed that cross examination was reserved by the Magistrate but further no such opportunity was afforded to the appellants, thereby causing serious depriving them of a valuable opportunity to challenge the legality and evidentiary value of the statement recorded under section 164, Cr.P.C. Reliance, in this regard, is placed upon the cases of **Muhammad Yousaf v. The State (2002 YLR 397)**, **Mst. Zainab Bibi v. S.H.O. and others (2003 YLR 3191)**, **Muhammad v. The State (2022 YLR 967) (Federal Shariat Court)**, **Gulzar Shah v. The State (2021 MLD 169) (Sindh High Court, D.B.)**, and **Kaleem Ullah v. The State (2026 MLD 637) (Peshawar High Court, D.B)**.

20. It is also an admitted position that, out of the accused nominated in the present case, Asadullah alias Labaik was tried along with the present appellants but was acquitted by the learned

trial Court after extending him the benefit of doubt on the same set of evidence. Once the trial Court found the prosecution evidence insufficient to sustain the conviction of one of the co-accused, such finding assumes significance while evaluating the case of the present appellants. Reliance, in this regard, is placed upon the case of **Umar Daraz v. The State (2026 SCMR 1185)**.

21. Keeping in view the foregoing discussion, the reasons recorded hereinabove, and the findings arrived at, this Court is of the considered view that the prosecution has miserably failed to establish its case against the present appellants beyond reasonable doubt. It is by now a cardinal principle of criminal jurisprudence that if a single circumstance creates reasonable doubt in the prosecution case, the accused becomes entitled to the benefit of such doubt. In this regard, reliance is placed upon the case of **Iftikhar Ahmed alias Papu v. The State (2026 SCMR 1010)**.

22. Accordingly, vide our short order dated 10.08.2026, the instant appeal was allowed, the appellants were acquitted of the charge, and the impugned judgment dated 03.03.2025, passed by the learned trial Court, was set aside. The jail authorities were directed to release the appellants forthwith, if not required in any other custody case. These are the detailed reasons in support of the short order dated 10.08.2026.

JUDGE