

**IN THE HIGH COURT OF SINDH CIRCUIT COURT  
LARKANA**

**Criminal Appeal No.S-145 of 2019**

**Appellants** : 1). Liaquat Ali s/o Ali Nawaz  
2). Mumtaz Ali s/o Allah Dino  
3). Mujahid Ali s/o Noor Ahmed  
4). Zahid Hussain s/o Abdul Khalique  
5). Muhammad Pariyal s/o Abdul Khalique  
Through M/S. Athar Abbas Solangi and  
Zahid Hussain Chandio, Advocates

**Complainant** : Hakim Ali son of Qadir Bux Buledi,  
Through Mr. Asif Ali Abdul Razak Soomro,  
Advocate

**The State** : Through Mr. Nazir Ahmed Bhangwar,  
Deputy Prosecutor General, Sindh

**Date of hearing** : 14-05-2025

**Date of Judgment** : 30-05-2025

**JUDGMENT**

**Jan Ali Junejo, J;-** This appeal calls in question the judgment dated 30.11.2019 (hereinafter referred to as the "*Impugned Judgment*"), passed by the learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Kamber (hereinafter referred to as the "*Trial Court*") in Sessions Case No.330/2015 (Re.St.Vs.Ahsan Buledi and others), for offence punishable under Sections 302, 148, 149, 114, 337-H(ii) PPC, vide Crime No.253/2014, registered with P.S Kamber Saddar, whereby the above named Appellants were convicted for an offence punishable under Section 302(b) of the Pakistan Penal Code (PPC) and sentenced to life imprisonment, with compensation of Rs.5,00,000/- (Rs.1,00,000/- each accused) to be paid to the bereaved family of the deceased in terms of Section 544-A Cr.P.C, and in default thereof, to further undergo simple imprisonment of six months, with benefit of Section 382-B Cr.P.C was also extended to the Appellants. Aggrieved thereby,

the Appellants preferred this appeal, seeking to set aside the impugned judgment and their acquittal from the charges leveled against them.

2. The prosecution's case, as presented before the learned trial Court, originated from FIR No.253/2014, registered on 16.11.2014, at about 00:15 hours at Police Station, Saddar, Kamber, wherein the complainant Hakim Ali son of Qadir Bukhsh Buledi, alleged that a longstanding and murderous enmity spanning 13–14 years existed between his family and Ahsan Ali Buledi along with his relatives, during course whereof, Ahsan Ali party used to issue threat that they will see Hubdar Ali. On 15.11.2014, at around 8:00 p.m, the complainant accompanied by his nephew Hubdar Ali (aged about 33–34 years), his brother Muhammad Nawaz, and another nephew Dildar Ali, had gone to look after their harvested paddy crop at the land having search lights in their hands. They were returning to their village, at about 08.00 p.m and when reached adjacent to Kothi of Master Sardar Ali Buriro, suddenly, seven accused persons emerged from the Government Girls' School, who were identified on search lights to be (1) Ahsan son of Muhammad Paryal, (2) Zahid alias Juman, and (3) Muneer son of Abdul Khalique—all armed with pistols; (4) Liaquat son of Nazal, (5) Mumtaz son of Allah Dino, and (6) Mujahid son of Noor Ahmed—each armed with repeaters; and (7) Muhammad Paryal son of Abdul Khalique, with empty handed. Accused Muhammad Paryal instigated rest of the accused not to spare Hubdar Ali, whereupon accused Ahsan, Zahid, and Muneer made pistol shots with intention to commit murder of Hubdar Ali by inflicting multiple injuries to him. The complainant and his witnesses, being unarmed, refrained from retaliation and instead raised cries, attracting nearby villagers to the scene. On seeing the villagers coming towards them, the accused fled from the scene offence making aerial firing. The complainant party saw Hubdar Ali, having sustained firearm injuries on his right side flank, right arm and left side of his back,

through and through, and he was immediately shifted to Taluka Hospital Kamber, wherefrom he was referred to Civil Hospital, Larkana, where he succumbed to the injuries. Thereafter, the complainant came at police station and lodged the FIR against the accused, to the above effect.

3. On completion of the usual investigation, the police submitted a final report under Section 173 Cr.PC (challan) before the competent Court, and the Appellants were sent up to face the trial. Subsequently, a formal charge was framed against the appellants/accused, to which they pleaded not guilty and claimed trial.

4. To support its case, the prosecution examined. (a) The complainant, Hakim Ali (PW-1), deposed that while returning from his land with the deceased Hubdar Ali and Dildar Ali, they were intercepted by the Appellants near the Kothi Master Sardar Ali. He testified that accused persons Ahsan, Munir, and Zahid @ Juman fired directly at the deceased, causing three alleged firearm injuries (right belly, left back, right arm), and also made aerial firing. (b) PW-2, Dildar Ali, corroborated complainant/PW-1's account as an eye-witness, confirming the direct firing and the three injuries. (c) PW-3, Muhammad Nawaz, another eye-witness, stated the accused fired 10-15 shots in the air besides three shots at the deceased. (d) PW-4 SIP Gulzar Ali, who conducted investigation in the case and testified about visiting the crime scene, collecting blood-stained earth and three 30-bore pistol crime empties, which were sealed in the presence of mashirs. (e) PW-5, Dr. Naeem Ahmed, who conducted the post-mortem on the dead body of the deceased, detailed five external injuries: (i) entry wound on right lumbar region, (ii) exit wound on right lumbar region back side, (iii) entry wound on left side of back, (iv) exit wound on left iliac fossa with intestinal loops outward, and (v) entry and exit wounds on the right forearm. (f) PW-6, Abdul Jabbar, a co-mashir, confirmed the I.O's actions during the site inspection. (g)

The prosecution tendered various exhibits including the FIR, post-mortem report, site inspection memo, and the recovered crime empties.

5. The Appellants in their statement recorded under Section 342 of the Code of Criminal Procedure (Cr.P.C), denied the allegations leveled against them and asserted that they had been falsely implicated due to longstanding enmity. They however, neither examined themselves on oath nor led any evidence in their defence. The learned trial Court after hearing counsel for the parties and appraisal of the evidence, rendered the Impugned Judgment, which the Appellants have assailed before this Court by preferring the instant criminal appeal.

6. Learned counsel for the Appellants argued that the impugned judgment is not sustainable in law and facts; that the conviction was based on manifestly unsatisfactory evidence, highlighting several critical flaws in the prosecution's case. Firstly, he pointed to the glaring contradiction between the depositions of the prosecution witnesses. This fundamental discrepancy, he argued, rendered the eyewitness accounts unreliable. Secondly, the counsel emphasized the ambiguity in the medical opinion itself, as Dr. Naeem Ahmed failed to specify which injury proved fatal, thus weakening the prosecution's case regarding the cause of death. Thirdly, he stressed the failure of the Complainant and PW Dildar Ali to attribute specific roles or injuries to individual Appellants, making it impossible to determine individual culpability and rendering the blanket conviction under Section 302(b) PPC unjustified. Fourthly, the counsel highlighted the significant and unexplained delay of 4 hours and 15 minutes in registering the FIR, raising doubts about its spontaneity and genuineness. Fifthly, he pointed to the material contradiction regarding the number of shots fired – with witnesses claiming 15 to 20 shots fired in the air besides those hitting the deceased, yet only three empties were recovered from the scene,

undermining the witnesses' credibility. Sixthly, he submitted that no active roles were attributed to Appellants Liaquat Ali, Mumtaz Ali, and Mujahid Ali, and only instigation was alleged against Muhammad Pariyal, yet all were convicted and sentenced identically, contrary to legal principles. Lastly, the learned counsel contended that the trial Court erred in appreciating the evidence, failed to observe established rules, and based the conviction on evidence that did not meet the standard of proof beyond reasonable doubt.

7. Conversely, learned counsel for the complainant and learned Deputy Prosecutor General (DPG) for the State vehemently opposed the appeal, defending the impugned judgment and praying for its' dismissal; that the prosecution had successfully established its case beyond reasonable doubt through consistent, unanimous, and trustworthy eye-witness testimonies from the Complainant (PW-1), Dildar Ali (PW-2), and Muhammad Nawaz (PW-3), who clearly identified the known Appellants. Regarding the alleged contradictions, they argued that minor discrepancies in witness accounts, such as the exact number of injuries, are natural for laymen and do not negate the core case, especially considering entry/exit wounds could be counted differently; that the medical report, despite not pinpointing a single fatal injury, clearly showed multiple firearm injuries collectively causing death. Concerning the discrepancy in shots fired versus empties recovered, they argued that not all empties might be recoverable, and the three found corroborated the firing. Finally, they submitted that the trial Court had judiciously appreciated the evidence, rightly convicted the Appellants, and that the benefit of doubt should not be extended based on artificial or hypothetical doubts when the prosecution case is otherwise sound.

8. I have considered the arguments advanced by the learned counsel for the parties at considerable length and have carefully perused the record. The cardinal

principle of criminal jurisprudence is that the prosecution must prove its case beyond reasonable doubt, and if there is any reasonable doubt, the benefit must go to the accused. In the present case, several glaring contradictions, discrepancies, and lacunae in the prosecution's evidence create not just a reasonable doubt, but a serious doubt about the guilt of the Appellants.

9. On examination of evidence available on record, it appears that the medical opinion provided by Dr. Naeem Ahmed (PW-5) is ambiguous and inconclusive. The doctor has miserably failed to disclose exactly which injury was fatal to the deceased and caused his death. This ambiguity creates a reasonable doubt regarding the cause of death and weakens the prosecution's case substantially. In cases of murder, it is essential for the prosecution to establish the cause of death with certainty, which has not been done in the present case.

10. As per FIR, the incident had taken place at 15.11.2014, at 08.00 P.M and the dead body of the deceased was received by the medical officer at 12.40 A.M that too with a gap of 04 hours and 40 minutes but the medical officer in postmortem report has stated that the rigor mortis was present/visible in the body of deceased and it was an established position in medical jurisprudence and toxicology that usual duration of rigor mortis was 24 to 48 hours in winter and 18 to 36 hours in summer. As the incident took place in winter and dead body already showed signs of rigor mortis, it suggested that the death must have taken place any time in the past 24 to 48 hours, which contradicted prosecution's story. The Medical Officer mentioned the time of the death and postmortem about three hours which is totally against the ocular account. The reliance is placed upon case of Zafar Ali Abbasi v. Zaffar Ali Abbasi (2024 SCMR-1773), wherein the Honourable Supreme Court of Pakistan has observed that:-

*S.302(b)---Qatl-i-amd---Reappraisal of evidence---Medical evidence---rigor mortis, development of---Postmortem report and opinion of doctor negating version of the complainant---In the*

*present case the doctor who conducted the postmortem of the deceased, while appearing as a witness before the Trial Court, submitted that rigor mortis was developed and eyes of the deceased were semi opened---Considering the contention of the complainant that the injured was immediately taken to the hospital for treatment in his jeep, question arose as to how rigor mortis was developed and why eyes of the deceased were not closed---Postmortem report, the statement of the doctor and his opinion did not support the contention of the complainant regarding immediate shifting of the injured to the hospital---Had the complainant and eye-witness been present at the place and time of the occurrence, the injured could have been taken to the hospital, without loss of time and thereby, rigor mortis could not have developed---Doctor explained that the injuries were lunar shaped, which meant that probably, the injuries were caused through lunar shaped weapon---On the contrary, the complainant and the eye-witnesses alleged that the appellant (accused) inflicted dagger blows on the deceased---Their statements regarding nature of the injuries sustained by the deceased and the weapon used contradicted the postmortem report and the statement of the doctor---Presence of the witnesses at the time of the crime was doubtful, as such the occurrence seemed to be unseen---Prosecution had failed to establish its case against the appellant beyond a reasonable doubt---Appeal was allowed, and appellant was acquitted of the charges”.*

11. On ocular account, neither the Complainant Hakim Ali nor PW Dildar Ali have disclosed the specific role of each Appellant, particularly which of the Appellant caused which of injury to the deceased. This failure to attribute specific roles makes it impossible to determine individual culpability. It is still incumbent upon the prosecution to establish that all the accused acted in furtherance of a common intention. In the present case, the prosecution has failed to establish such common intention through clear and convincing evidence.

12. There is an unexplained delay of 4 hours and 15 minutes in the registration of the FIR. The FIR was registered at 12:15 A.M on 16.11.2014, whereas the incident allegedly occurred at around 8:00 P.M on 15.11.2014. No plausible explanation has been furnished by the Complainant for this significant delay. Such delay raises serious doubts about the spontaneity and genuineness of the FIR.

13. It is a well-established principle that delay in lodging the FIR, if not satisfactorily explained, creates a doubt about the prosecution's case, as it provides an opportunity for deliberation and fabrication. In the present case, the unexplained delay of over four hours is substantial enough to cast a shadow of doubt on the prosecution's narrative. In similar circumstances, the Honourable Supreme Court of Pakistan, in the case of ***Shaukat Hussain v. The State through Prosecutor General Punjab and another (2024 SCMR 929)***, was pleased to hold that:

*“As per contents of FIR, the occurrence in this case took place on 03.05.2008 at 11:30 a.m. and the matter was reported to the Police on the same day at 3:30 p.m. and as such there is a delay of about four hours in reporting the crime to the Police whereas Police Station was situated at a distance of about 20 kilometers from the place of occurrence. No explanation at all was furnished for causing delay in reporting the crime to the Police. The contention that approximately four hours delay in lodging FIR is a normal thing does not appeal to the mind. Had the matter been reported within reasonable time, the police would have easily reached at the place of occurrence within about an hour. Why the matter has not been reported immediately by the eye-witnesses is a question which could not be satisfactorily explained by the witnesses during their evidence. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out”.*

14. There is a material contradiction regarding the number of shots fired. The Complainant claimed that the accused persons fired 15 to 20 shots in the air, while PW-3 Muhammad Nawaz testified that they fired 10 to 15 shots in the air, in addition to the three shots fired at the deceased. However, only three empties were allegedly recovered from the scene and produced before the trial Court. This discrepancy further undermines the credibility of the prosecution witnesses and creates serious doubts about the veracity of their testimonies. If the accused had indeed fired 15 to 20 shots, as claimed by the Complainant, or 10 to 15 shots, as claimed by PW-3, a substantial number of empties should have been recovered



from the scene. The recovery of only three empties contradicts the eyewitness accounts and raises doubts about the truthfulness of their testimonies.

15. Record further shows that the allegation against Appellant No. 5 (Muhammad Pariyal) is only of instigation, with no active role attributed to him in the commission of the offense. Similarly, no active roles have been attributed to Appellants Nos.1, 2, and 3 (Liaquat Ali, Mumtaz Ali, and Mujahid Ali). Despite this, all Appellants were convicted and sentenced identically, which is contrary to the principles of criminal jurisprudence. Each accused person must be judged based on his individual role and culpability, which trial court failed to do.

16. The motive set up by the prosecution against the Appellants is weak and shrouded in mystery. The Complainant and prosecution witnesses merely stated the motive as "Fatal Dispute" without providing any specific details or background regarding the alleged enmity. The prosecution failed to produce any substantial evidence to prove the existence or nature of this motive. It is a settled principle that while motive is not always essential to prove in a criminal case, especially when there is direct evidence, a weak or unproven motive can cast doubt on the prosecution's narrative, particularly when the other evidence is contradictory or unreliable. In this case, the failure to establish a clear motive further weakens the prosecution's case against the Appellants.

17. A significant discrepancy arises concerning the weapon allegedly used in the commission of the offence. The evidence presented by the prosecution, including the testimony of the Investigating Officer and the mashirs, indicates that only three crime empties of a 30-bore pistol were recovered from the scene and produced as case property. Crucially, no witness, including the Investigating Officer, disclosed that any pistol or repeater was ever recovered from the possession of any of the Appellants during the investigation. In the absence of the

recovery of the weapon of offence from any of the Appellants, the ballistic evidence based solely on recovered empties, especially in light of the FSL report contradiction, becomes highly questionable. Moreover, the case property was forwarded to the Forensic Science Laboratory (FSL) for examination vide letter dated 14-01-2015, after an inordinate and unexplained delay of about two months. The Investigating Officer failed to offer any justification for this delay during his testimony. Such an undue and unaccounted delay in sending the crime empties for forensic analysis casts serious doubt on the integrity of the prosecution's case. It raises legitimate concerns regarding the possibility of evidence manipulation or planting, especially when viewed in light of the legal principles enunciated in *Iftikhar Hussain and Others v. The State (2004 SCMR 1185)*.

18. The learned trial Court erred in appreciating the evidence and failed to observe the established rules for the appreciation of evidence in deciding the case. The trial Court appears to have overlooked the significant contradictions and discrepancies in the prosecution's evidence and convicted the Appellants based on manifestly unsatisfactory evidence, which does not meet the standard of proof beyond reasonable doubt required in criminal cases.

19. The independence and impartiality of the recovery mashir, PW-6 Abdul Jabbar, are highly questionable. During cross-examination, he admitted to being the real maternal cousin (Masat) of the complainant, Hakim Ali. While relationship alone may not automatically disqualify a witness, the failure of the Investigating Officer to secure independent mashirs from the locality, despite PW-6 acknowledging the presence of several other co-villagers at the scene, raises serious concerns. Relying solely on a close relative of the complainant casts

significant doubt on the fairness and transparency of the recovery process, particularly when independent witnesses were potentially available.

20. The process of recovery and sealing of evidence itself suffers from irregularities and creates doubt. PW-6 Abdul Jabbar expressed uncertainty during cross-examination about whether the Investigating Officer actually sealed the recovered crime empties, stating, “Due to lapse of time, I do not remember that whether I.O. sealed the recovered empties”. Furthermore, his testimony indicates that the blood-stained earth was sealed in a packet of cigarette found by the I.O *on the spot*. Using an item found at the scene, which could potentially be contaminated, for packaging crucial evidence, combined with the mashir’s uncertainty about the sealing of the empties, points towards procedural flaws and weakens the chain of custody, thereby diminishing the evidentiary value of the recovered items.

21. The reliability of the post-mortem examination is further undermined by the admissions of the Medico-Legal Officer, Dr. Naeem Ahmed (PW-5), during cross-examination. He conceded that he had only opened the abdominal cavity during the examination and, more significantly, admitted that he had not received any *special* training in conducting post-mortems. These admissions, coupled with his previously noted failure to identify the specific fatal injury among the five documented wounds, raise questions about the thoroughness and expertise applied during the autopsy, further weakening the medical evidence presented by the prosecution.

22. A critical analysis of the ocular account provided by the Complainant Hakim Ali and PWs Dildar Ali and Muhammad Nawaz raises serious doubt about their actual presence at the scene of the incident. The prosecution asserts that the accused persons, seven in number and armed with deadly firearms,

ambushed the deceased Hubdar Ali and his companions, firing 15 to 20 shots, out of which three struck the deceased. Despite being allegedly present in close proximity — described as 2 to 5 paces from the deceased — none of the accompanying witnesses sustained even a minor scratch. Such an assertion defies natural human probabilities and casts doubt on the prosecution's version. The alleged incident took place in a densely populated village (Ghathar) near a girls' school, in a street. It is highly improbable that during a burst of indiscriminate firing in such close confines, only the deceased was hit while three other accompanying persons remained completely unscathed. Further, while the complainant and PWs repeatedly asserted that they were carrying torches and witnessed the firing, they failed to produce these torch lights during investigation or trial, and no credible explanation was given for their absence. Moreover, the eyewitnesses claimed to have identified the accused in poor lighting conditions, during a fast-moving violent event — a claim that lacks corroboration from any independent or neutral witness despite the alleged presence of villagers and the proximity of residential areas, shops, and schools. Additionally, none of the PWs including the complainant could recall or identify any of the numerous villagers who purportedly gathered at the crime scene. Their failure to chase the fleeing accused or raise alarms involving others in the community, when they claim to have been surrounded by supportive co-villagers, further undermines their credibility. All these factors — the improbability of the scenario, lack of injuries to the witnesses, inconsistencies in testimony, failure to produce corroborative physical evidence (e.g., torch lights), and absence of independent witnesses — cumulatively shake the foundation of the prosecution's story. It is trite law that where presence of eyewitnesses is doubtful, and their conduct is unnatural, their testimony cannot form the sole basis for conviction. The benefit of doubt must go to the accused. The evidence on record falls short

of the standard required for a finding of guilt beyond reasonable doubt. In analogous circumstances, the Honourable Supreme Court of Pakistan in the case of *Muhammad Akhtar and others v. The State and others (2025 SCMR 45)* held that:-

*“PW.14 has specifically nominated all the accused with specific firearms in their hands and he has attributed specific firearm injuries on different parts of the bodies of the deceased as well as the injured to all the accused with precision. Surprisingly, PW.14 did not receive a single firearm injury in the whole occurrence despite indiscriminate firing by six nominated accused and despite allegedly witnessing the entire occurrence from a close range. Non-receiving of any firearm injury by PW.14 during the occurrence and his accurate attribution of each injury of the deceased and injured to each accused specifically with specific firearms casts serious doubt about his presence at the place of occurrence and his plantation as an eye-witness of the occurrence due to previous enmity with the nominated accused cannot be ruled out of consideration particularly when his testimony is lacking independent corroboration in material aspects”.*

23. The learned trial Court erred in appreciating the evidence and failed to observe the established rules for the appreciation of evidence in deciding the case. The trial Court appears to have overlooked the significant contradictions and discrepancies in the prosecution evidence and convicted the Appellants based on manifestly unsatisfactory evidence, which does not meet the standard of proof beyond reasonable doubt required in criminal cases.

24. It is a fundamental principle of criminal jurisprudence that the prosecution must establish its case beyond reasonable doubt, and if there is any reasonable doubt, the benefit must go to the accused. In the present case, the cumulative effect of the numerous contradictions, discrepancies, and lacunae in the prosecution’s evidence – including the issues related to the number of injuries versus medical evidence, ambiguous medical opinion, lack of specific roles, unexplained FIR delay, discrepancy in shots fired versus empties recovered, weak motive, the contradiction regarding the weapon and FSL report, the interested

nature of the mashir, irregularities in the recovery and sealing process, and doubts regarding the post-mortem examination – creates not just a reasonable doubt, but a profound and serious doubt about the guilt of the Appellants.

25. The Superior Courts have consistently held that in criminal jurisprudence, the prosecution bears the burden to prove its case beyond reasonable doubt by establishing every essential element of the alleged offence. In the present matter, the prosecution has failed to discharge this burden. Consequently, the Appellants are entitled to the benefit of doubt. In view of the foregoing analysis, I am of the considered opinion that the prosecution has not succeeded in proving its case with the degree of certainty required under the law. Accordingly, the impugned judgment is neither sustainable on facts nor tenable in law.

26. In view of the foregoing discussion and findings, this appeal is **allowed**. The impugned judgment dated 30.11.2019, passed by the learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Kamber, in Sessions Case No.330/2015, is hereby set aside. The Appellants, namely, (1) Liaquat Ali son of Ali Nawaz, (2) Mumtaz Ali son of Allah Dino, (3) Mujahid Ali son of Noor Ahmed, (4) Zahid Hussain son of Abdul Khaliq, and (5) Muhammad Pariyal son of Abdul Khaliq, are acquitted of the charges leveled against them. They shall be released forthwith if not required to be detained in any other case.

**JUDGE**