

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. S-31 of 2019
(Sajid Hussain Abro Vs. The State)

Appellant : Sajid Hussain son of Muhammad Sachal Abro,
through Mr.Asif Ali Abdul Razak Soomro, Advocate.

The State : through Mr. Aitbar Ali Bullo, Deputy Prosecutor
General

Complainant : Syed Sikandar Ali Shah (*Nemo*)

Date of Hearing : 18.09.2025.

Date of Decision : 18.09.2025.

Date of Reasons : 29.09.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through this Criminal Appeal, the appellant has assailed the judgment dated 15.05.2019, passed by the learned Additional Sessions Judge-I, Shikarpur, in Sessions Case No.279 of 2013, arising out of Crime No.02 of 2013, registered at Police Station, Jhali Kalwari, for offences punishable under Sections 302, 395, 396, 148 and 149, P.P.C. By the impugned judgment, the appellant was convicted and sentenced to undergo rigorous imprisonment for life and further directed to pay compensation of Rs.100,000/- to the legal heirs of the deceased, in terms of Section 544-A, Cr.P.C. The benefit of Section 382-B, Cr.P.C. was, however, extended to the appellant.

2. The brief facts of the prosecution case are that on 07.02.2013, at about 03:30 a.m., the complainant, along with his father namely Syed Hakim Ali Shah (deceased), his brother Asif Ali Shah, and his cousin Syed Ahsan Ali, were present near their residence, where a cattle farm was also situated. As the electric bulbs were glowing, they noticed the presence of accused persons namely Sajid Hussain alias Bakir Ali (present appellant), Mumtaz Ali, and Imtiaz Ali, all armed with K.Ks, along with Noor-ul-Haq and Muhammad Hanif, also armed with K.Ks, and three unknown persons (who, if seen again, would be identified), similarly armed with K.Ks. The accused persons allegedly attempted to steal the cattle. Upon resistance offered by the complainant's father Hakim Ali Shah, accused Sajid Hussain (present appellant) is stated to have fired from his K.K., which hit the deceased on the left side of his chest, resulting in his instantaneous death at the spot. The accused thereafter decamped, taking away one buffalo. The complainant, leaving the other witnesses with the dead

body, proceeded to the police station and lodged FIR on the same day at about 06:30 a.m.

3. During the course of usual investigation, the complainant, on the same day, recorded his further statement wherein he disclosed the names of the unknown persons earlier cited in the FIR. In the meantime, a set of accused persons were arrested by the police, and from the possession of accused Noor-ul-Haq, a gun was allegedly recovered. The present appellant subsequently surrendered before the learned trial Court. Since the challan had already been submitted, the trial Court proceeded to initiate the trial proceedings in accordance with law.

4. Initially, charge was framed on 28.11.2013 against the remaining accused persons, excluding the present appellant. However, upon surrender of the appellant before the learned trial Court on 29-05-2014, the charge was amended on 19.12.2014, to include him as well. The appellant pleaded not guilty to the charge and claimed to be tried. Consequently, the learned trial Court permitted the prosecution to adduce its evidence in support of the charge.

5. In this regard, the prosecution commenced its evidence by examining the complainant as PW-01, who deposed before the learned trial Court and exhibited the copy of the FIR, his further statement, and the receipt regarding handing over of the dead body. PW-02 Asif Ali Shah and PW-03 Ahsan Ali Shah were also examined in support of the case. Thereafter, PW-04 Bachal Shah, mashir of the case, was examined, who exhibited the memo of inspection of the place of incident and of the dead body, prepared on 07.02.2013 at about 07:30 a.m., whereby blood-stained earth, one empty cartridge of K.K. and a Sindhi cap allegedly belonging to the accused were secured. He further produced the inquest report, memo of arrest of accused Noor-ul-Haq, Majid and Saleemullah, as well as memo of recovery of shotgun on the pointation of accused Noor-ul-Haq. The prosecution then examined PW-05 Hajjan Shah, who was one of the investigating officers of the case, and who produced letter addressed to the S.S.P. for permission, SBBL gun and cartridges for analysis by the FSL, Larkana, road certificate and relevant roznamcha entries. PW-06 Lal Bux was examined as the person who had received the dead body of the deceased for post-mortem examination. PW-07, the medical officer, exhibited the lash chakas form and the post-mortem report. PW-08 SIP Jan Muhammad, the first investigating officer, was

examined, who produced letter to the S.S.P. for permission to send the blood-stained earth for chemical examination, and also exhibited the chemical examiner's report along with relevant roznamcha entry. PW-09 Ameer Ali, Tapedar, was examined, who produced the site sketch of the place of occurrence. Thereafter, the prosecution closed its evidence and also filed an application under Section 510 Cr.P.C. for production of the FSL report of Larkana.

6. Subsequently, the learned trial Court recorded the statement of the present appellant along with other co-accused under Section 342, Cr.P.C., wherein the appellant denied the allegations, professed his innocence, and prayed for his acquittal. After completion of proceedings and hearing of the parties, the learned trial Court delivered the impugned judgment dated 15.05.2019, which has been assailed through the instant appeal.

7. Learned counsel for the appellant has contended that there exist major discrepancies in the prosecution case. It is submitted that the entire prosecution rests upon material inconsistencies between the ocular account and the medical evidence, while the alleged motive has not been proved. Learned counsel further argued that, on perusal of the record, it appears that even the prosecution witnesses themselves were initially unsure about the actual culprits, as tracker dogs were called for identification, whereas on the other hand, the FIR was lodged against named accused persons with full particulars of their residence, which raises serious doubts about the veracity of the case. It was next submitted that the prosecution has utterly failed to prove its case against the present appellant beyond any shadow of doubt. Moreover, it was urged that a grave illegality has crept in, as on the very same set of evidence, the learned trial Court acquitted the co-accused, while convicting the present appellant, which is not sustainable in the eye of law. Accordingly, learned counsel prayed for acquittal of the appellant.

8. Conversely, notices were issued to the complainant, and on 04.09.2025, this Court passed the following order, which is reproduced as under:

"In pursuance of the Court order dated 01.09.2025, the District Education Officer concerned served notice upon the complainant, who not only signed but also affixed his thumb impression in acknowledgment of service. Further, through the SSP concerned, ASI Gada Hussain submitted an endorsement regarding service upon the complainant, wherein his signature and thumb impression are also available on record. It is pertinent to note that this Criminal Appeal was admitted on 19.05.2019 and on the same day, notice was issued to

the complainant. On multiple occasions, notices were issued to secure the complainant's appearance. On 03.03.2025, this Court adjourned the matter with note of caution that, in case of non-appearance on the next date, the matter would be heard in his absence. On 09.04.2025, despite due service, the complainant remained absent. Again, on 26.05.2025, ASI Muhammad Hassan reported service, yet the complainant failed to appear. Accordingly, the matter was adjourned as the last and final opportunity. Subsequently, on 18.06.2025, notice was again duly served upon the complainant, but he did not appear. The same position continued on 24.07.2025. On 04.08.2025, ASI Muhammad Aslam of Police Station of Jhali Kalwari appeared and submitted that the complainant had been duly served but remained absent. He further reported that the complainant is serving a Government Teacher at Government High School, Jhali Kalwari. Consequently, notice was also issued through his departmental superiors, and compliance report from both the education department and S.S.P concerned confirmed due service. However, despite repeated service through multiple channels, the complainant failed to appear. Such deliberate and intentional avoidance of appearance has left this Court with no option but to proceed with the matter on the basis of record, after hearing learned counsel for the appellant as well as learned DPG."

9. In such circumstances, the learned Deputy Prosecutor General advanced his arguments in support of the impugned judgment. He submitted that the appellant was specifically nominated in the FIR for the commission of murder, and there was no reason for the complainant party to falsely implicate him. It was contended that the prosecution evidence forms a complete chain of circumstances, which fully establishes the guilt of the appellant. Although certain minor discrepancies exist in the medical evidence, the same, according to him, are inconsequential and stand sufficiently corroborated by the ocular account. It was further argued that since the other co-accused were not assigned any specific role, they were rightly acquitted by the trial Court, but the case of the present appellant stands on an entirely different footing. Learned Deputy Prosecutor General, therefore, prayed for dismissal of the instant appeal.

10. Heard arguments of the learned counsel for the parties and perused the material available on the record.

11. After perusal, it transpires that the conduct of the prosecution witnesses in the instant case is not only surprising but also inconsistent with normal human behavior. It is noteworthy that, despite the allegation that the accused had murdered the father of the witness(s), they made no immediate or subsequent effort to pursue or apprehend the accused, nor did they raise an alarm or seek immediate assistance. Such a passive and indifferent reaction in the face of a brutal and personal tragedy seriously undermines the credibility

of their testimonies. Reliance is placed on the judgment rendered in **Khizar Hayat v. The State (2025 SCMR 1339)**, wherein the Hon'ble Supreme Court of Pakistan observed that:

We have also noted that the conduct allegedly exhibited by the complainant party is offensive to normal human conduct, taking into account the number of individuals from both factions at the time of the occurrence. Despite the absence of definitive guidelines regarding human conduct and behavior, it is reasonable to assume that the prosecution witnesses would not let the perpetrators go scot-free after the murder of their loved ones in the normal course of events, given the accepted standards of human behavior.

12. According to the prosecution, the accused persons were identified by the witnesses in the light of an electric bulb allegedly installed at the place of occurrence. Although all the prosecution witnesses, including the Investigating Officer (IO), admitted the availability of the said electric bulb, it is a matter of record that no effort was made by the prosecution to collect or secure this source of light during the investigation. The failure to take into possession such a crucial piece of corroborative evidence seriously undermines the reliability of the identification made under its illumination. In light of the judicial pronouncements, the non-production of the electric bulb in the present case constitutes an omission. It creates a dent in the prosecution's version and raises doubt about the accuracy and possibility of the alleged identification of the accused. In this regard, reliance is placed upon the authoritative judgments: **Azhar Mehmood and others v. The State (2017 SCMR 135)**, **Arshad Khan v. The State (2017 SCMR 564)**, and **Ibrar Hussain and another v. The State (2020 SCMR 1850)**.

13. In the present case, the complainant categorically stated that he proceeded immediately to the police station after the incident to report the occurrence. The place of incident is situated at a distance of merely 2 to 3 kilometers from the concerned police station. The time of occurrence has been stated as approximately 3:30 a.m., yet the First Information Report (FIR) was lodged at 6:30 a.m., resulting in an unexplained delay of at least three hours. In criminal cases, prompt lodging of the FIR is of critical importance, as it reflects the naturalness of the occurrence and reduces the chances of false implication and fabrication. Applying to the present facts, the three-hour delay in the registration of the FIR, despite the close proximity of the police station, and in the absence of any explanation from the prosecution, gives rise to a legitimate presumption that the FIR was not lodged immediately, but rather after deliberations and possibly after the accused were nominated by

name through consultations. The Honourable Supreme Court of Pakistan, in the judgment **Waqas Ahmed v. The State (2025 SCMR 1087)**, held:

7. In this case the occurrence took place on 03.07.2009 at about 3.00/4.00 AM which has been reported by complainant Muhammad Ali (PW.7) at 07.00 AM, after a delay of 04 hours, if counted from 04.00 AM or 03:00 AM respectively. No explanation, much less plausible, has been furnished by the complainant for the said delay. It is settled law that unexplained delay in lodging FIR creates a doubt in the prosecution's case and its benefit has to be extended and construed in favour of the accused. In case titled, Mst. Asia Bibi v. The State and others (PLD 2019 Supreme Court 64), this Court has held that in absence of any plausible explanation, delay in lodging of FIR is always considered to be fatal as it casts suspicion on the prosecution story. In case of Zeeshan alias Shani v. The State (2012 SCMR 428) this Court has observed that delay of more than one hour in lodging the FIR give rise to the inference that occurrence did not take place in the manner projected by prosecution and the time was consumed in making effort to give a coherent attire to the prosecution's case, which hardly proved successful. Same is the view of this Court in case of Muhammad Fiaz Khan v. Ajmer Khan (2010 SCMR 105).

14. As per the site inspection memo (Memo of Place of Incident) prepared by the Investigating Officer, it is clearly recorded that on the northern side of the place of occurrence, the back side of the house of Rasheed Mahar is situated. Furthermore, even the complainant party candidly admitted during the proceedings that there are approximately 100 to 125 houses belonging to various communities located in the vicinity of the crime scene. Despite this admission and the thick residential nature of the area, no effort was made by the Investigating Officer to associate any of the residents or independent witnesses from the neighbourhood with the investigation. The complainant party themselves conceded that the entire case rests upon the testimony of close relatives of the deceased. While it is a settled principle that the evidence of related or interested witnesses is not to be discarded merely on the ground of relationship, it is equally well-established that where independent witnesses are readily available, their non-association without any plausible justification casts serious doubt on the veracity of the prosecution's version. Support is drawn from the case of **Muhammad Ramzan v. The State (2025 SCMR 762)**. In view, the deliberate omission to associate independent and impartial witnesses in the present case despite their availability is a serious flaw in the prosecution's case. It gives rise to an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984.

15. In the present case, during the cross-examination of one of the alleged eyewitness, namely Syed Ahsan Ali Shah, a suggestion was put forth by the defence counsel regarding the engagement of sniffer/tracker dogs. In response, the witness candidly admitted that sniffer dogs were indeed called to the scene of the incident and that they followed the alleged footprints of the culprits. This admission raises a material contradiction in the prosecution's version. According to the prosecution, the accused were well-known to the complainant and the eyewitnesses by name and appearance, and their residential addresses were even mentioned in the FIR. If that was the case, and the accused were already known and identified with certainty, then the engagement of tracker dogs appears wholly unnecessary and unwarranted. This inconsistency creates a serious doubt upon the prosecution case. Reliance is placed on the judgment of **Sadique Sabzoi v. The State (2023 YLR 987-DB)**.

16. So far as the question of recovery from the present appellant is concerned, it is an admitted fact that no recovery of the crime weapon or even the allegedly stolen buffalo was effected from his possession. This lack of incriminating recovery is a significant factor that tilts the balance in favour of the appellant, entitling him to the benefit of doubt. Support for this proposition is drawn from the judgment in **Muhammad Afzal v. The State (2025 YLR 941 [DB])**. In contrast, the alleged recovery of the crime weapon (a gun) was made from co-accused Noor-ul-Haq on 24-02-2013, during the course of interrogation on his pointation. It is further noted that the crime empty was secured from the place of occurrence on 07-02-2013. Both the recovered weapon and the secured crime empty were sent to the Forensic Science Laboratory (FSL) under a road certificate dated 01-03-2013, and the FSL received them on the same day. This creates a glaring delay of more than 21 days between the seizure of the crime empty and its dispatch to the FSL. The delay in sending the ballistic material to the FSL, without any satisfactory explanation, renders the chain of custody doubtful. Moreover, the prosecution's conduct in apparently waiting for the recovery of a weapon before dispatching the crime empty indicates afterthought and manipulation. This significantly undermines the evidentiary value of the ballistic report and creates a serious dent in the prosecution's case. In this context, reliance is placed on the judgment of the Honourable Supreme Court of Pakistan in **Muhammad Abras v. The State (2025 SCMR 1145)**, where it was held:

7. In reconsidering the purported recovery of the crime weapon based on the appellant's indication, we note that the crime empties

were collected on 03.06.2010 from the scene of the incident, while the alleged recovery of the crime weapon occurred on 16.08.2010. Notably, both items were subsequently received by the Forensic Science Laboratory, Punjab on 03.09.2010 from an individual named Faheem Ahmed No.7685-C, which transpired approximately 18 days after the claimed recovery. In the matter of Nasrullah v. State (2017 SCMR 724), this Court noted that the retrieval of the pistol from the appellant's possession bore no legal significance, as the laboratory's report revealed that both the recovered pistol and the secured crime empties had been submitted on the same day, thereby casting doubt on the potential for fabrication. In a comparable manner, the samples were dispatched to the laboratory following a considerable delay, which stripped the positive report (Ex.PFF) of any evidentiary significance.

In the light of the above settled principle, the unexplained and inordinate delay in the dispatch of key forensic material, coupled with the absence of any recovery from the present appellant, significantly weakens the prosecution's case.

17. There exists a serious discrepancy between the ocular account and the medical evidence in the present case, which casts severe doubt on the prosecution's version. According to the eyewitnesses, the deceased sustained a firearm injury on the left side of the chest, which was a through-and-through wound, exiting from the left lumbar region. However, this version is materially contradicted by the medical evidence. As per the deposition of the medical officer and the post-mortem report, two wounds were identified: One wound measuring 1 cm x 1 cm, oval in shape with everted margins, located on the left side of the chest; another wound measuring 1.5 cm x 1 cm, cavity deep, located on the back side of the chest. According to settled principles of medical jurisprudence, specifically **Chapter 25 of Modi's Medical Jurisprudence, 26th Edition**, it is stated that: "*The wound of entry is usually larger, with inverted edges, while the wound of exit is smaller, and has everted edges.*" Based on this principle, the wound on the front (left chest) with everted margins is more consistent with an exit wound, while the larger wound on the back corresponds to an entry wound, which directly contradicts the prosecution's claim that the shot entered from the front and exited through the back or lumbar region.

18. Moreover, the medical officer further opined during cross-examination that a wound at the lumbar region could only be caused if the deceased was in sleeping position or if the fire was shot from a higher elevation, which is contrary to the prosecution's narrative. Additionally, it was admitted that the second wound was present on the back side of the chest, also referred to in anatomical terms as the posterior thorax. This region includes the vertebrae,

and surrounding musculature. Surprisingly, the post-mortem report marks this entire region as "NAD" (No Abnormality Detected), which is inconsistent with the presence of a wound, thereby further undermining the reliability and accuracy of the medical evidence relied upon by the prosecution. These contradictions between medical evidence and ocular testimony are not minor, and in criminal jurisprudence, such inconsistencies strike at the root of the prosecution's case. Reliance is placed on the authorities: **Chetan v. The State, 2025 SCMR 944, Muhammad Arif v. The State, 2019 SCMR 631, Abdul Jabbar and another v. The State, 2019 SCMR 129, Muhammad Mansha v. The State, 2018 SCMR 772, Nazeer Ahmed v. The State, 2016 SCMR 1628, and Muhammad Arif v. The State, 2024 YLR 2019 (DB).**

19. As per the prosecution's own record, the blood-stained earth was secured from the place of occurrence on 07-02-2013, but it was sent to the Chemical Examiner for analysis after a delay of 13 days, without any plausible explanation offered either in the investigation record or during the trial proceedings. The Honourable Supreme Court of Pakistan, in the case of **Muhammad Azam v. The State and others (2025 SCMR 810)**, has expressed serious concern over delayed dispatch of articles to the Chemical Examiner.

20. Furthermore, it is also a matter of concern that the last-worn clothes of the deceased, which would have been highly relevant forensic evidence for blood analysis and confirmation of the injury pattern, were not sent to the Chemical Examiner at all. The prosecution neither produced any letter seeking permission to send such articles, nor was any entry, report, or witness testimony exhibited during trial to justify their omission. In this regard, reliance is placed on the judgment in **Nadir Khoso and others v. The State and others (2024 YLR 1565)**.

21. It is a settled principle of criminal jurisprudence that any piece of evidence not put to the accused during the recording of his statement under Section 342 Cr.P.C. cannot be used against him at any subsequent stage of the trial. In the present case, a crucial omission is evident: no question was put to the accused regarding the alleged recovery of crime empty or the report of the Forensic Science Laboratory (FSL) during his statement recorded under Section 342 Cr.P.C. The Honourable Supreme Court of Pakistan, in the case of **Abdul Hayee and Abdullah alias Ghazali and another v. The State and others (2025 SCMR 281)**, has been pleased to continual such view.

22. Moreover, it is a significant aspect of the present case that except the appellant, the learned trial court acquitted all the co-accused persons, disbelieving the very same set of evidence relied upon for convicting the appellant. The acquittal of the other five accused persons by the trial court on grounds of lack of credible evidence clearly indicates that the prosecution's case was not consistent or reliable. In such circumstances, it would be unjust and legally impermissible to deny the present appellant the benefit of the same doubt and inconsistency that the trial court has extended to his co-accused. Reliance in this regard is placed upon the pronouncements of the Honourable Supreme Court in the cases of **Muhammad Akhtar v. The State (2025 SCMR 45)**, **Ghulam Rasool v. The State (2025 SCMR 74)**, and **Khizar Hayat v. The State (2025 SCMR 1339)**.

23. It is a well-settled principle of criminal jurisprudence that when there arises any reasonable doubt in the prosecution's case, the benefit of that doubt must be extended to the accused, not as a matter of grace or concession, but as a matter of right. This principle forms the bedrock of criminal law and ensures the protection of innocent persons from wrongful conviction. The legal maxim that governs this principle is the well-known Latin maxim: *In dubio pro reo means "When in doubt, for the accused"*. This doctrine reflects the foundational concept that it is better for a guilty person to go free than for an innocent one to be wrongly punished. Where the evidence produced by the prosecution is found to be lacking in certainty, reliability, or suffers from material contradictions or procedural irregularities, the accused must be acquitted. In this regard, reliance is placed on the judgment of the Honourable Supreme Court of Pakistan in case of **Qurban Ali v. The State (2025 SCMR 1344)**.

24. For the foregoing reasons and detailed discussion, it is evident that the prosecution has failed to establish its case against the present appellant beyond a reasonable doubt. Consequently, the benefit of doubt must be extended to the appellant, who is therefore entitled to acquittal. As, this appeal has already been allowed vide short order dated 18.09.2025, whereby the impugned judgment was set aside, and the appellant was directed to be released forthwith, if not required in any other case. These are the detailed reasons for the short order passed on the aforementioned date.

JUDGE