

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Appeal No.184 of 2022

Appellant : Roshan Ali Shah son of Ismail Shah,  
Through Mr. Aizaz Hussain Shah, advocate.

Complainant : Khadim Hussain Shah  
Through Mr. Fayyaz Ali, advocate along with  
Mst. Naimat (widow of deceased) & Mst. Bacha  
(mother of deceased) are present.

Respondent : The State  
Through Mr. Sardar Ali Solangi, APG Sindh

Date of hearing : 15.05.2025

Date of judgment : 04.06.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANLI, J.-** This appeal challenges the judgment dated February 22, 2022, passed by the learned Ist Additional Sessions Judge/Model Court, Thatta, in Criminal Sessions Case No.353 of 2019, emanating from FIR No.28 of 2019 of P.S. Ketu Bunder. The appellant, Roshan Ali Shah was convicted for offence under Section 302(b) P.P.C as Tazir and sentenced to rigorous imprisonment for life, along with a fine of Rs. 100,000/- as compensation payable to the legal heirs of the deceased. The appellant seeks to set aside this judgment and for his acquittal.

2. The prosecution's case, as laid out in the FIR lodged by complainant Khadim Hussain Shah on September 9, 2019, at 17:30 hours, alleges an incident that occurred on September 8, 2019, at about 15:45 hours. The complainant stated that he and his brother, Abdul Rehman Shah (the deceased), and cousins Usman Shah and Murad Shah, were returning from their agricultural land when they were waylaid near a path in the bushes by the appellant Roshan Ali Shah (armed with a double-barrel gun), Sher Ali Shah, Nazar Shah, Babu Shah (all armed with hatchets), and Soomar Shah. The motive for the attack was stated to be an old land dispute and a cattle-pen, as well as a previous FIR (No. 21 of 2017) lodged against the accused. According to the complainant, the accused had been threatening them to withdraw the case and vacate the land. On the day of the incident, at the instigation of accused Soomar Shah, the appellant Roshan Ali Shah allegedly fired a straight shot from his gun at Abdul Rehman Shah, hitting

his spinal cord, while Sher Ali Shah simultaneously inflicted a sharp-sided hatchet blow to the deceased's head, causing instantaneous death. Nazar Shah and Babu Shah are accused of causing injuries to Usman Shah. The injured and the deceased were subsequently taken to Shaikh Zayed Medical Center, Sakro.

3. Following the registration of the FIR, the case was challaned, and formal charges were framed against all accused on February 4, 2020, to which they pleaded not guilty and claimed trial. The case was transferred to the Model Criminal Trial Court on March 26, 2020, for prosecution evidence.

4. The prosecution presented ten witnesses: PW-1 Khadim Hussain Shah (complainant), PW-2 Usman Shah (injured eyewitness), PW-3 Murad Ali Shah (eyewitness), PW-4 Toorpyo Shoro (Tapedar), PW-5 Dr. Muhammad Iqbal Rajput (Medical Officer who conducted the post-mortem), PW-6 PC-Muhammad Nawaz Jat (witness for depositing case property), PW-7 HC-Rahim Bux Pitafi (witness for depositing firearms), PW-8 Shah Hussain Shah (mashir), PW-9 Inspector Muhammad Ali Zour (Investigating Officer), and PW-10 ASI Ziaullah Niazi (officer who received initial information). Various documents, including the FIR, medical reports, sketch of the place of incident, and recovery memos, were brought on record.

5. Statements of the accused under Section 342 Cr.P.C. were recorded, where they denied the allegations, claiming false implication due to a land dispute. They asserted that they were cultivating their own land and that the complainant party was pressuring them to vacate it, leading to a counterblast case. They also mentioned previous cases, including an attack on Roshan Shah and a robbery case in which he was acquitted. The accused did not opt to examine themselves on oath or lead any defense evidence. The trial court, in its impugned judgment, convicted the appellant Roshan Ali Shah while acquitting the remaining co-accused (Nazar Shah, Soomar Shah, Sher Ali Shah, and Babu Shah) on the ground of benefit of doubt, citing lack of corroboration for the allegations against them.

6. The learned counsel for the appellant, advanced several arguments challenging the conviction, highlighting material contradictions, inherent

improbabilities, and procedural lapses in the prosecution's case. Firstly, the learned counsel emphasized a critical contradiction regarding the recovery of the empty cartridge. The complainant (PW-1 Khadim Hussain Shah) and the eyewitnesses (PW-2 Usman Shah and PW-3 Murad Ali Shah) consistently deposed that the appellant Roshan Shah fired only one shot from his double-barrel gun and then immediately fled the scene without reloading or opening the barrel. However, the empty cartridge was found lying three to four feet away from where the deceased fell. The Investigating Officer (PW-9 Inspector Muhammad Ali Zour), in his cross-examination, admitted that an empty cartridge from a 12-bore double-barrel gun does not eject automatically but has to be manually removed from the chamber. The IO further conceded that he did not conduct any special inquiry into how the empty cartridge was found at the scene despite this known fact. This raises serious doubts about the authenticity of the crime scene and the recovery itself. This argument finds strong support in the Supreme Court judgment cited: Muhammad Rafique alias Feeqa v. The State (2019 SCMR 1068), which held that if a spent cartridge from a 12-bore double-barrel gun is found ejected when no reloading or chamber opening is alleged, it casts serious doubt on the investigation and the entire prosecution case, leading to acquittal. Secondly, the appellant's counsel pointed out discrepancies regarding the place of incident. The site plan indicated that 'F' point, the complainant party's way, comes after crossing the 'G' point (appellant's Otaq), but the incident occurred at 'A' point, which is not stated to be between the complainant's route and their destination after crossing the Otaq. The complainant (PW-1) and PW-2 Usman Shah stated that they had crossed the Otaq of Roshan Shah before the incident. This raises questions about the exact location and the complainant's version of events. Thirdly, the motive advanced by the prosecution, an old dispute over land and a cattle-pen, and the demand for withdrawal of a previous FIR, was argued to be weak and fabricated. The learned counsel for the appellant stressed the improbability of accused Soomar Shah, the deceased's father-in-law, instigating his murder, especially when they had four children together and the marriage was consensual. This aspect, specifically highlighted in the trial court's judgment (para 18), raises serious doubt about the common object of the alleged unlawful assembly and the veracity of Soomar Shah's instigation. This contradiction was acknowledged by the trial court itself, which acquitted Soomar Shah on this

very basis. The trial court's reasoning that "it does not appeal to a prudent mind that by his instigation, he would cause death of the deceased" further weakens the overall prosecution narrative regarding the alleged conspiracy. Fourthly, concerns were raised about the lack of independent corroboration. Despite around 20-22 people gathering at the scene after the incident, as stated by PW-3 Ali Murad Shah, none of these independent witnesses were cited or examined by the prosecution. This omission is significant, especially given the existing enmity between the parties, and it creates an adverse inference against the prosecution's case. Reliance can be placed on cases such as *Muhammad Asif v. The State* (2017 SCMR 486), which underscores the importance of examining independent witnesses in cases of prior enmity. Fifthly, a significant delay of 10 days in dispatching the gun and empty cartridge to the Forensic Science Laboratory (FSL) was highlighted without plausible explanation. Furthermore, there was no production of station diary entries regarding the deposit of case property in the malkhana or its dispatch to the FSL. These omissions cast serious doubt on the integrity of the collected evidence and the FSL report, rendering it unworthy of consideration. The fact that both mashirs were allegedly available for every recovery and procedure conducted by the IO further fuels suspicion regarding the fairness and transparency of the investigation. Sixthly, the FIR itself suffered from a significant delay of more than 25 hours despite the complainant and police being available at the hospital during the post-mortem examination. Such a delay, without satisfactory explanation, opens the door to the possibility of due deliberation and fabrication of the prosecution story, as held in *Amin Ali and another v. The State* (2011 SCMR 323). Seventhly, the absence of injuries on PW-3 Ali Murad Shah and the complainant, despite their alleged presence during the incident, raises questions about their actual availability and participation. Only PW-2 Usman Shah sustained injuries. Eighthly, contradictions between the evidence of ASI Ziaullah Niazi and the Medical Officer regarding the arrival time of the injured and the dead body at the hospital, and the exact time of examination and treatment, contribute to the overall doubt surrounding the incident. The medical officer's findings regarding the nature of injuries on Usman Shah (caused by hard and blunt object, not sharp-sided hatchet as alleged against Nazar Shah and Babu Shah) were specifically noted by the trial court in acquitting these co-accused, further weakening the consistency of the ocular account. The fact that the gun

allegedly used by Roshan Shah was recovered at the pointing of accused Nazar Shah, and that no blood stains were found on the recovered hatchet, further undermines the prosecution's claims. Finally, the absence of blackening around the firearm injury on the deceased, as noted by the Medical Officer, suggests that the shot was fired from beyond three feet or one yard, contrary to the complainant's and Medical Officer's claims of a close-range shot. This inconsistency calls into question the accuracy of the ocular account. The trial court's note regarding the discrepancy in ASI Ziaullah Niazi's testimony about where the deceased's body was examined at the hospital further highlights inconsistencies in the evidence.

7. The learned APG for the State supported the stance of learned trial court while reiterating the consistency of the eyewitnesses on material particulars and the presence of motive, struggled to provide satisfactory rebuttals to the cumulative weight of the defense arguments. He contended that minor discrepancies would not negate the incident and that the motive was clear due to admitted enmity.

8. In rebuttal, learned advocate for appellant submitted that, they could not adequately explain the critical contradictions regarding the empty cartridge ejection, the delay in FIR and FSL dispatch, the lack of independent corroboration, and the inconsistencies in medical evidence, especially concerning the injuries and the distance of the firearm shot. The trial court's own findings in acquitting the co-accused, based on the lack of corroboration and inherent improbability (as in the case of Soomar Shah), inadvertently bolster the appellant's defense. The principle that "if a single doubt is created in the prosecution story, its benefit must go to the accused" is a fundamental tenet of criminal jurisprudence. Learned APG for the State, while endeavoring to uphold the conviction, primarily relied on the ocular testimony of the complainant and the two eyewitnesses, asserting their consistency on material particulars. However, the APG failed to convincingly address the significant points of doubt raised by the defense. The argument that minor discrepancies should be overlooked falls short when confronted with fundamental contradictions such as the non-ejection of the empty cartridge from a double-barrel gun, which directly impacts the veracity of the crime scene and the alleged recovery of the weapon. The delay in lodging the FIR and the unexplained delay in sending the case property to the FSL remain unaddressed, weakening the integrity of the

investigation. Furthermore, the APG could not offer a plausible explanation for the absence of independent witnesses despite their alleged presence at the scene, nor could they reconcile the inconsistencies between the ocular account and the medical evidence regarding the nature of injuries and the distance of the firearm shot. The very grounds upon which the co-accused were acquitted by the trial court, namely, the lack of corroboration and the inherent improbability of their alleged roles, further undermine the prosecution's case against the appellant, as these factors collectively cast a shadow of doubt over the entire prosecution narrative.

9. In light of the exhaustive review of the evidence, the arguments presented, and the judicial pronouncements guiding the interpretation of criminal cases, this Court is of the considered opinion that the prosecution has failed to prove its case against the appellant, Roshan Ali Shah, beyond a reasonable doubt. The cumulative effect of the material contradictions, inherent improbabilities, and procedural lapses noted above leads to the inescapable conclusion that the conviction cannot be sustained.

10. Specifically, the undisputed fact that a 12-bore double-barrel gun does not automatically eject an empty cartridge, coupled with the prosecution's unwavering assertion that only one shot was fired and the empty was found at the scene, directly contradicts the established mechanics of the weapon and the IO's own admission. This glaring inconsistency, particularly in light of the Supreme Court's pronouncement in *Muhammad Rafique alias Feeqa v. The State* (2019 SCMR 1068), which expressly deals with the doubtful nature of such recovery, creates a fundamental doubt that permeates the entire prosecution story and renders the recovery of the crime empty highly suspicious, thereby undermining the very foundation of the case. Furthermore, the unexplained and inordinate delays in lodging the First Information Report and dispatching the crucial case property to the Forensic Science Laboratory significantly compromise the integrity and evidentiary value of pivotal evidence, raising legitimate concerns about the possibility of manipulation and afterthought. The absence of independent and unbiased witnesses, despite their alleged presence at the scene of occurrence, especially given the acknowledged enmity between the parties, creates an adverse inference against the prosecution's narrative, as reliable corroboration from neutral sources is conspicuously missing. The inconsistencies between the ocular and medical

evidence, particularly regarding the nature of injuries and the distance from which the firearm was allegedly discharged, further exacerbate the doubts surrounding the accuracy and veracity of the prosecution's version of events. The trial court's own acquittal of the co-accused on the grounds of lack of corroboration and the inherent improbability of their alleged roles such as the father-in-law instigating the murder of his son-in-law with whom he had no dispute serves as a compelling testament to the weaknesses pervading the prosecution's case, inadvertently bolstering the appellant's defense and establishing a pattern of doubt that extends to the entire criminal enterprise attributed to the accused.

11. It is a well-settled and cardinal principle of criminal jurisprudence that for a conviction to stand, the prosecution must establish its case against the accused beyond all reasonable doubt. This burden of proof is absolute and never shifts. The accused is presumed innocent until proven guilty, and if a single reasonable doubt, however slight, arises from the evidence, the benefit of that doubt must invariably and as a matter of right go to the accused, leading to his acquittal. This "golden rule" of criminal law dictates that it is better for ten guilty persons to escape than for one innocent person to suffer conviction. In the present case, not one, but multiple, substantial and unassailable doubts have been established through a meticulous and comprehensive examination of the entire record, eroding the prosecution's claim of guilt to its very core. The evidence presented, when viewed in its totality and subjected to the rigorous scrutiny required in criminal proceedings, fails to inspire the requisite confidence for a conviction.

12. Furthermore, this Court has taken judicial notice of a solemn and highly pertinent development during the pendency of this appeal, which, while not a substitute for evidence on merits, nonetheless carries significant moral and persuasive weight in reinforcing the benefit of doubt. The widow of the deceased, Mst. Naimat, and the mother of the deceased, Mst. Bacha, both major legal heirs of the deceased Abdul Rehman Shah, were present in court. They have voluntarily and unequivocally filed their affidavits, recording their explicit no-objections to the acquittal of the appellant, Roshan Ali Shah. Additionally, the learned counsel for the complainant, Mr. Sadam Hussain Abbasi, has also commendably recorded his no-objection to the appellant's acquittal. This willingness on the part of the closest bereaved family members to consent to the appellant's acquittal,

having undoubtedly considered their deepest sentiments and their position as the primary sufferers of the tragedy, acts as a powerful factor in reinforcing the reasonable doubts already identified on the merits of the prosecution case. This extraordinary gesture reflects not only a lack of malice but also an implicit acknowledgment of the infirmities in the prosecution's evidence and possibly a desire for closure or reconciliation. While the Court's decision primarily rests upon the inherent weaknesses and contradictions in the evidence presented, the no-objections rendered by the principal legal heirs, who hold the foremost position in matters concerning the deceased's rights, serve as an additional, compelling circumstance that solidifies the conclusion of reasonable doubt.

13. Therefore, applying the well-established principles of criminal law that mandate the granting of benefit of doubt when the prosecution fails to establish guilt unequivocally, and further buttressed by the humane and significant no-objections rendered by the major legal heirs of the deceased, this Court finds the conviction of the appellant to be unsafe and unsustainable in law.

14. Consequently, the impugned judgment dated February 22, 2022, passed by the learned Ist Additional Sessions Judge/Model Court, Thatta, convicting the appellant Roshan Ali Shah, is hereby set aside. The appellant, Roshan Ali Shah son of Ismail Shah, is acquitted of the charge leveled against him. He shall be released from custody forthwith, if not required in any other case.

**J U D G E**