IN THE HIGH COURT OF SINDH BENHC AT SUKKUR

Criminal Appeal No. S-107 of 2025

Appellants	:	1) Syed Asif Ali Shah s/o Syed Taj Muhammad Shah 2) Syed Waqar Ali Shah s/o Syed Taj Muhammad Shah 3) Syed Sajjad Shah s/o Syed Asif Ali Shah *Through* Mr. Muhammad Aslam Gadani, Advocate
Complainant	:	Syed Musharraf Ali Shah s/o Syed Zakir Hussain Shah *Through* Mr. Gulshan Ahmed Shujrah, Advocate
The State	:	*Through* Mr. Khalil Ahmed Maitlo, DPG
Date of hearing	:	19.01.2026
Date of decision	:	23.01.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.– The appellants have called in question the judgment dated 22.10.2025 passed by the learned Additional Sessions Judge, Kandiaro in Sessions Case No.33 of 2024, arising out of Crime No.217 of 2023 of P.S. Kandiaro under sections 324, 337-A(i), 337-F(i), 147, 148, 149 PPC, whereby the appellants Syed Asif Ali Shah and Syed Waqar Ali Shah have been convicted for offence under Section 337-A(i) and sentenced to suffer Rigorous Imprisonment for two years; besides, to pay *Daman* of Rs.20,000/- each; and for under Section 337-F(i) PPC to suffer R.I for one year and to pay *Daman* of Rs.10,000/- each. Appellant Syed Sajjad Ali Shah has been convicted and sentenced for an offence under Section 337-F(i) PPC to suffer R.I for one year; besides to pay *Daman* of Rs.10,000/, while co-accused Syed Kazim Ali Shah and Syed Zahir Ali Shah were acquitted by extending them benefit of doubt.

2. The prosecution case, in brief, is that on 02.09.2023 at about 6:00 p.m. near the house of the complainant in village Allan Shah, owing to a prior dispute between accused Asif Ali Shah and one Ali Gohar Shah and because the complainant was allegedly siding with Ali Gohar, all the accused, armed with hatchets, pistols and a lathi, came, abused the complainant and on his protest caused injuries to him, his brother Hafeez Shah and his sister Mst. Majida. As per FIR, Asif allegedly caused a hatchet blow on the complainant's

head and another on the arm of Mst. Majida, Waqar allegedly caused a hatchet blow on the complainant's leg and another on the head of Hafeez, Sajjad allegedly caused a hatchet blow on the complainant's back and Saood allegedly gave a lathi blow to Hafeez. On their cries, their uncle Syed Naib Ali Shah and other villagers allegedly arrived, intervened on oath of Holy Quran and pacified the matter, thereafter the injured were taken to the police station, medico-legal letters were obtained and they were examined at Taluka Hospital Kandiaro, from where the complainant was referred to Nawabshah. The FIR was lodged on 04.09.2023 at 1500 hours.

3. After usual investigation, challan was submitted; copies were supplied and the case was sent to the Court of Sessions and then made over to the learned Additional Sessions Judge, Kandiaro. A joint charge under sections 324, 337-A(i), 337-F(i), 147, 148, 149 PPC was framed against all accused, to which they pleaded not guilty and claimed trial. The prosecution examined eight witnesses, including the complainant, his injured brother and injured sister, the mashir, the author of FIR, two doctors and the I.O, and produced the FIR, mashirnamas, medical certificates and other formal documents. After closure of prosecution side, statements of accused under section 342 Cr.P.C were recorded wherein they professed innocence, pleaded false implication on account of dispute with Ali Gohar Shah and suggested that the injuries were caused by a fall from a motorcycle. No accused examined himself on oath nor adduced defence evidence. The learned trial Court disbelieved section 324 PPC but convicted the present appellants under sections 337-A(i) and 337-F(i) PPC, while acquitting co-accused Kazim and Zahir.

4. Learned counsel for the appellants argued that the entire ocular account is furnished by interested witnesses closely related inter se and admittedly inimical to the appellants; that the only independent person named at the spot, namely uncle Naib Ali Shah, was withheld without any explanation; that there are serious and irreconcilable contradictions between the

prosecution's narrative of sharp-edged hatchet blows and the medical evidence, which records all injuries as caused by hard and blunt substance; that the mashir evidence is self-contradictory regarding the identity of co-mashir; that the formal documents such as the memo of injuries and reference to a lady constable and the person who brought the injured to hospital are not supported through their production in the witness box; and that on the same set of evidence two co-accused have already been acquitted on benefit of doubt. Learned counsel submitted that these are not minor discrepancies but material contradictions which shake the very foundation of the prosecution case, attracting the settled principle that even a single reasonable doubt entitles the accused to acquittal as of right. It was further argued that although the charge is also defective, inasmuch as it is joint, omnibus and not in strict compliance with section 211 Cr.P.C, yet in the presence of such substantive infirmities in the evidence, a remand for re-trial would only give the prosecution an unwarranted second opportunity to fill in lacunae, which the law does not permit where the prosecution has already failed to prove its case beyond reasonable doubt.

5. Learned DPG, assisted by learned counsel for the complainant, supported the impugned judgment and contended that the complainant and both injured witnesses have broadly supported the occurrence and the medical evidence confirms receipt of injuries; that the discrepancies pointed out are, at best, minor and natural due to lapse of time; that acquittal of two co-accused does not automatically entitle the appellants to the same relief; and that any defect in framing of charge is curable under section 537 Cr.P.C as no specific prejudice or failure of justice has been demonstrated.

6. Having heard learned counsel for the parties and examined the entire record with their assistance, the first and foremost aspect which emerges is the direct and categorical conflict between the description of the weapon and manner of assault in the ocular account and the nature of injuries as per medical evidence. The complainant and both injured PWs have consistently deposed that

hatchets with sharp-cutting edges were used on the head, leg, back and arm, allegedly with intention to commit murder; yet, the medical officers have opined all injuries to be *Shajjah-i-Khafifah* and *Jurh Ghayr Jaifah Damiyah* caused by hard and blunt substance. No clarification was elicited from the doctors whether the injuries in question could result from a sharp cutting edge and, if so, why the weapon has been categorically described as blunt. This is a substantive contradiction which goes to the root of the prosecution case and directly impacts the credibility of the ocular account, the attribution of specific roles to individual accused, and even the correct classification of the alleged offence under the various provisions of Chapter XVI of PPC.

7. The law on appreciation of evidence is by now well-settled that where the ocular account is in material conflict with the medical evidence and the two cannot be reconciled on any reasonable hypothesis, the ocular version is not to be accepted at its face value unless supported by strong independent corroboration. In offences under the Qisas and Diyat provisions, where the very nature of the injury (sharp or blunt, simple or grievous) and its legal classification determine the penal consequences, misdescription or uncertainty on this point creates a serious doubt which must operate in favour of the accused. The learned trial Court, while noticing this inconsistency, brushed it aside as a minor discrepancy without undertaking any meaningful discussion as to how injuries consistently alleged to have been caused by sharp-edged hatchets could simultaneously be medically certified as having been caused by a hard and blunt substance, nor did it explain how this conflict could be reconciled with the assignment of specific sharp-weapon roles to each appellant.

8. The second significant infirmity relates to the non-production of admittedly available and material witnesses. The complainant’s uncle, Syed Naib Ali Shah, is shown in the FIR as the very person who reached the spot during the occurrence, intervened on oath of Holy Quran and pacified the parties. Such a witness, who is simultaneously a close relative and yet projected

in the FIR as a mediator peacemaker, would have been a highly material witness for unfolding the genesis and manner of occurrence and for confirming or otherwise the version of both sides. Despite his centrality, neither the I.O. explained any reason for not citing or examining him under section 161 Cr.P.C, nor did the prosecution assign any cause for withholding him from the witness box. The non-examination of such a material witness squarely attracts the presumption that had he been produced, he might not have supported the prosecution, thereby corroding the reliability of the case set up.

9. Similar omissions surround the formal aspects of investigation. The co-mashir mentioned in the memo of injuries was not produced; instead, PW-4 spoke of some other friend as co-mashir, which contradicts the contents of the very document he was supporting. Likewise, the lady constable who, according to prosecution, initially examined the injured female before referral to the doctor, was never produced, nor was the person who actually brought the injured to the hospital examined, although he is mentioned in the relevant medico-legal papers. These are not mere technical lapses; they impair the chain of events from occurrence to medical examination and weaken the overall reliability of the prosecution narrative. When such omissions are considered cumulatively with the weapon-injury contradiction discussed above, the resulting doubt is not only reasonable but substantial.

10. The status of co-accused Kazim and Zahir also assumes significance. On the same set of evidence, they were acquitted by the trial Court on the reasoning that they were merely shown present with weapons but had not been assigned any specific role or overt act in the commission of the alleged offence. Once the trial Court itself records that the charge and evidence, as framed and led, did not justify conviction of two of the accused and grants them benefit of doubt, the remaining accused are also entitled to have the same evidence scrutinized with equally strict standards. The rule of consistency, though not absolute, mandates that where the case against the remaining

accused is not distinguishable in quality from that of the acquitted co-accused, and the same set of witnesses and circumstances forms the basis of prosecution, it becomes unsafe to maintain conviction against some while acquitting others merely on a selective appreciation of evidence. The learned trial Court failed to demonstrate how, in the presence of the same contradictions and omissions, the testimony of interested witnesses could be relied upon without independent corroboration against the present appellants while being discarded against the co-accused.

11. It is also an admitted position that all eye-witnesses belong to the same family and are on inimical terms with the accused side on account of an earlier dispute involving one Ali Gohar Shah. The presence of enmity is a double-edged circumstance: it may furnish motive for the occurrence, but it equally provides motive for false implication and exaggeration. In such circumstances, the safest course in criminal jurisprudence is to seek independent corroboration from neutral quarters or from an unimpeachable medical or forensic source. Here, no independent villager was examined, the only apparently neutral eye-witness (Naib Ali) was withheld, the medical evidence does not fully support but rather undermines the prosecution version, and investigation suffers from omissions already noted. Standing alone and uncorroborated, the testimony of interested and inimical witnesses, marred by material contradictions, does not meet the high standard of proof beyond reasonable doubt required for recording a conviction.

12. Coming to the issue of defect in charge and section 537 Cr.P.C, it is correct that the charge, as framed, is joint and omnibus, clubbing several sections of the PPC together and generally alleging “rioting, being members of an unlawful assembly and attempting to commit Qatl-e-Amd” against all accused. Strict compliance with section 211 Cr.P.C would require that the particular acts alleged, the specific injury linked to each act and the precise legal nature of the offence be distinctly set out for each accused. The trial Court itself

ultimately found that section 324 PPC was not made out and acquitted two co-accused on the ground that no role was assigned to them, which implicitly reflects the initial lack of clarity in the charge. However, in the present appeal, this Court is not persuaded that the case should be remanded merely to cure the defect in charge. The jurisprudence under section 537 Cr.P.C is that where the defect in charge is accompanied by otherwise reliable and convincing evidence, the irregularity is curable and the conviction can be maintained if no failure of justice is demonstrated; conversely, where the entire edifice of prosecution evidence is itself shaky, contradictory and insufficient to prove the charge beyond reasonable doubt, the appropriate course is not to remand the matter for a fresh attempt but to extend the benefit of doubt to the accused. Remand cannot be used as a device to afford the prosecution a second chance to fill in gaps or to improve a case which has already failed on merits.

13. In the present case, even if the charge were re-framed in strict conformity with section 211 Cr.P.C, the inherent contradictions between the ocular and medical evidence, the non-production of material witnesses, the inconsistencies in mashir evidence, the admitted enmity and the selective acquittal of co-accused would continue to haunt the prosecution version. These are matters of substance, not mere form. No amount of re-drafting of the charge or re-recording of statements under section 342 Cr.P.C can erase the doubts which have already emerged from the evidence as it stands on record. Criminal law does not contemplate multiple opportunities to the prosecution until a conviction is secured; it insists that the case must succeed or fail on the evidence lawfully produced in the first instance.

14. The guiding principle, reiterated time and again by the superior Courts, is that if a single circumstance creates a reasonable doubt in the prudent mind about the guilt of an accused, the accused is entitled to its benefit as a matter of right and such doubt must be extended not as a concession but as a mandatory corollary of the presumption of innocence. In the case at hand, there

is not merely one but multiple circumstances which cumulatively create serious doubt: the fundamental clash between ocular and medical evidence regarding the nature of weapon and injuries; the withholding of a key eye-witness named in the FIR; the failure to produce important formal witnesses linked with the medical and investigative chain; the inconsistencies in mashir evidence; and the acquittal of co-accused on the same set of facts. Taken together, these infirmities render the prosecution case unsafe for maintaining conviction.

15. In view of the above discussion, this Court is of the considered opinion that the prosecution has failed to prove the charge against the present appellants beyond reasonable doubt. The learned trial Court did not correctly appreciate the effect of the contradictions and omissions in the prosecution evidence and misapplied the settled principles governing benefit of doubt. The impugned judgment to the extent of conviction and sentence of the appellants, therefore, cannot be sustained.

16. Consequently, the appeal is allowed. The conviction and sentences recorded against appellants Syed Asif Ali Shah, Syed Waqar Ali Shah and Syed Sajjad Shah through judgment dated 22.10.2025 passed by the learned Additional Sessions Judge, Kandiaro in Sessions Case No.33 of 2024 arising out of Crime No.217 of 2023 of P.S. Kandiaro are hereby set aside and they are acquitted of the charge. The appellants shall be released forthwith, if not required to be detained in any other case. The Superintendent of the concerned jail is directed to ensure compliance with this judgment at once and to submit a compliance report through the Additional Registrar of this Court.

J U D G E