

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

**Criminal Jail Appeal No.D-44 of 2019
Criminal Jail Appeal No.S-70 of 2019
Confirmation No. 18 of 2019**

**Present:
Mr. Justice Amjad Ali Sahito
Mr. Justice Jan Ali Junejo**

Appellants : 1. Bakhat @ Bakho S/o Shahdad Lolai,
2. Shabir @ Repeater S/o Gullab Lolai,
Through Mr. Irfan Badar Abbasi, Advocate for
Pauper Appellants.

Complainant : Abdul Khalique S/o Abdul Majeed,
Through Ms. Mehran Abdullah, Advocate.

The Respondent/State : Through Mr. Aitbar Ali Bullo, learned DPG.

Date of hearing : 13-05-2025

Date of Judgment : 13-05-2025

JUDGMENT

Jan Ali Junejo, J.— These jail appeals present a challenge to the conviction judgment dated July 19, 2019 (hereinafter referred to as the “Impugned Judgment”), which was rendered by the 1st Additional Sessions Judge/Model Criminal Trial Court, Shikarpur (hereinafter referred to as the “Trial Court”). This pivotal judgment stemmed from Sessions Case No. 337/2013 (Crime No. 12/2012), where the Trial Court found both appellants unequivocally guilty under multiple stringent sections of the Pakistan Penal Code (PPC). Specifically, they were convicted under Sections 302, 452, 337-H(2), 148, and 149 PPC. The sentencing pronounced by the Trial Court was rigorous and distinct for each appellant. Appellant Bakhat received the gravest penalty: a death sentence, which remains contingent upon confirmation by the High Court of Sindh, alongside a payment of Rs.200,000/- as compensation to the legal heirs of the deceased. Appellant Shabir, on the other hand, was handed a life imprisonment sentence, and directed to pay Rs.200,000/- in terms of Section 544-A Cr.P.C. In case of default, he shall undergo imprisonment for six months more. Beyond these

primary sentences, both appellants were subjected to additional, significant terms of imprisonment, including three years of rigorous imprisonment under Section 148 PPC, another three years under Section 452 PPC, and three months under Section 337-H(2) PPC. Notably, all these sentences were ordered to run concurrently. Benefit of section u/s 382-B Cr.P.C was extended for the period they remained in jail as Under Trial Prisoners. Furthermore, in strict adherence to the provisions of Sections 374 and 376 of the Criminal Procedure Code, 1898, the Trial Court has transmitted the entire Record & Proceedings to this Court for the indispensable "Confirmation" of the death sentence, its ultimate fate will be decisively determined by this very judgment.

2. The case originated from an FIR detailing events of August 15, 2012, at approximately 8:30 PM, when complainant Abdul Khaliq, his brother Muhammad Hassan, and nephews Hubdar Ali and Arbelo were in their brightly lit courtyard. Accused Bakhat @ Bakho, Nazir Ahmed, Munwar @ Muno, Abdul Majeed @ Majo, and Shabir @ Repeater armed with Kalashnikov, along with two unidentified armed individuals armed with Guns, trespassed into their home. Bakhat @ Bakho and Nazir Ahmed fired their Kalashnikovs at Muhammad Hassan, who was fatally wounded and died instantly. The motive for this attack reportedly stemmed from Bakhat @ Bakho's prior false "Karap" accusation against Muhammad Malook (nephew of complainant Abdul Khaliq), which a private "faisla" (settlement) had disproven, leading Bakhat @ Bakho to seek revenge on Muhammad Hassan. The complainant subsequently lodged an FIR at Usman Issani @ Bado police station. Following the investigation by Inspector Khalil-ur-Rehman Massan, a challan was submitted, initially listing all accused as absconders. As the offense under Section 302 PPC falls under the exclusive jurisdiction of the Sessions Court, the case was forwarded to the Sessions Judge Shikarpur. This transfer occurred after the learned 2nd Civil Judge & J.M Shikarpur completed the necessary formalities, including recording statements from private and official prosecution witnesses in the absence of the accused. The

case was then assigned to the Court of learned 4th Additional Sessions Judge Shikarpur. Accused Bakhat @ Bakho and Shabir @ Repeater were arrested on April 6, 2013, and June 23, 2014, respectively, and were committed to face trial. A formal charge was framed against them by the Court of learned 4th Additional Sessions Judge Shikarpur, to which both appellants pleaded not guilty and opted for a trial. Subsequently, on June 20, 2016, and June 29, 2016, both accused were granted post-arrest bail by the Court of learned 4th Additional Sessions Judge Shikarpur. However, they misused this concession and absconded. Consequently, proceedings were initiated against them, and on October 6, 2017, the court of learned 2nd Additional Sessions Judge Shikarpur placed the case on dormant file pending their re-arrest. Both accused were later re-arrested in connection with the murder of Hubdar, an eyewitness in the present case (FIR No. 08/2017). Finally, on May 25, 2019, the Record & Proceedings were transferred from the Court of learned 2nd Additional Sessions Judge Shikarpur to the 1st Additional Sessions Judge/Model Criminal Trial Court, Shikarpur, for its legal disposal.

3. The prosecution, in order to substantiate its case, presented several key witnesses and produced various exhibits. PW-1 Dr. Abdullah (Exh. 25) verified the inquest report (Exh. 7/B) and post-mortem report (Exh. 5/A), confirming Muhammad Hassan's unnatural death due to firearm injuries. PW-2 Tapedar Anwar Ali (Exh. 26) verified the sketch of the incident's location (Exh. 6/A). PW-3 Complainant Abdul Khaliq (Exh. 27), an eyewitness, corroborated the FIR (Exh. 7/A) and the receipt of the deceased's body (Exh. 7/C). He testified to identifying the accused, the firing by Bakhat and Nazir, and the recovery of empties and blood-stained earth from the scene. PW-4 eye witness Arbelo (Exh. 28) further supported the complainant's account, detailing the motive and the events of the firing. PW-5 Mashir Abdul Ghaffar (Exh. 29) verified the mashirnama of the deceased's body and the incident scene (Exh. 10/A and Exh. 10/C). Lastly, PW-6 Author of FIR and I.O. Inspector Khalil-ur-Rehman Masan

(Exh. 30) verified the Danistnama, mashirnama of the dead body inspection, mashirnama of the incident place (Exh. 10/A to Exh. 10/C), and produced the original chemical examiner report (Exh. 30/A and Exh. 30/B) and roznamcha entry No. 14 (Exh. 30/C). The Chemical Examiner's report conclusively established the presence of human blood on the recovered soil. The prosecution brought the following witnesses for examination and produced the exhibits listed below.

- (i) PW-1 Dr. Abdullah (Medical Officer) Exh.25. He Conducted post-mortem of deceased Muhammad Hassan; confirmed cause of death as firearm injuries; detailed injury report and medical findings. He Inquest report (Exh.7/B), Post-mortem report (Exh.5/A).
- (ii) PW-2 Anwar Ali (Tapedar) at Exh.26. He provided first-hand account of the incident, identified accused, described sequence of events, and actions post-incident. He produced original Sketch of place of incident at Exh.6/A.
- (iii) PW-3 Abdul Khalique (Complainant/Eye-witness) at Exh.27. He provided first-hand account of the incident, identified accused, described sequence of events, and actions post-incident. He seen FIR at Exh.7/A and receipt of dead body at Exh.7/C and verified the same.
- (iv) PW-4 Arbelo (Eye-witness) at Exh.28. He corroborated the complainant's account as an eye-witness present at the scene.
- (v) PW-5 Abdul Ghaffar (Mashir) at Exh.29. He witnessed and verified the preparation of mashirnama (site inspection and recovery memos).
- (vi) PW-6 Inspector Khalil-ur-Rehman Masan (IO) at Exh.30. He verified various documents and described investigation steps. He produced letter addressed to Mukhtiarkar Garhi Yasin and original chemical examiner report at Exh.30/A and 30/B. He also produced original Roznamcha entry No.14 at Exh.30/C.

4. Appellants, in their statements under Section 342 Cr.P.C. (Exh. 32 and Exh.33), denied the charges, claiming false implication due to a land dispute, and asserted that a prior matrimonial dispute had been resolved. However, neither appellant chose to examine themselves on oath under Section 340 (2) Cr.P.C., nor did they present any witnesses in their defense. The Impugned Judgment, delivered on July 19, 2019, by the 1st Additional Sessions Judge/Model Criminal

Trial Court, Shikarpur, convicted both appellants. Bakhat @ Bakho was sentenced to death, subject to confirmation by the High Court of Sindh, and ordered to pay Rs. 200,000 as compensation to the deceased's legal heirs. He is to be "hanged by neck till he is dead". Shabir @ Repeater was sentenced to life imprisonment under Section 302(b) read with Section 149 PPC and also directed to pay Rs. 200,000 in compensation, with a default imprisonment of six months. Additionally, both appellants received three years' rigorous imprisonment under Section 148 PPC, three years' rigorous imprisonment under Section 452 PPC, and three months' simple imprisonment under Section 337-H(2) PPC. All sentences were ordered to run concurrently, with benefit extended under Section 382-B Cr.P.C. The court emphasized the gravity of the offenses and the appellants' prior absconding and criminal behavior, specifically noting their involvement in the murder of eyewitness Hubdar. The Record & Proceedings were sent to the High Court of Sindh for confirmation of the death sentence as per Section 374 Cr.P.C.

5. Learned counsel for the Appellants argued that the FIR was lodged with malicious intent following a resolved tribal dispute. It was contended that PW-3 and PW-4 were interested witnesses with material contradictions in their testimonies, particularly regarding the light source and the accused's entry point. The medical evidence (Exh. 5/A) was challenged, arguing that it did not support the eyewitness accounts, as no bullets were recovered, and the injuries could have been inflicted by a shotgun rather than a Kalashnikov. Furthermore, it was emphasized that no weapons were recovered from Bakhat, and the death sentence was disproportionate, as no premeditation was proven. Learned counsel for the Appellants argued that no specific role was attributed to Shabir, as he allegedly did not fire or assault the deceased. It was argued that mere presence was insufficient for a conviction under Section 302/149 PPC. The counsel highlighted that PW-3 and PW-4 admitted that Shabir did not shoot, and there

was no evidence of a common intention to commit murder. The delayed arrest and the absence of a forensic or ocular link to the crime were also emphasized. The learned counsel prayed that the Impugned Judgment may be set-aside and the Appellants may be acquitted of the charge.

6. The learned Deputy Prosecutor General (DPG) countered these arguments, asserting the consistency in the eyewitness testimonies of PW-3 and PW-4, who identified all the accused, including Shabir, under adequate electric light. The DPG argued that their testimonies aligned on core facts, such as timing, weapons, and roles. The medical evidence (Exh. 5/A) was deemed consistent with high-velocity weapons, such as Kalashnikovs, as testified by PW-1. The learned D.P.G highlighted the prior dispute as establishing animus and the threats as corroborating intent. The recovery of empties was said to match the eyewitness accounts. The learned DPG contended that the Trial Court Judgment was sound and based on credible evidence, and the appeals lacked merit. The learned DPG prayed that the appeals may be dismissed.

7. Upon careful consideration of the evidence on record, arguments presented by the learned counsel for both parties, and the Impugned Judgment, this Court finds that Bakhat @ Bakhu Lolai's appeal is hereby modified, limited to the conversion of his sentence, while Shabir @ Repeater Lolai's appeal must be allowed. The ocular evidence serves as the cornerstone of the prosecution's case against the accused. Both eyewitnesses, the complainant Abdul Khaliq (brother of the deceased) and eye witness Arbelo, provided consistent and coherent accounts of the incident. They both testified that they were sitting in the courtyard when a group of armed men, whom they identified as the accused, entered. They were unequivocal in identifying Bakhat @ Bakho and Nazir as the individuals who fired Kalashnikovs directly at the deceased, Muhammad Hassan. They also consistently stated that Shabir @ Repeater was

present and armed but did not fire. Both witnesses affirmed that “electric bulbs were glowing”, providing sufficient light for identification. Given that the parties were known to each other from the same village and had a pre-existing dispute (the ‘Karap’ issue), the possibility of mistaken identity is negligible. The defense subjected both witnesses to rigorous cross-examination. They were questioned on minor details such as the exact positioning of cots, the direction from which the accused entered. While PW-4 Arbelo admitted to not remembering certain specifics due to the “lapse of time”, their core testimony regarding the identity of the assailants and their specific roles remained unshaken. The defense's suggestion that the complainant himself murdered his brother over a land dispute was a bare assertion, unsupported by any evidence. PW-3 and PW-4 are natural witnesses, being family members present at their own home during the incident. While their relationship to the deceased makes them “interested witnesses”, their testimony cannot be dismissed on this ground alone, especially when it is consistent and corroborated by other evidence. Their clear and specific attribution of the fatal shots to Bakhat, while assigning a passive role to Shabir, lends credibility to their account.

8. The medical evidence, provided by Dr. Abdullah, is crucial in establishing the cause and nature of death. The post-mortem report (Exh. 5/A) details five distinct firearm injuries. Dr. Abdullah opined that injuries No. 1 and 2, which penetrated the chest and abdomen and damaged vital organs including the heart, liver, and right kidney, were sufficient to cause death in the ordinary course of life. He concluded that death was due to hemorrhage and shock resulting from these injuries and was “instant”. All injuries were ante-mortem. During cross-examination, Dr. Abdullah stated that the injuries “might be the result of Kalashnikov”. He critically distinguished between bullet and shotgun pellet injuries, noting that bullet wounds are "oval shape" while pellet injuries are in a

“circle”. He explicitly denied the defense's suggestion that the injuries were from a shotgun. Although no bullet was recovered from the body, his expert opinion based on the nature of the wounds (oval-shaped, through-and-through) strongly corroborates the eyewitness accounts that Kalashnikovs were used. The medical evidence is consistent and robust. It unequivocally proves that the deceased died an unnatural, violent death caused by multiple firearm injuries. The description of the wounds aligns with the use of a high-velocity rifle, as alleged by the prosecution, and contradicts the defense's theory of a shotgun. This evidence successfully establishes the *corpus delicti* and provides significant corroboration to the ocular account. In the case of ***Sohail Akhtar and another v. The State and another (2024 SCMR 67)***, the Honourable Supreme Court of Pakistan held that: *“The ocular account of the occurrence is in line with the medical evidence brought on the record. The prosecution witnesses have not been shattered during cross-examination and their evidence is confidence inspiring. The judgment passed by the High Court is well reasoned and based on proper appreciation of evidence available on the record”*.

9. The circumstantial evidence provides a crucial link between the ocular account and the physical reality of the crime scene. Tapedar Anwar Ali's sketch places the accused (Point B) merely 8 feet away from the deceased (Point A), a distance well within effective firing range. The most significant piece of circumstantial evidence is the recovery of 10 empties of Kalashnikov and 3 empties of a gun from the scene (Point C), as testified by the mashir (PW-5) and the Investigating Officer (IO, PW-6). This directly corroborates the eyewitnesses' claim that Kalashnikovs were used and that multiple shots were fired. The recovery of blood-stained earth, later confirmed to be human blood by the chemical examiner (Exh. 30/B), validates the location of the murder. The IO (PW-6) detailed the procedural steps taken, including lodging the FIR promptly, inspecting the body, and securing the evidence. The defense highlighted a weakness in the investigation: the failure to cite any independent witnesses from

the village. While this is a procedural lapse, it is not fatal to the prosecution's case, particularly as PW-5 testified that the IO did ask other villagers, but they were reluctant to act as mashirs, a common issue in such cases. The circumstantial evidence strongly supports the prosecution's narrative. The recovery of Kalashnikov empties from the spot where the eyewitnesses claimed the assailants stood provides powerful, independent corroboration to the ocular and medical evidence.

10. The prosecution has successfully established its case against Bakhat @ Bakhu beyond a reasonable doubt. The chain of evidence is complete and unbroken. The direct, unshaken ocular testimony of two eyewitnesses (PW-3 and PW-4) naming him as the shooter is powerfully corroborated by the medical evidence (injuries consistent with a Kalashnikov) and the circumstantial evidence (recovery of 10 Kalashnikov empties) further solidifies the case against him. The Appellant Bakhat absconded for 2 years, misused bail, and was later charged in FIR No. 08/2017 for murdering eyewitness Hubdar, demonstrating a pattern of intimidation. His prolonged absconding explained the non-recovery of the weapon. The empties and medical evidence sufficed to establish guilt. Bakhat offered no alibi or evidence to counter prosecution claims. His denial under Section 342 Cr.P.C. (Exh. 32) was vague and unsupported. The minor discrepancies (e.g., entry direction of accused) were trivial and did not undermine the core prosecution version. In support of the proposition that minor contradictions or discrepancies in the statements of prosecution witnesses should not be fatal to the prosecution case, reliance is placed on the judgment of the Hon'ble Supreme Court of Pakistan in ***Nazir Ahmed v. The State (2023 SCMR 1299)*** wherein it was observed 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". Although the specific motive alleged by the prosecution, while not forming the core of its case, was not conclusively established, its non-proving does not, by itself, vitiate the conviction. However, in line with the settled jurisprudence of the Honourable Supreme Court, the absence or weakness of motive may be considered a mitigating circumstance warranting the commutation of the death sentence to life imprisonment. In similar circumstances, the Honourable Supreme Court in ***Khalid v. The State through PG Sindh (2024 SCMR 1474)*** held that: "*According to the settled principles, non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance for reducing the quantum of sentence awarded to an accused*". The Trial Court relied on eyewitness testimonies, medical reports, and recoveries to form a "chain of evidence" under Section 149 PPC, holding Bakhat liable for the unlawful assembly's common object. The prosecution conclusively proved Bakhat's role in the murder through direct eyewitness testimony (PW-3/PW-4), medical corroboration (PW-1), conduct, and circumstantial evidence (recoveries/chemical report). The Trial Court's conviction under Sections 302/149 PPC is legally sound and does not require interference.

11. The case against Shabir @ Repeater stands on a different footing. The prosecution's own eyewitnesses (PW-3 and PW-4) consistently stated that although the appellant, Shabir @ Repeater, was present at the scene and armed, he did not discharge his weapon. His criminal liability, therefore, rests solely on

Section 149 of the Pakistan Penal Code (PPC), which necessitates proof that he shared the common object of the unlawful assembly to commit murder. No overt act has been attributed to the appellant. The evidence falls short of establishing, beyond reasonable doubt, that he shared the specific intent required to commit murder, particularly in light of the witnesses' clear identification of the individuals who actively fired shots. His mere presence at the scene, absent any direct participation or contribution to the act of murder, gives rise to reasonable doubt regarding his culpability for the principal offence under Section 302 PPC.

12. In view of the foregoing discussion, the instant appeals were disposed of. It would be appropriate to reproduce the order dated 13.05.2025 passed by this Court, which reads as under:

“Heard arguments of learned Counsel for the Appellant as well as complainant and learned DPG for the State. Reasons to be recorded later on, the Criminal Jail Appeal No. S-70 of 2019, filed by the appellant/accused Shabir @ Repeater is allowed. The impugned Judgment dated 19.07.2019, passed by learned 1st Additional Sessions Judge/MCTC, Shikarpur, in Sessions Case No.337/2013, (Re: State v. Bakhat @ Bakho and others), being outcome of Crime No.12/2012 registered at Police Station Usman Issani @ Bado, District Shikarpur, under section 302, 452, 337-H(2), 148 PPC r/w section 149 PPC, is set-aside to the extent of Appellant Shabir @ Repeater. He is acquitted from the Charge by extending the benefit of doubt. Appellant is in jail, he shall be released forthwith if not required in any other custody case.

The Cr. Jail Appeal No. D-44 of 2019, filed by the appellant Bakhat @ Bakho being meritless is **dismissed**. The conviction awarded by learned trial court vide Judgment dated 19.07.2019, passed by learned 1st Additional Sessions Judge/MCTC, Shikarpur, in Sessions Case No.337/2013, (Re: State v. Bakhat @ Bakho and others), being outcome of Crime No.12/2012, registered at Police Station Usman Issani @ Bado, District Shikarpur, offence under sections 302, 452, 337-H(2), 148 PPC r/w section 149 PPC, awarded to him for offence under section 302(b) is maintained but on account of mitigating circumstances involved in the present case, the sentence to death on the charge of murder of deceased is reduced/converted to imprisonment for life. The other sentence awarded to the appellant Bakhat @ Bakho vide impugned Judgment awarded by the learned trial court is also maintained including compensation amount. The benefit of section 382-B Cr.P.C is also

extended in favour of appellant. As a result the reference bearing CrI. Confirmation Case No. D-18 of 2019, submitted by the learned trial court for confirmation of death sentence to the appellant Bakhat @ Bakho is answered in **NEGATIVE**".

These constitute the reasons for our short order dated 13.05.2025.

JUDGE

JUDGE