IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Revision Application No.D-04 of 2023

<u>Before</u>:
Mr. Justice Amjad Ali Sahito,
Mr. Justice Ali Haider 'Ada'

Applicant/Complainant	:	Mst.Fateh Khatoon w/o Late Haji Fareed Bangulani, *through* Mr. Rafique Ahmed K. Abro, Advocate.
Respondents	:	Muhammad Qasim and others *through* Mr. Altaf Hussain Surhiyo, Advocate
The State	:	*through* Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh.

Criminal Jail Appeal No. D-07 of 2023
Criminal Confirmation No. D-06 of 2023

Appellant	:	Farman son of Dhingano Banglani, *through* Mr. Altaf Hussain Surhiyo, Advocate
The State	:	*through* Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh.
Complainant	:	Mst.Fateh Khatoon w/o Late Haji Fareed Bangulani, *through* Mr. Rafique Ahmed K. Abro, Advocate.

Criminal Jail Appeal No. S-13 of 2023

Appellant	:	Farman son of Dhingano Banglani, *through* Mr. Altaf Hussain Surhiyo, Advocate
The State	:	*through* Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh.

Criminal Appeal No. S-32 of 2023

Appellants	:	1). Muhammad Qasim son of Haji Bhai, 2). Muhammad Hashim son of Haji Bhai 3). Abdul Rasool son of Abdul Ghafoor, *through* Mr. Altaf Hussain Surhiyo, Advocate
The State	:	*through* Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh.
Complainant	:	Mst.Fateh Khatoon w/o Late Haji Fareed Bangulani, *through* Mr. Rafique Ahmed K. Abro, Advocate.
Date of Hearing	:	21.10.2025.

Date of Decision : .11.2025.

JUDGMENT

Ali Haider 'Ada'. J:- Mst. Fateh Khatoon, the complainant, filed Criminal Revision Application No. D-04 of 2023 against the accused/appellants Muhammad Qasim, Muhammad Hashim, and Abdul Rasool, who had been convicted and sentenced to imprisonment for life by the learned Additional Sessions Judge-II, Jacobabad (the trial Court) in Sessions Case No. 208 of 2019, for offences punishable under Sections 302, 201, 342, 337-H(ii), 506/2, 148, and 149 of the Pakistan Penal Code (PPC), arising out of Crime No. 18 of 2019 registered at Police Station Mubarakpur (hereinafter referred to as the "main case"). Being aggrieved by the quantum of sentence, the complainant filed the instant Criminal Revision Application seeking enhancement of the sentence from imprisonment for life to the death penalty.

On the other hand, co-accused Farman filed Criminal Jail Appeal No. D-07 of 2023, challenging the same impugned judgment of the learned trial Court whereby he was convicted and sentenced to death for the offence under Section 302 PPC. The said death sentence was submitted for confirmation to this Court through Confirmation Case No. D-06 of 2023, as required under Section 374 Cr.P.C. The appellant Farman also challenged another impugned judgment dated 09.03.2023, passed by the learned trial Court in Sessions Case No. 162 of 2019, for the offence punishable under Section 23(1)(a) read with Section 25 of the Sindh Arms Act, 2013, arising out of Crime No. 22 of 2019 registered at Police Station Mubarakpur, which is an offshoot case of the main case. Likewise, the co-accused Muhammad Qasim, Muhammad Hashim, and Abdul Rasool also preferred Criminal Appeal No. S-32 of 2023, assailing the same impugned judgment of the trial Court whereby they were convicted and sentenced to imprisonment for life.

According to the said judgment, all the accused persons were further sentenced to pay a fine of Rs. 300,000/- each, and in case of default, to undergo simple imprisonment for six months. They were also directed to pay Rs. 500,000/- collectively to the legal heirs of the deceased under Section 544-A Cr.P.C., and in case of non-payment, the amount was to be recovered as arrears of land revenue. Additionally, all the accused were convicted and sentenced for the offence under Section 342 read with Section 149 PPC to rigorous imprisonment for six months and a fine of Rs. 10,000/- each, and in case of

default, simple imprisonment for six months; For the offence under Section 506/2 read with Section 149 PPC — rigorous imprisonment for two years and a fine of Rs. 10,000/- each, and in case of default, simple imprisonment for three months; For the offence under Section 148 read with Section 149 PPC — rigorous imprisonment for one year, and in case of default, simple imprisonment for one month. However, the learned trial Court directed that all the sentences shall run concurrently, and further extended the benefit of Section 382-B Cr.P.C. to all the convicts.

2. The prosecution case, as set forth in the FIR and reiterated during the trial, is that the deceased Muhammad Aslam was the nephew of the complainant Mst. Fateh Khatoon. It is alleged that accused Abdul Ghafoor (who was later acquitted by the trial Court) had earlier expressed annoyance towards the deceased and had forbidden him from visiting the village. On 05.04.2019, the complainant, along with the deceased Muhammad Aslam, her nephew Piyaro, and the grandson of her brother-in-law, namely Muhammad Ramzan, went to the house of accused Farman Bangulani situated in his village. On the following night, i.e., 06.04.2019, at about 2:30 a.m., the accused persons namely Farman, Muhammad Hashim, Muhammad Qasim, Abdul Rasool, and two unknown persons arrived there. All of them, except Muhammad Qasim who was armed with a lathi, were carrying pistols. Accused Farman addressed the deceased Muhammad Aslam, stating that he had already been warned by Abdul Ghafoor not to come to the house, yet he had still come. Thereafter, accused Muhammad Qasim struck a lathi blow on the back of the deceased, while accused Farman fired a shot from his T.T. pistol, which hit the deceased on his chest, causing him to fall to the ground.

3. After the firing, all the accused persons resorted to aerial firing and then fled from the scene. The two unknown accused, however, allegedly confined the complainant party in a room by locking the door from outside. In the morning, the accused persons released them, whereupon the complainant and her companions came out and saw the dead body of Muhammad Aslam lying nearby. It is further alleged that after committing the murder, the accused dragged the dead body and threw it into a nearby water stream. Thereafter, the witness Piyaro informed the police about the incident. The police then arrived at the spot and took necessary steps, including the preparation of the inquest and the postmortem examination of the deceased. After completion of the funeral ceremonies on 09.04.2019, the present FIR was lodged, the usual investigation

was conducted, and the accused persons were sent up to face trial before the learned trial Court.

4. Upon receiving the case papers, the learned trial Court supplied the requisite copies of documents to the accused under Section 265-C, Cr.P.C. Thereafter, on 19.08.2019, the learned trial Court framed charge against accused Farman, Muhammad Qasim, and Muhammad Hashim, to which they pleaded not guilty and claimed to be tried. Subsequently, two more accused joined the proceedings, whereupon an amended charge was framed on 12.11.2019; they too pleaded not guilty and claimed trial.

5. In pursuance thereof, the prosecution, in order to prove its case, examined ten witnesses and produced certain documents to establish the same. The report of the Chemical Examiner pertaining to the blood-stained earth and the clothes of the deceased was produced by the learned Prosecutor through an application under Section 510, Cr.P.C. Thereafter, the learned Prosecutor closed the prosecution side by filing a statement dated 13.10.2022.

6. The learned trial Court thereafter recorded the statements of the accused under Section 342, Cr.P.C, wherein all of them denied the allegations leveled against them, pleaded not guilty, and prayed for acquittal. However, none of the accused opted to examine themselves on oath under Section 340(2), Cr.P.C, nor did they produce any evidence in their defence.

7. After hearing the learned counsel for the parties, the learned trial Court acquitted accused Abdul Ghafoor, whereas the accused Muhammad Qasim, Muhammad Hashim, and Abdul Rasool were convicted and sentenced to imprisonment for life. Accused Farman, however, was convicted and sentenced to death. Being aggrieved by the said judgment, the convicts preferred their respective appeals, while the complainant, being dissatisfied with the sentence awarded to the co-accused, filed Criminal Revision Application seeking enhancement of their life imprisonment to death penalty. During the pendency of the appeals, it was reported by the Jail Authorities that appellant Muhammad Hashim had expired. The said report was taken on record and verified, whereupon, to his extent, proceedings in Criminal Appeal No. 32 of 2023 stood abated.

8. As regards the offshoot case under the Sindh Arms Act, 2013, the learned trial Court framed charge against accused Farman on 03.05.2019, to which he

pleaded not guilty and claimed trial. The prosecution examined police officials ASI Mehar Ali, ASI Muhammad Ibrahim, and PC Wahid Bux, who produced the relevant documents pertaining to recovery proceedings and other connected material. Thereafter, the prosecution closed its side by filing a statement. The learned trial Court then recorded the statement of accused Farman under Section 342, Cr.P.C, wherein he denied the allegations, pleaded innocence, and claimed acquittal, but neither examined himself on oath nor produced any defence evidence. Subsequently, the learned trial Court, after evaluating the evidence, convicted the accused Farman in the offshoot case and sentenced him to undergo rigorous imprisonment for seven years with a fine of Rs. 30,000/-, and in case of default in payment of fine, to further suffer simple imprisonment for six months.

9. Mr. Altaf Hussain Surhiyo, Learned counsel for the appellants contended that the alleged occurrence has not been established by the prosecution in a manner that inspires confidence. He submitted that, according to the prosecution itself, the accused persons had earlier restrained the deceased from visiting their village; however, despite such alleged restraint, the deceased visited the house of accused Farman one day prior to the occurrence, took lunch and dinner there, and remained in normal conversation with the complainant party. It is, therefore, highly unnatural and improbable that the accused would subsequently commit his murder on the pretext that he had visited their village, which renders the prosecution story doubtful and contrived. Learned counsel further argued that the prosecution has miserably failed to connect the appellants with the commission of the offence, as there is no independent or corroborative circumstantial evidence available on record linking them with the alleged occurrence. He further submitted that the alleged motive has not been proved through any cogent or reliable evidence; and once a motive is set up by the prosecution, it is incumbent upon it to establish the same through convincing evidence. In the absence of proof of motive, coupled with material contradictions and discrepancies appearing in the statements of prosecution witnesses, the case of the prosecution becomes doubtful. Learned counsel emphasized that the prosecution has failed to discharge its burden of proving the guilt of the accused beyond reasonable doubt. In support of his contentions, he placed reliance upon the cases reported as 2025 SCMR 704, 2018 SCMR 577, 2023 SCMR 139, 2015 SCMR 291, 2022 SCMR 1006, 2022 SCMR 1627, 2023 SCMR 670, 2023 SCMR 566, 2025 SCMR 1087, PLD 2019 SC 64, 2012 SCMR 428, and 2010 SCMR 105.

10. Conversely, Mr. Rafique Ahmed K. Abro, learned counsel for the complainant argued that the learned trial Court, while relying upon the same set of evidence, awarded death penalty to accused Farman but, without assigning sound reasons, took a lenient view against the remaining co-accused and sentenced them only to imprisonment for life. He therefore urged that, in exercise of revisional jurisdiction, this Court may enhance the sentence of the co-accused from imprisonment for life to death penalty. He further submitted that, on merits, the prosecution has successfully proved its case against all accused persons through consistent ocular, medical, and circumstantial evidence, which sufficiently establishes their participation in the occurrence and the commission of murder of an innocent person without any lawful justification.

11. On the other hand, Mr. Ali Anwar Kandhro, learned Additional Prosecutor General supported the impugned judgment passed by the trial Court. He contended that the main role in the occurrence has been assigned to accused Farman, who inflicted firearm injury upon the deceased, whereas the co-accused, though not having a specific role of causing injury, participated in the occurrence and were therefore rightly convicted under the law for imprisonment for life.

12. Heard the arguments advanced by the learned counsel for the respective parties as well as learned Additional P.G, and perused the material available on record.

13. According to the prosecution, the deceased Muhammad Aslam, nephew of the complainant Mst. Fateh Khatoon, was murdered by accused Farman and others. It is alleged that on the night of 06.04.2019, at about 2:30 a.m., the accused Farman, Muhammad Hashim, Muhammad Qasim, Abdul Rasool, and two unknown persons entered the house where the complainant and the deceased were present. Accused Muhammad Qasim struck the deceased with a lathi, while accused Farman fired at him with a pistol, hitting him on the chest and causing his death. The accused thereafter fled the scene after aerial firing. Later, the complainant found the dead body of Muhammad Aslam near a water stream and lodged the FIR after completion of funeral rites on 09.04.2019. The incident was witnessed by Piyaro and Muhammad Ramzan, who are close relatives of the complainant.

14. It has been observed upon perusal of the record that, according to the complainant, two persons had witnessed the occurrence; however, one of them, namely Muhammad Ramzan, was given up by the prosecution without

assigning any cogent reason. The only explanation offered was that he was allegedly an absconder in other criminal cases, yet no FIR or documentary evidence was brought on record to substantiate such a claim or justify his non-production. The prosecution's failure to produce material witnesses who were otherwise cited in the case seriously affects the integrity of its version. In these circumstances, an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, is legitimately drawn that had this witness been produced, his testimony would not have supported the prosecution's case. Such non-production of material witnesses, coupled with other infirmities and glaring omissions, leads to the conclusion that the prosecution has failed to establish the charge against the accused beyond the shadow of reasonable doubt. Support for this view is drawn from **Waqas Ahmad v. The State (2025 SCMR 1087),** wherein the Hon'ble Supreme Court held that non-production of material witnesses without a plausible justification warrants drawing an adverse inference against the prosecution and significantly weakens its case. Further support is drawn from the case of **Lal Khan vs The State 2006 SCMR 1846**, as it had been held that:

> "....*The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence. The non-production of any other inmate of the house by the prosecution and subsequent change of initial version of the occurrence by Mst. Noor Bibi not only, would seriously reflect upon the credibility of her testimony but also create a reasonable doubt regarding the correctness of the subsequent version of homicidal death of deceased set up by the prosecution.....*"

15. In addition, no private witness from the locality was associated to witness the incident. The complainant deposed that "*After Triphari (Asr prayer) time, we arrived at the house of Farman. We had taken lunch at Thul and thereafter boarded a wagon. Accused Abdul Ghafoor, his sons, and women folk were present in the house of accused Farman when we arrived there, including the wife of accused Farman. Some other relatives from adjoining houses also came to meet us. Accused Farman served us dinner.*" On the other hand, the eyewitness Piyaro stated that "*Except the accused, no other villagers were our relatives in the village of accused Abdul Ghafoor.*" Such inconsistency in their statements creates serious doubt regarding the presence of the eyewitnesses at the place of the incident.

16. The prosecution alleges that the accused persons committed the murder inside a room during the night at about 2:30 a.m. and thereafter confined the complainant party in another room by locking them inside until around 6:00 a.m. the following morning. It is further alleged that the complainant party managed to push open the door at that time. However, as per the FIR, it was stated that the door was opened by the accused in the early morning, whereas in her testimony, the complainant deposed that *"two unknown culprits had confined us in a room. Thereafter, at about 6:00 a.m., the door of the room was opened by us, and when I came out, I saw that no person from our village was present at the place of wardat."*

17. Such conduct, however, appears wholly unnatural and inconsistent with normal human behavior. The purported eye-witnesses' conduct, as described, is manifestly unnatural. Their failure to intervene, raise an alarm, or attempt to escape during this prolonged period casts serious doubt upon the veracity of their account and the credibility of their alleged presence at the scene of the occurrence. Support is drawn from the case of **Muhammad Bilal versus The State 2025 SCMR 1580.** Further reliance may also be placed upon the cases of **Zafar v. The State (2018 SCMR 326)** and **Liaqat Ali v. The State (2009 SCMR 95)**. A similar situation was examined by the Hon'ble Supreme Court in **Pathan v. The State (2015 SCMR 315),** wherein it was held that:

> "*The presence of witnesses on the crime spot due to their unnatural conduct has become highly doubtful, therefore, no explicit reliance can be placed on their testimony. They had only given photogenic/photographic narration of the occurrence but did nothing nor took a single step to rescue the deceased. The causing of that much of stab wounds on the deceased loudly speaks that if these three witnesses were present on the spot, being close blood relatives including the son, they Would have definitely intervened, preventing the accused from causing further damage to the deceased rather strong presumption operates that the deceased was done to death in a merciless manner by the culprit when he was at the mercy of the latter and no one was there for his rescue. In similar circumstances, the evidence of such eye-witnesses was disbelieved by this Court in the case of Masood Ahmed and Muhammad Ashraf v. The State (1994 SCMR 6).*" (Underline emphasized)

18. According to the prosecution, the alleged motive behind the occurrence was that one of the co-accused, Abdul Ghafoor, had restrained the deceased from visiting their village. Surprisingly, however, the record reflects that on the very day of the incident, the deceased, accompanied by his cousin and his aunt (the complainant), and visited the house of the accused Farman and other co-accused, who were residing in the same vicinity. They reportedly shared both lunch and dinner with the accused family before the incident allegedly took place later that night. It is then alleged that the deceased was murdered for the very reason that

he had come to their village, which is naturally illogical and inconsistent with normal human conduct. Furthermore, the prosecution narrative is self-contradictory, as alleged, the deceased had already been threatened not to visit the house or the village of the accused, it remains strange why he was allowed to visit, dine, and remain in their company for several hours before being killed. The prosecution has failed to explain what specific reason or provocation led to the killing. Thus, the alleged motive is vague, unsubstantiated, and shrouded in mystery. The prosecution has nowhere established any prior enmity, dispute, or incident of altercation between the parties which could plausibly serve as a motive for such a heinous act. In the absence of a proven motive, the prosecution case becomes highly doubtful. In this respect, reliance is placed on **Tariq Mehmood v. The State (2025 SCMR 780).** A similar view was taken in **Muhammad Ashraf v. The State (2025 SCMR 1082).**

19. As per the prosecution's own evidence, the medical officer stated that on 06.04.2019, he received the dead body through Police Constable Khadim Ali, which clearly indicates that the police had knowledge of the incident at that time. The inquest report and other relevant memos further substantiate that the police became aware of the occurrence on the same day at about 6:30 a.m. Despite this, there was an inordinate and unexplained delay in the registration of the FIR, which was lodged only on 09.04.2019—three days after the incident. The record reflects that the postmortem examination of the deceased was conducted prior to the lodging of the FIR. The complainant himself did not approach the police station promptly; instead, one of the witnesses, namely Piyaro, informed the police, yet no FIR was recorded at that stage. Even after the police had taken possession of the dead body from the scene, the complainant made no immediate effort to initiate criminal proceedings. She proceeded to the hospital for postmortem formalities, and thereafter, upon completion of the burial, only then approached the police station to lodge the FIR. Such an unreasonable delay in setting the criminal law in motion creates serious doubt regarding the prosecution's version and the manner in which the occurrence is alleged to have taken place. The First Information Report is expected to be lodged at the earliest possible stage to prevent fabrication, or afterthought. Support for this view is drawn from the case of **Amjad and another v. The State (2025 SCMR 1388).** Reference in this regard may also be made to the case of **Asia Bibi v. The State (PLD 2019 Supreme Court 64)**, wherein Apex Court explained that:

> *"There is no cavil to the proposition, however, it is to be noted that in absence of any plausible explanation, this Court has always considered the delay in*

lodging of FIR to be fatal and casts a suspicion on the prosecution story, extending the benefit of doubt to the accused. It has been held by this Court that a FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime; thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt which, of course, cannot be extended to anyone else except to the accused. Furthermore, FIR lodged after conducting an inquiry loses its evidentiary value. [See: Iftikhar Hussain and others v. The State] (2004 SCMR 1185)]."

Similar views were also taken in the cases of **Amir Muhammad Khan v. The State (2023 SCMR 566), Khial Muhammad v. The State (2024 SCMR 1490), Abid Hussain and another v. The State and another (2024 SCMR 1608) and Shaukat Hussain v. The State through PG Punjab and another (2024 SCMR 929).**

20. Moreover, medical evidence, at its best, serves only as a piece of supporting evidence. It may confirm the fact of receipt of injuries, their nature, and the kind of weapon used in the occurrence; however, it can never, by itself, establish the identity of the assailant. Sole reliance on medical evidence, therefore, cannot suffice to hold that it was the accused who committed the murder of the deceased. In the present case, the medical officer was unable to specify the precise kind of weapon used in the commission of the offence, nor could he categorically correlate the injuries with any particular weapon allegedly recovered from the accused. Reference in this context may be made to **Muhammad Hassan and another v. The State and another (2024 SCMR 1427)** and **Iftikhar Hussain alias Kharoo v. The State (2024 SCMR 1449).** A similar view was reaffirmed in **Muhammad Ramzan v. The State (2025 SCMR 762).**

21. Additionally, there exists a material inconsistency between the medical evidence and the ocular account of the occurrence. According to the ocular witnesses, the deceased allegedly received an injury purportedly caused by a lathi used by accused Qasim. However, the medical officer, in his deposition, categorically stated that the deceased had sustained no injury caused by a lathi or any other hard or blunt object. This glaring conflict casts serious doubt on the credibility of the prosecution case and raises questions regarding the accuracy and truthfulness of its evidence. Reliance in this regard may be placed on **Muhammad Riaz v. The State (2024 SCMR 1839)**, and **Obaidullah and 2 others v. The State and others (2025 SCMR 1558).**

22. Furthermore, the prosecution's reliance upon the alleged recovery of empties and the weapon of offence is also highly doubtful. The record reveals that the empties were secured from the place of incident on 09.04.2019, whereas

the accused Farman was arrested subsequently on 15.04.2019. During interrogation, the pistol was allegedly recovered on the pointation of the said accused. However, the forensic record indicates that all the material, the empties and the recovered pistol was dispatched to the Forensic Science Laboratory (FSL) on 15.04.2019 and 19.04.2019 respectively. This sequence of events clearly shows that the empties were sent to the laboratory only after the arrest of the accused, with a delay of nearly six days, while the pistol was forwarded after a further delay of two days. Such unexplained delay in sending the crime empties and weapon to the FSL creates serious doubt regarding the sanctity of the recovery proceedings. The laboratory's report also reflects that both the empties and the pistol were received and examined within interval, indicating that the FSL might have awaited the alleged recovery of the weapon thereby leaving ample room for manipulation or fabrication. As such, the retrieval of the pistol from the possession of the accused bears no legal significance, and the positive report of the FSL, having been based on belatedly dispatched samples, loses its evidentiary worth. Reliance is placed upon the case of **Muhammad Abras v. The State (2025 SCMR 1145)**. A similar view was expressed in **Nasrullah v. The State (2017 SCMR 724)**.

23. Furthermore, the prosecution has relied upon the alleged recovery of a pistol said to have been effected on the pointation of accused Farman during interrogation. However, the record is completely silent as to whether any such disclosure statement of the accused was formally recorded in writing. The absence of any record of the alleged pointation renders the recovery proceedings highly doubtful and devoid of legal sanctity. In this regard, guidance may be taken from the judgment of the Hon'ble Supreme Court in **Zafar Ali Abbasi and another v. Zafar Ali Abbasi and others (2024 SCMR 1773)**, wherein it was held that

> *"5. In order to bring the case within the ambit of Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must prove that a person accused of any offence, in custody of police officer, has conveyed an information or made a statement to the police, leading to discover of new fact concerning the offence, which is not in the prior knowledge of the police. Such information or statement should be in writing and in presence of witnesses. In absence of information or statement from a person, accused of an offence in custody of police officer, discovery of fact alone, would not bring the case of the prosecution under the said Article. According to the prosecution, a dagger used in the commission of the offence was recovered on the disclosure and pointation of the appellant. Surprisingly, the I.O. did not record the information received from the appellant in writing, in presence of a witness, while he was in police custody. The prosecution has failed to establish any disclosure from the appellant, therefore, recovery of the dagger, in the*

circumstances was immaterial."

24. Such omission violates settled principles of fair investigation and materially affects the credibility of the prosecution's version. Consequently, the alleged recovery cannot be safely relied upon. It is further observed that the record is silent regarding the safe custody of the recovered pistol and the manner in which it was preserved or produced before the Forensic Science Laboratory. The prosecution has failed to establish that the case property remained intact with from the time of its recovery until its dispatch for examination. In the absence of proof of safe custody, the recovery and the corresponding forensic report lose their evidentiary significance. Reliance in the aspect as discussed is placed on **Muhammad Ismail v. The State (2017 SCMR 898).** The Honourable Supreme Court, in a case titled **Ahmad Ali and another v. The State (2023 SCMR 781),** had held that:

> *"5....Thus, the Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said Police Station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tempered with until that time. A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court."*
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> *"6.... Thus, under the Police Rules and the High Court Rules, mentioned above, in all cases especially in the cases of articles sent to the chemical examiner, it is necessary that there be no doubt as to what person or persons have had charge of such articles throughout various stages of the inquiry. Besides, the person who packed, sealed, and dispatched such articles should invariably be examined. Further, the clothes, weapons, money, ornaments, food and every other article that forms a part of the circumstantial evidence has to be produced in court, and their connection with the case and identity should be proved by witnesses."*

25. Insofar as the recovery of the pistol and the positive report of the Forensic Science Laboratory (FSL) are concerned, it is significant to note that once the direct prosecution evidence has been disbelieved, the conviction and sentence of the accused cannot be maintained merely on the basis of such recovery and the corresponding FSL report. Without delving into the merits or demerits of these pieces of evidence, it is well settled that recovery alone, even if proven, cannot form the sole basis for conviction when the primary ocular account stands discredited. In this context, reliance may be placed on the judgments of the Hon'ble Supreme Court in **Dr. Israr-ul-Haq v. Muhammad Fayyaz (2007 SCMR 1427), Muhammad Afzal alias Abdullah and others v. The State and others**

(2009 SCMR 436), Abdul Mateen v. Sahib Khan and others (PLD 2006 SC 538), and Nek Muhammad and another v. The State (PLD 1995 SC 516).

26. It is well established that the High Court, while exercising its revisional jurisdiction, is empowered to examine the correctness, legality, or propriety of any finding, sentence, or order passed by subordinate courts. However, the power to enhance a sentence is to be exercised sparingly and only in cases where there is a manifest miscarriage of justice. Such enhancement requires the presence of clear, cogent, and convincing evidence, elements that are conspicuously absent in the present case. In the instant matter, all important components are either lacking or insufficiently substantiated, thereby rendering any enhancement of sentence unjustified. Thus, in view of the foregoing facts, when there are no cogent reasons available in the prosecution case to justify the enhancement of sentence and the prosecution has also failed to demonstrate any compelling circumstances warranting enhancement of the punishment. Therefore, any attempt to seek enhancement of sentence in the given situation appears to be unjustified and improper, therefore, does not call for the invocation of the Revisional jurisdiction of this Court for enhancement of the sentence. Reliance is placed on the judgments in **Muhammad Akhtar and others Vs. The State (2025 SCMR 45), Sohail Akhtar and another Vs. The State and another (2024 SCMR 67), and Chatto Khan Suhandro Vs. Ghulam Nabi Suhandro and others (2023 MLD 772),** wherein the Honourable Apex Court and this Court, while addressing the issue of sentence for enhancement, declined to enhance the sentence.

27. It is noteworthy that the trial court, upon examining the same set of evidence, acquitted co-accused Abdul Ghafoor, who allegedly played a primary role in issuing threats to the deceased, restraining him from visiting the village, and provoking the others to question the deceased's presence in the village. The trial court, finding reasonable doubt in the prosecution's case against him, extended the benefit of doubt and acquitted him. Reliance in this regard is placed upon **Khizar Hayat v. The State (2025 SCMR 1339)**. This principle has been consistently reiterated by the Hon'ble Supreme Court in **Khair Muhammad and others v. The State (2025 SCMR 1599).** Furthermore, the Apex Court in **Muhammad Mansha v. The State (2018 SCMR 772)** and **Naveed Asghar v. The State (PLD 2021 SC 600)** emphasized that it is preferable that ten guilty persons be acquitted rather than one innocent person be convicted. For ease of reference, the relevant piece from Muhammad Mansha's case is reproduced below:

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is better than ten guilty persons be acquitted rather than one innocent person be convicted. Reliance in this regard can be made upon the case of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

28. In view of the foregoing reasons and discussion, the Criminal Revision Application filed by the complainant for enhancement of sentence is hereby dismissed, being devoid of merit. Consequently, Criminal Jail Appeal No. D-07 of 2023 and Criminal Appeal No. S-13 of 2023, filed by accused/appellant Farman, as well as Criminal Appeal No. S-32 of 2023, filed by accused Muhammad Qasim and Abdul Rasool, are hereby allowed. Accordingly, the judgments passed by the learned Additional Sessions Judge-II, Jacobabad, in Sessions Case No. 208 of 2019 and Sessions Case No. 162 of 2019 are set aside to the extent of the present appellants. The appellants shall be released forthwith, if not required to be detained in any other custody case. The reference made by the learned trial Court for confirmation of the death sentence of appellant Farman is answered in the negative.

JUDGE

JUDGE