

IN THE HIGH COURT OF SINDH AT KARACHI**Present:****Mr. Justice Omar Sial****Mr. Justice Miran Muhammad Shah****Criminal Appeal No. 387 of 2024****[Aijaz Bahadur vs. The State]****Criminal Appeal No. 386 of 2024****[Aijaz Bahadur vs. The State]****Confirmation Case No. 06 of 2024****[Reference made by the Sessions Judge
Karachi (West) for confirmation of death sentence
Awarded to the appellant Aijaz Bahadur]**

Appellant : Aijaz Badshah,
through M/s. Hussan Bano and Iqbal
Shah, Advocates.

Respondent : The State
through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General a/w
complainant.

Date of hearing : 28.10.2025

Date of Judgment : 26.11.2025

JUDGMENT

Omar Sial, J.: On 16.10.2020, Azam Khan recorded a section 154 Cr.P.C. statement at the Civil Hospital in Karachi. He stated that a year ago, his sister, Bushra, married an already married man, Aijaz Bahadur. The couple, after living elsewhere for some time, moved to the same neighborhood as Bushra's family. Azam's mother and sister went to meet Bushra, but Aijaz did not permit. The ladies came back home and informed the family of Aijaz's refusal. This prompted two of Azam's brothers, namely, Abid and Iftikhar, to accompany their mother to Bushra's house. This time, however, things took an ugly turn when Aijaz opened fire on the two boys, killing Iftikhar on the spot and injuring Abid. F.I.R. No. 378 of 2020 was registered under sections 302 and 324 P.P.C. at the Jackson police station on

16.10.2020. The police visited the place of the incident the same day and found three empty bullets fired from a 9 mm pistol. That same night on 16.10.2020, Aijaz Bahadur was arrested, in an injured condition, on the information provided by Romaiz Khan and Adil Khan. When arrested, he had a 9 mm pistol for which he did not have a license. He also confessed that he had killed Iftikhar and injured Abid in the earlier shooting. F.I.R. No. 379 of 2020 was registered against him under section 23(1)(a) of the Sindh Arms Act, 2013.

On 24.11.2020, the injured brother, Abid, also unfortunately expired.

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2. Aijaz Bahadur pleaded not guilty and claimed to be tried. At trial, the court examined **Azam Khan (PW-1)** who was the complainant, **Hajra (PW-2)**, and **Zeenat Nisa (PW-3)** who were both eyewitnesses, **Aadil (PW-4)** who was a witness to the immediate aftermath of the shooting, **S.I. Mohammad Israr Khan (PW-5)** who was the first police responder to the information that a shooting had occurred. **S.I. Raja Intisar (PW-6)**, who was the police officer who arrested Aijaz Bahadur, **Dr. Abdul Jabbar Memon (PW-7)**, who was the doctor to whom the dead and injured brothers were brought after the shooting, and **S.I. Mukhtar Ali (PW-8)**, who was the investigating officer of the case. In his statement recorded under section 342 Cr.P.C., Aijaz Bahadur pleaded that he was innocent, and the reason he had been framed was that Bushra's family was not happy with them for marrying each other.

3. The learned Sessions Judge, Karachi West, on 20.05.2024, convicted Aijaz and sentenced him to death under section 302(b) P.P.C. He was also asked to pay compensation of Rs. 1,000,000.

4. We have heard the learned counsel for Aijaz Bahadur and the learned Additional Prosecutor General. The complainant was present at the hearings but did not wish to engage private counsel. We have reappraised the evidence, and our observations and findings are as follows.

5. There are two eyewitnesses to the incident, Hajra (PW-2) and Zeenat Nisa (PW-3). There was also an injured, Abid, who died a month later. While we find the testimonies of both the ladies to be confidence-inspiring, we have noticed that the investigating officer did not record their section 161 Cr.P.C. statements till after a month. The statement of the injured Abid, the best possible witness, was never recorded by the investigating officer till his death. The Supreme Court in several cases, has observed that the evidentiary value of a delayed section 161 Cr.P.C. statement is nil unless there was a cogent reason to explain the delay (reference may be made to Bashir Muhammad Khan vs The State (2022 SCMR 986), Abdul Khaliq vs The State (1996 SCMR 1553), Muhammad Asif vs The State (2017 SCMR 486), Noor Mohammad vs The State (2020 SCMR 1049) and Sajid Hussain Jogi vs The State (PLD 2021 SC 898)). The delayed recording of section 161 statements and the failure to record the statement of the injured Abid are areas we have closely examined. The learned Additional Prosecutor General explained that this lapse occurred due to the investigating officer's negligence and, perhaps, ulterior motives, as well as the illiteracy of the complainant's family. He said that Abid had in fact visited the police station along with Azam, but the investigating officer did not record his statement. The family, being completely unaware of the importance of section 161 Cr.P.C. statements, had no idea that the delayed or non-recording of the statements could adversely impact their case. He argued that there was no malafide on the part of the aggrieved family. Looking at the case holistically i.e. the narration of events of the witnesses at trial; the socio-economic and educational background of the aggrieved family; the prompt recording of the section 154 Cr.P.C. statement and registration of the F.I.R. giving the details of what had transpired; the testimonies of Azam and Aadil, who had arrived at the scene almost immediately after the shooting; the mother and sister of the deceased, at trial, testifying categorically as to what had happened; the inability of the defence to create dents in their testimonies; tilt us to believe the reason given for the late and non-recording of the statements.

6. Blood stains were found at the scene of the crime, though the investigating officer at trial testified that it was not possible to collect a sample. The ability and expertise of investigating officers to collect forensic evidence is alarming, yet we are not inclined to hold it against the aggrieved family. Bullet empties recovered from the place of the incident, and then the same are matched with the pistol recovered from Aijaz, also tilting the balance against him.

7. Aijaz stated in his section 342 Cr.P.C. statement that the two brothers had actually come to murder him and his wife, Bushra, and that he had made a call on the Police Helpline. This would mean that he acknowledged that the two brothers had come to his house, but how they then ended up getting shot, he did not explain. He also said that he did not know who shot at Abid. Rather strange, given that the occurrence is happening right outside his house in a small building, and he also acknowledges it. He then said that he was being framed as he had married Bushra against the will of her parents. This begs the question that if he was being framed, then how did one die and one get injured outside his house? The assailants died due to unknown reasons, which is hard to believe. He could not produce a single witness who could support his claim.

8. Aijaz, when arrested, was in an injured condition. This reflects that a scuffle took place between the three men, in which Aijaz was also beaten, which prompted him to open fire on the two brothers. The shooting was not premeditated and occurred suddenly and in the heat of the moment.

9. Given the above, it would be just and appropriate to uphold the conviction but reduce the sentence from death to life imprisonment. The remaining sentence, i.e., payment of fine and imprisonment in lieu thereof, shall stand.

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10. As mentioned above, when Aijaz Bahadur was arrested, he possessed a pistol that was not licensed. He was convicted under

section 23(1)(a) of the Sindh Arms Act 2013 and sentenced to five years.

11. At trial, the prosecution examined S.I. Raja Intisar Ahmed (PW-1 - the officer who arrested Aijaz and recovered the pistol from him); PW-2 Adil (the witness to the arrest and recovery), and PW-3 Mukhtar Ali, who was the investigating officer. In his section 342 Cr.P.C. statement, the appellant claimed that he was at home with his wife when the complainant's side men had come to beat him and that it was Iftikhar, who had a pistol, who shot at him but missed. Abid then beat him with an iron rod, and he had heard two fire shots in the background. He had called the police, who came to his home and took him and his wife, Bushra, to the police station. He claimed that a woman police officer had made three shots with the pistol, after which she had the number erased from the pistol. The defence taken is illogical and contradictory, and we do not believe it.

12. The defence alleged during the cross-examination of the investigating officer that the recovered pistol did have a number, but the police had a nearby cobbler erase it. This suggests that the recovery of a pistol was admitted, but that the only issue was whether the number was already erased or had been erased subsequently by the police. Speaking hypothetically, even if the police had rubbed it, that should not have stopped Aijaz from, at the very least, producing the weapon's license, which he did have.

13. Given the above, both the appeals are dismissed. The death reference is answered in the negative.

JUDGE

JUDGE