IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Revision Application No.S-42 of 2025

Applicants:	Abdul Latif, Faqir Muhammad @ Faqiro and Abdul Rasheed *Through* Mr. J.K.Jarwar, Advocate
Injured:	Gulzar Ali *through* Mr. Aijaz Ali Bhutto, Advocate
The State:	*Through* Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General
Date of hearing:	**05.6.2025**
Date of decision:	**05.6.2025**
Date of Reason:	**16.06.2025**

J U D G M E N T

Ali Haider 'Ada',J;- Through this Criminal Revision Application, the applicants challenge the judgment dated 19.03.2025, passed by the learned Sessions Judge, Naushahro Feroze, in Criminal Appeal No. 08/2025. The Appellate Court upheld the judgment dated 25.02.2025, passed by the learned Consumer Protection Court/Judicial Magistrate, Naushahro Feroze, through which the learned trial Court convicted and sentenced the applicants as follows:

i. For the offence under Section 337-F(vi) read with Section 34 of PPC, the applicants were sentenced to suffer Simple Imprisonment (SI) for 24 months and to pay Rs. 10,000/- each as Daman to the legal heirs of complainant Zamir Hussain, or in default thereof, to suffer Simple Imprisonment until payment of the amount.

ii. For the offence under Section 337-A(i) read with Section 34 PPC, the applicants were sentenced to suffer SI for 12 months and to pay Rs. 5,000/- each as Daman to injured witness Muhammad Iqbal, or in default thereof, to suffer Simple Imprisonment until payment of the amount.

iii. For the offence under Section 337-A(i) read with Section 34 PPC, the applicants were sentenced to suffer SI for 12 months and to pay Rs. 5,000/- each

as Daman to injured witness Gulzar Ali, or in default thereof, to suffer Simple Imprisonment until payment of the amount.

iv. For the offence under Section 337-F(i) read with Section 34 PPC, the applicants were sentenced to suffer SI for 6 months and to pay Rs. 5,000/- each as Daman to injured witness Gulzar Ali for his injuries Nos. 2 and 3, or in default thereof, to suffer SI until payment of the amount.

The sentences awarded under *Tazir* (punishment) to the accused will run concurrently. Furthermore, the benefit of Section 382 of the Criminal Procedure Code (Cr.P.C) was extended to accused Abdul Latif, who had remained in custody for 25 days.

2. The prosecution's case is that a dispute had arisen between the parties concerning children. On 01.12.2023, at around 04:30 p.m., the applicants, along with their companions, armed with hatchets, lathis, and pistols, trespassed into house of the complainant. They used abusive language, and at the instigation of accused Abdul Rasheed, co-accused Abdul Latif struck the complainant with a hatchet on his left arm. Accused Abdul Rasheed inflicted a lathi blow on PW Muhammad Iqbal's head and shoulder, while accused Faqir (alias Faqir Muhammad) struck PW Gulzar on his arm and head with lathi blows. Accused Meehon and Nazim also made aerial firing. PW Mst. Hawa pleaded with the accused in the name of Almighty Allah, after which they fled the scene. The injured were initially taken to the police station, from where they were referred to the hospital for treatment, and subsequently, an FIR was lodged by the complainant.

3. After completing the investigation, the investigating officer submitted the challan before the trial Court, which framed charges against the applicants and co-accused Meehon and Nazim. The accused pleaded not guilty and claimed trial.

4. During the trial, an application was filed by one Hamal Faqir, informing the Court that complainant Zameer Hussain had passed away. To prove its case, the prosecution examined the witnesses: PW-1, injured Gulzar Ali; PW-2, injured Muhammad Iqbal; PW-3, mashir Ameer Ali, who produced the memo of the place of incident, memo of injuries, and memo of arrest and recovery; PW-4, M.O. Dr. Mairaj Rasool, who produced the carbon copy of the police

letter, along with the provisional and final medical certificates for the three injured; and PW-5, I.O. ASI Muhammad Luqman Khokhar, who produced the FIR. After the examination of these witnesses, the learned prosecutor closed the prosecution's case.

5. The statements of the accused were recorded under Section 342 of the Cr.P.C, wherein they denied the allegations leveled against them and claimed their innocence. However, the accused neither examined them on oath nor chose to produce any witnesses in their defense.

6. After hearing arguments from both sides, the learned trial Court pronounced the impugned judgment on 25.02.2025, convicting and sentencing the present applicants as described above, while acquitting accused Meehon and Nazim of the charges. The applicants subsequently appealed the judgment before the learned Appellate Court, which dismissed their appeal and upheld the decision of trial Court.

7. Learned counsel for the applicants contended that there are contradictions in the evidence presented by the prosecution witnesses, which have not been considered by either the trial Court or the appellate Court. He further argued that the medical evidence does not align with the ocular account. Additionally, he pointed out that the recovery of the crime weapon is legally flawed, as the recovered hatchet was not sent for chemical examination to the Chemical Analyst. He concluded that the prosecution has failed to establish its case against the applicants. Based on these arguments, learned counsel prayed for the acquittal of the applicants by setting aside the impugned judgments.

8. On the other hand, learned counsel for the injured parties opposed the revision application, arguing that the applicants were specifically named with distinct roles in causing injuries to the complainant party. He asserted that the witnesses fully supported the prosecution's case and the recovery of the hatchet from applicant Abdul Latif further corroborated the complainant's version. Therefore, he argued, the revision application is meritless and should be dismissed.

9. Learned State counsel also supported the impugned judgment, submitting that specific roles were assigned to the applicants and the recovery

of the hatchet was duly made. However, he conceded that the hatchet was not sent to the chemical analyst, which was essential for a complete investigation. He further noted that the learned trial Court had acquitted the co-accused on the same evidence.

10. After hearing the arguments from all counsels and perusing the material available on record, the matter was taken under consideration.

11. Upon cautious and meticulous examination of the record, it is revealed that the alleged incident took place on 01.12.2023**.** On the same day, the complainant party approached the police station for obtaining a letter for medical treatment. As per the prosecution evidence, all injured persons were in a conscious state at that time. Two of the injured, namely Zameer and Iqbal**,** were referred to Nawabshah for further medical treatment, whereas the third injured person, Gulzar**,** was treated at the local medical facility and was discharged on the same day.

12. Despite the fact that the injured were capable of lodging the FIR and had access to the police on the day of occurrence, the FIR was registered belatedly on 24.12.2023**,** i.e., after a delay of 23 days from the date of the incident. The prosecution has attempted to justify this delay by contending that the final medical certificates were not in hand and were awaited in order to determine the applicable penal sections. However, the record reveals that the final medical certificates were issued on 18.12.2023 and even from that date, the FIR was not lodged promptly. Therefore, an unexplained delay of five days ensued after the availability of the medical documents. Such inordinate and unexplained delay in the registration of FIR casts serious doubt on the veracity of the prosecution case, especially in circumstances where the injured were conscious and capable of approaching the police on the day of occurrence. The delay appears to be neither plausible nor justified and raises the possibility of consultation, improvement in the story to desired penal consequences. In this Context, reliance is placed upon the case of ***Shaukat Hussain vs the State 2024 SCMR 929, Muhammad Ikhlas vs The State 2025 PCrLJ 57.***

13. As per the version of the prosecution, Mst. Hawa**,** the mother of the complainant, had arranged the vehicle to transport the injured persons first to the police station and thereafter to the hospital for medical treatment. It is the prosecution’s case that Mst. Hawa was the person who obtained the police

letter for medical treatment and then accompanied the injured to the hospital. However, according to the medical letter, it was received by the injured Gulzar instead of Mst. Hawa, whereas all depositions consistently state that the injured were referred through a letter. This discrepancy contradicts the medical record and raises doubts about the accuracy of the prosecution's version. Notably, Mst. Hawa is also shown as one of the marginal witnesses in the case; however, the prosecution failed to examine her, which significantly weakens the evidentiary value of the prosecution's case.

14. Furthermore, injured witness Gulzar deposed that Mst. Hawa and a neighbor brought the injured to the hospital. He further stated that Zameer and Iqbal were later shifted to Nawabshah hospital by one Mashooq Solangi, who was identified as a neighbor. The other injured, Muhammad Iqbal, also named Mashooq Solangi as the person who assisted in transportation. However, the prosecution failed to produce Mashooq Solangi as a witness, despite the fact that he was a material witness having firsthand knowledge of the events immediately following the incident.

15. Additionally, the prosecution did not produce the Head Constable of the concerned police station who had initially issued the letter for medical treatment. Since the prosecution's case cruxes upon timely issuance of medical referral and the official acknowledgment of injuries, the testimony of the said Head Constable was crucial. His absence from the witness box renders the chain of events incomplete and casts further doubt on the prosecution's case. It is a settled proposition that withholding of material witnesses without justification gives rise to adverse inference against the prosecution. Reliance is placed upon the case of ***Shaukat Hussain vs the State (Supra) Nasir Mehmood and other vs the State and others 2019 PCrLJ Note 3, Muhammad Ikhlas v. The State*** *(Supra).*

16. Furthermore, the deposition of injured witness Muhammad Iqbal is completely silent with regard to the alleged role of the appellant, Faqiro alias Faqir Muhammad. While the prosecution's case is that the said appellant caused injuries to PW Gulzar, it is noteworthy that Muhammad Iqbal, himself an injured eyewitness, did not attribute any specific overt act to the appellant Faqiro alias Faqir Muhammad in relation to the injuries sustained by Gulzar. This omission is significant and creates a material inconsistency in the prosecution's version, especially when the role of each accused is required to be

clearly established through reliable ocular evidence. The silence of a key injured witness on such point adversely affects the credibility of the prosecution case and raises reasonable doubt regarding the actual involvement of the appellant in inflicting injuries to PW Gulzar.

17. Apart from the aforementioned contradictions, there exist several other material discrepancies in the prosecution evidence that cumulatively weaken its case. For instance, injured witness Muhammad Iqbal stated during cross-examination that he regained consciousness at Nawabshah hospital, whereas PW Gulzar categorically deposed that all injured persons were fully conscious when they reached the police station. This contradiction directly impacts the credibility of the events immediately following the occurrence and suggests inconsistency in the injured witnesses' recollection. Additionally, the alleged motive of the incident, as claimed by the prosecution, was a quarrel between the parties. However, there is internal inconsistency in the prosecution's narrative even on this point. Muhammad Iqbal stated that the quarrel lasted for one hour, whereas Gulzar testified that it continued for only half an hour. It was further alleged that aerial firing was carried out to spread harassment and fear. However, the prosecution has failed to substantiate this claim through any physical evidence. The investigation agency did not recover any crime empties from the scene of occurrence, nor were any empties handed over by the complainant party. Another important discrepancy pertains to the site memo and memo of arrest and recovery, where the mashir admitted during cross-examination that the signatures on the two documents were different, raising suspicion regarding the authenticity or preparation of those memos. Further, while the Investigating Officer deposed that the mashirnama of injury was prepared at the police station, the mashir himself stated that it was prepared in the village. In view of these contradictions and inconsistencies, the prosecution's case becomes doubtful and does not inspire confidence. It is a settled principle that where the prosecution evidence is inconsistent and contradictory on material particulars, the benefit must go to the accused. Reliance in this regard is placed on the case of ***Hubdar alias Huboo Jagirani v. The State (2024 YLR 599).***

18. In addition, the testimony of mashir Ameer Ali, who is also a prosecution witness, reveals that Mst. Hawa shifted the injured to the hospital. However, it is both surprising and astonishing that although Ameer Ali is the

real brother of the complainant and a close family member, his deposition is completely silent regarding his own role in the events immediately following the occurrence. He neither stated that he accompanied the injured to the police station nor that he was involved in shifting them to the hospital. His silence on such material aspects despite being in a position to assist casts doubt on the naturalness of his conduct and raises questions about the credibility and completeness of his testimony. Moreover, although other witnesses, including the injured, mentioned the presence and assistance of a neighbor, Mashooq Solangi, in transporting the injured, other than Ameer Ali, who made no reference whatsoever to Mashooq Solangi.

19. It is also significant to note that the mashir of arrest and recovery, Ameer Ali, categorically deposed during trial that nothing was recovered from the accused/appellant Abdul Latif at the time of his arrest. This statement directly contradicts the prosecution's claim that a hatchet was recovered from the appellant at the time of his arrest. It is the failure of prosecution to corroborate this alleged recovery through the testimony of its own mashir renders the recovery proceedings highly doubtful.

20. Upon examination of the recovery proceedings, it is evident that the hatchet allegedly recovered was neither sealed at the spot by the Investigating Officer, nor were any bloodstains found on the weapon as per the prosecution's own evidence. This omission raises serious doubts regarding the evidentiary value of the alleged recovery. The failure to seal the weapon at the place of recovery and the absence of any bloodstained marks, particularly when the weapon is alleged to have been used in a violent assault, makes the recovery highly doubtful. In this regard, reliance is placed upon the case of ***Abdullah and 3 others v. The State 2021 PCrLJ Note 63.***

21. Now, turning to the medical evidence, the medical evidence in respect of injured Muhammad Iqbal is also not in consonance with the ocular account of the prosecution witnesses. As per the ocular testimony, Muhammad Iqbal sustained injuries on the head and right shoulder; however, the medical documents are silent with regard to any injury on the right shoulder. This contradiction between the oral evidence and medical record creates doubt about the prosecution's claim regarding the seat and nature of injuries. Likewise, the medical evidence indicates that injured Gulzar received injuries on the right arm and head, whereas PW Ameer Ali, the brother of the

complainant and mashir of various memos including **memo of injuries**, testified that Gulzar received injury on the wrist**,** which again introduces inconsistency in the prosecution's account.

22. Additionally, the medical officer who initially examined the injured testified during cross-examination that he was, in fact, a dermatologist. His deposition is completely silent as to the seat of injury, duration of injury, and the nature of weapon used**,** all of which are essential components of medical evidence. In present case, his role was limited to producing documents, without offering any substantive or explanatory medical opinion based on professional analysis. Such approach of medical officer weakens the evidentiary value of medical testimony and renders it incomplete and ineffective for corroborating the ocular account.

23. It is very crucial that medical evidence must furnish essential details**,** including the seat of injury**,** probable duration and kind of weapon used**,** to support the prosecution version. In this context, ***Chapter III*** of ***Modi's Medical Jurisprudence and Toxicology (26th Edition)*** clarifies that although medical officers are experts in their field, it is necessary that they have a sound understanding of all branches of medicine**.** It is also expected to offer a clear and expert opinion on the cause, nature, and likely manner of injuries. Reliance in this regard is placed upon case of ***Muhammad Tasweer v. Hafiz Zulkarnain and 2 others PLD 2009 SC 53, Altaf Hussain v. Fakhar Hussain and another 2008 SCMR 1103.***

24. In this context, where there exists a material conflict between the medical and ocular evidence, the benefit of doubt must go to the accused. This principle has been consistently upheld by Superior Courts. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Amin Ali v. The State, 2011 SCMR 323***, similar view was taken in ***Humayon v. Habib-ur-Rehman and 2 others, 2024 YLR 427.***

25. As far as the role of the Investigation Officer is concerned, he admitted in his deposition that no official entries were made regarding the movements of the police party, either at the time of investigation or during arrest and recovery proceedings. This is a clear violation of the provisions of the Police Rules, 1934, which explicitly provide that every event or action undertaken by the police shall be recorded in writing in the relevant daily diary or roznamcha**.**

26. It is also an admitted position on record that the learned trial Court acquitted co-accused Meenho alias Mian Bux and Nizam from the charges, whereas the appellants were convicted on the basis of the same set of evidence led by the prosecution. The prosecution did not file any Criminal acquittal appeal against the said acquittal, thereby allowing it to attain finality. This selective conviction from within the same body of evidence renders the judgment of conviction legally unsustainable**.**

27. It is now a settled principle of criminal jurisprudence that where the evidence is identical and inseparable with respect to multiple accused and part of that group is acquitted on benefit of doubt or lack of sufficient evidence, then the remaining accused cannot be convicted.Reliance is placed on a catena of judgments from the Hon'ble Supreme Court of Pakistan**,** where this principle has been consistently reaffirmed: ***Altaf Hussain v. The State 2019 SCMR 274***, ***Imtiaz alias Taj v. The State 2018 SCMR 344***, ***Tariq v. The State 2017 SCMR 1672***, ***Muhammad Asif v. The State 2017 SCMR 486***, ***Shahbaz v. The State 2016 SCMR 1763***, ***Akhtar Ali v. The State 2008 SCMR 6***, ***Iftikhar Hussain v. The State 2004 SCMR 1185.***

28. It is a well-recognized principle of criminal law that the testimony of an injured witness is not to be treated as gospel truth. The mere fact that a witness has sustained injuries in the occurrence only establishes his presence at the scene of crime, but does not automatically guarantee the truthfulness of his version**.** The credibility and reliability of such a witness must still be evaluated on the touchstone of judicial scrutiny, keeping in view the surrounding facts and circumstances of the case, consistency in statements, corroborative evidence and conduct during investigation and trial. Injured witnesses, though presumed to be natural witnesses, are not infallible and their testimony must be subjected to the same standards of credibility as any other witness. In this Context, reliance is placed upon the case of ***Nazir Ahmed v. Muhammad Iqbal and another (2011 SCMR 527), Muhammad Pervaiz v. The State (2007 SCMR 670), Attaullah and 3 others v. The State (2016 YLR 2148).*** In the present case, although the witnesses Muhammad Iqbal and Gulzar are injured, their depositions are found to be inconsistent with the medical evidence**,** lacking corroboration from material witnesses, and suffering from serious contradictions, as already discussed above. Therefore, their status as injured

witnesses alone is not sufficient to uphold conviction, unless their testimony passes the test of truthfulness and consistency, which it clearly fails in this case.

29. In view of the foregoing reasons, the prosecution has failed to establish its case against the appellants. Accordingly, the impugned judgments passed by both the learned Appellate Court and the learned Trial Court are hereby set aside. The appellants are acquitted of the charges. These are the reasons for the short order of even date.

J U D G E