

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Appeal No. 8-51 of 2024

Zakir Ali son of Anwar,  
Adult, Muslim, by caste Bhayo,  
Resident of village Ghulam Rasool Bhayo,  
Taluka Tangwani,  
Presently confined in Central Prison Sukkur -----Appellant

VERSUS

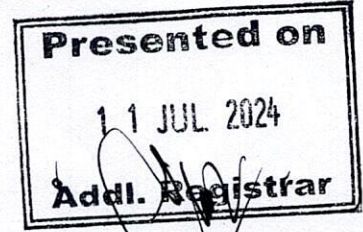
The State -----Respondent



Off: U/S:324, 353, 148, 149 PPC  
Cr.No.16/2024 PS B Section Kandhkot.  
Distt: Kashmore @ Kandhkot.

APPEAL UNDER SECTION 410 CR.P.C.





IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Appeal No. 8-50 of 2024

Zakir Hussain son of Anwar,  
Adult, Muslim, by caste Bhayo,  
Resident of village Ghulam Rasool Bhayo,  
Taluka Tangwani,  
Presently confined in Central Prison Sukkur -----Appellant

VERSUS

The State -----Respondent

Off: U/S:23 (i) (a) 25 Sindh Arms Act 2013  
Cr.No.17/2024 PS B Section Kandhkot.  
Distt: Kashmore @ Kandhkot.



APPEAL UNDER SECTION 410 CR.P.C.

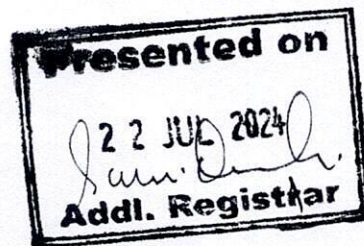
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**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

Crl. Appeal No. 5-53 of 2024

Gulzar son of Ali Jan Menik,  
R/o Rasaldar, Taluka Kandhkot,  
District Kashmore at Kandhkot.

(Presently confined in Central Prison, Sukkur).

.....Appellant.

**Versus**

The State.

.....Respondent.

Crime No.16 of 2024, of P.S B-Section,  
Kandhkot.

U/S: 324, 353, 148, 149, PPC.



**APPEAL UNDER SECTION 410, Cr.P.C.**



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IN THE HIGH COURT OF SINDH. CIRCUIT COURT, LARKANA

**(1) Cr. Appeal No.S-51 of 2024**

Zakir Ali Bhayo v. The State

**(2) Cr. Appeal No.S-50 of 2024**

Zakir Hussain Bhayo v. The State

AND

**(3) Cr. Appeal No.S-53 of 2024**

Gulzar Menik v. The State

Appellants in Cr. : Through Mr. Muhammad Afzal Jagirani,  
Appeals No.S-50 & Advocate.  
51 of 2024

Appellant in Cr. : Through M/s Safdar Ali G. Bhutto & Mushtaque Ali  
Appeal S-53/2024 Langah, Advocates.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor  
General.

Date of hearing : 12.02.2025.

Date of Judgment : 12.02.2025.

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

**Khalid Hussain Shahani, J.-** The instant criminal appeals are adjudicated through this consolidated judgment, considering that Criminal Appeals No.51 and 53 of 2024 emanate from Crime No.16/2024 of Police Station B-Section, Kandhkot, whereas Criminal Appeal No.50/2024 is a consequential case originating from Crime No.17/2024. Given their factual matrix and commonality of occurrence, their adjudication through a single judgment aligns with the principle of judicial economy, as upheld by the Hon'ble Supreme Court of Pakistan in cases involving interconnected criminal proceedings, ensuring coherence in judicial determinations.

2. Appellants Zakir Ali/Hussain Bhayo (being the same individual) and Gulzar Menik were prosecuted before the learned Additional Sessions Judge-II, Kandhkot, in Sessions Case No.32/2024 Re(The State v. Zakir Hussain &

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Others), arising out from Crime No.16/2024, registered at Police Station B-Section, Kandhkot. Upon conclusion of the trial, the learned trial court, vide judgment dated 25.06.2024, found them guilty of offences under Sections 324, 353, 148 read with Section 149 of the Pakistan Penal Code (PPC).

- i) For the offence under Section 324 PPC read with Section 149 PPC, the appellants are sentenced to rigorous imprisonment for a term of ten years and are further directed to pay a fine of Rs. 400,000/- each, aggregating to Rs. 800,000/-. In the event of default in payment, the convicts shall undergo simple imprisonment for an additional period of two years.
- ii) For the offence under Section 353 PPC read with Section 149 PPC, the appellants are sentenced to rigorous imprisonment for a period of two years
- iii) For the offence under Section 148 PPC read with Section 149 PPC, the appellants are sentenced to rigorous imprisonment for three years and are further directed to pay a fine of Rs. 400,000/- each, totaling Rs. 800,000/-. In case of default in payment, they shall undergo simple imprisonment for a further term of two years.

Benefit of Section 382-B Cr.P.C was extended to them.

3. The appellant, Zakir Hussain, was subjected to a separate trial concerning the recovery of an illicit weapon before the same learned court in Sessions Case No.33/2024, Re(The State v. Zakir Hussain Bhayo) bearing Crime No.17/2024, registered at Police Station B-Section, Kandhkot. The learned trial court, after examining the evidentiary record, legal precedents, and testimonies presented, rendered a judgment on 25.06.2024, convicting the appellant under Section 25 of the Sindh Arms Act, 2013. The appellant was sentenced to rigorous imprisonment for a term of ten years and imposed with a fine of Rs. 200,000/-. In case of non-payment of the fine, he was further directed to undergo simple imprisonment for an additional term of two years.

4. As per prosecution theory, on 30-01-2024, a police party from Police Station B-Section, Kandhkot, led by ASI Shah Muhammad Muhammadani, whilst patrol, allegedly encountered a group of six armed individuals near an abandoned brick-kiln at Jiskani, situated along the Kandhkot-Thul road at about 0030 hours. The police claim that an armed confrontation ensued, leading to the apprehension of the accused, Zakir Hussain Bhayo, while the remaining suspects managed to flee the scene. During the alleged arrest, an unlicensed 12-bore double-barrel shotgun along with five live cartridges of the same bore was purportedly recovered from the possession of the accused. The said weapon and ammunition were sealed on the spot, and a memo of arrest and recovery was prepared accordingly. Subsequently, the accused Zakir Hussain, along with the recovered weapon and cartridges, was taken to the police station, where a case bearing crime No.16/2024 was registered against him for offences under Sections 324, 353, 148, and 149 of the



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Pakistan Penal Code (PPC). Additionally, a separate FIR bearing No.17/2024 was lodged against the accused for the alleged possession of an illegal weapon under the relevant provisions of the law.

5. It is pertinent to note that the Hon'ble Supreme Court of Pakistan, in multiple judgments, has emphasized that strict adherence to legal safeguards in cases involving alleged police encounters is imperative. Courts have consistently held that in such cases, independent corroborative evidence is crucial to dispel doubts regarding false implications and ensure adherence to the principles of justice.

6. It is of significant legal importance to note that the appellant, Gulzar Menik, who was already in judicial custody at the time, was later formally arrested and brought to trial. This procedural development necessitates a critical examination in light of established jurisprudence of the Hon'ble Supreme Court of Pakistan, which underscores that an accused person already in custody should not be implicated without independent corroborative evidence linking them to the alleged offence. The courts have consistently held that mere custodial status does not suffice as conclusive proof of involvement in an offence, and the prosecution bears the onus to establish, beyond reasonable doubt, a substantive connection between the accused and the alleged crime. The principles laid down by the superior courts dictate that procedural fairness, due process, and adherence to the fundamental rights of the accused, as enshrined in the Constitution of Pakistan, must be meticulously observed in such circumstances.

7. In both cases, a formal charge was framed against the accused, to which they pleaded 'not guilty' and sought trial. In order to establish its case beyond reasonable doubt, the prosecution presented its evidence through the examination of key witnesses, including PW-1 ASI Sanwal Khan, who was the dispatch official; PW-2 ASI Shah Muhammad, the complainant; PW-3 PC Lehaq Gujrani, an eyewitness and mashir; PW-4 IO/SIP Khawand Bux Awan, the investigating officer; and PW-5 WPC Akbar Ali Chandio, the officer in charge of the Malkhana. These witnesses provided testimonies and produced relevant documentary evidence to substantiate the allegations. Upon completion of the prosecution's evidence, the Deputy District Public Prosecutor (DDPP) for the State formally closed the prosecution's case.

8. It is significant to note that the same set of witnesses provided testimonies in the parallel case regarding the recovery of an alleged crime weapon from appellant Zakir Hussain Bhayo. The Hon'ble Supreme Court of Pakistan has consistently emphasized in its judgments that a fair trial requires



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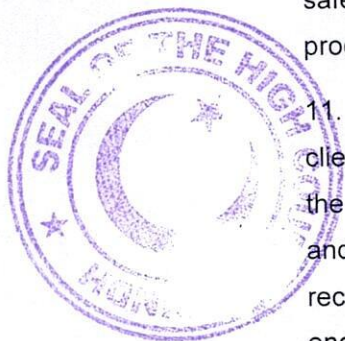


strict scrutiny of prosecution evidence, particularly in cases where the same witnesses appear in multiple proceedings. Therefore, their testimonies must be evaluated in light of corroborative material to ensure that the fundamental rights of the accused, as guaranteed under Article 10-A of the Constitution of Pakistan, are duly protected.

9. In their statements recorded under Section 342 Cr.P.C, the appellants categorically denied the allegations leveled against them and maintained their innocence. Despite being provided the opportunity under the law, they neither produced any defence evidence nor opted to examine themselves on oath as permissible under Section 340(2) Cr.P.C. It is a settled principle of law, as repeatedly enunciated by the Hon'ble Supreme Court of Pakistan, that an accused is not obligated to prove his innocence, and the burden of proof lies squarely upon the prosecution to establish guilt beyond a reasonable doubt. However, the learned trial court, after appreciating the available evidence and considering the legal aspects, rendered its judgment convicting the appellants, as mentioned in the impugned verdicts. The Supreme Court has consistently held that mere denial of allegations by the accused without rebutting the prosecution's case with cogent evidence does not suffice to create doubt, yet any inherent contradictions or lacunae in the prosecution's case must be assessed carefully to ensure that the fundamental rights of the accused are not prejudiced.

10. Having carefully heard the learned counsels representing the appellants and the learned Deputy Prosecutor General for the State, and having meticulously examined the entirety of the evidentiary record, I have undertaken a comprehensive judicial scrutiny in light of the legal principles laid down by the Hon'ble Supreme Court of Pakistan. The assessment of the available material has been conducted with due adherence to the settled precedents, ensuring that the fundamental rights of the accused are safeguarded, while simultaneously upholding the principle of fair trial and due process as enshrined under Article 10-A of the Constitution of Pakistan.

11. The learned counsel representing appellant Zakir Bhayo argued that his client is a victim of police excesses and unlawful actions. He contended that the appellant, Zakir Hussain, was unlawfully apprehended from his residence and subsequently falsely implicated in the instant cases through fabricated recoveries. The counsel further submitted that, despite an alleged armed encounter lasting approximately six to seven minutes involving five alleged culprits and an equal number of police personnel, no individual from either side sustained any firearm injury, nor was any damage inflicted upon the



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police mobile van, despite it being an apparent target. He argued that such circumstances render the prosecution's case highly questionable and inconsistent with judicial precedents requiring credible and independent corroboration in cases involving police encounters.

12. With respect to appellant Gulzar Menik, the counsels appearing on his behalf asserted that he was already confined in jail at the time of the incident and was subsequently shown as formally arrested within the jail premises in connection with the present case. They maintained that the prosecution failed to produce any tangible or corroborative evidence establishing his involvement in the offence. Furthermore, regarding the Criminal Record Office (CRO) reports of the appellants, all learned counsels collectively contended that the cases reflected therein were all instances of police abuse of power and had been falsely registered against them, a practice condemned by the Hon'ble Supreme Court of Pakistan in multiple judgments where law enforcement agencies were found to have manipulated criminal records to justify unlawful arrests and detentions. The counsels emphasized that in light of the settled jurisprudence, the burden rests upon the prosecution to establish the guilt of the accused beyond reasonable doubt, which has not been discharged in the present case.

13. The learned Deputy Prosecutor General asserted that the prosecution has successfully discharged its burden of proof by establishing the charges against the appellants beyond a reasonable doubt through credible and legally admissible evidence. He further argued that the conviction of the appellants by the learned trial court was in strict conformity with the principles enunciated by the Hon'ble Supreme Court of Pakistan, which emphasize that once the prosecution's case stands corroborated by ocular, forensic, and circumstantial evidence, mere denial on the part of the accused cannot suffice to create reasonable doubt. Relying on settled jurisprudence, the learned DPG contended that the trial court rightly appreciated the material on record and rendered a well-reasoned verdict. Consequently, he prayed for the dismissal of these appeals, as they are devoid of legal merit and do not warrant any interference by this appellate forum.

14. As per the case presented by the prosecution, a police contingent comprising five officers allegedly identified the appellants along with four other individuals. It was further contended that a confrontation ensued between the two groups, purportedly lasting for approximately six to seven minutes. However, it is noteworthy that despite the purported prolonged exchange of fire, only appellant Zakir Bhayo was allegedly apprehended by the police,



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raising serious questions regarding the credibility of the prosecution's narrative.

15. Moreover, the identification of the remaining accused, including appellant Gulzar, during odd hour of the night (i.e., 0030 hours) under unclear visibility conditions, without any assertion that they were previously known to the law enforcement officials, appears highly questionable. The Hon'ble Supreme Court of Pakistan, in multiple precedents, has emphasized that identification in low-light conditions without corroborative evidence must be viewed with extreme caution.

16. Additionally, despite an alleged crossfire lasting six to seven minutes, neither any member of the police force sustained any injury nor was the police vehicle, which was presumably visible to the accused, struck by any gunfire. This aspect further diminishes the reliability of the prosecution's version, as judicial pronouncements have reiterated that a lack of injuries or damage in alleged police encounters must be scrutinized to preclude false implications. Furthermore, the prosecution has failed to provide any plausible explanation as to why the accused individuals were allegedly present on a link road at such an unusual hour, reinforcing the necessity for strict adherence to the principle that in criminal cases, the benefit of doubt must always favor the accused, as consistently held by the Hon'ble Supreme Court of Pakistan. It is settled law as held in the case of *Tariq Parvez v. The State* (1995 SCMR 1345) that even if a slightest doubt arises in the prosecution case, its benefit must be extended in favour of the accused.

14. Keeping in view above factual as well as legal position, I am of the opinion that the prosecution miserably failed to establish the charges in both cases against the appellants beyond shadow of reasonable doubt; as such, the impugned judgments suffer from illegalities and infirmities and cannot be sustained.

15. For what has been discussed above, these three Criminal Appeals were allowed by me vide short order dated 12.02.2025, whereby the impugned judgments were set aside and the appellants were acquitted of the charge. Above are the detailed reasons for said short order.

13<sup>th</sup> February, 2025.

(Khalid Hussain Shahani)  
Judge

