

IN THE HIGH COURT OF SINDH,CIRCUIT COURT MIRPURKHAS

Criminal Appeal No.S-07 of 2024.

Criminal Appeal No. S-141 of 2018 (Old Number)

Date	Order with signature of Judge
Appellants:	1.Muhammad Hanif s/o Muhammad Siddique 2. Jalal S/o Jumoon Both confined at Central prison Hyderabad, through Mr. Om Parkash H. Karmani, Advocate.
The State:	through Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General Sindh.
Complainant:	Hameer through Mr. Waheed Ali Lashari, Advocate.
Date of Hearing.	24.07.2025.
Date of Decision.	24.07.2025.
Date of Reason.	29.07.2025.

J U D G M E N T.

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Ali Haider ‘Ada’J:- Through the instant appeal, the appellants have challenged the judgment dated 02.06.2018, passed by the learned Sessions Judge, Tharparkar at Mithi, in Sessions Case No. 15 of 2017, titled The State v. Muhammad Hanif and others, arising out of Crime No. 01 of 2017 registered at Police Station Diplo for offences punishable under Sections 302, 201, and 34 PPC. By the impugned judgment, the appellants were convicted and sentenced to suffer imprisonment for life as Tazir, and were further directed to pay a fine of Rs. 200,000/- each as compensation to the legal heirs of the deceased, as provided under Section 544-A Cr.P.C. However, the benefit of Section 382-B Cr.P.C was extended to both the appellants.

2. Briefly stated, the facts of the prosecution case are that the FIR was lodged on 10.01.2017 at about 1500 hours by the complainant Hameer, wherein the date and time of the incident was mentioned as 08.01.2017 at about 6:00 p.m. According to the FIR, the complainant Hameer was present at his house along with his son Amir Hassan when the accused persons Muhammad Hanif and Jalal arrived and took Amir Hassan along with them, stating that they had some work with him. The complainant also saw co-accused Siddique and Wali Muhammad standing outside the

house. However, Amir Hassan did not return home that night. The complainant approached the accused persons the next day to inquire about the whereabouts of his son, but they responded in a harsh and evasive manner. Subsequently, during the search for his son, the complainant reached the Pacca Road leading to village Layari, where he found a dead body, which he identified as that of his son Amir Hassan. He informed the villagers and the local police, who arrived at the scene, completed the necessary formalities, and shifted the dead body for post-mortem examination. The deceased was buried after the post-mortem. During the condolence gathering (Fateha Khwani), two witnesses, Allah Jurio and Juman, informed the complainant that on 08.01.2017 at around 8:00 p.m., they had seen one person in the company of accused Muhammad Hanif and Jalal. It was further stated that Muhammad Hanif was armed with a desi pistol and that the accused had a person with them covered in a shawl. Upon seeing the witnesses, the accused persons threatened them to stay away from the scene. As they moved forward, the witnesses heard the sound of a fire-shot and, fearing for their safety, returned to their village. Later, they came to know that the dead body found at the place of occurrence belonged to Amir Hassan. Based on this information, the complainant lodged the FIR. Subsequently, accused Muhammad Hanif and Jalal were arrested on 11.01.2017, while accused Siddique and Wali Muhammad were arrested on 14.01.2017. On 12.01.2017, during the course of interrogation, accused Muhammad Hanif voluntarily produced the weapon of offence, which was recovered on his pointation. After completion of the investigation, the challan was submitted and the accused were sent up for trial.

3. After the submission of the final challan, the learned Trial Court framed the charge against the accused persons on 07.04.2017. All the accused pleaded not guilty and claimed to be tried. Consequently, the prosecution was directed to lead its evidence. In support of its case, the prosecution examined the following witnesses:

PW-1: Hameer, the complainant, who deposed in line with the contents of the FIR and also produced a copy thereof. PW-2: Allah Jurio, an alleged witness who supported the prosecution case. PW-3: Kastoor Chand, a police constable and dispatch rider who submitted the case property, including blood-stained clothes contained in seven jars, to the Chemical Examiner. He also produced the forwarding letter from the concerned SHO. PW-4:

Atta Muhammad, acted as mashir and produced the memo of examination of the dead body, Danishnama, Lash Chakas Form, memo of seizure of clothes of the deceased, memos of site inspection, and memos of arrest. PW-5: Pirdan Singh, Tapedar, who prepared and exhibited the sketch of the place of incident. PW-6: Natho, acted as mashir of the recovery of the weapon, and he produced the memo of recovery of weapon. PW-7: Onar Singh, the Investigating Officer who deposed regarding the investigation conducted.

4. The prosecution gave up witness Juman and, after recording the above evidence, submitted a statement closing its side of the case. Thereafter, the statements of the accused were recorded under Section 342 Cr.P.C., wherein all of them denied the allegations, professed innocence, and prayed for acquittal. However, none of the accused opted to be examined on oath under Section 340(2) Cr.P.C, and they did not produce any defense evidence. Upon conclusion of the trial, the learned Trial Court, after hearing the arguments of respective counsel for the parties, convicted appellants Muhammad Hanif and Jalal, while acquitting co-accused Siddique and Wali Muhammad of the charge. The appellants, being aggrieved by their conviction, have preferred this criminal appeal.

5. Learned counsel for the appellants contended that the prosecution case suffers from contradictions and material discrepancies. He argued that the incident was unwitnessed, and the prosecution failed to prove any motive for the alleged offence. It was further submitted that the appellants were falsely implicated without any substantive or corroborative evidence. Reliance is placed on the case law as reported in 2018 SCMR 95, 2018 SCMR 153, 2018 SCMR 50 and 2018 MLD 410.

6. On the other hand, learned counsel for the complainant supported the impugned judgment and submitted that the accused were seen in the company of the deceased by two witnesses, namely Allah Jurio and Juman, who later disclosed the incident to the complainant. He maintained that, though the occurrence was not witnessed directly, the circumstantial evidence sufficiently establishes the guilt of the accused.

7. Conversely, the learned Deputy Prosecutor General also supported the conviction and contended that the recovery of the weapon from accused Muhammad Hanif, on his pointation, was duly effected and that the said weapon matched the crime empties recovered from the place of

occurrence. He admitted that the incident was unseen but asserted that the chain of circumstantial evidence was complete, and thus, the conviction was rightly recorded.

8. Heard the learned counsel for the parties and perused the material available on record with due care and caution.

9. The prosecution case is initiated on the basis of the deposition of the complainant, who testified that on 08.01.2017, his son, Amir Hassan, was taken away by the accused Muhammad Hanif and Jalal, while co-accused Siddique and Wali Muhammad were present outside the house. The complainant stated that his son did not return that night, and upon approaching the accused persons to inquire about his whereabouts, they behaved rashly and offered no assistance. During the subsequent search, the complainant found the dead body of his son near the road, but crucially, at that stage, he did not inform the police that his son was last seen in the company of the accused persons. This omission seriously weakens the nearness of the allegation. Thereafter, the prosecution sought to establish its case on the circumstantial evidence provided by witness Allah Jurio, who, according to the deposition of the complainant, along with Juman, came to his residence to express condolences. During this condolence visit, they allegedly informed the complainant that on the night of the incident, they saw the deceased in the custody of the appellants near Lyari Bus Stop with one hand held by Jalal and the other by Muhammad Hanif, who was also armed with a pistol. As per the complainant's narration, the witnesses were allegedly threatened by the accused and, fearing for their lives, proceeded past the scene, during which they heard a fire-shot. A crucial point emerging during cross-examination of the complainant was regarding the relationship between the complainant and prosecution witness Allah Jurio. The complainant categorically denied any familial relationship with Allah Jurio, describing him merely as a neighbor. However, to properly assess the veracity and impartiality of the prosecution's evidence, it is essential to scrutinize the testimony of Allah Jurio himself. Upon examination, Allah Jurio explicitly stated that the complainant is his brother-in-law, and further deposed that the deceased Amir Hassan was his maternal nephew, being the son of his sister. This significant contradiction between the complainant and the witness casts serious doubt on the credibility of their

testimony. The complainant's denial of a close familial relationship with a key witness, who claims not only to be related to the complainant but also to the deceased, raises legitimate concerns regarding possible suppression of facts or an attempt to render the witness as independent when in fact he was a closely interested witness. This inconsistency is material and not trivial, as it goes directly to the impartiality and trustworthiness of the prosecution witness. It undermines the claim that the testimony was given by an independent bystander, and rather suggests the possibility of interested testimony, thereby affecting the evidentiary value of such statements. Prosecution witness Allah Jurio deposed during examination-in-chief that he saw the appellants along with a third person whose face was muffled, near the Lyari Bus Stop. He stated that as he and his companion proceeded forward on their motorcycle, they heard the sound of a fire-shot. However, in cross-examination, the same witness denied that the incident took place at Lyari Bus Stop, creating a material contradiction regarding the place of occurrence, which is central to the prosecution's case. The contradiction and dishonest improvement raises a serious question that which version of the witness is to be believed, as it is settled that when the witness makes dishonest improvement then it loses its significance. Reliance is placed upon the case of *Muhammad Jahangir vs the State* (2024 SCMR 1741).

10. Further, Allah Jurio was admitted to be the maternal uncle of the deceased, making him a closely related. If his account is to be believed that he saw the appellants with a muffled person (allegedly the deceased) and later heard a fire-shot, it is expected of a reasonable and concerned relative to either intervene, raise alarm, inform the police, or at the very least immediately inform the complainant. His silence and failure to act, especially upon hearing a fire-shot near the place where his nephew was allegedly held, renders his conduct highly unnatural and unbelievable. Moreover, if the muffled individual was indeed the deceased, and if the deceased recognized his maternal uncle's voice, it is equally unbelievable that no plea for help was made, nor any resistance or reaction noted, which further weakens the prosecution's narrative. In such a scenario, corroboration was crucial, particularly through the examination of witness Juman, who was allegedly present with Allah Jurio and was also described as a relative of the deceased (his cousin). However, the

prosecution chose to give up Juman. Despite being allegedly present, he was withdrawn and not called to testify. This leads to a reasonable inference that material witnesses were intentionally withheld. The non-production of such material witnesses, particularly when available and capable of corroborating the version presented, entitles the court to draw an adverse inference under *Article 129(g), Qanun-e-Shahadat Order, 1984*.

11. Another significant aspect which casts serious doubt on the veracity of the prosecution's case is the non-examination of Ali Muhammad and Sharif, who were admittedly cited by the complainant in his deposition. He testified that Ali Muhammad and Sharif of the locality had also informed him that they saw the deceased in the company of the present appellants at or around the relevant time. These individuals, if examined, would have acted as independent witnesses and potentially corroborated the account allegedly given by Allah Jurio and Juman. However, the prosecution neither cited them as witnesses in the calendar of witnesses nor produced them in Court, nor offered any plausible explanation for such omission. In the present case, the only two witnesses who allegedly saw the deceased with the accused were close relatives of the complainant. One of them, Juman was not produced at all, and the other Allah Jurio, gave an inconsistent version, and his testimony was seriously shaken during cross-examination. When such crucial testimony is weakened or rendered doubtful, the duty of the prosecution becomes more onerous to prove the case beyond reasonable doubt, especially by bringing forward other available eyewitnesses. Ali Muhammad and Sharif, being natural and relevant witnesses, could have bridged the evidentiary gap. However, their complete omission is not only unexplained but also reinforces the inference of deliberate suppression of evidence. In this Context at all, reliance is placed upon the case of *Muhammad Nasir Butt and 2 others vs The State and others* (2025 SCMR 662).

12. In the context of circumstantial evidence, every link must be strong, convincing, and unimpeachable. In such like cases every circumstance should be linked with each and form the continuation of chain. Reliance is placed upon the case of *Naved Asghar and 2 others vs The State* (PLD 2021 SC 600), *Altaf Hussain vs Fakhar Hussain and another* (2008 SCMR 1103). In the instant case, not only was the witness who allegedly

observed the incident closely connected to the complainant, but another corroborating witness was withheld. This deliberate omission creates a serious dent in the integrity of the prosecution's case. The chain of evidence is thereby rendered broken not by major contradiction but by deliberate omission and non-participation of key individuals.

13. The cornerstone of the prosecution's case is that on 08.01.2017, the deceased Amir Hassan was last seen in the company of the present appellants and co-accused. However, the record reveals that the memo of dead body examination was prepared on 09.01.2017 at 10:30 AM, confirming the recovery and examination of the deceased's body. Despite this development, the FIR was not lodged until 10.01.2017 at 3:00 PM, resulting in a delay of more than 28 hours after recovery of the dead body, and over two days from the alleged time of incident. Furthermore, the post-mortem examination was conducted on 09.01.2017 at about 12:30 PM, and the examining doctor opined that the time elapsed since death was 20 hours. This places the estimated time of death around 04:30 PM on 08.01.2017. By contrast, complainant testified that the accused took the deceased at about 06:00 PM on 08.01.2017, Allah Jurio, an alleged witness, deposed that he observed the deceased with the appellants at around 08:00 PM that night. Such material inconsistencies in the timelines severely undermine the chain of circumstantial evidence necessary to prove guilt beyond reasonable doubt. This inordinate and unexplained delay casts serious doubt on the authenticity and spontaneity of the prosecution's version. It is a settled principle of law that prompt reporting of a cognizable offence is essential to exclude the possibility of consultation, deliberation, or fabrication. Reliance in this regard based upon the case of *Khial Muhammad vs The State* (2024 SCMR1490).

14. It is an admitted position on record that the statements of the two prosecution witnesses, namely Allah Jurio and Juman, were recorded under Section 161 Cr.P.C. on 14.01.2017, whereas the occurrence took place on 08.01.2017, and the FIR was registered on 10.01.2017. This amounts to a delay of at least four (04) days after the FIR. No plausible explanation has been furnished by the prosecution for this inordinate and unexplained delay in recording the statements of these witnesses. Such unexplained delay casts serious doubt on the credibility and truthfulness of the witnesses, particularly where the prosecution case rests heavily on

the last seen evidence, and the complainant himself is admittedly not an eyewitness to the incident. So far on the context of delay of statement under section 161 Cr.P.C is concerned, reliance is placed upon the case of ***Bashir Muhammad Khan vs The State (2022 SCMR 986)***.

15. Though, the last seen evidence, in the absence of a strong chain of circumstantial corroboration, is widely regarded by Superior Courts as a weak type of evidence, insufficient on its own to sustain a conviction, particularly where other circumstances raise doubts about its credibility. This position is fortified by the pronouncements of the Hon'ble Supreme Court in the cases of ***Muhammad Abid v. The State (PLD 2018 SC 813)*** and ***Fayyaz Ahmed v. The State (2017 SCMR 2026)***.

16. Now turning to the aspect of recovery, the prosecution has relied upon the recovery of a firearm allegedly effected at the pointation of appellant Muhammad Hanif. It is well-settled law that for a recovery to be admissible under Article 40 of the Qanun-e-Shahadat Order, 1984, the discovery must be based on fresh and new information disclosed by the accused in custody, which leads to the actual recovery of the article in question. In the present case, although it is alleged that the appellant voluntarily led to the recovery of the pistol on 12.01.2017, there is no statement of the accused recorded, showing that he made any disclosure that resulted in the recovery. The absence of a recorded disclosure statement deprives the recovery of its foundational legal basis, and therefore, such recovery cannot be treated as a discovery under the law. Reliance is placed upon the case of ***Zafar Ali abbasi and another vs Zafar Ali abbasi and others (2024 SCMR 1773)***. Further, it is noted that the recovered weapon was sent to the ballistic expert only on 16.01.2017, four days after the alleged recovery. The prosecution has failed to explain this delay in forwarding the weapon for forensic analysis. It is also significant that no evidence has been produced to establish the safe custody and secure chain of transmission of the recovered weapon during the interregnum. Reliance is placed upon the case of ***Haji Nawaz vs The State (2020 SCMR 687)***.

17. The medical evidence is strictly confined to determining the nature and seat of injury, as well as the kind of weapon. It is not designed to

identify the perpetrator. Reliance is placed upon the case of *Muhammad Ramzan vs the State* (2025 SCMR 762).

18. During cross-examination, the complainant explicitly denied that the deceased was an Amil (i.e., a person who prepares or provides amulets (taweez) to others). However, prosecution witness PW-2 Allah Jurio categorically admitted that the deceased was indeed engaged in the work of preparing and giving taweez to people. This contradiction is material in nature, particularly because the defence has raised a plea that the deceased may have been murdered by unknown persons who were aggrieved or annoyed due to his profession as an Amil.

19. It is a well-settled principle of criminal jurisprudence that if a single loophole in the prosecution's case comes on record, the benefit of such doubt must be extended to the accused. The standard of proof in criminal trials requires the prosecution to establish its case beyond reasonable doubt. Any failing in this regard entitles the accused to acquittal. In support of this proposition, reliance is placed on the authoritative judgment of the Hon'ble Supreme Court of Pakistan in the case of *Ahmed Ali and another vs. The State* (2023 SCMR 781), wherein it was held as under:

*12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).*

20. In view of the foregoing reasons and detailed discussion, the instant appeal was allowed vide short order dated 24.07.2025, whereby the appellants were acquitted of the charges levelled against them. Consequently, the judgment dated 002.06.2018 passed by the learned Sessions Judge Tharparkar at Mithi in Sessions Case No. 15 of 2017 was set aside to the extent of the appellants. The Jail Authorities were directed to release the appellants forthwith, if not required in any other criminal case. These are the detailed reasons in support of the short order announced earlier.

*JUDGE*