

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

Criminal Appeal No.S-19 of 2024

Appellants : 1). Naveed Ali s/o Sachal Khan,
2). Zahid Ali @lias Ghaghoo s/o Muhammad
Sachal by caste Ghanghro
Through Mr. Rukhsar Ahmed Junejo,
Advocate

Complainant : **Imtiaz Hussain s/o Imam Bux Ghanghro**
Through Mr. Mumtaz Ali Jessar, Advocate

The State : **Through Mr.Nazir Ahmed Bhangwar, D.P.G**

Date of hearing: **07-05-2025**

Date of Judgment: **16-05-2025**

JUDGMENT

Jan Ali Junejo, J;- This Criminal Appeal challenges the Judgment dated 29.03.2024 (hereinafter referred to as the *Impugned Judgment*), rendered by the learned 1st Additional Sessions Judge/MCTC, Larkana (hereinafter referred to as the *Trial Court*) in Sessions Case No.145 of 2015, which arose out of FIR No.196 of 2014, registered for offence punishable under Sections 302, 337-H(2), 148 and 149 of the Pakistan Penal Code (PPC) at P.S, Ratodero, whereby appellants were convicted for offence under Section 302(b) PPC and sentenced to life imprisonment with compensation of Rs.500,000 each to the legal heirs of the deceased in terms of Section 544-A of the Code of Criminal Procedure (Cr.P.C.), in default thereof, to suffer six months' simple imprisonment. They were further convicted under Section 337-H(2) PPC and sentenced to three months' simple imprisonment with fine of Rs.10,000 each, and in failure thereof, to suffer one-month simple imprisonment. All sentences were ordered to run concurrently, with the benefit of Section 382-B Cr.P.C.

2. Brief facts as stated in the FIR are that on 28-11-2014, complainant Imtiaz Hussain lodged FIR at Police Station, Ratodero, wherein he mentioned about the preplanned murder of his father, Imam Bux, by five accused—Sachal Khan (instigator), Pathan Khan, Zahid alias Ghagho, Naveed Ali, and Liaquat Ali—all residents of Mehar Ghanghro. The motive was alleged to be revenge for an old murder case in which the deceased had been acquitted 22 years earlier. On the day of the incident, while the deceased was waiting by the roadside with his grandson and relatives, the accused arrived, duly armed with firearms and, upon instigation of accused Sachal Khan, accused Pathan Khan fired at his father with intention to kill which hit him on his left flank, accused Zahid alias Ghagho fired from his pistol at his father, hitting him on his left thigh, accused Naveed also made straight fire from his pistol at his father, which on his back side and accused Liaquat fired with pistol straight upon his father which hit on his right buttock and his father fell down. The assailants then fired aerial shots in celebration and fled the scene. The complainant transported the deceased to Taluka Hospital Ratodero for postmortem, and after the funeral, lodged the FIR, seeking legal action under Sections 302, 114, 148, 149, and 337-H(ii) of the Pakistan Penal Code. Following the submission of the challan, the accused were sent up for trial. A formal charge was framed prior to the commencement of proceedings.

3. At the trial, the prosecution examined PW-01 Complainant Imtiaz Hussain at Exh.25, he produced receipt of dead body at Exh.25-A and FIR of the present case at Exh.25-B. PW-02 eye-witness Saifullah at Exh.26. PW-03 eye-witness Banhal Khan at Exh.27. PW-04 Medico-Legal Officer Dr. Syed Shah Hussain at Exh.31, he produced inquest report and postmortem report at Exh.31-B. PW-05 Corpse Bearer PC Abdul Sattar at Exh.32. PW-06 Mashir Abdul Rasheed at Exh.33, he produced memo of injury at Exh.33-A, Danistnama at Exh.33-B, memo of place of incident, blood stained earth and recovery empties at Exh.33/C, memo of arrest of accused and recovery at Exh.33/D. PW-07

Author of the FIR namely ASI Mehboob Ali at Exh.34. PW-08 Tapedar Nadeem Ahmed at Exh.35, he produced sketch of vardat at Exh.35-A. PW-09 SIO/SIP Lashkar Khan at Exh.36, he produced letter of Mukhtiarkar for preparation of sketch of vardat at Exh.36-A, letter to Chemical Examiner, Sukkur @ Rohri at Exh.36-B roznamcha entry No.18 a Exh.36-C and letter of transfer of investigation at Exh.36-D. PW-10 Arresting Officer SIP Oshaq Ali at Exh.37, he produced joint roznamcha entries, memo of arrest of accused and recovery and copy of FIR Crime No.188/2015 at Exh.37-A to 37-C respectively. PW-11 mashir of arrest namely PC Muhammad Ali at Exh.38 and PW-12 Inspector Muhammad Yaseen Tagar at Exh.39.

4. Initially, the accused were convicted by learned 3rd Additional Sessions Judge/MCTC, Larkana, vide judgment dated 16.03.2022 and such judgment was set aside in Criminal Jail Appeal No. S-11/2022 (*Naveed Ali and others v. The State*), by this Court vide judgment dated 18.09.2023, and the matter was remanded to learned trial Court for recalling and re-examination of prosecution witnesses Saifullah and Banhon Khan with an opportunity to the defence for cross-examination, and recording of statements of the accused under Section 342 Cr.P.C afresh, if they desire so and then to pass judgment afresh.

5. The learned trial Court in compliance of directions contained in above referred judgment of this Court, recalled and re-examined eye-witnesses Saifullah and Banhon Khan at Exh. 48 & 49. Thereafter, the learned State Counsel closed the side of prosecution at Ex.50 and also submitted the Forensic Science Laboratory (FSL) and chemical examination reports with separate statement at Ex.51.

6. Subsequently, fresh statements of the accused were recorded under Section 342, Cr.P.C, wherein they denied the allegations leveled against them. Accused Liaquat Ali referred to the earlier defence evidence available on record at Exh.44

and 45. However, the accused neither produced any defence evidence nor opted to record their statements on oath under Section 340(2), Cr.P.C. As a result, vide the impugned judgment, accused Naveed Ali (son of Sachal Khan Ghanghro) and Zahid Ali alias Ghaghoo (son of Muhammad Sachal Ghanghro) were found guilty of the offence punishable under Section 302(b), PPC, and were sentenced to life imprisonment, with compensation of Rs.500,000/- each to the legal heirs of the deceased, as contemplated under Section 544-A, Cr.P.C, and in default thereof, to undergo simple imprisonment for six months. They were also convicted under Section 337-H(2), PPC, and sentenced to simple imprisonment for three months, along with a fine of Rs.10,000/- each. In case of default in payment of the fine, they were to undergo one-month simple imprisonment. All sentences were ordered to run concurrently, with the benefit of Section 382-B, Cr.P.C extended to them, while rest of the accused namely Muhammad Sachal and Liaquat were acquitted of the charged offence by extending them benefit of doubt.

7. Learned counsel for the appellants argued that the impugned judgment is against the law and the facts of the case; that trial Court has failed to consider material contradictions in the prosecution's evidence; that the complainant and private witnesses are closely related inter-se, which has made their testimony unreliable; that the motive is doubtful, since no incident occurred for two decades. He pointed out that co-accused Muhammad Sachal and Liaquat have been acquitted, and the role attributed to the present appellants is identical; that the principle of "*falsus in uno, falsus in omnibus*" should apply, and there are inconsistencies in the statements regarding the location of houses, the timing of the incident, and the people present. Summing up his contentions, learned counsel argued that the statements of witnesses appear to be copied and pasted, raising serious doubt about their veracity and lastly prayed that the Appellants may be acquitted of the charged offence.

8. Conversely, learned Deputy Prosecutor General who is assisted by learned counsel for the complainant while supporting the impugned judgment contended that the prosecution successfully proved its case beyond a reasonable doubt and that the eye-witnesses account is consistent and corroborated by medical evidence with the recovery of weapons from the Appellants; that the motive for the crime was clearly established, therefore, the learned trial Court has rightly convicted the Appellants, based on the available evidence. They lastly prayed for dismissal of the instant appeal.

9. I have thoroughly examined the record and carefully considered the arguments of both parties. On meticulous examination of the evidence, including the testimonies of the complainant, eye-witnesses and the medical officer, it found the eye-witness testimonies of Saifullah and Banhal Khan consistent and mutually corroborative, even after thorough cross-examination. The medical evidence aligned with these accounts, particularly regarding the injuries sustained by the deceased. Additionally, the recovery of unlicensed pistols from the appellants Naveed Ali and Zahid Ali alias Ghaghoo, substantially reinforced the prosecution's case. The trial Court correctly noted the positive report of Forensic Science Laboratory (FSL) which is related to the weapon recovered from Naveed. The trial Court also addressed the delay in lodging the FIR, offering a reasonable explanation, based on the circumstances of the case. However, due to inconsistencies in the evidence against co-accused Liaquat and Muhammad Sachal, the Court extended the benefit of doubt to them. Upon review, it is evident that the trial Court properly appreciated the facts and evidence, successfully established the guilt of Naveed Ali and Zahid Ali alias Ghaghoo beyond reasonable doubt. The minor contradictions highlighted by the defence do not materially undermine the prosecution's case, and the principle of "*falsus in uno, falsus in omnibus*" does not apply here, given the careful scrutiny and reliability of the key witness testimonies.

- **Imtiaz Hussain (Complainant):** As the son of the deceased, Imtiaz gave the initial detailed account in the FIR, identifying the accused and describing the sequence of events, including prior threats and the actions of each accused during the incident. Although minor discrepancies regarding village layout and distances were pointed out by the defense, these do not affect the essential credibility of his testimony.
- **Saifullah (Eye-witness):** Saifullah's testimony, recorded upon this Court's remand, corroborated the complainant's narrative. He detailed the prior enmity and identified the accused and their roles in the firing. While some minor inconsistencies emerged under cross-examination, the core of his testimony remained consistent and reliable.
- **Banhal Khan (Eye-witness):** Banhal Khan's testimony further confirmed the sequence of events and identification of the accused, consistent with the other eyewitnesses. Despite defense arguments concerning his young age at the time of a related prior incident and some statement inconsistencies, his account of the crime itself was coherent and supportive of the prosecution's case.
- **Dr. Syed Shah Hussain (Medico-Legal Officer):** The post-mortem report and testimony confirmed that the deceased's injuries were caused by firearm wounds sufficient to cause death, aligning with eyewitness descriptions.
- **Abdul Sattar (Corpse Bearer):** His testimony confirmed the proper custody and transfer of the deceased's body, supporting the procedural integrity of the investigation.
- **Abdul Rasheed (Mashir):** Testified to the recovery of spent cartridges and bloodstained earth at the crime scene, as well as the arrest and recovery of an unlicensed pistol from Naveed Ghanghro.
- **SIP Lashkar Khan (Investigating Officer):** His testimony about site visits, evidence collection, and arrest procedures bolstered the prosecution's claims.
- **SIP Oshaq Ali (Arresting Officer):** Provided testimony regarding the arrest of Zahid Hussain and recovery of an unlicensed pistol, corroborated by a mashir.

10. With regard to the acquittal of the co-accused, namely Muhammad Sachal and Liaqat Ali, it is pertinent to mention here that they were acquitted by extending them benefit of doubt. The prosecution's evidence concerning their specific roles failed to meet the requisite standard necessary for a conviction. Their acquittal, rendered out of an abundance of caution, does not, however, cast any adverse reflection on the prosecution's case as it pertains to the present appellants. The learned trial Court rightly placed reliance on the precedent laid

down in ***Muhammad Sharif and others v. The State and others (2019 SCMR 1368)***, wherein the Hon'ble Supreme Court observed that: *“Acquittal of Hazrat Gul, the respondent, seemingly out of abundant caution, does not adversely reflect upon the seemingly out of abundant caution, does not adversely reflect upon the case qua the appellants; he is assigned a general role and a positive forensic report based upon empties, dispatched subsequent to arrest, would not qualify to the required standard of proof so as to view his presence in the community of intention beyond reasonable doubt; the appellants assigned effective roles qua the deceased are placed in a vastly different position; they have been rightly convicted, however insofar as quantum of sentence to be exacted from Muhammad Sharif appellant is concerned, he is identically placed; as the casings found wedded with gun P/9 were also dispatched subsequent to his arrest, a factor received by the High Court as a mitigating circumstance qua Muhammad Iqbal, appellant, the same goes squarely for Muhammad Sharif. Consequently, penalty of death awarded to Muhammad Sharif is also altered into imprisonment for life; remainder of convictions as well as sentences consequent thereupon are kept intact; sentences shall run concurrently with benefit of section 382-B of the Code of Criminal Procedure, 1898. Resultantly, Criminal Appeal is dismissed”.*

11. In conclusion, the trial Court's careful appraisal of the evidence withstands judicial scrutiny. The prosecution successfully established its case against Naveed Ali and Zahid Ali alias Ghaghoo beyond reasonable doubt. Minor discrepancies in the evidence do not affect the overall credibility of the prosecution's case or the reliability of the convictions. The learned trial Court rightly applied the relevant law and evaluated the evidence in a fair and thorough manner, resulting in a well-reasoned and just judgment. Reliance is rightly placed on the dictum laid down by the Honourable Supreme Court of Pakistan in ***Nazir Ahmed v. The State (2023 SCMR 1299)***, wherein it was held that: *“It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the*

evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored”.

12. With regard to the quantum of sentence awarded to the appellants by the learned trial Court, it is evident from the record that the Court, while relying on the dictum laid down by the Hon’ble Supreme Court of Pakistan in the case of ***Muhammad Sharif and others v. The State and others (2019 SCMR 1368)***, duly considered the mitigating circumstances before imposing the lesser punishment of life imprisonment. Given that the murder of Imam Bux was premeditated, committed in cold blood, and motivated by revenge stemming from a 22-year-old murder case involving Ashique Ali Ghanghro, the circumstances of the offence are undeniably grave. Furthermore, the conduct of the appellants in celebrating the act by resorting to aerial firing demonstrates their brazenness and lack of remorse. In light of these aggravating factors, the appellants are not entitled to any further leniency or reduction in sentence. As such, the sentence awarded is in accordance with law and does not warrant any interference.

13. In view of the foregoing discussion, the instant criminal appeal, being devoid of substantive merit, stands dismissed. The impugned judgment passed by the learned 1st Additional Sessions Judge/MCTC, Larkana, is well-reasoned and in accordance with law, and is hereby upheld.

JUDGE