

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No. S-45 of 2023

Appellant : Ali Muhammad @ Popal s/o Balach Jakhrani,
Through M/s. Asadullah Soomro & Agha Zaib
Hussain Pathan, Advocates.

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar, DPG

Date of hearing : 14-07-2025

Date of Judgment : 30-07-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J—This appeal assails the judgment dated November 22, 2023, rendered by the learned Additional Sessions Judge/MCTC, Kashmore, in Sessions Case No. 519 of 2020 (and subsequently 541 of 2020), whereby the appellant, Ali Muhammad, was convicted for offence u/s 302(b) PPC r/w section 149 PPC and sentenced to life imprisonment as Ta'zir and to pay fine of Rs.100,000/- as compensation to be paid to the legal heirs of deceased Ahsan Ali, in default thereof to undergo S.I for 06 months more. The appellant was further convicted for offence u/s 311 PPC r/w section 149 PPC and sentenced to life imprisonment. Both the sentences of imprisonment to run concurrently, with benefit of section 382-B Cr.P.C.

2. The prosecution alleged that on April 29, 2020, at about 09:00 p.m, near Muradwah link road leading from village Sakhi Mithal Khan Jakhrani, Ihsan Ali (deceased) was murdered by the accused Ali Muhammad alias Popal and co-accused (Ali Hassan, Raja, Ghulam Nabi, and two muffled faces). The motive was stated to be "Karo Kari" (honor killing) with Mst. Ghulam Fatima. According to the prosecution,

eyewitnesses Gohram and Muhammad Ibrahim were present and witnessed the incident. Following the incident, the police were informed, a site inspection conducted, evidence secured, and an FIR lodged by ASI Ali Nawaz. The accused, Ali Muhammad alias Popal, was subsequently arrested on August 16, 2022, based on spy information.

3. The trial commenced following the lodging of FIR No. 51/2020 at P.S. Buxapur, under Sections 302, 311, 148, 149 PPC. During the trial, the prosecution examined several witnesses, including the Tapedar (Naseer Ahmed), Mashirs of sealing (Ajab Ali, Ali Mardan), the Complainant/ASI (Ali Nawaz), the Investigating Officer (Nawab Khan), and the purported eyewitnesses (Gohram and Muhammad Ibrahim), along with the Mashirs of Arrest (Balaksher and Balach). The defense vehemently contested the prosecution's narrative, cross-examining the witnesses to highlight what they perceived as fundamental flaws in the case.

4. Learned counsel mainly contended, that the prosecution has failed to establish the guilt of appellant beyond reasonable doubt, primarily due to numerous grave inconsistencies, procedural lapses, and material contradictions in the evidence presented by the State. Furthermore, the prime eyewitnesses, namely Gohram and Muhammad Ibrahim, appeared before this Court and recorded no objection for the acquittal of the appellant Ali Muhammad alias Popal. It is particularly significant that P.W. Muhammad Ibrahim is the father of the deceased and a major legal heir. Apart from this, Criminal Acquittal Appeal No. D-40 of 2021 was also withdrawn by them, which was dismissed as withdrawn vide order dated March 06, 2025. Learned counsel for the accused also contended that the conviction recorded by the trial court was unsustainable in law and facts, being based on an utterly untrustworthy and contradictory body of evidence. Learned advocate pointed out that the most glaring

contradiction pertains to the source of light at the crime scene during the night incident. PW-7 (Guhram in the provided evidence) testified that they identified the accused by the "headlights of our motorcycles," whereas PW-8 (Muhammad Ibrahim in the provided evidence) claimed the accused party had "torch lights" which they lit for identification. This is not a minor discrepancy; it goes to the very root of identification in a dark setting, rendering both accounts suspected or at least one of them patently false. Furthermore, PW-8 Muhammad Ibrahim denied any knowledge of a "faisla" (settlement) with the Umrani community regarding the murders of Ihsan and Mst. Ghulam Fatima in June 2020. Conversely, PW-7 Guhram, a supposedly equally pivotal eyewitness, not only confirmed such a "faisla" but provided intricate details about its purpose (for the two muffled faces) and the written undertaking on stamp paper. Such a profound disagreement on a post-incident event directly related to the motive and identification of culprits fatally impeaches the veracity of at least one, if not both, witnesses. The learned counsel highlighted the inconsistency in the recording of the crucial Section 161 Cr.P.C. statements of the eyewitnesses. PW-3 ASI Ali Nawaz (Complainant) initially claimed he "had not recorded the statements of Muhammad Ibrahim and Guhram named in the FIR as eye witnesses. Same was orally stated by them." Yet, later, PW-9 (Nawab Khan in the provided evidence) IO Nawab Khan testified he "recorded the statements of private PWs at about 09:00 pm at police station," and PW-7 Guhram claimed his statement was recorded on April 30, 2020, at 03:30 PM. This disarray regarding the very existence, timing, and location of the initial formal statements renders them highly suspect. Applying the precedent from Syed Saeed Muhammad Shah & others Vs the State (1993 SCMR 550), statements recorded by the police after delay and without explanation are to be ruled out of consideration. The conflicting accounts about when and where these statements were

truly formalized, coupled with the initial claim of only oral statements, severely undermines their evidentiary value. PW-3 ASI Ali Nawaz and PW-5 (Ali Mardan in the provided evidence) Ali Mardan both explicitly admitted that the mashirnama of the dead body and inquest report (Exh.06/B and 06/C) do not bear their signatures as mashirs, despite their claimed presence and acceptance of contents. This is a fatal procedural omission, as the very purpose of a mashirnama is to attest to the veracity of the recovery or inspection through independent witnesses' signatures. The learned counsel emphasized that despite the place of incident and arrest being described as "busy roads" with people passing by, the prosecution consistently failed to secure any private or independent mashirs for the recovery of the dead body, site inspection, or even the arrest of the accused. Reliance solely on police officials as mashirs, particularly when independent persons were allegedly available, raises a strong inference of manipulation and negates the concept of transparency in evidence collection. PW-1 (Naseer Ahmed in the provided evidence) Tapedar Naseer Ahmed admitted that he prepared the site plan on September 16, 2020, a considerable delay of five months after the alleged incident. Crucially, he confessed that the IO "SIP/IO Nawab shown me place of incident." This admission devastates the credibility of the site plan, as it was not prepared independently based on fresh observations but on the pointing of the investigating officer months later, raising serious doubts about its accuracy and objectivity. The IO Nawab Khan also admitted that he did not recover any torch lights or other sources of illumination, despite eyewitnesses claiming such lights were used for identification during the night. This omission points to either a dishonest improvement by the witnesses or a shoddy investigation by the IO. The learned counsel pointed out that both primary eyewitnesses, Guhram and Muhammad Ibrahim, admitted that in their initial Section 161 Cr.P.C. statements, they only leveled "general

allegations" against the accused regarding firing. However, at trial, they made a "dishonest improvement" by specifically attributing shots to individual accused (e.g., Ali Hassan firing at the frontal head, Ali Muhammad at the face, Raja at the head). This improvement, made only during trial, is a clear attempt to strengthen a weak prosecution case and renders their testimony unreliable. The collective inconsistencies, omissions, and commissions by the prosecution witnesses, coupled with the procedural lacunas, cast a heavy shadow of doubt on their trustworthiness. Their credence stands severely impeached. The defense contended that the incident appeared to be a "blind murder" initially, and the accused were implicated due to "dispute over matrimonial affairs" or other enmity, rather than concrete evidence. The belated and inconsistent eyewitness accounts, along with the procedural irregularities, lend credence to the suggestion that the case might have been fabricated or tailored.

5. The Learned Deputy Prosecutor General (DPG) for the State maintained that the prosecution had successfully proven its case beyond reasonable doubt. He emphasized that the core narrative of the murder, involving the deceased Ihsan Ali and the alleged accused, remained consistent. The eyewitnesses, Guhram and Muhammad Ibrahim, provided a consistent account of the incident itself, including the motive of "Karo Kari," the number of assailants, and the use of firearms. Physical evidence, such as blood-stained earth and empty casings from the scene, and the last-worn clothes of the deceased, were recovered and sent for forensic analysis, corroborating the incident. The arrest of the accused Ali Muhammad alias Popal was duly effected based on credible information and properly documented. Any minor discrepancies in the statements of witnesses should be overlooked as natural variations in human memory and observation, especially in traumatic events, and do not go to the root of the prosecution's case. The DPG argued that the trial court correctly

appreciated the evidence and found the accused guilty based on a holistic view of the material on record. He reluctantly agreed that the eyewitnesses Muhammad Ibrahim and Gohram being father and cousin of the deceased appeared before the court and voluntarily raised no-objection for acquittal of the appellant and prior to this also withdrawn the acquittal appeal No.D-40/2021 filed by them, which was dismissed vide order dated March 06, 2025.

6. Having meticulously perused the record of the case, heard the arguments of the learned counsel for the accused and the learned DPG for the State, and applied the principles of criminal jurisprudence, this Court finds itself unable to uphold the conviction recorded against the accused.

7. The cumulative effect of the myriad contradictions, discrepancies, and procedural lapses in the prosecution's evidence is profoundly unsettling and creates a reasonable doubt that must endure to the benefit of the accused. The conflicting accounts of PW-7 Guhram and PW-8 Muhammad Ibrahim regarding the source of light at the dark crime scene (motorcycle headlights vs. torch lights) is not a mere trivial omission but a dishonest improvement that directly impacts the veracity of their identification of the assailants. If they cannot agree on such a fundamental aspect of visibility, their claim of identifying multiple assailants, including those with "muffled faces," becomes inherently unreliable. Furthermore, the stark contradiction between Guhram's detailed account of the "faisla" and Muhammad Ibrahim's denial of any knowledge of it demonstrates a fundamental lack of cohesion and truthfulness in their testimony, impeaching their collective credence as untrustworthy witnesses. The admitted absence of mashirs' signatures on the mashirnama of the dead body and inquest report is a grave procedural irregularity. It directly violates the sanctity and evidentiary value of these crucial documents, which

are meant to provide impartial corroboration. The persistent failure to associate independent private mashirs, despite their alleged availability at a "busy road" where public passage was noted, suggests a deliberate omission that compromises the transparency and reliability of the police proceedings, creating a strong impression of malafide in the evidence collection process.

8. The site plan (Exh.14/A), prepared five months after the incident and admittedly based on the pointing of the IO, loses all its corroborative value. It cannot be considered an independent and accurate depiction of the scene at the time of the incident but rather a recreation based on police narrative, thus representing a weakened type of evidence that offers no independent corroboration. The chaotic and contradictory accounts surrounding the recording of the Section 161 Cr.P.C. statements of the eyewitnesses (oral, then recorded by complainant, then recorded by IO at different times/locations) are deeply problematic. This ambiguity, coupled with the "general allegations" in initial statements versus "dishonest improvements" of specific roles at trial, directly falls afoul of the principle enunciated in Syed Saeed Muhammad Shah & others Vs the State (1993 SCMR 550). Such delayed, contradictory, and unexplainable alterations or inconsistencies in crucial statements render them entirely untrustworthy and should be ruled out of consideration, leaving a significant lacuna in the prosecution's foundational evidence. The IO's failure to recover any light sources, despite eyewitness claims of their use for identification, is a glaring omission that raises questions about the thoroughness and impartiality of the investigation. This omission, combined with the lack of private mashirs, reinforces the impression that the investigation was not conducted fairly or transparently.

9. At the very heart of the prosecution's case lies the fatally inconsistent testimony of its purported eyewitnesses. PW-7 Guhram and PW-8 Muhammad Ibrahim, who claimed to have witnessed the incident, provided diametrically opposed accounts regarding the source of illumination that allowed for identification at the nocturnal crime scene. Guhram specifically asserted identification by the headlights of their motorcycles, while Muhammad Ibrahim, the deceased's own father, insisted the accused party utilized torch lights. This is not a mere trivial discrepancy; it directly assails the very mechanism of identification in darkness, rendering both accounts inherently suspicious and one, if not both, patently false. Further undermining their collective credibility is the stark contradiction regarding a significant post-incident event: the "faisla" or settlement. Guhram meticulously detailed a settlement held in June 2020 with the Umrani community concerning the murders of Ihsan and Mst. Ghulam Fatima, even referencing a written undertaking for the "two muffled faces." Conversely, Muhammad Ibrahim vehemently denied any knowledge of such a crucial development. Such a profound and irreconcilable divergence on a material fact, directly related to the alleged motive and the subsequent course of events, exposes a deep-seated untrustworthiness in their respective narratives, severely impeaching their credence as reliable witnesses. Moreover, the Investigating Officer, PW-9 Nawab Khan, admitted under cross-examination that he neither recovered any torch lights nor was any such source of identification disclosed to him by the prosecution witnesses, further accentuating the artificiality of these varying accounts.

10. The procedural conduct of the investigation further erodes any confidence in the prosecution's evidence. The site plan, prepared by PW-1 Tapedar Naseer Ahmed, a staggering five months after the alleged incident, was admittedly made at the specific

"pointing" of the Investigating Officer. This renders the document devoid of any independent corroborative value, transforming it from an objective record into a mere post-facto reconstruction tailored to fit the police narrative, thereby weakening a critical piece of evidence. Compounding these infirmities, PW-3 ASI Ali Nawaz and PW-5 Ali Mardan, the purported mashirs, unequivocally conceded that the mashirnama of the dead body and the inquest report (Exh.06/B and 06/C) did not bear their signatures, despite their claimed presence and acceptance of the contents. This constitutes a grave procedural lapse that vitiates the legal sanctity and evidentiary value of these documents, suggesting either gross negligence or a deliberate omission that compromises transparency. Furthermore, the police's consistent failure to associate independent private mashirs for the site inspection, dead body proceedings, or even the arrest of the accused, despite admitting that these locations were "busy roads" where the public regularly passed, is a glaring omission. The exclusive reliance on police officials as mashirs, when independent individuals were purportedly available, raises a strong and legitimate inference of malafide intent and a deliberate avoidance of public scrutiny, which undermines the integrity of the evidence collection process. Even the initial registration of the FIR, stated by PW-3 ASI Ali Nawaz and PW-5 Ali Mardan to have occurred after the post-mortem due to the initial absence of legal heirs, raises questions when considered alongside the alleged immediate presence and oral accounts from the eyewitnesses. Finally, the undeniable "dishonest improvements" introduced by both PW-7 Guhram and PW-8 Muhammad Ibrahim during their in-court testimonies further underscore their unreliability. While admitting to having leveled only "general allegations" of firing against the accused in their initial Section 161 Cr.P.C. statements, they meticulously provided specific details in court regarding which accused fired on what particular part of the deceased's body. This palpable shift from

general to specific allegations, without any tenable explanation, constitutes a deliberate and calculating embellishment, crafted to strengthen a weak prosecution narrative and consequently impeaches their credence as truthful witnesses. In summation, the cumulative effect of these pervasive inconsistencies in eyewitness accounts, the fundamental procedural lapses in evidence collection, the suspicious belatedness and methodology of the site plan, and the clear instances of dishonest improvements, coalesce to create an overwhelming and insuperable reasonable doubt concerning the guilt of the accused. The prosecution, burdened with the responsibility of proving its case beyond such doubt, has palpably failed in this paramount duty. Consequently, the conviction cannot, by any stretch of judicial interpretation, be allowed to stand.

11. In criminal jurisprudence, the rule is clear: suspicion, however strong, cannot take the place of proof beyond reasonable doubt. When the prosecution relies on evidence that is riddled with such material contradictions, fundamental inconsistencies, and procedural irregularities that they impeach the credence of the witnesses, and when crucial documents lack proper authentication, the benefit of doubt must inevitably be extended to the accused. The cumulative impact of these flaws creates a profound and inescapable reasonable doubt regarding the accused's guilt.

12. For the reasons stated above, and crucially, in light of the no-objection statement recorded by the prime eyewitnesses, Guhram and Muhammad Ibrahim (father of the deceased and a relative), for the acquittal of the present accused, Ali Muhammad alias Popal, and the subsequent withdrawal of Criminal Acquittal Appeal No. D-40 of 2021 by them on March 06, 2025, this Court is of the considered view that the prosecution has failed to establish the guilt of the accused, Ali

Muhammad alias Popal, beyond reasonable doubt. The impugned judgment of conviction is therefore unsustainable.

13. In light of the foregoing, the appeal is allowed. The conviction and sentence awarded to the accused, Ali Muhammad alias Popal, by the learned Additional Sessions Judge, Kashmore, vide judgment dated 22-11-2023, is hereby set aside. The accused is acquitted of the charges. He shall be released forthwith, if not required in any other case. The office is directed to communicate this judgment to the concerned jail authorities and the trial court for necessary compliance.

J U D G E

Asghar Altaf/P.A