

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Cr. Jail Appeal No.104 of 2022.

Appellants : Sahib and another through Mr. Abdul Rasheed Abro, Advocate.

Complainant : Ghulam Hussain Lund through Mr. Zulfiqar Ali Korai, Advocate.

Respondent : The State, through Mr. Ghulam Murtaza Mallah, Assistant Prosecutor General

Date of Hearing : 28.8.2025.

Date of Judgment : 07.11.2025.

JUDGMENT

TASNEEM SULTANA, J:-Through the listed Criminal Jail Appeal, Appellants-accused Sahib and Allah Warayo have assailed the Judgment dated 19.8.2021, passed by the learned 1st Additional Sessions Judge/ Model Criminal Trial Court (Trial Court), Dadu in Sessions Case No.225 of 2014 Re: State v. Sahib and another, arising out of FIR No.25 of 2014, registered at P.S. B-Section Dadu, under Sections 302, 337-H(ii), 114, 504, 147, 148, 149 P.P.C, whereby the above named Appellants-accused were convicted under section 265-H(2) Cr.P.C and sentenced as under :

- a) **U/s 302(b) P.P.C. R/w S.149 P.P.C to suffer imprisonment for life as Tazir with** payment of an amount **Rs.300,000/- (three lac) each as compensation** to the heirs of deceased in terms of Section 544-A(1) Cr.P.C, in case of failure same shall be recovered under the procedure provided U/s 544-A(2) Cr.P.C. and the convicts shall also suffer simple imprisonment for six months in addition.
- b) **U/s 337-H(2) P.P.C R/w section 149 P.P.C.** and sentenced to **suffer rigorous imprisonment for three (03) months and to pay a fine amount of Rs . 3,000/-, each in case of default in payment of the fine amount,** they shall suffer simple imprisonment for three (15) days more.
- c) **U/s 504 P.P.C. R/w 149 P.P.C. and sentenced to suffer rigorous imprisonment for two (02) years and to pay a fine of Rs . 10,000/-** (ten thousand rupees) each, in default whereof they shall undergo simple imprisonment for two (02) months more.

All the sentences awarded to accused shall run concurrently and their earlier period of detention, if any, shall be

deducted from the sentence of imprisonment as provided U/s 382-B Cr.P.C.

2. Brief facts of the prosecution case are that Ghulam Hussain Lund lodged FIR at P.S B-section Dadu alleging therein that on 17.2.2014 at about 05:00 p.m, altercation had taken place between complainant party and accused Malook and others over the matter of land. The complainant, his uncle Illahi Bux aged about 45/46 years, brothers Habibullah and Imdad Ali were present at their land i-e Survey No.483 Deh Soonhiyon, in the meantime, accused Malook armed with gun, Daim with hatchet, Sahib, Allah Warayo and Ghulam Rasool all three armed with guns and Lakhmir empty handed came there, on their arrival, all accused used abusive language against them and accused Lakhmeer instigated to co-accused to kill the complainant party. Meanwhile, accused Daim caused hatchet blow to Illahi Bux with intention to commit his murder which hit him above the right side eye brows, accused Malook made straight fire with his gun upon Illahi Bux with intention to kill him which hit him on his chest and he having raised cry fell down. Then accused while making aerial firing and abusing the complainant party went away. After departure of accused, the complainant party found that Illahi Bux had been died at spot.

3. After completing usual investigation, the SHO P.S B-Section submitted charge-sheet under section 173, Cr.P.C.,(Challan), showing accused Lakhmeer in custody and the remaining accused as absconders. After completing committal proceedings, the accused Malook, Sahib, Daim, Allah Warayo and Ghulam Rasool were declared as proclaimed offenders and the case was made over to the Court of learned Additional Sessions Judge-III, Dadu.

4. Having been supplied requisite documents as provided under section 265-C, Cr.P.C.,the Trial court framed a formal charge against accused lakhmeer at Ex.5 to which accused pleaded not guilty and claimed trial vide his plea recorded at Ex.5/A. Thereafter the case was transferred to the Court of learned 1st Additional Sessions Judge/MCTC, Dadu for its disposal according to law.

5. At the trial prosecution examined P.W-1 Dr. Niaz Ahmed Kalhoro at Ex.8, he produced police letter and postmortem examination report at Ex.8/A and Ex.8/B respectively. The complainant filed an application praying therein for keeping the proceedings of the case in abeyance which was allowed and kept on record at Ex.9 and the case was kept in abeyance vide order dated 11.8.2018 at

Ex.10. Subsequently, absconding accused Sahib and Allah Warayo (present appellants) were arrested and sent up through supplementary challan received to the trial Court on 19.3.2022. Having been supplied the requisite documents to the appellants Sahib and Allah Warayo an amended charge was framed against accused Sahib, Allah Warayo and Lakhmir at Ex.12 and their pleas were recorded at Ex.12/A to Ex.12/C wherein they did not plead their guilt and claimed trial.

6. The prosecution examined P.W-1 Habibullah at Ex.13, P.W-2 complainant Ghulam Hussain at Ex.14, he produced FIR at Ex.14/A, P.W-3 mashir l at Ex.15, he produced memo of dead body, Danistnama, receipt, memo of cloths of deceased and memo of place of incident at Ex.15/A to Ex.15/D respectively. P.W-4 I.O SIP Muhammad Ameen Vighio at Ex.16, he produced entry No.36 & 39 dated 17.2.2014, entries Nos.19, 20 & 30 dated 19.2.2014, memo of arrest of accused Lakhmir, entries No.10 & 12 dated 23.2.2014 and report of chemical examiner at Ex. 16/A to Ex.16/E respectively. P.W-5 Dr. Niaz Ahmed at Ex.17. P.W-6 Tapedar Abid Ali Shah at Ex.18, he produced police letter and site plan at Ex.18/A and Ex.18/B, thenceforth learned ADPP for the State closed evidence side vide his statement at Ex.19. During trial, accused Lakhmir absconded away, hence, his case was bifurcated and proceeded separately.

7. Statements of the accused Sahib and Allah Warayo u/s 342 Cr.P.C were recorded at Ex.20 and Ex.21 wherein they denied the allegations leveled against them by the prosecution and claimed their innocence and further stated that PWs are interested and inimical towards them. They stated that due to old dispute over street they have been implicated in this case. However, neither they examined themselves on oath in disproof of the charge, nor examined any witness in their defence under section 340 (2) Cr.P.C. The Trial Court after hearing the learned counsel for the appellants as well as ADPP for the State convicted the appellants and sentenced them as mentioned above, vide impugned judgment 19.8.2021, which is challenged in this appeal.

8. Learned counsel for the Appellants, *inter alia*, has contended that the appellants are innocent and they have been falsely implicated in this case by the complainant due to previous enmity over landed dispute which also admitted by the complainant in his FIR; that mere presence at the place of wardat has been alleged against appellants and no overt act is attributed to them except abusing and firing in the air; that complainant, both eye witnesses and mashir being closely related

inter se are partisan and inimical to the appellants whose testimony requires independent corroboration which is lacking in the case; that there is delay of two days in lodging FIR without plausible explanation which shows that the FIR was lodged after due deliberation and consultation; that no recovery is effected from possession of the appellants and the prosecution has failed to produce confidence inspiring and trustworthy evidence to connect the appellants with the commission of crime; that allegedly deceased Illahi Bux was killed by the co-accused Daim and Malook by causing hatchet blow on forehead and firearm injury on his chest respectively to the deceased Illahi Bux, who are absconding; that no substantial evidence is brought on record to establish that present appellants shared common intention or actually facilitated co-accused in commission of murder of an innocent person; that the Trial Court failed to consider that the complainant malafidely implicated the appellants in the background of previous dispute over landed property; that the impugned judgment is not sustainable under the law and is liable to be set aside.

9. Conversely, learned Addl. P.G duly assisted by learned counsel for the complainant supported the impugned judgment and contended that the present appellants were present duly armed with guns when the co-accused Daim and Malook caused murder of deceased Illahi Bux thus by facilitating the main accused; that they have actively participated in the commission offence and shared common intention; that there are no material contradictions in the prosecution evidence, sufficient material is available on record to connect the appellants with the commission of offence while sharing common intention therefore, the prosecution has proved its case against the Appellants beyond any reasonable doubt and they do not deserve any leniency from this Court.

10. I have heard the learned counsel for the Appellants as well as Addl. P.G. and scanned the material available on record.

11. A meticulous appraisal of the evidence available on record indicates that the prosecution's case rests exclusively upon the evidence of the prosecution witnesses, namely complainant Ghulam Hussain (PW1) and Habibullah (PW2), both close relatives of deceased. The complainant, Ghulam Hussain (PW-1), deposed that on 17.02.2014 at about 5:00 p.m. he, along with his uncle Illahi Bux and brothers Habibullah and Imdad Ali, was present at their land bearing survey No. 483 deh soonhyon near the brick-kiln. The co-accused Malok and other had exchanged harsh words due to landed dispute. On the same day at

about 6.00 pm the accused persons, namely Malook, Daim, Sahib, Allah Waryao, Ghulam Rasool and Lakhmir, arrived there armed with deadly weapons and on the instigation of accused Lakhmir, accused Daim caused hatchet blow on the right eyebrow of his uncle Illahi Bux, while accused Malok made straight fire upon the chest of the deceased Illahi Bux, resulting his instant death and after the assault, all the accused resorted to aerial firing. The testimony of Habibullah (PW-2), though remained consistent and coherent with that of the complainant in respect, of the roles of absconding accused and does not attribute any distinct or specific role to the present appellants except their presence. In the same sequence the complaint had not attributed the roles to both the appellants. The complainant in his evidence has admitted that after fatal assault of their uncle, all accused persons aimed their weapons, made ariel firing and left the crime scene. The ocular account was furnished by closely related witnesses viz. complainant and his brother Habibullah who admittedly are inimical towards the accused on account of a long-standing dispute over land bearing S.No.483.

12. In his cross-examination, the complainant Ghulam Hussain unequivocally admitted that both parties are closely related and that there existed a dispute between them over landed property. He further acknowledged that owing to such strained relations, neither party was on visiting nor on dining terms with the other. The complainant also deposed that a month prior to the occurrence, a dispute concerning ownership of land had arisen between them. In contrast PW2 Habibullah, in his cross-examination, stated that in fact the dispute regarding ownership of land emerged on the very day of the incident. This divergence in their versions, particularly on the point of timing of the dispute, further reflects the animosity prevailing between the parties and introduces an additional element of doubt in the prosecution narrative.

13. Furthermore, during cross-examination, the complainant Ghulam Hussain, conceded that he, along with his father Muhammad Meeral and Mohammad Waris, had gone to the P.S for lodging the FIR, however, PW-2 Habibullah contradicted this version by asserting that he, along with his brother Imdad Ali and complainant Ghulam Hussain, visited the police station to register the case. Their testimonies, when read conjointly, are not free from material discrepancies particularly with regard to the time of occurrence, the sequence of firing, the relative

distance between the assailants and the deceased, and even the circumstances surrounding the lodging of the FIR. PW-1 further admitted that the FIR was not recorded on his own statement and that neither his version nor that of his father was reduced into writing at that stage. Both Ghulam Hussain (PW-1) and Habibullah (PW-2) also gave divergent and inconsistent accounts concerning their actual presence at the scene and their subsequent movements after the incident, thereby eroding the intrinsic worth of their evidence.

14. It has been observed that the alleged occurrence took place on 17.02.2014 at 1800hours, whereas the First Information Report (F.I.R.) was lodged on 19-02-2014the at 1500 hours, reflecting an unexplained delay of approximately 21 hours. As per the contents of the F.I.R., the complainant stated that they transported the dead body to the hospital, where the police also arrived, and upon completion of legal formalities, post-mortem examination, dead body was taken back to the village for the last rites, and thereafter they proceeded to the police station to lodge the report. However, this explanation finds no corroboration either from oral testimony or from documentary material produced on record.

15. On the contrary, the record unequivocally established that the dead body was that brought to the hospital by HC Ghulam Mustafa accompanied by a police letter, and that on 17-02-2014 at about 1900 hours ASI Ameen Vigheo prepared memo of dead body and danishtnama. This fact stands corroborated by P.W Dr. Niaz Ahmed, who deposed that on 17-02-2014 at 7.00 p.m, the dead body of the deceased was received at the hospital through police. The cumulative effect of this evidence demolishes the explanation advanced by the complainant and renders the delay in lodging the FIR not only unexplained but such delay, in a case of homicide involving close relatives, cannot be dismissed as a minor irregularity. The police station was nearby; the explanation that the complainant was "grieved" is neither plausible nor legally sufficient. In case of ***Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)***, it was observed as under:

"Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate".

The circumstances indicates that the FIR was not the result of a spontaneous disclosure of facts but rather appears to have been

lodged after deliberation and consultation with a view to falsely implicate the accused. The Hon'ble Supreme Court of Pakistan in the case of **G.M. Niaz v. The State (2018 SCMR 506)**, was pleased to hold as under:

“An FIR in respect of the alleged occurrence had been lodged after about seven hours and forty minutes which by itself was a circumstance doubting the claimed availability of the above mentioned eyewitnesses with the deceased at the time of occurrence.”

Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of **Zafar v. The State and others (2018 SCMR 326)**, wherein it has been observed as under:

“It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 3.00 a.m. (later half of night) and the matter was reported to the police on the same day at 8:30 am. i.e. after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and the police station is 09 miles. The post-mortem on the dead body of deceased was conducted on the same day at 2.00 p.m. i.e. After 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW-5) and Umer Daraz (PW6) in the FIR or while appearing before the learned trial Court qua the delay in lodging the FIR or for that matter the belated post-mortem of the deceased.”

16. It is also of material significance that the statements of prosecution witnesses, namely P.Ws Habibullah and Imdad, under Section 161, Cr.P.C., were recorded after an unexplained delay of three days (03) days, i.e., on 20-02-2014. The prosecution failed to advance any cogent, convincing, or legally acceptable explanation for this lapse. Such unexplained delay in recording the statements of material witnesses, who were admittedly available from the very inception, creates a legitimate doubt regarding the truthfulness and spontaneity of afterthought and consultation. It is by now a well-settled principle of criminal jurisprudence that even a delay of one or two days in recording statements of eyewitnesses, if not satisfactorily explained, is fatal to the prosecution and materially affects its credibility. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court of Pakistan in the case of **Muhammad Asif v. The State (2017 SCMR 486)**, wherein it was held as under:

“There is a long line of authorities/precedents of this Court and the High Courts that even one or two days unexplained delay in recording the Statement of eye-witnesses would be fatal and testimony of such witnesses Cannot be safely relied upon.”

In this regard, reliance can also be placed on **Muhammad Sadiq v. The State (PLD 1960 SC 223)**, **Tariq Gul v. Ziarat Gul (1976**

SCMR 236), Muhammad Iqbal v. The State (1984 SCMR 930) and Haroon alias Harooni v. The State and another (1995 SCMR 1627). Similarly, it has been settled by the august Supreme Court of Pakistan in **Muhammad Khan vs. Maula Bakhshah (1998 SCMR 570)** that:

“It is settled law that credibility of a witness is looked with serious suspicion if his statement under Section 161, Cr.P.C. is recorded with delay without offering any plausible explanation.”

17. A glaring omission which strikes at the very root of prosecution case is that although the appellants, Sahib and Allah Warayo, allegedly made ariel firing while leaving place of incident, the alleged crime weapon, i.e., the gun(s) were neither recovered from their possession at the time of arrest nor on their pointation during investigation.

18. The medical evidence, though confirming firearm and sharp-cut injuries, merely establishes the cause of death but does not connect the appellant with the occurrence. It is trite of criminal law that medical evidence is only corroborative in nature and cannot by itself establish participation of a particular accused.

19. The investigating officer ASI Muhammad Ameen claimed, in his cross examination, that he visited place of incident on 19.02.2014 in presence of mashirs and recovered one green colour empty cartridge and one green colour live cartridge from one place and five empties of red colour cartridge of 12 bore from another place. However mashir Meer Muhammad contradicted this account by deposing that only one green colour live cartridge of only one green colour empty cartridge were recovered. This material inconsistency between the testimony of the investigating officer and the mashir not only weakens the alleged recovery, but also creates serious doubt regarding the manner and credibility of the investigation. The investigating officer (PW-4) further admitted that no independent mashir from the locality was associated at the time of recovery, no photographs or sketch were prepared, and that all mashirs were from the complainant's family, one of whom was even previously convicted in another criminal case. Such procedural lapses and selective association of witnesses casts a grave shadow upon the fairness and transparency of the investigation, thereby eroding the evidentiary worth of the entire process.

20. The ocular account was furnished by closely related witnesses viz. complainant and his brother who admittedly are inimical towards the accused on account of a long-standing dispute over land bearing S.No.483. Their testimony, though confident in tone, is not free from material contradictions regarding time of occurrence, distance from which the firing was made, number of shots, and the sequence of the incident. None of the witnesses could explain why, despite claiming to have lifted the deceased immediately after the assault, their clothes remained unstained with blood. No independent witness from the vicinity or from the adjoining brick-kiln admittedly was associated at any stage of investigation or produced at trial. Such failure to produce independent corroboration casts serious doubt upon the veracity of the prosecution story and the impartiality of the witnesses.

21. The prosecution witnesses have not assigned them any overt act except firing in the air. The role attributed to the present appellants is only to the extent of their presence at occurrence and firing in the air; no direct, specific, or active participation has been alleged or proved against them.

22. As has been delineated above, the contradictions appearing in the evidence of the prosecution witnesses have completely undermined the credibility of their testimony. Their statements, when read collectively, reveal material inconsistencies. In this context, the reliance is placed upon case of **ZAFAR vs. The STATE (2018 SCMR 326)**, wherein the Hon'ble Supreme Court of Pakistan has held that:-

11. Having discussed all the aforesaid aspects of the case, it has been observed by us that medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/ corroborative piece of evidence and presence of eyewitnesses at the place of occurrence at the relevant time has been found by us to be doubtful, no reliance can be placed on the supportive/ corroborative piece of evidence to convict the appellant on capital charge.

23. The learned trial court has discussed the common object of unlawful assembly in para No. 39 of the impugned judgment, wherein, mainly the principle governing constructive liability of the appellants have been discussed, but no discussion was made that on what grounds, the murder of deceased was an organized commission of the crime by the appellants. The learned trial court has also not clarified in the light of the evidence that whether the appellants arrived at the land

in dispute after a pre-concert or prearrangement of several accused of one family can not be proved through direct evidence and surrounding circumstances in each case. The presence of the appellants at the spot, without any credible evidence of their active role or common intent, is not sufficient to attract the vicarious liability contemplated under Section 149 PPC. The main accused Malook and Daim are still absconding who have been ascribed role of causing firearm injury on vital part of body and hatchet blow on forehead respectively to the deceased. Unless their criminal liability is established through trial, collective liability of sharing common intention cannot be fixed against present appellants under Section 149 PPC who are only described as merely present and making aerial firing. The Hon'ble Supreme Court has categorically held that mere presence of an accused at the scene of occurrence does not ipso facto make him liable for the act of others unless it is proved that he shared the common object of the unlawful assembly. The prosecution badly failed to prove the common intention of the appellants.

24. It was reiterated that where evidence against an accused is doubtful or omnibus in nature, conviction under Section 149 PPC cannot be maintained. Accordingly, in the absence of credible evidence proving that the appellants shared any common object or actively participated in the offence, their conviction under Section 302 read with Section 149 PPC is not sustainable in law. Reliance is placed in the case of **Mohammad Yaqoob, Sub-Inspector vs The State (PLD 2001 SC 378)** in which Honourable Apex Court held as under:

"It was held a few decades earlier by this Court which still holds the fields that it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference, or the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis".

25. The cumulative assessment of all above factors reveals that the ocular account is not corroborated by reliable circumstantial or forensic evidence, and the investigation itself is tainted by partiality and procedural irregularities, hence, the benefit of such doubt must go to

the accused as a matter of right. It is a cardinal principle of criminal jurisprudence that a single reasonable doubt in the prosecution story is sufficient to acquit the accused. Reliance is placed in the case of ***Muhammad Mansha v. The State (2018 SCMR 772)***, the Hon'ble Supreme Court of Pakistan has held that: -

*“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of *Tarique Parvez v. The State (1995 SCMR 1345)*, *Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)*, *Muhammad Akram v. The State (2009 SCMR 230)* and *Muhammad Zaman v. The State (2014 SCMR 749)*.*

26. In view of the above discussion, the prosecution has failed to bring home the guilt of the appellants beyond a reasonable doubt. Consequently, instant appeal is allowed. Impugned judgment dated 19.08.2021 passed by learned trial Court in Sessions Case No.225 of 2014 Re: State v. Sahib and another, arising out of FIR No.25 of 2014, registered at P.S. B-Section Dadu, under Sections 302, 337-H(ii), 114, 504, 147, 148, 149 P.P.C, is set aside. Appellants, namely Sahib s/o Lakhmeer Lund and Allah Warayo, are acquitted of the charge by extending them the benefit of doubt. They shall be released forthwith, if not required in any other custody case.

JUDGE

Shabir/P.S