JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.S-194 of 2022

(Niaz Hussain @ Muhammad Arshad v The State)

Appellant:	Niaz Hussain @ Muhammad Arshad through Mr. Maisum Hussain Sahar, Advocate.
Respondent:	The State through Mr. Shawak Rathore Deputy Prosecutor General Sindh.
Date of Hearing:	02.11.2026.
Date of Judgment:	02.11.2026.
Date of Reasons:	05.11.2026.

JUDGMENT

MUHAMMAD HUMAYON KHAN, J. - Through this appeal, the appellant Niaz Hussain alias Muhammad Arshad challenges the judgment dated 31.10.2022 of the learned Additional Sessions Judge-IV, Dadu, passed in the supplementary proceedings arising out of Crime No. 05 of 2019 of Police Station Jhallo, District Dadu, offence under sections 302, 452, 337-H (ii), 147, 148, 149, 504, 114 PPC. The trial Court convicted him under section 302 (b) PPC and sentenced him to imprisonment for life as ta'zir, with compensation of Rs.200,000/- under section 544-A Cr.P.C. or, in default, six months' simple imprisonment. It also convicted and sentenced him on subsidiary counts arising from the same occurrence. The sentences were to run concurrently, with the benefit of section 382-B Cr.P.C.

2. The prosecution case is that harsh words had earlier passed between the complainant Khuda Bux Solangi and Zakariya Abro over grass. At about 1900 hours on 19.02.2019, Taj Muhammad alias Tajoo, Zakariya, Dost Muhammad alias Ashfaque, Nadeem and the appellant entered the complainant's house in village Dost Muhammad Abro, armed with guns and a repeater. Taj Muhammad urged the others to kill the complainant. Zakariya fired a shot which struck the complainant's daughter, Mst. Kousar, on the right side of

her chest, and a second shot struck her on the right arm. The accused left, firing into the air, and Kousar died at the spot.

3. The chronology that matters is as follows:

- 19.02.2019, 2200 hours: the complainant telephoned ASI Abdul Razaque from Civil Hospital, Dadu. According to the officer, he told him that Zakariya had murdered his daughter.
- 19.02.2019, 2315 hours to 20.02.2019, 0045 hours: the post-mortem examination was conducted.
- 20.02.2019, 0300 hours: the FIR was registered, some eight hours after the occurrence.
- 20.02.2019, 0700 hours: the police inspected the scene and secured blood-stained earth and twelve 12-bore empties. Investigation later passed to Inspector Noor Mustafa.
- 01.03.2019: the statement of Ashique Ali, the eye-witness who attributes the arm shot to the appellant, was recorded under section 161 Cr.P.C.
- 06.03.2019: a double-barrelled gun and six cartridges were recovered on the pointation of the co-accused Nadeem.
- 23.12.2019: Nadeem, Taj Muhammad and Dost Muhammad were tried and acquitted. Their acquittal rested on findings of material contradictions in the prosecution evidence, a weak motive, and failure to prove a common design.
- 28.06.2022: the appellant, who had been declared a proclaimed offender, was arrested. Nothing was recovered from him.

4. A charge was framed against the appellant on 04.08.2022 (Ex. 27) under sections 148, 149, 452, 504, 337-H (ii) and 302 PPC. He pleaded not guilty. The prosecution examined six witnesses and gave up the eye-witness Afzal. In his statement under section 342 Cr.P.C., the appellant denied the charge and claimed false implication over a land dispute. He alleged that the complainant had himself killed his daughter. He did not give evidence on oath or lead defence evidence. The trial Court convicted him as stated above, and this appeal followed.

5. PW-1 Khuda Bux Solangi (Ex. 28), complainant and father of the deceased. He placed himself, Ashique and Afzal in his house at 1900 hours. He named the five armed intruders and attributed the chest shot to Zakariya. In his own words, "other also fired", and that shot hit his daughter on the right arm near the shoulder; he did not name its shooter in that sentence. In cross-examination he said the police arrived about thirty minutes after the incident, and that SHO Noor Mustafa came personally. He also said there were many marks of firing on the walls and roofs. After the post-mortem, he said, he sent the body to the village and went himself to the police station, where the FIR was recorded at 0300 hours.

6. PW-2 Ashique Ali Solangi (Ex. 29), eye-witness. He is related to the complainant and visits daily. He said the room was lit by bulbs, and expressly attributed the chest shot to Zakariya and the arm shot to the appellant. He admitted three things. First, his statement was recorded by the police only on 01.03.2019, although he went with the complainant to the police station at 0300 hours on the night of the occurrence. Secondly, the police questioned only the complainant, not the witnesses. Thirdly, Afzal arrived ten minutes after him, whereas the complainant said they came together.

7. PW-3 Dr. Nusrat Buriro (Ex. 31), Woman Medical Officer. She conducted the post-mortem examination from 2315 hours on 19.02.2019 to 0045 hours on 20.02.2019. She found a firearm entry wound on the lower right chest with an exit on the left lower back. She also found multiple pellet wounds on the back of the lower half of the right arm. Death was caused by injury No. 1, the chest wound. Injury No. 2, on the arm, was non-lethal. She estimated the chest shot was fired from about one foot, and the arm shot from five to six feet.

8. PW-4 ASI Abdul Razaque Channa (Ex. 32), first officer. He said the complainant telephoned him at 2200 hours and named Zakariya as the murderer. He was not aware of the incident before then, and first saw the body in hospital. He conducted the inquest proceedings, returned to the police station, and recorded arrival entry No. 20 at 2350 hours. He registered the FIR at 0300 hours and

inspected the scene at 0700 hours. In cross-examination he admitted the following:

- the inquest papers do not name the accused or the eye-witnesses;
- he saw no marks of firing on the walls;
- he neither secured the bulbs nor recorded the source of light;
- he did not record the statements of the deceased's mother, her husband or the villagers; and
- the cartridge descriptions and the holes in the clothing are not entered in the memos.

9. PW-5 ASI Muhammad Sadique Lund (Ex. 33), arresting officer. He arrested the appellant on 28.06.2022 on the road leading to Seeghar Peer. He stated in terms that nothing was recovered from him.

10. PW-6 Inspector Noor Mustafa Pathan (Ex. 34), subsequent investigating officer. He took over the investigation on 26.02.2019, arrested Nadeem, and recovered a double-barrelled gun on Nadeem's pointation on 06.03.2019. He admitted the following:

- he did not visit the place of incident on the day of the murder;
- he did not produce the initial investigation or arrival entries;
- apart from the witnesses' statements, no tangible evidence was available against the accused;
- he could not recall how many cartridges were dispatched for examination; and
- he described sending one sealed parcel, whereas the ballistic report records receipt of four.

11. Mr. Maisum Hussain Sahar, learned counsel for the appellant, filed a written synopsis and made the following submissions.

- Participation, not death, is the issue. Proof that Kousar died of firearm injuries does not establish that the appellant fired, or

that he shared a common object making him liable for the fatal chest shot attributed to Zakariya.

- The only express attribution is late. The only witness who expressly attributes a shot to the appellant is PW-2, whose statement was recorded ten days late although he was at the police station on the night of the occurrence.

- The complainant does not name the second shooter. He places the arm wound near the shoulder, whereas the doctor found it on the lower half of the arm.

- The earliest information names Zakariya alone.

- The official chronology is unresolved.

    - The complainant's account of the SHO's visit is contradicted by that officer himself.

    - The first officer's return entry precedes the completion of the post-mortem examination.

    - The eight-hour delay in the FIR was not reconciled with the complainant's own account of his movements.

- Nothing connects the appellant forensically. Nothing was recovered from him. The recovered gun relates to the acquitted Nadeem, and its custody and dispatch are unproved.

- The earlier acquittal rested on shared defects. The co-accused were acquitted on defects common to the prosecution evidence.

- The finding on common object is inconsistent. The trial Court recognized that the appellant had no intention to murder the deceased, then found a common object to murder her without explaining how.

- The section 342 examination was incomplete. The abscondence and the forensic material were never put to him.

12. Mr. Shawak Rathore, the learned Deputy Prosecutor General supported the impugned judgment. He contended that the complainant and Ashique are natural witnesses whose presence in their own house needs no explanation. He argued that the appellant

was named in the FIR with a specific role, and that the medical evidence confirms a firearm injury on the arm. The delay in the FIR, he submitted, was explained by the hospital proceedings and the funeral. He added that the appellant's abscondence for more than three years supports the prosecution case, and that his role distinguishes him from the acquitted co-accused.

13. I have heard learned counsel for the appellant and the learned Deputy Prosecutor General and have examined the record for myself, as an appellate Court must. **13-A.** It is pertinent to observe that, despite issuance and service of notices on numerous occasions, the complainant, Khuda Bux Solangi, has neither appeared before this Court nor made any arrangement for representation to contest the instant appeal. Such persistent non-appearance, notwithstanding repeated opportunities afforded to him, reflects his apparent lack of interest in pursuing the matter at the appellate stage. Be that as it may, the complainant's absence cannot, by itself, constitute a ground for acquittal or diminish the obligation of this Court to independently scrutinize the prosecution evidence. Accordingly, the appeal has been examined and determined on its own merits,

14. That Mst. Kousar died an unnatural death from firearm injuries is not in dispute, and I do not doubt it. The medical evidence proves it. But that evidence does not tell me who fired, and, as the Supreme Court explained in Muhammad Hassan v The State 2024 SCMR 1427, medical evidence can confirm the nature and mechanism of an injury but cannot identify the assailant. The question in this appeal is therefore narrower. I must decide whether the prosecution proved, beyond reasonable doubt, that this appellant fired at the deceased. If it did, I must also decide whether it proved that he shared a common object making him answerable for the fatal shot fired by another.

15. PW-3 found that the deceased died of the chest wound, injury No. 1, and that the arm wound, injury No. 2, was non-lethal. The prosecution attributes the chest wound to Zakariya, who is not before me. The only act attributed to the appellant is the arm shot. So the first question is whether that act is reliably proved.

16. The complainant does not prove it. In his examination-in-chief, he attributes the chest shot by name to Zakariya. Of the second shot, however, he says only that another accused fired it, without naming him. The trial Court described both eye-witnesses as attributing the respective shots unequivocally, which overstates the complainant's evidence. In effect, the attribution of the arm shot to the appellant rests on PW-2 alone.

17. I accept that the evidence of a single witness may sustain a conviction if the witness is wholly reliable, and that relationship alone does not discredit a witness: *Farooq Khan v The State 2008 SCMR 917*. The question is therefore whether PW-2 is a witness of that quality. In my view he is not, for the reasons that follow.

18. PW-2 admitted that he went with the complainant to the police station when the FIR was lodged at 0300 hours on 20.02.2019. He also admitted that the police questioned only the complainant. Yet his statement under section 161 Cr.P.C. was recorded on 01.03.2019, ten days after the occurrence. No reason was offered for the delay. He was not absent, unwell, or unknown to the police. He was at the police station on the night itself.

19. The Supreme Court has held that an unexplained delay in recording the statement of an eye-witness casts serious doubt on his evidence: *Muhammad Khan v Maula Bakhsh 1998 SCMR 570; Mohammad Asif v The State 2017 SCMR 486*. The delay here is of particular importance, because PW-2 is the only witness who attributes a specific act to the appellant. An attribution first recorded ten days after the event, by a witness available from the first night, cannot safely be the sole basis for convicting the appellant of murder.

20. Three further matters affect the reliability of the prosecution account.

21. First, according to PW-4, when the complainant first informed the police at 2200 hours he named Zakariya alone as the murderer. PW-4 also admitted that the inquest papers name neither the accused nor the eye-witnesses. I do not hold that the appellant's name was deliberately added later; the record before me is not sufficient for that finding. But the earliest recorded version gives no support to the specific role later attributed to him.

22. Secondly, the complainant said the police reached his house about thirty minutes after the incident, and that SHO Noor Mustafa came there personally. PW-6, Inspector Noor Mustafa, said he did not visit the place on the day of the murder. PW-4 said he knew nothing of the incident before 2200 hours and first saw the body at the hospital. These accounts cannot all be true. This is not a difference of a few minutes. It concerns whether there was any police presence at the scene at all that evening, and so whether the prosecution's account of prompt police involvement is reliable.

23. Thirdly, PW-4 said he returned to the police station after the post-mortem examination and recorded arrival entry No. 20 at 2350 hours. According to PW-3, the post-mortem examination continued until 0045 hours. The prosecution offered no explanation for that sequence.

24. The FIR was recorded at 0300 hours, eight hours after the occurrence and five hours after the police had been informed. I accept that hospital and post-mortem formalities account for part of that time. The trial Court went further, holding that the complainant took the body to the village and lodged the FIR after the funeral. The complainant's own evidence is different. He said he sent the body to the village and went himself to the police station. The trial Court's explanation is therefore not the complainant's.

25. The Supreme Court in *Pervaiz Khan v The State 2022 SCMR 393* treated unexplained time after the parties reached hospital as weakening the asserted eye-witness account. The delay here is not by itself decisive. But it adds to the doubt created by the late statement of PW-2 and by the limited earliest version.

26. The occurrence took place after dark. PW-2 relied on bulbs, but PW-4 neither secured them nor recorded any source of light in the memo of the place of incident. In *Sardar Bibi v Munir Ahmad 2017 SCMR 344*, the Supreme Court treated the failure to establish the claimed source of light as a factor weakening a night-time identification. The accused here were known to the witnesses, so this is a reason for caution rather than a ground for rejection. It is a further point, however, at which the account was not independently tested.

27. The same applies to the complainant's description of many marks of firing on the walls and roofs. The officer who inspected the scene the next morning saw none on the walls.

28. The complainant placed the arm wound near the shoulder, whereas PW-3 found the pellet wounds on the back of the lower half of the arm. A lay witness may describe a wound loosely, and I do not treat this difference as decisive. But it concerns the one injury attributed to the appellant, given by the witness who did not even name its author. It does not strengthen the attribution.

29. Nothing was recovered from the appellant. The gun on which the prosecution relied was recovered on the pointation of Nadeem, who was acquitted, and it cannot be treated as evidence against the appellant. Even as to that gun, PW-6 could not say how many cartridges were dispatched, and he described one parcel where the laboratory recorded four. No custodian of the case property, and no one who carried the parcels to the laboratory, was examined. The prosecution must prove the safe custody and safe transmission of articles sent for expert examination: *Ahmad Ali v The State 2023 SCMR 781*. The delayed and unexplained dispatch of ballistic material weakens any result relied on: *Muhammad Abras v The State 2025 SCMR 1145.* No ballistic finding connecting any empty to a weapon associated with the appellant is on record.

30. Recovery is in any case corroborative only. It cannot sustain a conviction once the direct evidence is found unreliable: *Saifullah v The State 1985 SCMR 410.* Where the ocular account is doubtful, medical evidence, motive, recovery and abscondence cannot together supply the missing proof of participation: *Zafar v The State 2018 SCMR 326.*

31. The alleged motive was an earlier quarrel over grass. Its date, its circumstances and its witnesses were not proved, and the earlier trial Court found it unsubstantiated. A weak motive does not defeat reliable direct evidence. But where the direct evidence is itself doubtful, it calls for closer scrutiny: *Hameed Khan alias Hameedai v Ashraf Shah 2002 SCMR 1155*. It gives no support to the prosecution case against the appellant.

32. Nadeem, Taj Muhammad and Dost Muhammad were acquitted on 23.12.2019 on the evidence of the same witnesses. The trial Court found material contradictions as to the time of the incident, the time the police were informed, and the motive, and held the common design unproved. I accept that the appellant's case is different, because a shot is attributed to him. That difference does not, however, cure the defects common to both trials: the same witnesses, the same chronology and the same delayed statement.

33. Where evidence has been disbelieved against some accused, it can be relied on against another only if a sound reason distinguishes his case and reliable corroboration supports it: *Mohammad Asif v The State 2017 SCMR 486*; *Pervaiz Khan v The State 2022 SCMR 393*. The only distinguishing feature here is PW-2's attribution of the arm shot, recorded ten days late. No independent evidence corroborates it.

34. The trial Court found, in paragraph 36 of its judgment, that the appellant did not intend to murder the deceased. In paragraph 37 it nonetheless held that he shared a common object to murder her, and that it was immaterial what part each accused played. It did not explain how it moved from the one finding to the other.

35. Liability under section 149 PPC requires proof of an unlawful assembly of five or more persons, of its common object, and that the offence was committed in prosecution of that object, or was one the members knew was likely to be committed: *Muhammad Altaf v The State 2002 SCMR 189*. Those ingredients must be found on reliable evidence, not assumed from the fact that the appellant was said to be armed. Three of the five alleged members have been acquitted, and the common design was held unproved in their trial. In the present trial, the only evidence of the appellant's membership is the same doubtful attribution I have discussed. If the prosecution's case was that a shot aimed at the complainant killed his daughter, section 301 PPC would answer the point about the unintended victim. It would not supply proof of the appellant's participation.

36. The appellant was asked one composite question about the occurrence. He was not asked about the medical opinions, the

ballistic report, Nadeem's recovery, the proclamation proceedings, or PW-5's claim that he tried to slip away when arrested. An incriminating circumstance not put to the accused under section 342 Cr.P.C. cannot be used against him: *Muhammad Shah v The State 2010 SCMR 1009; Qaddan v The State 2017 SCMR 148.* The Supreme Court has applied that rule to proclamation material specifically in *Ghulam Abbas v The State 2021 SCMR 23.* In any event, abscondence is only a corroborative circumstance and cannot by itself support a conviction: *Rohtas Khan v The State 2010 SCMR 566.*

37. The appellant's allegation that the complainant killed his own daughter is unproved, and I make no finding that he did. But the appellant was not required to prove it. The burden of proving his guilt lay throughout on the prosecution, and the failure of a defence plea does not discharge that burden: *Wazir Mohammad v The State 1992 SCMR 1134; Shamoon alias Shamma v The State 1995 SCMR 1377.* The trial Court treated the absence of defence evidence as a reason to accept the prosecution case, and in doing so it misplaced the burden.

38. Defects in investigation do not by themselves entitle an accused to acquittal where reliable evidence otherwise connects him with the offence: *The State through Anti-Narcotics Force v Muhammad Arshad 2017 SCMR 283.* Here, however, the defects are not peripheral. They concern the means by which the one attribution against the appellant could have been tested: the late recording of PW-2's statement, the failure to verify the light, and the failure to record the evidence of the deceased's mother and the villagers.

39. I must consider the evidence as a whole. The attribution of a shot to the appellant rests on PW-2 alone. His statement was recorded ten days late without explanation, although he was available from the first night. The complainant does not name the appellant as the second shooter, and the earliest information named Zakariya alone. The official chronology contradicts itself, and the delay in the FIR is explained on a basis the complainant did not give. Nothing was recovered from the appellant, and nothing forensic connects him with the offence. The same witnesses were found unreliable against three co-accused. And the finding of common object was reached without the ingredients of section 149 PPC being established.

40. It is settled that a single circumstance creating reasonable doubt in a prudent mind entitles the accused to its benefit, not as a matter of grace but as of right: *Tariq Pervez v The State 1995 SCMR 1345; Muhammad Akram v The State 2009 SCMR 230; Muhammad Mansha v The State 2018 SCMR 772.* Here there are several such circumstances, and together they leave me unable to hold that the appellant's guilt was proved beyond reasonable doubt.

41. For these reasons, Criminal Appeal No. S-194 of 2022 was **allowed** vide short order dated 02.11.2026. The conviction of the appellant Niaz Hussain alias Muhammad Arshad, and every sentence awarded to him by the judgment dated 31.10.2022 of the learned Additional Sessions Judge-IV, Dadu, are **set aside**, including the compensation under section 544-A Cr.P.C. and the subsidiary convictions. I acquit him of the charge by extending him the benefit of doubt. He shall be released forthwith if not required in any other case.

42. ***Above are reason for my short order dated 02.11.2026***

JUDGE

APPROVED FOR REPORTING

Abdullahchanna/PS