

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.460 of 2024.

Appellant : Gul Bagh @ Gali Bagh son of Nazuk,
Through Mr. Ajab Khan Khattak, advocate.

Complainant : Muhammad Khan
Through Mr. Ghulam Mustafa Katpar advocate

Respondent : The State
Through Mr. Qamaruddin Nohri, Asstt: P.G Sindh

Date of hearing : 26.05.2025

Date of Judgment : 04.06.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J. – This criminal appeal, calls into question the legality and propriety of the judgment dated 27.05.2024 passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court (MCTC), Karachi West, in Session Case No.475/2021. By virtue of the impugned judgment, the appellant, Gul Bagh alias Guli Bagh, stands convicted in pursuance of Section 265-H(ii) Cr.P.C. for an offense punishable under Section 302(b) of PPC. He has been sentenced to rigorous life imprisonment and directed to pay compensation of Rs. 300,000/- (Rupees Three Lacs) to the legal heirs of the deceased Muhammad Anwar, in terms of Section 544-A Cr.P.C., failing which he shall undergo simple imprisonment for six months. The benefit of Section 382-B Cr.P.C. has been extended to the appellant.

2. Being aggrieved by and dissatisfied with the aforementioned conviction and sentence, the appellant has invoked the appellate jurisdiction of this Court, seeking reversal of the findings of the trial court and his consequent acquittal.

3. The factual matrix of the prosecution's case, as culled from the FIR bearing No. 212/2020, lodged on July 1, 2020, at 14:00 hours at Police Station Gulshan-e-Maymar by Muhammad Khan, is that on June 29, 2020, at about 14:00 hours, the complainant, his father Muhammad Anwar (the deceased), paternal uncle Akil, Allah Gul, and Bismillah Khan were present at a graveyard in Afghan Camp, Gulshan-e-Maymar, where construction work for a mosque was underway. Suddenly, the appellant, Gul Bagh, along with Syed Wali, Abdul Ahad, Syed Ali, and 8 to 10 other unknown individuals, arrived in a Suzuki vehicle bearing registration No. KU-6691. They were allegedly

armed with knives, iron rods, and "dandas" (sticks). The prosecution claims that they attacked the complainant party with a common intention. Specifically, the FIR states that the appellant, Gul Bagh, inflicted knife injuries upon the complainant's father, Muhammad Anwar, on various parts of his body, causing him to fall to the ground severely injured. Other accused persons are alleged to have also inflicted injuries upon the complainant, Muhammad Khan, and his relatives Akil, Allah Gul, and Bismillah. The incident was purportedly witnessed by Ajab Gul, Gul Muhammad, and others. The critically injured Muhammad Anwar was shifted to Abbasi Shaheed Hospital via ambulance, where he succumbed to his injuries the following day, i.e., June 30, 2020. The FIR was registered against the nominated accused, including the appellant, and 8 to 10 unknown persons inter alia on above facts.

4. Subsequent to the registration of the FIR, the investigation was entrusted to SIP Mirza Saleem Baig (PW-4). His investigation includes visiting and inspecting the crime scene on July 3, 2020, where a memo of site inspection (Exh. 5/G) was prepared, and a Suzuki vehicle was seized. Recording statements of witnesses under Section 161 Cr.P.C. Effecting the arrest of the appellant, Gul Bagh, on August 16, 2020, from Northern By-Pass Road based on information provided by the complainant. During a personal search, cash of Rs. 2,000/-, an Afghan mobile SIM, and a Daewoo Bus ticket from Karachi to Lahore were recovered (Exh. 5/H). Obtaining the appellant's remand and interrogating him, during which he allegedly confessed to the murder due to a mosque-related dispute and offered to lead to the recovery of the crime weapon. Recovering the blood-stained "churi" (knife), identified as the crime weapon, on August 19, 2020, from bushes at Afghan Bakra Mandi, upon the appellant's pointation, in the presence of mashirs Muhammad Khan and Abdul Ghaffar (Exh. 5/I). Sending the recovered knife for chemical examination after obtaining permission from the SSP, the report of which subsequently confirmed the presence of human blood (Exh. 10/D). Upon completion of the investigation, a challan was submitted before the competent court. The accused was provided with the necessary documents in accordance with the law. A formal charge was framed against the appellant at Ex.4, to which he pleaded not guilty and opted for trial. To substantiate its case, the prosecution presented seven witnesses, whose testimonies are summarized below:

- *PW-1 Muhammad Khan (Complainant/Eye-witness): He is the son of the deceased. His testimony largely reiterated the contents of the FIR. He described the attack, the fatal knife injuries inflicted by the appellant on his father, and also claimed to have sustained injuries himself. He produced the Medico-Legal Certificate (MLC), death*

certificate of his father (Exh. 5/A and 5/B), memo of inspection of the dead body (Exh. 5/C), inquest report (Exh. 5/D), receipt of the dead body (Exh. 5/E), the FIR (Exh. 5/F), memo of site inspection (Exh. 5/G), memo of arrest and recovery (Exh. 5/H), memo of recovery of the crime weapon (Exh. 5/I), and police letter to MLO Abbasi Shaheed Hospital (Exh. 5/J). He specifically identified the appellant in court. During cross-examination, he admitted to being an Afghan refugee with an expired PR card restricting his movement to District Malir. He also admitted not being medically examined despite claiming injury and not producing his medical letter. He stated that the crime weapon was recovered from bushes accessible to the general public and identified the "Royal Rizwan" inscription on the "churi."

- PW-2 Ajab Gul (Eye-witness): He is the paternal cousin of Muhammad Khan. His testimony corroborated PW-1's account of the incident, including the attack, the specific role of the appellant in inflicting fatal injuries on Muhammad Anwar, and the roles of other accused. He acted as a mashir for the memo of inspection of the dead body (Exh. 5/C), inquest report (Exh. 5/D), memo of site inspection (Exh. 5/G), and memo of arrest and recovery (Exh. 5/H). In cross-examination, he acknowledged stating "old enmity" against accused persons in his 161 Cr.P.C. statement, which was not mentioned in his examination-in-chief. He also admitted that on August 16, 2020, he was "roaming in a police mobile in search of accused persons."
- PW-3 Allah Gul (Eye-witness): He is also a relative of the deceased. His testimony largely supported the prosecution narrative, detailing the attack, the injuries sustained by Muhammad Anwar at the hands of the appellant, and his own injuries. He produced his medico-legal letter (Exh. 8/A). In cross-examination, he stated his 161 Cr.P.C. statement was recorded on 31.06.2020 and admitted that it did not specifically state which accused held which weapon.
- PW-4 SIP Mirza Saleem Baig (Investigation Officer): He provided a detailed account of the investigation, from receiving the FIR to submitting the challan. He described the site inspection, arrest of the appellant, his alleged confession, the recovery of the crime weapon (churi) on the appellant's pointation from bushes, and its dispatch for chemical examination. He produced the relevant memos and letters (Exh. 10/A, 10/B, 5/G, 5/H, 5/I, 10/C). In cross-examination, he admitted that he did not keep the recovered "churi" in Malkhana but sent it directly to the chemical examiner, denying keeping it at home. He also conceded not producing entry regarding departure to inspect the place of incident or for taking the "churi" to the chemical examiner. He stated that the "churi" was used by butchers. He confirmed that the sole dispute identified in his investigation was over the mosque.
- PW-5 Dr. Usman Hashmi (Medical Legal Officer): He was on duty at Abbasi Shaheed Hospital on June 30, 2020. He testified that Muhammad Anwar died during treatment due to cardio-pulmonary arrest resulting from stab wound injury, based on the death certificate issued by R.M.O. Dr. Irfan. In cross-examination, he admitted that he had not treated or admitted the patient.
- PW-6 SIP Deedar Ali (Police Official): He prepared the inquest report (Exh. 5/D) and memo of inspection of dead body (Exh. 5/C) at Abbasi Shaheed Hospital on June 30, 2020, in the presence of PW-1 and PW-2. In cross-examination, he clarified that his 161 Cr.P.C. statement mentioned the incident date incorrectly as 28.06.2020, and that it was recorded on 30.06.2020.

- *PW-7 Dr. Sohail Ahmed Yaar Khan (Senior Medico Legal Officer): He initially examined Muhammad Anwar on June 29, 2020, at Abbasi Shaheed Hospital. He found two sharp-edged wounds on the deceased's chest, measured them, and issued the MLC (Exh. 5/A), referring the patient to the General Surgery Department.*

5. The appellant, when examined under Section 342 Cr.P.C., denied the prosecution's allegations and claimed to be falsely implicated by the complainant party due to a dispute over his sister's marriage. He, however, did not offer to give evidence on oath in his defense under Section 340(2) Cr.P.C. nor did he produce defense witnesses. After considering the evidence and arguments, the learned trial court convicted the appellant for murder for offence under Section 302(b) PPC but acquitted him of the charge under Section 324 PPC (attempt to murder) relating to the injuries of the complainant and other witnesses, citing insufficient medical corroboration for their injuries.

6. Mr. Ajab Khan Khattak, learned counsel for the appellant, assailed the impugned judgment on various grounds, both factual and legal. His primary contentions were that the learned trial court rendered the judgment mechanically without applying a judicial mind, and fundamentally misread and misappreciated the evidence on record. It was submitted that the court failed to consider the glaring inconsistencies and contradictions in the prosecution's evidence, which, if properly evaluated, would have shattered the prosecution's case. The learned counsel highlighted a two-day delay in the lodging of the FIR (incident on 29.06.2020, FIR on 01.07.2020), which the complainant failed to plausibly explain. While the complainant (PW-1) claimed to have sustained injuries, he did not produce medical evidence to substantiate his presence at the scene or his injuries. It was also argued that the prosecution failed to produce other "injured witnesses," leading to an inference that they did not support the prosecution's version, a point partially conceded by the trial court's acquittal on Section 324 PPC. It was strongly contended that the post-mortem of the deceased was not conducted, which is crucial for determining the exact cause of death. Furthermore, the initial medical examination was conducted by PW-7 Dr. Sohail Ahmed Yaar Khan, while the final opinion regarding the cause of death was extended by PW-5 Dr. Usman Hashmi, who had neither treated nor admitted the deceased. This fragmented medical evidence creates serious doubt. The recovery of the alleged crime weapon (churi) was seriously questioned. Firstly, it was recovered from an open area (bushes) accessible to the general public, diminishing its evidentiary value as it was not recovered from the exclusive possession of the accused. Secondly, there was an inordinate delay of 14 days in sending the crime

weapon to the Forensic Science Laboratory (FSL) (recovered on 19.08.2020, sent on 03.09.2020), and the safe custody of the weapon was not proved, as the IO (PW-4) admitted not keeping it in the Malkhana but sending it directly. This procedural lapse, it was argued, compromises the integrity of the evidence. A significant point raised was that the appellant was acquitted in a separate FIR (No. 229/2020 U/s 334 PPC) concerning the alleged snatching of the same "churi" from one Abdul Ghaffar (who was also a mashir to the recovery in this case), because the complainant in that case did not support the prosecution. This, it was argued, fundamentally undermines the very basis of the crime weapon's link to the appellant. The learned counsel submitted that the prosecution's case is solely based on the testimonies of inimical and interested private witnesses (PW-1, PW-2, PW-3), who are relatives of the deceased. Their depositions, it was argued, are replete with material contradictions and omissions, making them unworthy of reliance. For instance, PW-2 admitted "old enmity" in his 161 Cr.P.C. statement, not mentioned in examination-in-chief, and PW-3's 161 Cr.P.C. statement was vague about weapon identification. It was contended that their testimonies, being partisan, cannot sustain a conviction. It was vehemently argued that the prosecution failed to discharge its initial burden of establishing the charge/allegations against the appellant beyond a reasonable doubt. The cumulative effect of the weaknesses in the prosecution's case, including the delays, questionable recovery, and contradictory evidence, creates a strong doubt. It was asserted that the learned trial court erroneously resolved this doubt in favor of the prosecution, contrary to the time-tested golden principle of criminal jurisprudence that if any single or slightest doubt arises in the case, its benefit must unequivocally go in favor of the accused (appellant) and not the prosecution. The evidence of recovery was asserted to have been managed by the prosecution to secure a conviction, and as such, it is not tenable under the law. The appellant is not a previous convict and has no prior criminal record, nor is any other case pending against him. In support of his arguments, the learned advocate for the appellant placed reliance on the precedents: 2018 SCMR 787, 2008 P.Cr.L.J 383, 2012 MLD 365, 2020 YLR 85, 2017 SCMR 584, 2009 SCMR 230, 2019 SCMR 652, 2022 SCMR 962, and 2019 MLD 1966. These case laws generally address issues pertaining to the credibility of interested witnesses, the effect of delays in lodging FIRs, the sanctity and evidentiary value of recovery of crime weapons, and the application of the principle of benefit of doubt.

7. Conversely, the learned APG duly assisted by the learned advocate for the complainant, while adopting the arguments presented before the trial court and the judgment's reasoning, robustly defended the conviction and sought dismissal of the appeal. It was strenuously argued that the testimonies of the three direct eyewitnesses, PW-1 Muhammad Khan, PW-2 Ajab Gul, and PW-3 Allah Gul, are consistent, cohesive, and fully support the prosecution's version of the incident. Their presence at the scene was natural, given the ongoing mosque construction and their familial ties. Any minor discrepancies or omissions in their statements were attributed to normal human memory and stress inherent in such a traumatic event, and do not undermine the core truth of their accounts. While acknowledging the familial relationship between the eyewitnesses and the deceased, it was submitted that mere relationship does not automatically discredit their testimony. The learned counsel argued that an "interested witness" is one with a motive to falsely implicate the accused, and no such malafide motive was conclusively proven against the eyewitnesses in this case. Their testimonies, having been subjected to rigorous cross-examination, were found by the trial court to be trustworthy and reliable, thus forming a sound basis for conviction. The learned counsel emphasized the strong corroboration provided by the medical evidence. PW-7 Dr. Sohail Ahmed Yaar Khan clearly identified sharp-edged wounds on the deceased, and PW-5 Dr. Usman Hashmi confirmed that death resulted from stab wound injuries during treatment, consistent with the ocular account. Furthermore, the recovery of the blood-stained "churi" (knife) on the pointation of the appellant and the subsequent Forensic Serology Analysis Report confirming the presence of human blood on it, unequivocally links the appellant to the crime. These pieces of circumstantial evidence form a complete chain that buttresses the eyewitness testimonies. The delay in lodging the FIR was adequately explained by the complainant (PW-1), who was preoccupied with attending to his critically injured father and subsequent funeral arrangements. Such delays are a common occurrence in murder cases, particularly in rural or tribal settings, and unless malafide is demonstrated, they should not be used to dismantle an otherwise strong prosecution case. It was contended that where direct evidence is strong, consistent, and reliable, the need for independent corroboration becomes a rule of caution rather than a strict requirement. The testimonies of the eyewitnesses, particularly PW-1, were sufficient to prove the case, and they were further corroborated by other material evidence. The learned advocate for the complainant relied upon the case laws: 2008 SCMR 917, 2023 SCMR 190, and 2023 SCMR 487. These judgments reinforce the principles that the testimony of a relative witness, if found credible after

careful scrutiny, can form the basis of conviction, and that minor contradictions or inconsistencies in witness statements do not necessarily lead to their discarding if the substance of their testimony remains consistent.

8. I have extended anxious consideration to the arguments advanced by the learned counsel for both parties and have undertaken a comprehensive re-evaluation of the entire evidence on record, including the testimonies of all seven prosecution witnesses and the documentary evidence.

9. Record reflects, the testimonies of PW-1 Muhammad Khan, PW-2 Ajab Gul, and PW-3 Allah Gul constitute the direct evidence in this case. All three witnesses consistently deposed about the presence of the appellant, Gul Bagh, at the scene of the incident and his active role in inflicting knife injuries upon the deceased, Muhammad Anwar, leading to his demise. While the learned counsel for the appellant highlighted certain alleged contradictions, such as PW-2's mention of "old enmity" in his 161 Cr.P.C. statement which was absent in his examination-in-chief, or PW-3's inability to specify weapon details in his earlier statement, these are considered minor discrepancies. The Hon'ble Supreme Court of Pakistan has repeatedly held that minor variations in witness accounts, which are often attributable to normal human fallibility, memory lapses, or the stress of a traumatic event, do not discredit an otherwise truthful and coherent narrative. The core of their testimonies regarding the appellant's presence and his role in the fatal assault remains consistent across all three eye-witnesses. Their presence at the scene, where mosque construction was taking place and they were present with the deceased, appears natural and believable.

10. The argument regarding PW-1, to PW-3 being "interested witnesses" merely due to their familial relationship with the deceased holds no absolute bar to their credibility. As per the well-established jurisprudence, reaffirmed in cases like 2008 SCMR 917, the testimony of a relative witness, if otherwise reliable and inspiring confidence, can be relied upon for conviction, provided it withstands close scrutiny and there is no apparent motive for false implication. In the instant case, while the defense suggested a dispute over a marriage as a motive for false implication, this was merely asserted by the accused in his Section 342 Cr.P.C. statement without supporting evidence. The cross-examination of the eyewitnesses did not reveal any strong, specific, and proven motive to falsely implicate the appellant, particularly for such a grave offense. The consistency in their narrative about the appellant's direct involvement outweighs the general assertion of "old enmity."

11. The medical evidence fully corroborates the ocular account regarding the cause of death. PW-7 Dr. Sohail Ahmed Yaar Khan definitively identified two sharp-edged wounds on the deceased's chest, injuries consistent with the use of a "churi" as described by the eyewitnesses. Although no formal post-mortem was conducted, PW-5 Dr. Usman Hashmi, an MLO, confirmed the cause of death as cardio-pulmonary arrest due to stab wound injury, based on the medical record and the deceased dying during treatment. In circumstances where a patient dies during treatment for injuries, the medical opinion of the treating or attending doctor on the cause of death can be considered valid, especially when corroborated by the initial examination. The absence of a full post-mortem, while a procedural lapse, does not, in the specific facts and circumstances of this case, render the medical evidence unreliable or create a reasonable doubt about the cause of death attributable to the described injuries.

12. The recovery of the blood-stained "churi" (Exh. 5/I) on August 19, 2020, on the pointation of the appellant, as testified by PW-4 SIP Mirza Saleem Baig and corroborated by PW-1 Muhammad Khan (mashir), is a crucial piece of corroborative evidence. The subsequent Forensic Serology Analysis Report (Exh. 10/D), confirming the presence of human blood on the knife, strongly links the weapon to the crime. The argument that the recovery was from an "open area" accessible to the public, thus diminishing its value, was rebutted by PW-4's clarification that it was recovered from "bushes," implying a concealed location. While not from the immediate person of the accused, recovery on pointation from a concealed place is a recognized mode of recovery. The delay of 14 days in sending the "churi" to the FSL, from August 19, 2020, to September 3, 2020, is an irregularity. However, such a delay, while a procedural lapse, does not automatically destroy the evidentiary value of the recovery, especially when there is no evidence of tampering or malafide intent on the part of the investigating agency. The integrity of the sealed parcel, as presented in court, further supports its authenticity. The burden was on the defense to prove tampering, which it failed to do.

13. The acquittal of the appellant in a separate FIR (No. 229/2020) concerning the alleged snatching of the "churi" from Abdul Ghaffar is a distinct matter. That case pertained to a different charge (U/s 334 PPC) and its outcome was based on the complainant in that specific case not supporting the prosecution. This does not automatically negate the fact of the "churi" being recovered on the appellant's pointation in the murder case, particularly when its blood-staining is forensically confirmed to be human. The two matters,

though involving the same weapon, stand on their own evidentiary footings regarding the respective charges. The delay of two days in lodging the FIR has been adequately explained by the complainant (PW-1) due to his father's critical condition, subsequent death, and funeral arrangements. Such a delay, considering the peculiar circumstances of a murder case, is often condoned by superior courts. As for the complainant's claimed injuries without medical evidence, the trial court appropriately addressed this by acquitting the appellant of the Section 324 PPC charge. This finding, however, does not diminish the complainant's role as a credible eyewitness to the murder of his father.

14. The appellant's defense of false implication due to a marriage dispute, unsupported by any evidence, is a mere bald denial. His failure to take a timely plea of alibi, that is, at the earliest opportunity (soon after arrest), and his inability to produce any independent witness to support his claim of absence from the scene, renders his alibi plea unreliable and an afterthought, as correctly noted by the trial court. While the principle of benefit of doubt is a cardinal rule of criminal justice, it is attracted only when a reasonable, grave, and material doubt arises from the evidence. It cannot be extended to minor inconsistencies or procedural lapses that do not go to the root of the prosecution's case or genuinely create a doubt about the culpability of the accused. In the present case, the ocular account, supported by medical evidence and corroborative recovery evidence, forms a strong, consistent, and convincing chain of events that firmly implicates the appellant. The discrepancies pointed out by the defense counsel are not of such a nature as to render the entire prosecution case doubtful.

15. Having meticulously re-evaluated the evidence, this Court finds that the prosecution has successfully established its case against the appellant beyond a reasonable doubt. The consistent and credible ocular testimonies of the eyewitnesses, which identify the appellant as the principal offender, are strongly corroborated by the medical evidence proving the unnatural death by sharp-edged weapons, and further by the recovery of the blood-stained crime weapon on the appellant's pointation, the human origin of which is confirmed by forensic analysis. These pieces of evidence, when viewed cumulatively, interlock to form a complete and compelling chain of evidence, leading to the inescapable conclusion that the appellant is indeed the perpetrator of the murder of Muhammad Anwar. The arguments raised by the learned counsel for the appellant, while noted, do not collectively create a reasonable doubt

sufficient to overturn the conviction. The case laws cited by the appellant's counsel are distinguishable on their facts and circumstances, as the present case benefits from robust and corroborative evidence.

16. For the foregoing reasons, I am of the considered opinion that the learned trial court, after thorough appreciation of the evidence, rightly convicted the appellant for the offense of murder. The findings of the learned trial court are based on sound reasoning and are supported by cogent evidence. No illegality, infirmity, or perversity has been observed in the impugned judgment that would warrant interference.

17. Resultantly, the instant Criminal Appeal No.460 of 2024 stands dismissed. The impugned Judgment dated May 27, 2024, passed by the learned I-Additional Sessions Judge/Model Criminal Trial Court, Karachi West, in Session Case No.475/2021, convicting and sentencing the appellant Gul Bagh alias Guli Bagh for offence under Section 302(b) PPC, is hereby upheld. The appellant, Gul Bagh alias Guli Bagh, presently confined in Central Prison, Karachi, shall serve out his sentence as ordered by the learned trial court. Let the record and proceedings (R&P) be remitted to the learned trial court forthwith, along with a certified copy of this judgment, for information and record.

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