HIGH COURT OF SINDH, CIRCUIT COURT MIRPUR KHAS

Criminal Appeal No. S-01 of 2026

Appellant: Khan Muhammad @ Aburo s/o Noor Muhammad Dars
Through Mr. Abdul Hafiz Mari, Advocate

The State: Through Mr. Neel Parkash
Deputy Prosecutor General, Sindh.

Complainant: Abdul Ghani s/o Muhammad Sadique Dars,
Through Mir Shahzad Ahmed Talpur, Advocate.

******

Criminal Appeal No. S-02 of 2026

Appellant: Khan Muhammad @ Aburo s/o Noor Muhammad Dars
Through Mr. Abdul Hafiz Mari, Advocate

The State: Through Mr. Neel Parkash
Deputy Prosecutor General, Sindh.

Date of hearing & Short Order: 03.11.2026

Date of Judgment: 04.11.2026

J U D G M E N T

Nisar Ahmed Bhanbhro J.- Though this single judgment, I propose to decide the fate of captioned Appeals, as they arise out of a single transaction.

2. In Criminal Appeal No.S-01/ 2026, the appellant Khan Muhammad alias Aburo s/o Noor Muhammad Dars has assailed the judgment dated 23-12-2025 (**1st impugned judgment**) passed by the learned 1st Additional Sessions Judge, Umerkot, (**Trial Court**) in Sessions Case No.130/ 2022 "Re *The State v. Khan Muhammad @ Aburo and others*" (arising out of F.I.R bearing Crime No. 68/ 2022 for offence punishable under section 302, 34 P.P.C of P.S Umerkot City), whereby he was convicted under section 302(b) P.P.C and sentenced to suffer life imprisonment and to pay Rs. 200,000/= as compensation to the legal heirs of deceased under section 544-A Cr.P.C and in case of default to suffer R.I for six months more.

3. In Criminal Appeal No. S-02/ 2026, the appellant Khan Muhammad alias Aburo s/o Noor Muhammad Dars has assailed the judgment dated 23-12-2025 (**2nd Impugned Judgment)** passed by learned 1st Additional Sessions Judge, Umerkot **(Trial Court)**, in Sessions Case No.121/ 2022 "Re: *The State v. Khan Muhammad*" (arising out of F.I.R bearing Crime No. 86/ 2022 for offence punishable under section 24 of Sindh Arms Act, 2013 of P.S Umerkot City; whereby he was convicted and sentenced to suffer R.I for seven years and to pay fine of Rs. 50,000/= and in case of default thereof to suffer S.I for six months more.

4. The facts pertaining to the **Criminal Appeal No.S-01/ 2026** are that complainant Abdul Ghani Dars lodged F.I.R bearing Crime No.68 of 2022 on 20.05.2022 at P.S Umerkot City alleging therein that on 19.05.2022 at 1525 hours, accused Mohib Dars and Khan Muhammad @ Aburo Dars came on motorcycles alongwith two unknown accused persons in front of dairy farm of complainant, situated at Bachal Machhi Paro, Umerkot town. Accused Mohib Dars made pistol shot at the chest of deceased Muhammad Hanif Dars while accused Khan Muhammad @ Aburo made

pistol shot at right thigh of deceased Muhammad Hanif, when he was running to save his life, resultantly, injured Muhammad Hanif Dars succumbed to injuries at hospital. After funeral and burial ceremony, complainant appeared at police station and lodged instant F.I.R.

5. After usual investigation, I.O submitted report under section 173 Cr.P.C before the concerned Judicial Magistrate. Since the alleged offence is exclusively triable by the Court of Sessions, therefore, learned Magistrate sent up the R&Ps of instant case to the Court of Sessions Judge, Umerkot, who transferred the same to the trial court for disposal in accordance with law.

6. After supplying the copies of case papers to the appellant and co-accused in compliance to provisions of Section 265 - C Cr.P.C. charge was framed against them; to which they pleaded not guilty and claimed trial.

7. At the trial, to substantiate charge prosecution examined following witnesses:

01. *PW-01 Complainant Abdul Ghani was examined at Ex.03, who produced FIR at Ex.3-A.*
02. *PW-02 Gul Muhammad was examined at Ex.04,*
03. *PW-03 Ghulam Raheem was examined at Ex.05, who produced Lash chakas form, Danishtnama, memo of inspection of dead body, receipt of receiving dead body and statement recorded U/S 162 Cr.P.C at Ex.5-A to 5-E respectively.*
04. *PW-04 Mashir Muhammad Asad was examined at Ex. 06, who produced memo of inspection of place of incident, memo of cloths of deceased, memo of arrest of accused Mohib Dars and Khan Muhammad @ Aburo, memo of arrest of accused Abdul Wahid @ Wahido @ Wahidoo and Dodo and recovery of motorcycle, memo of recovery of 9 mm pistol on the pointation of accused Mohib Dars and memo of recovery of 30 bore pistol on the pointation of accused Khan Muhammad @ Aburo at Ex. 6-A to 6-F respectively.*

05. *PW-05 M.O Dr. Kanji was examined at Ex.07,who produced police letter and post mortem report of deceased at Ex.7-A &7-B respectively.*

06. *PW-06 Allauddin was examined at Ex.08, who produced roznamcha entries at Ex. 8-A & 8-B respectively.*

07. *PW-07 Tapedar Javed Ahmed was examined at Ex.09, who produced letter of Mukhtiarkar and site plan at Ex.9-A & 9-B respectively.*

08. *PW-08 PC-Muhammad Rafique was examined at 10, who produced letter of SHO, letter of SSP, letter addressed to Incharge ICCBS Laboratory Karachi at Ex.10-A to 10-C respectively.*

09. *PW-09 I.O/SIP Ghulam Murtaza was examined at Ex.11, who produced roznamcha entries, entries of Malkhana Register No.19, FIRs of Crime No. 85 & 86 of 2022, U/S 24 Sindh Arms Act, 2013, letter addressed to Motor Vehicle Registration Officer, report of Excise Officer Umerkot alongwith letter, vehicle registration detail, memos of inspection of place of incident, receiving information of offence, Forensic Serology Analysis report and letter of Mukhtiarkar Umerkot at Ex. 11-A to 11-P respectively.*

8. Then learned Prosecutor closed the prosecution side by filing such statement. Thereafter, statements of the appellant and co-accused under section 342 Cr.P.C were recorded wherein they denied the allegations being false and claimed their innocence. However, they did not examine themselves on oath as required u/s 340(2) Cr.P.C nor lead evidence in defence except co-accused Mohib Dars, who examined D.W Ghulam Sarwar. During proceedings of the case co-accused Mohib died in Jail, therefore, case against him was abated vide order dated 27.09.2025.

9. After hearing the learned counsel for the parties, learned trial court acquitted co-accused Abdul Wahid @ Wahido and Dodo while convicted the appellant through 1st impugned judgment.

10. The facts pertaining to the **Criminal Appeal No.S-02/ 2026** are that on 28.06.2022, the appellant was under police custody in Crime No. 68/2022, U/S 302, 34 PPC of P.S Umerkot City and during course of investigation, he admitted his guilt, become ready to produce crime weapon, voluntarily led the police party to Vehro by-pass, , at about 1800 hours at Umerkot-Mirpurkhas road, took out one un-licensed 30 bore pistol alongwith magazine containing three live bullets, buried beside the wall of Civil Hospital Umerkot in presence of mashirs, which was used by him in commission of above offence. Complainant SIP Ghulam Murtaza Pathan lodged instant F.I.R. against the appellant.

11. After usual investigation, I.O submitted report under section 173 Cr.P.C before the concerned Judicial Magistrate. Since the alleged offence is exclusively triable by the Court of Sessions, therefore, learned Magistrate sent up the R&Ps of instant case to the Court of Sessions Judge, Umerkot, who transferred the same to the trial court for disposal in accordance with law.

12. After supplying the copies to the appellant charge was framed against him; to which he pleaded not guilty and claimed trial.

13. At the trial prosecution examined following witnesses:

01. PW-01 Mashir Muhammad Asad was examined at Ex.03, who produced memo of arrest and recovery at Ex.3-A.

02. PW-02 HC-Muhammad Rafique was examined at Ex.04, who produced roznamcha entries and letter addressed to Incharge FSL Hyderabad and receipt thereon at Ex. 4-A & 4-B respectively.

03. PW-03 Complainant/I.O SIP Ghulam Murtaza was examined at Ex.05, who produced roznamcha entries, FIR, memo of inspection of place of incident and report of FSL at Ex.5-A to 5-E respectively.

14. Then learned Prosecutor closed the prosecution side by filing such statement. Thereafter, statement of the appellant under section 342 Cr.P.C was recorded wherein he denied the allegations being false and claimed his innocence. However, the appellant did not examine himself on oath as required u/s 340(2) Cr.P.C nor lead evidence in defence.

15. After hearing the learned counsel for the parties, learned trial court convicted the appellant through impugned judgment. Hence these Appeals.

16. **Learned Counsel for the appellant** contended that there is delay of about 31 hours in recording F.I.R without plausible reasoning though complainant and his two other witnesses, in their evidence, admitted that police arrived soon after the incident in the hospital but no information was conveyed to the police regarding happening of alleged incident. He contended that on the very date of incident, police had reached at hospital and thereafter at scene of offence at 1800 hours, but no complaint was made for incorporation in 154 Cr.P.C book. He further contended that all witnesses are related *inter se* and despite of the fact that incident took place in a populated area within Umerkot City no independent person was cited as a witness. He further contended that motive towards murder of deceased was dispute over plot, but said motive was not established and same cuts the root of the prosecution case. He further contended that registration number of motor bike was not given in the F.I.R and even the Taxi driver, through which the victim was transported to the hospital, was not examined. He further contended that recovery was managed during captivity of the appellant as it is impossible that appellant after commission of crime would hide pistol in Umerkot hospital where dead body was brought soon after incident and large number of the people,

from the complainant side, were also available there. Lastly, he contended that medical evidence to the extent of present appellant contradicted the stance of the complainant as to the use of weapon for the commission of crime. He, therefore prayed for allowing instant appeals and acquittal of the appellant.

17. **Learned counsel for the complainant** contended that prosecution has fully established its case beyond shadow of doubt. It was day time incident; the accused were properly identified with their specific role and as per medical report both injuries were sufficient to cause death of a person in normal course. He contended that there was no ill will against the appellant to substitute as an offender against real culprit. He contended that prosecution witnesses were cross examined at length, but remained un-shattered and consistent on all material points viz a viz manner in which the offence took place; the nature and locale of injuries sustained by the victim and cause of death. He, therefore, prayed for dismissal of instant appeals.

18. **Learned D.P.G** supported the arguments advanced by learned counsel for the complainant and contended that minor discrepancies in the prosecution case occurred due to passage of time and were not fatal to the prosecution case. He contended that medical evidence was in line to the prosecution case and the opinion of the Medical Officer to the extent of use of weapon is irrelevant as ocular account over weighs the medical evidence, which is corroboratory in nature. He further contended that empties recovered from the scene of incident were sent alongwith recovered weapon for matching and F.S.L report is in positive, which sufficiently demonstrate that the weapon recovered from the appellant

was the same, used in the commission of crime. He, therefore, prayed for dismissal of instant Appeals.

19. **Heard arguments** and perused the material available on record.

20. It is well settled law that prosecution is burdened to discharge its solemn duty to prove its case beyond shadow of doubt and if a reasonable doubt appears in a prudent mind, the benefit of which shall be extended to the accused being favorite child of criminal justice system. Admittedly, the incident had taken place on 19-05-2022 at 3:25 p.m, the F.I.R was lodged on 20-05-2022 with a delay of 31 hours and no plausible explanation was furnished in that regard. Though it has been deposed unanimously by P.W-1 Abdul Ghani, P.W-2 Gul Muhammad and P.W-3 Ghulam Raheem that within half an hour time injured was removed to the hospital where he succumbed to the injuries and police arrived there; they informed police about the incident; the inquest report and certain other memos were prepared in the hospital, but no information as to the details of assassination were conveyed to the police including the names of the perpetrators. It is also prosecution case that on the same day at 1800 hours police inspected site of offence in presence of mashir Gul Muhammad. However, both the witnesses did not disclose the persons responsible for the commission of the crime. The police officials visited the Hospital where the deceased was taken but no inquiry was made nor any person claiming to be an eye-witness of the occurrence had disclosed the accused. It would not be unreasonable to infer that either the accused were not known to the persons claiming to be the witnesses of the commission of the crime or they were not present at the crime scene. The appellant was nominated for the first time when the crime report was registered after a considerable and unexplained delay. More particularly when the witnesses even did not record their statements on 20-05-2022 but they appeared before police to record their statements on

21-05-2022 and 28-05-2022 respectively, which also creates doubt as to presence of witnesses at the time of occurrence. Moreover, it was alleged that two of the accused persons were identified and known to the complainant party whereas two accused, who were riding the bike were unknown, but in the statements recorded latter-on the names of those persons were disclosed as acquitted accused Abdul Wahab and Dodo, both brothers of present appellant Khan Muhammad. During Trial, complainant P.W-1 Abdul Ghani deposed that the complainant party and accused were on disputed terms over a plot whereas P.W 2 Gul Muhammad, who is cousin of the complainant, has stated that there was enmity between the parties over ancestral plot; meaning thereby that the parties were related **inter se**. The omission to identify two accused, who were also the brothers of the present appellant, creates doubt as to veracity of the prosecution case. Therefore, it can be held safely that Complainant party was in wait to collect information about the incident and thereafter set law into motion, the presence of the witnesses at the place of incident therefore was doubtful.

21. It is settled law that a crime report or information entered in the prescribed book for the purpose of section 154 of the Cr.P.C. is not a substantive piece of evidence. Nonetheless, delay in the registration of an FIR may give the complainant and the police officials an opportunity to falsely nominate an accused or manipulate the evidence as a result of consultation and deliberations. The registration of a criminal case is the first step to put the proceedings in motion and to enable the in charge of a police station to secure the crime scene and collect the evidence before it is manipulated or loses its evidentiary value. The registration of a criminal case without delay has significance for the complainant as well as an accused. The delay raises the probability of false implication

of an accused and to manage the evidence to bring it in line with the prosecution's story. The promptness eliminates the chances of such prior consultation and deliberation and raises a presumption of credibility and bona fides.

22. Honorable Supreme Court of Pakistan in the case of **Muhamad Akhtar and others Versus the State reported in 2025 S C M R 45** has held as under:

> *"12. The statements of complainant/ PW. 14, PW.16 Muhammad Akhtar and the injured witness (PW.15) are suffering from dishonest improvements and material contradictions rendering their testimony doubtful.*
>
> *13. The infirmities in the case of the prosecution and the contradictory statements of the prosecution witnesses, which are also suffering from dishonest improvements, have created reasonable doubt in the case of the prosecution. According to settled principle of law, benefit of reasonable doubt has to be extended in favour of accused.*

23. In another case of **Muhammad Riaz and others Versus The State reported in 2024 SCMR 1839** Honorable Supreme Court of Pakistan has held as under:

> "13. *From the above-stated facts and circumstances, it is abundantly clear that in this particular case, the prosecution version is burdened/ loaded with major discrepancies, which create serious doubts about its authenticity. The prosecution version with regard to the manner of killing, the medical evidence and the recoveries, contradict each other on material points creating serious cracks in the prosecution version. The prosecution has failed to bring on record any convincing material to establish that it was the appellants who had committed the occurrence. It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to*

procure conviction then the Court can come forward for the rescue of the accused persons.

24. Moreover, PWs Abdul Ghani, Gul Muhammad and Ghulam Raheem deposed during trial that deceased Hanif, on sustaining fire arm injury over his chest at the hands of co accused Mohib, tried to rescue himself whereupon he was fired by appellant Khan Muhammad; however, medical evidence reflects that said fire was sustained on the thigh from front side; meaning thereby that there was no rescuing effort. It is further the case of the prosecution that the accused persons fired upon the deceased from a distance of about three feet and per medical evidence smoke was found present around the injuries, however, no blackening or charring were found on the injuries.

25. The Complainant in his evidence and FIR alleged that the incident had taken place during the peak hours of the day and witnessed by people who were attracted there. But none from them was cited as witnesses. No doubt the witnesses being brothers and the cousin of the deceased are the competent witnesses and their evidence cannot be discarded on account of relationship alone or to tag them as interested witness, but it is the axiomatic principle of law that the evidence of interested witness particularly when there is an element of enmity existing between the parties has to be examined with huge caution and care.

26. Medical account is not supporting the prosecution case. It is consistent evidence of the prosecution witnesses that appellant Khan Muhammad fired upon deceased with pistol, which hit him on thigh whereas in the M.L.C, which was recorded prior to registration of F.I.R, P.W-5 Dr. Kanji stated that injury over thigh was sustained through gun type weapon, which belied prosecution version of injury having been

sustained through a bullet type weapon, this brings the medical evidence in dissonance with ocular account. Though it is settled proposition of law that ocular account over weighs the medical evidence if the prosecution succeeded to establish its case beyond shadow of doubt but in the present case even the prosecution evidence is not confidence inspiring and trust worthy.

27. As to the recovery of weapon allegedly used in the commission of crime, it is quite surprising that appellant Khan Muhammad and co-accused Mohib were in police custody and on 28-06-2022 at 3:00 p.m co-accused Mohib led the police party for the recovery of weapon and on the same day at 1800 hours present appellant led police party to the hospital of Umerkot city. It is quite astonishing, that Asad Lashari, who is stated to be a shop keeper in Umerkot city, was associated as mashir in both the recovery proceedings and other formalities, who frankly conceded before court that he was called by the police to become mashir in the case. This piece of evidence demonstrates that he is stock witness harboured by the police to depose as desired. Moreover, it is baffles the wit of a prudent mind that soon after committing the crime, the accused went to the hospital where dead body was moved and to expose himself to the family members of deceased. It is also matter of record that crime empties were recovered from the place of incident on 19-05-2022, whereas pistol was allegedly recovered on 28-05-2022; however, empties and pistol were sent for forensic analysis on 30-05-2022 together. In such a situation, the Forensic Report was of no consequence. More particularly when such report was even not confronted to the appellant in both the cases. Non confronting an incriminating piece of evidence to the appellant/accused during his statement under section 342 Cr.P.C cannot be used to convict him on the basis of said piece of evidence. Moreso recovery of weapon is a

corroborative piece of evidence it does not lend support to identify the offenders. The Prosecution was required to prove through convincing evidence that the recovery so affected was actually the weapon used in the commission of crime and for that purposes should have sent the empty shells recovered from the place of incident on the very day for FSL and then the recovered pistol.

28. Honorable Supreme Court of Pakistan in the case of **Muneer Malik Versus The State reported in 2022 SCMR 1494** has held as under:

> *"Furthermore, the record shows that eight empties of Kalashnikov and six empties of T.T. pistol were recovered from the scene of occurrence on the same day i.e. 17.05.2007 through recovery memo but the said crime empties were neither kept in safe custody nor sent to Chemical Examiner immediately after recovery. The weapons of offence and the crime empties were jointly sent to the office of Chemical Examiner after a delay of more than two months i.e. on 13.07.2007 for which no plausible explanation has been given by the prosecution. In these circumstances, the recoveries are inadmissible in evidence and cannot be relied upon to sustain conviction of the appellants. We, therefore, set aside the conviction of the appellants under section 13(e) of the Arms Ordinance."*

29. To bring guilt of the accused home, the prosecution is required to adduce the evidence, which without a second thought convincingly depicts a picture of the offence surrounding the neck of the accused. The proof beyond reasonable doubt should be of such a nature that requires no hesitation in making a decision as the guilt of the accused to face off the presumption of innocence attached thereto until a finding of guilt. Unless the Court is satisfied and convinced that burden of proof has been

successfully discharged after a thorough and impartial examination of evidence on record, the burden of proof cannot be shifted to other side. In the present case there are major inconsistencies in the prosecution evidence that were overlooked by the Learned Trial Court, which demonstrated that the prosecution failed to prove its case against the appellant beyond any reasonable doubt. It is settled exposition of law that conviction cannot be recorded based on mere assumptions and presumptions, surmises and conjectures. If a single circumstance creating reasonable doubt in the prudent mind appears in the prosecution case, it would be sufficient to discredit the prosecution case, the existence of multiple circumstances was not required. Under the criminal trial, prosecution has to stand on its legs. Prosecution is duty bound to prove its case beyond shadow of doubt through confidence inspiring oral or documentary account, which if they fail would make its case doubtful. The Benefit of doubt if any in the prosecution case would tilt in favor of the accused being the blue-eyed child of criminal law. The crux of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as a matter of right and not as that of grace this principle of law has been repeatedly reiterated the courts of the Country.

30. In the case of **Rehmatullah and 2 others Versus the State reported in 2024 S C M R 1782** Honorable Supreme Court of Pakistan has been pleased to hold as under:

> 13. *We have, therefore, come to this irresistible conclusion that the circumstantial evidence produced in this case is not worthy of reliance and the prosecution has miserably failed, to prove its case against the appellants beyond the shadow of doubt. It is by now well settled that even a single circumstance, which creates*

> *reasonable doubt in the prosecution evidence, is sufficient to discard the prosecution case whereas the instant case is replete with number of circumstances, which have created serious doubts about the prosecution story.*

31. Honorable Supreme Court of Pakistan in the Case of **Abdul Qadeer Versus the State reported in 2024 SCMR 1146** has been pleased to hold as under:

> *22. All the above circumstances have created reasonable doubt in the case of the prosecution but benefit of same has not been extended to the petitioner by the courts below. According to settled principle of law even if a single circumstance creates a reasonable doubt in a prudent mind about the guilt of an accused he/she shall be entitled to such benefit not as a matter of grace and concession but as of right.*
>
> *23. According to settled principles of law the prosecution has to stand on its own legs and if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down.*

32. For the forgoing reasons, the case of indulgence of this court is made out. Accordingly, instant both Criminal Appeals are allowed and 1st impugned judgment dated 23-12-2025 passed by learned 1st Additional Sessions Judge, Umerkot, in Sessions Case No.130/ 2022 "Re *The State v. Khan Muhammad @ Aburo and others*" (arising out of F.I.R bearing Crime No. 68/ 2022 for offence punishable under section 302, 34 P.P.C of P.S Umerkot City) and 2nd impugned judgment dated 23-12-2025 passed by learned 1st Additional Sessions Judge, Umerkot, in Sessions Case No.121/ 2022 "Re: *The State v. Khan Muhammad*" (arising out of F.I.R bearing Crime No. 86/ 2022 for offence punishable under section 24 of Sindh Arms Act, 2013 of P.S Umerkot City) are hereby set aside and appellant Khan Muhammad alias Aburo s/o Noor Muhammad Dars is acquitted of the

charge(s) and directed to be released forthwith if not required for incarceration in any other custody case.

33. These are the reasons for short order dated 03.11.2026 by which the captioned Appeals were allowed.

Office is directed to keep signed copy of judgment in the connected file.

Approved for reporting JUDGE

"Saleem"