

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

Criminal Appeal No. S-54 of 2023.

**Before:-
Mr. Justice Ali Haider 'Ada'.**

Appellants : 1). Dilshad,
2). Deedar,
3). Muhib,
4).Noor Hassan,
5). Mir Hassan,
6).Abdul Rehman,
7). Joungal @ Nandho,
through Mr. Asif Ali Abdul Razak
Soomro, Advocate.

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

Complainant : Mr. Habibullah G. Ghouri
Advocate.

Date of Hearing : 15.06.2026.
Date of Decision : 15.06.2026.
Date of Reasons : 22.06.2026.

J U D G M E N T

Ali Haider 'Ada', J.- The appellants preferred the instant Criminal Appeal No.S-54 of 2023 against the judgment passed by the learned Additional Sessions Judge-II, Jacobabad, (trial Court) in Sessions Case No.88 of 2020, arising out of FIR No.69 of 2019, registered at Police Station B-Section Thull, whereby they were tried for offences punishable under Sections 302, 324, 337-A(i), 337-A(ii), 337-F(i), 148 and 149 PPC. The appellants were convicted and sentenced to rigorous imprisonment for life and were directed to pay compensation of Rs.500,000/- to the legal heirs of the deceased. In case of default in payment of compensation, the same was ordered to be recovered as arrears of land revenue, and in default thereof, the appellants were further directed to suffer simple imprisonment for six months.

2. The prosecution case, in brief, is that on 03.12.2019 at about 10:00 a.m., at the agricultural land of Abdul Jabbar situated in Deh Bakhtiarpur, Thull, the accused persons allegedly committed the murder of deceased Shah Nawaz and caused injuries to the complainant party with deadly weapons. The FIR was lodged on 05.12.2019. Initially, the deceased was alive; however, subsequently he succumbed to his injuries on 04.01.2020. After completion of the usual investigation, the challan was submitted before the learned trial Court.

3. Upon submission of the challan, the learned trial Court took cognizance of the matter and supplied the relevant documents to the appellants in accordance with law. Thereafter, on 22.02.2021, an amended charge was framed against all the appellants, to which they pleaded not guilty and claimed trial.

4. During the course of trial, the prosecution examined complainant Fazal Rehman, who produced the copy of FIR. The prosecution also examined PW Abdul Malik, an eye-witness of the occurrence, and Naeemullah, the mashir, who produced the memo of injuries relating to injured Shah Nawaz and Fazal Rehman, along with the memo of place of occurrence. Thereafter, the prosecution gave up PW Hafiz Muhammad Younis, who was cited as a mashir of the relevant memo. Dr. Abdul Karim was examined, who conducted medical examination of injured/deceased Shah Nawaz and injured Fazal Rehman and produced the relevant medical documents, including the letter for treatment. The prosecution further examined Muhammad Siddique, mashir of the memo of arrest of some of the appellants. Tapedar Bakhtullah was also examined, who produced the sketch plan of the place of occurrence.

5. During pendency of the trial, an application for compromise was filed along with affidavits of Muhammad Ishaq, father of deceased Shah Nawaz; Mst. Latifan Khatoon, mother of deceased;

Mst. Fatima, widow of deceased; Wajid Ali, son of deceased; Mst. Wadoo, daughter of deceased; and Abdul Ghaffar, son of deceased. Their statements were recorded in examination-in-chief as legal heirs of the deceased. Subsequently, Siraj Ahmed, son of deceased, appeared before the learned trial Court and recorded his statement in support of the compromise. The learned trial Court conducted publication proceedings and thereafter again recorded the statement of Mst. Rahandi, mother of deceased. In view of the compromise, accused Shah Nawaz son of Dur Muhammad was acquitted; however, no compromise was effected with regard to the remaining appellants/accused.

6. The prosecution further examined Dr. Nasrullah, who conducted the postmortem examination and produced the relevant documents. ASI Sanaullah was examined, who produced the memo of inspection of the place of incident and memo of arrest of some of the appellants. ASI Ali Gul was also examined, who produced the memo of injuries. Dr. Muhammad Umar and Dr. Naveed Ahmed were examined, who provided medical treatment to deceased Shah Nawaz at Hira Medical Hospital, Sukkur. Thereafter, ASI Misri Khan and HC Niaz Ahmed were examined, being relevant witnesses with regard to Roznamcha entries, documentation, Lash Chakas form, Danistama, inspection of dead body, and other relevant proceedings. Finally, the prosecution submitted a statement of closure of its evidence and the prosecution side was accordingly closed.

7. After closure of prosecution evidence, statements of the appellants were recorded under Section 342 Cr.P.C., wherein they denied the allegations, claimed innocence, and prayed for acquittal. They neither opted to appear on oath under Section 340(2) Cr.P.C. nor produced any defence evidence. Subsequently, the learned trial Court passed the impugned judgment, which has been assailed through the instant appeal.

8. Learned counsel for the appellants contended that there are material contradictions and inconsistencies available on records, which create serious doubt regarding the prosecution case. He argued that the non-examination of marginal witness Abdul Jabbar has also caused a dent in the prosecution story. It was further contended that the ocular account is not corroborated by the medical evidence and the prosecution has failed to prove its case beyond reasonable doubt. Learned counsel further argued that a cross-version/FIR was also registered by the appellant against the complainant party regarding the same occurrence, which reflects the existence of a counter version. According to him, the possibility of false implication of the appellants cannot be ruled out. He, therefore, prayed for acquittal of the appellants by extending them the benefit of doubt.

9. Conversely, learned Counsel for the Complainant and Deputy Prosecutor General supported the impugned judgment and submitted that the learned trial Court, after appreciating the entire evidence available on record, rightly convicted the appellants. They contended that the involvement of the appellants in causing injuries and committing the offence has been established through reliable evidence and minor discrepancies in the prosecution evidence are liable to be ignored. They prayed for dismissal of the appeal and maintenance of the conviction and sentence.

10. Heard learned counsel for the parties and perused the material available on record.

11. According to the prosecution case, the complainant party was allegedly assaulted by the appellants, whereby two persons, namely deceased Shah Nawaz and complainant Fazal Rehman, sustained injuries. Subsequently, injured Shah Nawaz succumbed to his injuries and expired on 04.01.2020. While examining the prosecution case, it is necessary to first consider the alleged motive behind the

occurrence. However, the prosecution has failed to establish any specific motive for the commission of the alleged offence. In the present case, no convincing material has been brought on record to establish any previous enmity, dispute, quarrel, or any other circumstance showing a reason for the appellants to commit the alleged occurrence. There is also no evidence available on record showing that the appellants had any prior dispute or quarrel with the deceased. Reference in this regard may be made to the case of **Fazal Mehmood versus The State, 2026 SCMR 350**.

12. Furthermore, the occurrence allegedly took place on 03.12.2019, whereas the FIR was lodged after an unexplained delay of two days, i.e., on 05.12.2019. Although the memo of injuries and the letter for obtaining medical treatment were issued by the police at the relevant time, surprisingly, no name of any accused was disclosed therein. It is also significant to note that prosecution witness Abdul Malik, brother of the deceased, was not an injured witness, yet he claimed himself to be an eye-witness of the occurrence. However, despite being allegedly present at the spot, he did not make any effort to ensure that his version was incorporated in the FIR as required under Section 154 Cr.P.C. Likewise, another witness, Ali Nawaz, was also claimed to be present at the place of occurrence, but no plausible explanation has been furnished as to why he did not take any step for prompt registration of the FIR. The unexplained delay in lodging the FIR, coupled with non-disclosure of the names of the accused at the earliest available opportunity, creates a serious doubt regarding the prosecution story and suggests deliberation and consultation before setting the criminal law into motion. Such delay assumes significance when the prosecution fails to furnish any convincing explanation for the same. Reliance in this regard may be placed upon the case of **Muhammad Siddique versus The State, 2026 SCMR 783**.

13. Moreover, there are material contradictions between the ocular account and medical evidence available on record. The prosecution examined complainant Fazal Rehman and one alleged eye-witness Abdul Malik. However, Abdul Malik, while claiming himself to be an eye-witness of the occurrence, did not depose regarding any specific injury allegedly caused to the complainant by the accused persons. He only stated in a general manner that after causing injuries to the deceased, the accused persons assaulted the complainant party. No specific role or individual act was attributed by him to any of the appellants regarding the injuries sustained by the complainant. Thus, the statement of Abdul Malik does not provide any independent corroboration to the version of the complainant. It is settled principle of law that contradictions appearing in the statements of prosecution witnesses, particularly on material aspects of the occurrence, cannot be ignored. Guidance in this regard may be drawn from the cases of **Mustaq Ahmed versus The State, 2026 SCMR 60** and **Sher Ahmed versus The State, 2025 SCMR 1717**.

14. Additionally, the injuries attributed to the complainant were medically declared as *Shajjah-e-Khafifah and Ghair-Jaifah Damiyah*. However, the medical evidence does not support the description of such injuries in accordance with the definition. Under the definition of *Damiyah*, an injury in which the skin is ruptured and bleeding occurs is considered to constitute *Damiyah*. However, the medical documents produced by the prosecution do not disclose any such specific description regarding the nature, depth, or bleeding of the injuries, which creates a doubt regarding the correctness of the medical classification. Furthermore, an important aspect of the case is the inconsistency between the medical evidence furnished by the doctors. Initially, deceased Shah Nawaz was examined by Dr. Abdul Karim, who found two injuries on his person; one injury measuring 8×2 cm on the mid-parietal region of the skull and another injury measuring 2×4 cm, skin superficial, on the right side of the nose.

However, the doctor who conducted the postmortem examination found one injury measuring *10 × 2 cm extending from the right forehead to the right occipital region of the skull*, whereas the alleged injury on the nose was not mentioned in the postmortem report. There is, therefore, a significant discrepancy between the seat, description, and dimensions of the injuries recorded by both medical officers. Such disagreement assumes importance because medical evidence is expected to provide independent corroboration to the ocular version of the prosecution.

15. Further, the prosecution witnesses deposed that the injured/deceased was shifted to Larkana Hospital and thereafter to Agha Khan Hospital, Karachi; however, no medical record or treatment documents from the said hospitals were produced on record to substantiate this assertion. Conversely, the complainant during his deposition silent that the injured was provided any such medical treatment or referred to Sukkur Hospital. Although two doctors were examined by the prosecution, they produced the medical prescription and other medical proof relating to the treatment of the deceased while he was alive, and the factum of his subsequent death at Sukkur Hospital was not properly established through the prosecution evidence. When the ocular account is inconsistent with the medical evidence and the prosecution fails to reconcile such discrepancies, the benefit of doubt must go to the accused. In this context, guidance may be sought from the judgment of the Hon'ble Supreme Court in the case of **Said-ur-Rehman versus The State, 2026 SCMR 955**.

16. In addition, the memo of the place of occurrence does not correspond with the sketch plan prepared by the Tapedar. There are material inconsistencies regarding the surrounding features and description of the place of occurrence. The prosecution was required to establish the place of occurrence through reliable and convincing evidence, as the site of the incident is a material circumstance for

connecting the accused with the alleged crime. However, the discrepancies appearing in the site-related evidence create serious doubt and cast a shadow upon the prosecution story. Reliance in this regard may be placed upon the case of **Rasheed Ahmad alias Sheeda versus The State, 2026 SCMR 798**.

17. More to the point that, the sketch plan of the place of occurrence was prepared at a belated stage. The record reflects that the sketch plan was prepared on 15.01.2021, whereas the occurrence took place on 03.12.2019. Thus, the site sketch was prepared after a considerable delay of more than one year. Such delay in preparation of the site plan assumes significance, particularly when the prosecution witnesses only pointed out the place to the Tapedar at a later stage. A site plan prepared after an unexplained delay, without independent verification of the actual place of occurrence, does not provide any substantial support to the prosecution case. The purpose of preparing a site sketch is to correctly reflect the actual position and circumstances of the occurrence; however, when the same is prepared belatedly, its evidentiary value becomes doubtful. Reliance may also be placed upon the case of **Soomer versus The State, 2018 PCr.LJ 629**.

18. As well, no weapon of offence was recovered from the possession of any of the appellants during the course of investigation. The non-recovery of the alleged weapons, which were stated to have been used in the commission of the offence, is also a circumstance creating doubt regarding the prosecution case. Although non-recovery of the weapon alone may not always be sufficient to discard the prosecution case, however, when considered with other material contradictions and missing links in the prosecution evidence, it provides further support to the plea of the appellants. Reliance in this regard may be placed upon the case of **Laiq Shah versus The State, 2026 SCMR 257**.

19. In addition, despite the prosecution witnesses asserting that blood was oozing from the injuries of the deceased at the place of occurrence, the investigating agency failed to secure any blood-stained earth from the spot. The memo of place of occurrence does not reflect the availability or collection of any blood-stained earth. The prosecution also failed to secure the blood-stained clothes of the deceased for the purpose of forensic examination, nor was any subsequent process undertaken to establish the presence of human blood or connect the alleged blood evidence with the occurrence. Such omissions cannot be ignored, slightly. Guidance in this regard may be drawn from the judgment of the Division Bench of this Court in the case of **Khalil-ur-Rehman alias Bholoo versus The State, 2022 PCr.LJ Note 25**, as well as the judgment of the Division Bench of the Lahore High Court in the case of **Karamat Ali versus The State, 2026 YLR 266**

20. The appellants have also taken the plea that the present case was a counter-version/cross-version case. It is evident from the record that another FIR No.04 of 2020 was registered under Sections 395, 452, 506(ii), 427, 337-H(ii), 337-A(i), 337-A(ii), 337-F(i), 148 and 149 PPC, at the instance of Mst. Moomal, wherein injuries were allegedly sustained by Mst. Moomal, appellant Dilshad, and Deedar at the hands of the complainant party. Thus, according to the appellants, the complainant party was also nominated as accused in the said cross-version, and injuries were sustained by both sides. In such circumstances, a fundamental question arises as to which party was the aggressor and which party was the victim of aggression. However, the prosecution failed to explain this material aspect of the occurrence. Rather, the complainant party completely denied the existence of any counter-version and did not disclose that the accused/appellant side had also lodged an FIR against them or that injuries were sustained by the accused side during the same occurrence. The question as to who was the aggressor remained unanswered, particularly when the factum of injuries sustained by

the adversary party was not properly explained by the prosecution. The suppression of material facts regarding injuries received by the opposite party adversely affects the prosecution case, as the prosecution is required to present the true occurrence before the Court and cannot withhold material circumstances. It is settled principle of law that concealment of the real facts relating to injuries sustained by the accused party or failure to explain such injuries creates doubt in the prosecution version and such benefit must go to the accused. Reliance in this regard may be placed upon the judgment of the Hon'ble Supreme Court in the case of **Bashir Ahmad versus The State, 2019 SCMR 1417**. Similarly, in the case of **Umar Daraz alias Muhammad Umar versus Mst. Durdana, 2025 YLR 1284**, it was observed that

“.....It has also been established that the case indeed was of cross version. However, the question fundamental to the fate of the case as to which party was the aggressor and which was aggressed upon remained unanswered, as the factum of sustaining the firearm injuries by both sides was concealed. The effect of concealing the real facts pertaining to the injuries sustained by the adversarial party has, on numerous occasions, been considered in favour of the accused. The latest being the case of Niaz v. State (2024 PCr.LJ 1473 Quetta), can well be referred to in this case.

26. *In the above backdrop, it is obvious that the occurrence, has not taken place in the mode and manner as alleged and presented. It is imperative to state that the consistent view of the higher courts is that in cases where major contradictions and discrepancies exist in the prosecution evidence, and it becomes evident that the incident did not occur as portrayed, then the benefit of doubt should be extended to the accused. The cases of Nawab Khan v. State (2024 YLR 457 Peshawar), Jawad v. The State and another (2020 YLR 1462), and Jalat Khan alias Jalo v. The State (2020 PCr.LJ 503) are, but few to refer in this regard. Additionally, the High Court of Balochistan unequivocally affirmed and reiterated the effect of such discrepancy on the prosecution case in Rafaat Shah v. The State (2022 PCr.LJ Note 39 Balochistan). The operative part reads as under:*

The mode and manner of the occurrence itself by the prosecution is not appealable to the prudent mind, therefore, it was highly unsafe to rely on the

statement of both these witnesses to maintain conviction and sentence of the accused on a capital charge.

Further reliance may be placed on the principle that where it becomes difficult to determine as to which party was the aggressor and which party was aggressed upon, such uncertainty creates doubt in the prosecution case. Reliance in this regard may be placed upon the cases of **Akhtar Nawaz versus The State, 2024 SCMR 1178**, **Niaz versus The State, 2024 PCr.LJ 1473**, **Muhammad Tahir versus The State, 2023 YLR 976**, **Fida Hussain versus The State, 2021 PCr.LJ 174**, **Khamiso Khalti versus Mitho Bhangwar, 2021 PCr.LJ Note 55**, and **Ahmed Shah versus The State, 2022 PCr.LJ 1260**.

21. Furthermore, the prosecution failed to associate any independent witness with the occurrence. The complainant, during cross-examination, admitted that the land of Abdul Jabbar was the place of occurrence and that Abdul Jabbar was present there at the relevant time. Despite being an independent witness, Abdul Jabbar was withheld by the prosecution without any plausible explanation. The withholding of such a material witness amounts to suppression of the best available evidence, and an adverse inference under **Article 129(g) of the Qanun-e-Shahadat Order, 1984**, can validly be drawn against the prosecution that had such witness been produced, his testimony would not have supported the prosecution case. Reliance in this regard may be placed upon the judgments reported as **Lal Khan versus The State, 2006 SCMR 1846**, **Riaz Ahmed versus The State, 2010 SCMR 846**, **Abdul Qadeer versus The State, 2024 SCMR 1146**, and **Riasat Ali versus The State, 2024 SCMR 1224**.

22. In view of the foregoing discussion, the prosecution has failed to establish its case against the appellants beyond reasonable doubt. It is a settled principle of criminal jurisprudence that the prosecution is bound to prove its case beyond reasonable doubt and the benefit

of every reasonable doubt must go to the accused. It is equally well settled that if a single circumstance creates doubt in the prosecution case, the same is sufficient to extend the benefit of doubt to the accused and entitle him to acquittal. Reliance in this regard may be placed upon the judgment of the Hon'ble Supreme Court in the case of **Iftikhar Ahmad versus The State, 2026 SCMR 677**.

23. For the foregoing reasons, the appellants were extended the benefit of doubt and, vide short order dated 15.06.2026, the appeal was allowed and the appellants were acquitted of the charge, the impugned judgment was set aside and directed to be released from prison forthwith, if not required in any other criminal case. These are the detailed reasons in support of the said short order.

JUDGE