

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT
HYDERABAD**

Criminal Appeal No. S-223 of 2021

Appellant: Muhammad Usman son of Muhammad Aachar
Khaskheli through Barrister Muhammad Saad
Saeed Qureshi, Advocate.

For the State: Ms. Safa Hisbani, Assistant Prosecutor General
Sindh.

Complainant: Abdul Ghafoor son of Muhammad Soomar through
Mr. Muhammad Hassan Chang, Advocate.

Date of hearing: 08-08-2025

Date of Judgment: 07-10-2025

JUDGMENT

Jan Ali Junejo, J. --- The present criminal appeal arises from Sessions Case No. 168 of 2016 (re: *The State v. Muhammad Usman & others*), emanating from FIR No. 52 of 2016 registered at Police Station Kario Ganhwar under Sections 302, 324, 114, 147, 148, 149, 337-H(2), and 504, P.P.C. After a full-dress trial, the learned Model Criminal Trial Court/1st Additional District & Sessions Judge, Badin, through judgment dated 03.11.2021 (hereinafter referred to as the "*Impugned Judgment*"), convicted the present appellant Muhammad Usman son of Muhammad Aachar under Section 302(b), P.P.C. and sentenced him to imprisonment for life along with payment of Rs.100,000/- as compensation to the legal heirs of the deceased. In case of default further undergo one year S.I. Benefit of section 382-B Cr.P.C also extended to the accused. All co-accused, however, were acquitted by extending them the benefit of doubt. Feeling dissatisfied with his conviction

and sentence, the appellant has preferred the present appeal under Section 410, Cr.P.C., seeking his acquittal.

2. The case originates from FIR No.52 of 2016, lodged by Abdul Ghafoor son of Muhammad Soomar at Police Station Kario Ganhwar on 20.06.2016 at 2000 hours. The incident, however, occurred a day earlier, on 19.06.2016 at about 1900 hours at Village V-Makan, where the complainant's brother Nazeer Ahmed (aged 35 years) was allegedly murdered due to a land dispute with Abdul Sattar Khaskheli and others. It was alleged that while Nazeer Ahmed was bathing in a pond, accused Usman Khaskheli abused and threatened him, and thereafter called his armed companions. The accused gathered outside the complainant's house, resorted to aerial firing, and launched an attack: Usman and Muhammad Hassan Khaskheli fired at Nazeer Ahmed, causing fatal head injuries; Ghulam Nabi alias Gulabi fired at Ghulam Nabi Mallah, causing pellet injuries; while Mir Muhammad, Achar, Abdul Sattar, and an unknown assailant assaulted Muhammad Soomar with hatchets and lathis. Upon the complainant's cries, Abdul Jabbar Mallah and others arrived at the scene, but the accused fled after further aerial firing. The injured were taken to Civil Hospital Badin, where the doctors declared Nazeer Ahmed dead. Following post-mortem examination, the dead body was handed over to the complainant, which culminated in the registration of the FIR.

3. After investigation, the challan was submitted before the Judicial Magistrate, who took cognizance and transmitted the case to the Sessions Court. It was then made over to the Court of the IInd Additional Sessions Judge, Badin. Proceedings were initiated against absconder Muhammad Hassan son of Muhammad Achar Khaskheli, who was declared a proclaimed offender. Copies of the case were supplied to the accused at Exh.4, and charge was framed at Exh.5. The accused pleaded not guilty and claimed trial.

4. Thereafter, complainant started to adduce the evidence. In first round of trial Nine PWs were examined by the prosecution. Thereafter, prosecution closed the side vide Exh.24. Statements of accused persons, statements on oath and defense witnesses in first round of trial were recorded from Exh. 26 to Exh.38. Thereafter, learned defense counsel filed statement and closed its side of evidence statement Exh.39. After full-fledged trial the Court of II-Additional Sessions Judge, Badin announced the Judgment on 10.09.2018 at Exh. 13 and accused Mehboob Ali son of Muhammad Achar Khaskheli was acquitted and accused Usman was sentenced to R.1 of 14 years and other accused persons were awarded lesser sentence to extent of causing injuries and case against accused Muhammad Hassan son of Muhammad Achar was kept on dormant file. Thereafter, accused persons filed separate appeals and complainant side filed application for enhancement of sentence before this Court. Criminal appeal Nos.D-181, 182, 183 of 2019 and Cr.Revision application No-04 of 2019 were heard by this Court and this Court allowed the appeals vide Joint order dated 14.1.2020 and Judgment of trial Court was set-aside with directions to trial court to re-hear the arguments and re-decide the case and at the same time, Arms Act case of accused Muhammad Usman was also remanded to trial court for re-hearing and announcement of fresh Judgment. The court of learned II-Additional Sessions Judge, issued non bailable warrants of absconder accused Muhammad Hassan and at last he was arrested. As per record, copies in compliance of section 265-C Cr.P.C were supplied to the accused Muhammad Hassan vide receipt Exh.43. The same court framed amended charge at Exh.44 but accused persons pleaded not guilty at trial vide their pleas at Exh.44/A to 44-G.

5. Thereafter, court of II-Additional Sessions Judge Badin made reference for transfer of all cases of accused persons to learned District and Sessions Judge, Badin and he was pleased to allow the said references and this murder case along with two arms Act cases were transferred to this Court.

6. Learned counsel for accused persons Muhammad Usman, Mir Muhammad, Shoukat, Ghulam Nabi alias Gulabi and Muhammad Achar filed statements at Exh.45 and 46 and mentioned therein that they do not want to conduct the cross examination on behalf of accused persons Muhammad Usman, Mir Muhammad, Shoukat, Ghulam Nabi alias Ghulabi, Muhammad Achar and Abdul Sattar as they had already conducted cross examination and their defense witnesses and their defense will be same.

7. After amended charge which was framed by the court of II-Additional Sessions Judge, Badin. The learned trial court started to record the evidence of prosecution witnesses.

8. In second round of trial in support of charge following witnesses were examined by the prosecution.

PW-1 Abdul Ghafoor (Complainant) — In both rounds (Exh.14/Exh.47), he reiterated that after an earlier altercation, the appellant Muhammad Usman fired at the deceased on the head; co-accused Muhammad Hassan also fired at the head; and other co-accused caused injuries to Soomar and to PW Ghulam Nabi. He produced the FIR and receipt of dead body. PW-1 is not an injured witness.

PW Soomar S/o. Arab (since deceased) — Initially examined (Exh.15), he alleged hatchet and lathi blows by certain co-accused; he too claimed that both Usman and Hassan fired at the deceased. He expired before the second round; his death was subsequently proved through CW documents.

PW-2 Ghulam Nabi (injured) — (Exh.16/Exh.48) He claimed pellet injuries on both lower legs caused by co-accused Ghulam Nabi @ Gulabi's repeater; he also supported the ocular account. His injuries were on non-vital parts.

PW-3 Abdul Jabbar (eye-witness/mashir) — (Exh.19/Exh.49) He supported the ocular account and also acted as mashir of recoveries of (a) two hatchets on the pointation of co-accused, and (b) a .222 rifle and a pistol allegedly produced from the appellant's house. He is related to the complainant side.

PW-4 PC Zakir Ali (formal) — (Exh.22/Exh.50) He spoke about receipt and handing over of the dead body for post-mortem and its return thereafter.

PW-5 Abdul Karim (mashir) — (Exh.20/Exh.51) He spoke to various memos: injuries, dead body, danishnama, clothes of the deceased, place

of incident, and arrest of certain accused. The danishnama prepared on 19.06.2016 at 2030 hours records two firearm injuries on the deceased.

CW-3/ASI Ghulam Mustafa — (Exh.52) He proved the death of PW Soomar and produced ancillary documents such as the death report and summons.

PW-6 Dr. Muhammad Hassan Gurgaz (Medical Officer) — (Exh.17/Exh.53) He conducted post-mortem starting at 2300 hours on 19.06.2016; he found a single firearm entry wound on the right frontal/maxillary region; no exit wound; and opined cause of death as hemorrhage and shock due to firearm injury to the frontal region. In cross, he admitted there is no mention in the PMR that the bullet was actually recovered, and that no blackening around the entry wound was noted. He denied that the wound could be caused by pellets.

PW-7 Tapedar Munawar Ali — (Exh.18/Exh.54) He prepared the sketch of the place of occurrence at police request.

PW-8 SIP/IO Muhammad Umar — (Exh.23/Exh.55) He registered the case, recorded the initial Roznamcha Entry, prepared various memos, and claimed recoveries at the appellant's instance. He sent sealed parcels to the ballistic expert and produced the expert's report.

PW-9 ASI Manik Khan & PW-10 HC Muhammad Sehto — (Exh.56/Exh.57) They spoke about arrest of a previously absconding co-accused; their testimonies are marginal to the appellant's role.

9. The defence opted not to lead evidence in the second round, relying on the earlier statements under Section 342 Cr.P.C. and the prior defence evidence, if any. The consistent stand was false implication on account of enmity; and that the recoveries were foisted.

10. Learned counsel for the appellant, while taking the Court through the depositions of the material witnesses, submitted that the ocular account is riddled with contradictions and stands in direct conflict with the medical evidence, which establishes only one firearm entry wound against the allegation of two distinct head-shots. He further contended that the Danishnama, prepared prior to the FIR, mentioned two firearm injuries which is belied by the post-mortem report; the forensic report is inconclusive regarding the bore or authorship of the crime bullet; and that unexplained delay of about 25 hours in lodging the FIR renders the prosecution case doubtful. He also stressed that the recoveries are foisted, attested only by related mashirs, and carry no evidentiary value in absence of forensic

corroboration. It was prayed that in view of these infirmities, the appellant is entitled to acquittal by extending him the benefit of doubt.

11. Conversely, learned counsel appearing for the complainant supported the impugned judgment and submitted that the complainant, the injured witnesses, and the mashirs have consistently implicated the appellant as the principal assailant who fired upon the deceased with a rifle. It was argued that the evidence of injured witnesses is of higher probative value, and their presence at the scene is beyond dispute. He further contended that motive of a simmering land dispute provides strong corroboration, and that minor discrepancies are natural and do not shake the core of the prosecution case. He prayed for dismissal of the appeal and confirmation of the conviction and sentence awarded by the trial Court.

12. Ms. Safa Hisbani, learned Assistant Prosecutor General Sindh, while adopting the arguments advanced on behalf of the complainant, contended that the prosecution has proved its case through ocular account supported by medical and circumstantial evidence. She submitted that the delay in lodging the FIR is reasonably explained in light of the prevailing circumstances, that contradictions pointed out by the defence are not material, and that the trial Court has given sound reasons for recording conviction. She, therefore, prayed for dismissal of the appeal.

13. I have considered the arguments advanced by the learned counsel for the Appellant, the learned counsel for the Complainant and the learned A.P.G. for the State. I have also carefully perused the entire evidence available on record with the able assistance of learned counsel for the parties. The record clearly establishes that the medical evidence is categorical in proving that the deceased Nazeer Ahmed sustained only a single firearm injury to the frontal region of the head. The post-mortem report, corroborated by PW-7 Dr. Muhammad Hassan, notes one entry wound measuring 1.5 cm x 1.2 cm, with recovery of a single bullet and no exit wound. This finding was not seriously

disputed by the defence. However, this very clarity exposes a fundamental contradiction: the complainant Abdul Ghafoor and eyewitnesses Muhammad Soomar and Abdul Jabbar consistently alleged that both the appellant Muhammad Usman and co-accused Muhammad Hassan fired separate shots at the deceased's head, thereby attributing two fatal injuries. The Inquest Report and Memo of Dead Body prepared by the Investigating Officer also recorded two firearm injuries, yet the medical evidence confirms only one. This conflict between ocular testimony and unimpeachable medical evidence is material, going to the heart of the prosecution case, as it leaves unresolved the crucial question of who actually inflicted the fatal shot. In settled criminal jurisprudence, where a conflict arises between ocular and medical evidence, the latter prevails. In the present case, although the cause of death stands established, the authorship of the fatal injury remains shrouded in doubt. Reliance may be placed on the recent judgment of the Honourable Supreme Court in *Chetan v. The State (2025 SCMR 944)*, wherein it was categorically observed: *"It has been held time and again by this Court that a medico-ocular conflict regarding the number of injuries sustained by the deceased is fatal to the prosecution case"*.

14. The FSL examination report bearing .FSL/FD/OR/F.A./769/2016, Hyderabad, dated 11-07-2016, regarding the crime bullet sent by the Senior Medical Officer, records two critical observations:

(i) No definite opinion can be expressed regarding one damaged condition crime bullet now marked as "D" due to the damaged condition of the bullet.

(ii) No definite opinion can be expressed regarding the bore of the bullet.

The report is conspicuously silent as to whether the crime bullet was fired from a rifle or a pistol, leaving the most material issue unresolved. In a case where two individuals were specifically attributed with firing at the deceased's head, the appellant Muhammad Usman allegedly with a rifle and the co-accused Muhammad Hassan with a pistol, the inability of the ballistic

expert to determine even the bore of the bullet fatally undermines the prosecution case. The scientific evidence, rather than corroborating the ocular account, leaves it shrouded in uncertainty. It is, therefore, impossible to hold with any degree of certainty whether the fatal shot emanated from the weapon allegedly recovered from the appellant or from the pistol of the acquitted co-accused. In criminal law, where two reasonable possibilities arise, one consistent with guilt and the other with innocence, the benefit must go to the accused. Accordingly, in the absence of definite forensic linkage, the attribution of the fatal shot to the present appellant remains highly doubtful.

15. It is pertinent to observe that co-accused Muhammad Hassan son of Muhammad Achar Khaskheli was acquitted by the trial Court vide impugned judgment dated 03.11.2021 on the very same set of evidence. The prosecution's evidence, having been disbelieved to the extent of Muhammad Hassan—who was assigned an identical role during the occurrence—cannot safely be relied upon for sustaining the conviction of the present appellant Muhammad Usman in the absence of any independent corroboration, which is conspicuously lacking in this case. The principle of consistency in judicial findings mandates that when the same evidence is found unreliable against one accused, it should not be selectively accepted against another accused charged with identical allegations, unless supported by strong and independent corroboration. Reliance is placed on the dictum of the Honourable Supreme Court of Pakistan in *Muhammad Shafi alias Kuddoo v. The State and others (2019 SCMR 1045)*, wherein it was categorically observed that: *“Ocular account is in conflict with medical evidence inasmuch as according to the crime report both the appellant, as well as, Abdul Razzaq, co-accused, are assigned one blow each to the deceased, whereas according to the initial medical examination, Medical Officer noted solitary injury on the head, its impact on the eye has been utilized by the witnesses to array the latter in the crime. Deputation of Sakina Bibi to monitor deceased's arrival so as to inform her son about deceased's arrival is also an aspect of the case that requires a*

pinch of salt. Certainly there was no occasion for the learned High Court to convert appellant's acquittal into conviction after it had itself disbelieved prosecution evidence qua two out of three accused, one with an identical role".

16. It is a matter of record that the occurrence took place at 1900 hours on 19.06.2016, while the FIR was lodged at 2000 hours on 20.06.2016, after a delay of about 25 hours. Although initial information was provided through Roznamcha entry at 1945 hours on 19.06.2016, the complainant (uninjured) and other prosecution witnesses offered no plausible explanation for this delay. It is a settled principle that unexplained delay in lodging the FIR creates doubt about the prosecution's case, as it affords time for deliberation and fabrication. In the present case, the unexplained and inordinate delay in the registration of the F.I.R. is of such magnitude that it materially undermines the prosecution's narrative. In analogous circumstances, the Honourable Supreme Court of Pakistan, in case of ***Shaukat Hussain v. The State through Prosecutor General Punjab and another (2024 SCMR 929)***, categorically held that: "As per contents of FIR, the occurrence in this case took place on 03.05.2008 at 11:30 a.m. and the matter was reported to the Police on the same day at 3:30 p.m. and as such there is a delay of about four hours in reporting the crime to the Police whereas Police Station was situated at a distance of about 20 kilometers from the place of occurrence. No explanation at all was furnished for causing delay in reporting the crime to the Police. The contention that approximately four hours delay in lodging FIR is a normal thing does not appeal to the mind. Had the matter been reported within reasonable time, the police would have easily reached at the place of occurrence within about an hour. Why the matter has not been reported immediately by the eye-witnesses is a question which could not be satisfactorily explained by the witnesses during their evidence. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out". The underlining is supplied.

17. The prosecution relied upon the recovery of a .222 rifle and a pistol from the appellant's residence. However, the mashir (PW-3 Abdul Jabbar) was

admittedly a close relative of the complainant, and no independent witness from the locality was associated with the recovery proceedings, notwithstanding that the premises were jointly occupied by the appellant and his family members. Furthermore, the prosecution failed to satisfactorily prove the Malkhana record and the safe custody and dispatch of the sealed parcels. Significantly, although the alleged recovery of the .222 rifle was effected on 29.06.2016, the weapon was dispatched to the FSL for examination only on 04.07.2016, reflecting an inordinate and unexplained delay of five days, which the prosecution has failed to plausibly account for. It also stands established from the record that the bullet secured by the Senior Medical Officer from the head injury of the deceased during the post-mortem examination did not match the weapon allegedly recovered from the appellant's house. More importantly, the ballistic report did not conclusively link the recovered rifle to the fatal projectile, expressly stating that no definite opinion could be furnished due to the damaged condition of the bullet. In these circumstances, the alleged recovery constitutes, at best, a weak corroborative piece of evidence, incapable on its own of sustaining a conviction. Indeed, the probative value of the ballistic expert's report is inherently dependent upon the credibility of the recovery itself; once the recovery is found to be doubtful, the expert opinion loses all evidentiary worth in the eyes of law. In analogous circumstances, the Honourable Supreme Court of Pakistan, in ***Yaqub Shah v. The State (1995 SCMR 1293)***, held that: *"The crime empties allegedly recovered from the spot on 12-5-1985 were sent to the Forensic Science Laboratory on 22-5-1985 i.e. two days after the arrest of the accused persons. The fire-arms (including gun P.13) were allegedly recovered on 31-5-1985 and were sent to Forensic Science Laboratory on 13-6-1985. The date of depositing the weapons in the Malkhana was found missing in the statement of S-FI.O. and concerned Head Constable. The report of the Fire-Arm Expert was, therefore, of no avail to the prosecution"*. In another similar case, ***Iftikhar Hussain and others v. The State (2004 SCMR 1185)***, the Honourable

Supreme Court of Pakistan was pleased to observe, with reference to the delay in dispatching the weapon to the FSL, that: *“Similarly the prosecution took a considerable time in dispatching crime empties and the weapon to the Forensic Science Laboratory for which no plausible explanation has been offered therefore, the evidence of recovery of incriminating articles cannot be used as a corroborate evidence to believe the statements of ocular witnesses”*.

18. While a land dispute was cited as the motive, motive alone cannot substitute for concrete proof, particularly when the direct evidence suffers from serious infirmities and the investigation itself appears tainted. In any event, the prosecution has also failed to establish motive against the present appellant during trial. The alleged motive is weak and does not connect the appellant with the commission of the offence. Reliance is placed on the dictum of the Honourable Supreme Court in *Muhammad Nasir Butt and 2 others v. The State and others (2025 SCMR 662)*, wherein it was observed that: *“The motive of the occurrence was stated to be altercation between Muhammad Hamid Amjad (brother of the complainant) and convict Baqir Butt prior to the occurrence by the complainant. Muhammad Hamid Amjad, allegedly present at the crime scene during the occurrence, was neither targeted by the accused nor he received any injury. As per statement of Shumaila (DW-1) the deceased Abid Ali had held her hand in the street, in the meanwhile the convict Baqir Butt (brother of Shumaila) came there and rescued her from Abid Ali and at the same moment Abid Ali made firing on them and she received firearm injuries at her arm. The alleged motive lacks the force necessary to connect the convicts with the commission of the offence”*.

19. The cumulative effect of the discrepancies, contradictions, and inherent weaknesses in the prosecution’s case leads this Court to the considered conclusion that the charge against the appellant Muhammad Usman has not been proved beyond reasonable doubt. The medical evidence, which is categorical in attributing a single firearm injury, stands in direct conflict with the ocular account, the Inquest Report, and the Memo of Dead Body, all of

which suggest two firearm injuries. The forensic report is inconclusive and fails to establish the authorship of the fatal injury. The acquittal of co-accused Muhammad Hassan, on the very same set of evidence, further weakens the prosecution's stance against the appellant, particularly when no independent corroboration is forthcoming. Added to this are the unexplained delay of about 25 hours in lodging the FIR and the doubtful nature of the alleged recoveries, which were attested only by related witnesses and lacked forensic linkage. These factors, individually and collectively, cast a deep shadow of doubt over the prosecution's narrative. It is a settled principle of law that the benefit of doubt is a right of the accused, not a concession, and must be extended whenever a single circumstance creates reasonable uncertainty about guilt. In the present case, several material circumstances converge to generate profound doubt. Accordingly, the conviction and sentence of the appellant cannot be sustained in law.

20. For the reasons recorded above, this appeal is allowed. The judgment dated 03.11.2021 passed by the learned Model Criminal Trial Court/1st Additional District & Sessions Judge, Badin, in Sessions Case No. 168 of 2016, whereby the appellant Muhammad Usman son of Muhammad Achar was convicted under Section 302(b), P.P.C. and sentenced to imprisonment for life with compensation, is hereby set aside. Consequently, the appellant Muhammad Usman is acquitted of the charge by extending him the benefit of doubt and shall be released forthwith, if not required in any other case. The direction for payment of compensation and the sentence in default are also set aside. The case property shall be disposed of in accordance with law after expiry of the statutory period of appeal or revision, unless required in any other proceedings.

JUDGE