IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No. S - 221 of 2017

Appellants:	(1) Muhammad Daim son of Kamil (2) Qaimuddin S/O Muhammad Kamil, both by caste Mubejo through Mr. Sheeraz Fazal, Advocate.
Complainant:	Through Mr. Achar Khan Gabol, Advocate.
The State	Through Mr.Muhammad Raza Katohar, Deputy Prosecutor General Sindh.
Date of hearing:	13.10.2026.
Date of decision:	30.10.2026.

J U D G M E N T

SURESH KUMAR, J.— This Criminal Appeal under Section 410, Cr.P.C. is directed against the Judgment dated 19.12.2017 passed by the learned Additional Sessions Judge-I, Naushahro Ferozee, in Sessions Case No.341/2010 (The State v. Muhammad Daim and others), arising out of FIR No.113/2010 registered at Police Station Padidan, District Naushahro Ferozee, for offences under Sections 302 and 34, P.P.C., whereby the appellants were convicted under Section 302(b), read with Section 34, P.P.C. and sentenced to imprisonment for life as ta'zir, with a fine of Rs.50,000/- each and, in default of payment, to undergo six months' rigorous imprisonment. The benefit of Section 382-B, Cr.P.C. was extended to them.

2. The prosecution case, as emerging from the FIR, is that on 07 August 2010, at approximately 15:45 hours, the complainant, Leemo Khan, along with his brothers Abdul Ghafoor, Qabil, and Jani Mubejo, was proceeding towards Padian town. When they reached the link road at Juman Shah, near the abandoned brick kiln of Sajan Lashari, five persons allegedly arrived on two motorcycles. The assailants were armed with pistols and their faces were uncovered; nevertheless, they were described at that stage as unknown persons who, according to the complainant, could be identified if seen again. The assailants allegedly fired upon Abdul Ghafoor, causing firearm injuries, as a result of which he died at the scene. The complainant subsequently proceeded to the police station and lodged the FIR against unknown persons. During the investigation, the complainant provided a further statement under Section 162 Cr.P.C. on 08 August 2010, in which he stated that he had subsequently come to know

the names of the persons allegedly involved in the occurrence. The names of Muhammad Daim, Ghulam Shabir, Lal Bux, Qaimuddin, and Muhammad Hashim were thereafter introduced in the investigation.

3. After the submission of the charge sheet, the appellants were tried by the learned Additional Sessions Judge, Naushahro Feroze. Following the supply of copies to the appellants, a formal charge was framed against them, to which they pleaded not guilty and requested a trial.

4. At trial, the prosecution examined complainant of the case namely Leemo Khan, as PW-1 at Ex. 8. He produced FIR at Ex. 8/A and further statement at Ex. 8/B. The statement of PW-2 Qabil was recorded at Ex. 9. PW-3 Jani was examined at Ex. 10. PW-4 Medical Officer, DHO Office Naushahro Ferozee Dr. Rehmatullah was examined at Ex. 11, who produced Lash Chakas at Ex. 11/A, postmortem report at Ex. 11/B. The Statement of PW-5 Mashir Sajjad Ali was recorded at Ex. 12, and he produced mashirnama of dead body at Ex. 12/A and mashirnama of place of incident at Ex. 12/B, and mashirnama of the recovery of cloths of the deceased at Ex. 12/C. PW-6 ASI Imam Bux posted at PS Darya Khan Mari was examined at Ex. 13. PW-7, Estate Mukhtiarkar, Naushahro Ferozee, Syed Agha Hub Ali Shah, was examined at Ex. 14, he produced sketch of Vardat at Ex. 14/A. PW-8 PC Zamir Hussain was examined at Ex. 15 and he produced receipt of handing over the dead body of the deceased as Ex. 15/A. PW-9, Investigating Officer (I/O) of the case namely SIP Irshad Ali was examined at Ex. 16. PW-10, SIP Ghulam Murtaza, another I/O of the case was examined at Ex. 17. PW-11, Retired Police Inspector Ghulam Qasim was examined at Ex. 18, and he produced letters vide Ex. 18/A to 18/C. The learned State Counsel had also filed an application under Section 540 Cr. P.C alongwith Chemical Report at Ex. 19.

5. Thereafter, the learned Trial Court recorded the statements of the appellants under Section 342 of the Cr.P.C. The appellants/accused persons also examined one defense witness, namely Moula Bux, at Ex. 26. After hearing the arguments, the learned Additional Sessions Judge-I, Naushahro Feroze, convicted and sentenced the appellants as mentioned in the impugned judgment. The appellants then challenged the impugned judgment through this appeal, which was allowed via judgment dated 25

October 2018, after hearing the parties, and the appellants were acquitted. However, the judgment of this Court was challenged through Criminal Petition No. 160-K of 2018 before the Honourable Supreme Court of Pakistan, but the matter was remitted via order dated 24 December 2020 to this Court for rewriting the judgment after hearing the parties.

6. The learned counsel for the appellants has primarily contended that the impugned judgment suffers from misappreciation of evidence and that the prosecution failed to establish the appellants' identity and participation beyond a reasonable doubt. He further contends that the appellants were not named in the FIR; rather, the complainant initially described the assailants as unknown persons, and their names were introduced subsequently through the complainant's further statement. He also argues that the complainant and the accused were previously known to each other, being relatives and caste fellows residing in the same locality, and therefore there was no plausible reason for their names not to have been disclosed at the earliest opportunity if they had actually been recognized during the occurrence. The learned counsel has additionally relied upon the reinvestigation conducted by Inspector Ghulam Qasim of the Crime Branch Sukkur, pursuant to the order of the Additional Inspector General of Police (Investigation), Sindh, dated 04 January 2011. According to the learned counsel for the appellants, the reinvestigation report referred to the statements of independent persons and concluded that the accused, including the present appellants, were innocent. He also contends that the prosecution witnesses were closely related to one another and that no independent witness was associated, despite the alleged occurrence having taken place during the daytime on a common road.

7. Conversely, the learned counsel for the complainant has supported the impugned judgment. He has further contended that the ocular account is fully supported by the medical evidence and circumstantial evidence in the form of empties recovered from the scene of the incident. He has also contended that the motive has been established. Lastly, he has argued that the appeal may be dismissed and that the conviction and sentence awarded to the appellants may be maintained.

8. The learned Deputy Prosecutor General for the State, while supporting the impugned judgment, has contended that the prosecution has proved its case through trustworthy evidence. He has also argued that the conviction and sentence awarded by the Trial Court may be maintained.

9. I have heard learned counsel appearing on behalf of the appellants, counsel for the complainant, and learned Deputy P.G. for the State, so also examined the available record with their able assistance.

10. On a careful reassessment of the evidence available on record, it appears that the complainant, Leemon Khan (PW-1), lodged the FIR against five unidentified persons, although the occurrence allegedly took place in broad daylight and the assailants had uncovered faces. The names of the appellants, Muhammad Daim and Qaimuddin, along with those of three co-accused, were subsequently introduced through the complainant's further statement dated 8 August 2010. The FIR (Ex. 8/A) records that the assailants could be identified if seen again, whereas in his further statement (Ex. 8/B), the complainant disclosed their names, stating that he had subsequently come to know about their involvement. The further statement does not disclose the source of such information or the circumstances in which their identities became known to him. This version differs materially from his subsequent deposition before the Trial Court, wherein he claimed to have recognized the accused during the occurrence itself. The omission of their names from the earliest prosecution version, therefore, assumes significance, particularly when their subsequent nomination was attributed to information acquired after the occurrence.

11. The evidence further reveals that the parties were previously known to one another. PW-1 admitted during cross-examination that the accused were his distant relatives, while PW-2, Qabil, stated that the wives of complainant Leemon Khan, accused Ghulam Shabir, and appellant Muhammad Daim were sisters. PW-6, ASI Imam Bux, also admitted that the complainant and the accused belonged to the same community and village. Thus, the accused were not strangers to the prosecution witnesses, and their omission from the FIR assumes particular significance. The complainant sought to explain this omission by alleging that ASI Imam Bux had not correctly recorded his version. However, PW-6 maintained that he had recorded the

FIR according to the complainant's statement, read its contents over to him, and obtained his thumb impression after the complainant acknowledged them to be correct. The contemporaneous record, including the inquest papers, also described the assailants as unidentified persons. In these circumstances, the explanation offered by the complainant does not satisfactorily account for the omission of the appellants' names from the earliest prosecution version, particularly when the witnesses subsequently claimed to have recognized them during the occurrence.

12. The evidence of PW-3 Jani and PW-10 SIP Ghulam Murtaza further raises doubt concerning the subsequent identification. PW-3 admitted during cross-examination that his statement under Section 161, Cr.P.C., mentioned that the involvement of the accused became known after the occurrence. Similarly, PW-10 admitted during cross-examination that the prosecution witnesses had not disclosed the names of any accused in their statements recorded under Section 161, Cr.P.C. He also referred to recording the complainant's further statement on 7 August 2010, whereas Ex. 8/B bears the date 8 August 2010. The discrepancy concerning the date of the further statement is not, by itself, decisive; the material consideration is that the earliest prosecution version did not identify the assailants, whereas the witnesses subsequently claimed to have recognized them during the occurrence. These circumstances directly concern the reliability of the identification upon which the prosecution relies. The subsequent nomination of the appellants, when considered alongside the earliest prosecution version and the admissions brought on record, materially affects the credibility of the eyewitnesses' claim of recognition. In this regard, reliance is placed upon *Falak Sher alias Sheru v. The State* (1995 SCMR 1350), wherein the Honourable Supreme Court, while considering the subsequent nomination of an accused whose name did not appear in the FIR, held as under:

> *"Any statement or further statement of the first informant recorded during the investigation by police would neither be equated with First Information Report nor read as part of it."*

13. Further reliance is placed upon the case of Muhammad Rafique and others v. The State and others, (2010 SCMR 385), wherein the Honourable Supreme Court at page 96, has observed as under:

> *24….. "This Court in the case of Saeed Muhammad Shah v. State 1993 SCMR 550 wherein it is observed that if a witness improves his statement on material aspect of the case then such improvement is not worthy of reliance and the evidence of such witness requires corroboration. This Court in the case of Saeed Muhammad Shah v. State 1993 SCMR 550 observed that if such improvement is not worth of reliance and the evidence of such witness requires corroboration. In the case of Khalid Javed v. State 2003 SCMR 1419 while reiterating the above rule, it was further observed that such witness is to be considered to be wholly unreliable and it is not advisable to place explicit reliance upon his evidence"*

14. The evidence of PW-1 Leemon Khan, PW-2 Qabil, and PW-3 Jani during the trial attributed specific firing roles to the appellants. According to their account, Qaimuddin fired at Abdul Ghafoor, causing an injury to his nose, while Muhammad Daim fired twice, causing injuries to his neck and chest. However, the attribution of these roles must be examined in light of the circumstances under which the appellants were subsequently nominated. The earliest prosecution version did not identify any of the assailants, despite their uncovered faces and the fact that they were previously known to the prosecution witnesses. The witnesses' subsequent testimony assigning particular acts of firing to the appellants cannot be considered in isolation from this material departure from the original account. Although their relationship with the deceased does not, by itself, render their evidence unreliable, the unexplained inconsistency concerning identification affects the confidence that can safely be placed in their subsequent attribution of firing roles. The prosecution has not satisfactorily reconciled this inconsistency, which relates to the identity of the persons alleged to have committed the offence.

15. The medical evidence establishes that Abdul Ghafoor sustained three firearm injuries involving the nose, the left side of the neck, and the left side of the chest, resulting in his death due to shock and excessive hemorrhage. Dr. Rehmatullah (PW-

4) found corresponding wounds of entry and exit and, although no charring marks were present, expressed the opinion that the shots had been fired from a close distance. The injuries described in the postmortem report substantially correspond to those narrated by the eyewitnesses. However, the medical evidence establishes the nature and cause of death and does not identify the persons responsible for causing those injuries. Thus, the correspondence between the ocular and medical evidence does not eliminate the doubt arising from the subsequent identification of the appellants. In this regard, reliance may be placed upon Zafar v. The State (2018 SCMR 326), wherein the Honourable Supreme Court recognized that medical evidence and recoveries are corroborative in nature and cannot independently sustain a conviction where the primary ocular evidence is found unreliable.

16. As regards the recoveries, three empty cartridges of a .30-bore pistol and bloodstained earth were secured from the place of occurrence under mashirnama Ex. 12/B. However, no crime weapon was recovered from either appellant, nor was any ballistic evidence produced connecting them with the recovered empties. The chemical examiner's report confirmed the presence of human blood in the earth material. These recoveries support the occurrence of firearm violence at the stated place but do not independently connect either appellant with the commission of the offence.

17. The evidence of SIP Irshad Ali (PW-9) also reveals that the involvement of appellant Qaimuddin was questioned during the investigation. PW-9 stated that he recorded statements from persons who claimed that Qaimuddin and Muhammad Hashim were present at a faisla held at the otaq of Muhammad Awais Rajper until approximately 7:00 p.m. on the date of the occurrence. On the basis of these statements, he placed their names in column No. 2 of the challan, while Muhammad Daim, Ghulam Shabir, and Lal Bux were sent up for trial. The learned Magistrate, however, subsequently took cognizance against all five accused. Although the opinion of an investigating officer is not binding upon the Court, the evidence of PW-9 shows that material inconsistent with the prosecution's allegations against Qaimuddin had surfaced during the investigation. The statements recorded by him cannot, merely because they formed the basis of his opinion, be treated as substantive evidence

establishing an alibi. Nevertheless, the fact that Qaimuddin was placed in column No. 2 forms part of the circumstances surrounding the investigation and requires consideration alongside the evidence concerning his subsequent identification. The significance of this aspect lies in the material disclosed during the investigation rather than the conclusion reached by the investigating officer.

18. The case was subsequently reinvestigated by Inspector Ghulam Qasim (PW-11), pursuant to the order dated 4 January 2011, issued by the Additional Inspector General of Police (Investigation), Sindh. PW-11 produced the relevant correspondence at Exhs. 18/A and 18/B and the reinvestigation report at Exh. 18/C. According to his testimony, he examined certain persons who disputed the involvement of the accused and submitted a report expressing an opinion favorable to them. However, during cross-examination, PW-11 admitted that he had not revisited the place of occurrence, had not served notices upon the prosecution witnesses under Section 160, Cr.P.C., and had not collected any other material, apart from the statements of persons examined during the reinvestigation, to establish that the accused were unconnected with the occurrence. The superior police authority, through the communication produced at Exh. 18/B, left the matter for determination by the Court, as the case was already pending trial. These admissions materially limit the evidentiary value of the reinvestigation report. The conflicting investigative opinions are not determinative of the charge, which must be decided upon an independent assessment of the evidence recorded during the trial, particularly the reliability of the ocular testimony and the circumstances surrounding the appellants' subsequent nomination.

19. The appellants, in their statements recorded under Section 342, Cr.P.C., denied the prosecution allegations, claimed innocence, and pleaded false implication. In support of their defense, they examined Moula Bux as DW-1 at Ex. 26, who deposed that a private faisla had taken place between the parties concerning the murder of Abdul Ghafoor. According to him, the accused took an oath on the Holy Quran denying their involvement, initially at his otaq and subsequently at Dargah Syed Juman Shah. He further stated that a written faisla was prepared and that the complainant's party had initially agreed to it. During cross-examination, however,

DW-1 admitted that the copy of the faisla dated 25 February 2011 did not mention the names of its mashirs, that only the accused party had taken the oath, and that apart from such an oath, no other authentic proof was available to declare the accused innocent. The proceedings of a private faisla, or an oath taken during such proceedings, cannot determine criminal liability or substitute for evidence recorded before a court of law. The testimony of DW-1, therefore, does not independently establish the appellants' innocence. Nevertheless, the appellants were under no obligation to establish their innocence through such proceedings, and the prosecution remained responsible for proving the charge against them beyond a reasonable doubt.

20. The learned trial Court convicted the present appellants while acquitting co-accused Ghulam Shabir, Lal Bux, and Muhammad Hashim by extending the benefit of doubt. The distinction drawn by the learned trial Court was that specific firing roles had been attributed to Muhammad Daim and Qaimuddin, whereas the remaining accused had not been assigned any such role. Although the cases of the present appellants stand on a different footing in view of the specific allegations against them, the attribution of firing roles cannot, by itself, overcome the material doubt concerning their identification. The learned trial Court placed reliance upon the consistency of the ocular account and its correspondence with the medical evidence, without satisfactorily reconciling the initial description of the assailants as unknown with the witnesses' subsequent claim of recognition. The medical evidence may support the nature and location of the injuries described by the witnesses, but such correspondence does not establish that the appellants were the persons who inflicted those injuries. The distinction drawn between the appellants and the acquitted co-accused, therefore, does not remove the doubt arising from the prosecution evidence concerning the appellants' identification.

21. The evidence, when considered in its entirety, establishes that Abdul Ghafoor died as a result of firearm injuries. The prosecution, however, has failed to establish beyond a reasonable doubt that the present appellants were responsible for causing those injuries. The earliest prosecution version did not disclose their identities, despite the occurrence having taken place in broad daylight and the fact that the parties were

previously known to one another. Their names surfaced through a subsequent statement referring to information acquired after the occurrence, whereas the eyewitnesses later claimed to have recognized them at the scene. The complainant's explanation for their omission from the FIR is not supported by the police officer who recorded it, while the admissions of PW-3 and PW-10 further affect the reliability of their subsequent nomination. The medical findings and recoveries, though supporting the occurrence, do not independently connect either appellant with the offence. The remaining evidence, including the material collected during the investigation, does not satisfactorily resolve the uncertainty concerning their involvement. These circumstances, considered collectively, create reasonable doubt regarding the appellants' identification and participation in the occurrence.

22. The infirmities discussed above are not confined to minor discrepancies or matters of insignificant detail. They concern the identity of the persons alleged to have committed the murder and directly affect the reliability of the ocular testimony upon which the conviction rests. The subsequent attribution of specific firing roles, notwithstanding its correspondence with the medical injuries, cannot safely sustain the conviction when the appellants' identification remains doubtful. In this regard, reliance is placed upon Muhammad Mansha v. The State (2018 SCMR 772), wherein the Honourable Supreme Court held that even a single circumstance creating reasonable doubt in a prudent mind concerning the guilt of an accused entitles him to the benefit of such doubt, not as a matter of grace or concession, but as a matter of right.

23. In view of the above facts and circumstances, the prosecution has failed to establish the charge against the appellants beyond a reasonable doubt, and the conviction recorded by the learned trial Court cannot be sustained. Consequently, the instant Criminal Appeal is allowed. The conviction and sentence awarded to appellants Muhammad Daim and Qaimuddin through the impugned judgment dated 19 December 2017, passed by the learned Additional Sessions Judge-I, Naushahro Feroze, are hereby set aside. The appellants are acquitted of the charge by extending to them the benefit of the doubt. The appellants are present on bail; therefore, their bail bonds stand cancelled and surety is discharged.

J U D G E