

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

**Criminal Jail Appeal No.D-36 of 2020  
Crl.Conf. Case No.D-35 of 2020**

**Present:**

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

Appellant : Rehmat Ali s/o Muhammad Juman Balhro  
Through Mr. Ahmed Bux Abro, Advocate

The State : Through Mr. Aitbar Ali Bullo, D.P.G

Date of hearing : 15-05-2025

Date of Judgment : 30-05-2025

**JUDGMENT**

**Jan Ali Junejo, J:-** This criminal appeal is preferred to challenge the judgment dated 22.10.2020, rendered by learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Kambar, in Sessions Case No.153 of 2018 (Re: The State vs. Rehmat Ali Balhro), emanating from FIR Crime No.25 of 2018, registered for offence punishable under Section 302, 337-H(ii), 114, 34 of the Pakistan Penal Code at P.P Pakho of Police Station, Kamber, whereby appellant Rehmat Ali son of Muhammad Juman Balhro, was convicted for the murder of complainant's brother Barkat Ali alias Baro @ Ali Akbar Balhro and sentenced to death under Section 302(b) PPC, as *Tazir*, with compensation of Rs.10,00,000/- to the legal heirs of the deceased in terms of Section 544-A of the Criminal Procedure Code, and in default thereof, to undergo six months' simple imprisonment. In addition to this, a reference for confirmation of death sentence against the appellant has also been submitted to this Court.

2. The genesis of facts, borne out from the FIR lodged by complainant Abdul Qadir Balhro on 08.02.2018, at 1200 hours, is to the effect that a prolonged murderous enmity existed between the complainant and Rustam Ali Balhro's party. Yesterday, i.e 07.02.2018, at evening time, he and his brother Barkat @ Baro @ Ali Akbar, aged about 45/46 years, cousins Zameer Hussain and Abdul Fattah had come to Khairpur Juso on their motorcycles with some work and from the bus stop, his brother Barkat @ Baro @ Ali Akbar after purchasing some things from the shop, returned. They were standing on a little-bit distance, in the meantime, at round 05.30 p.m, they saw four accused namely Rustam, 2). Rehmat Ali (appellant), armed with pistols, 3). Ali Gohar and 4). Shakeel Ahmed, with guns, emerged. Of them, accused Rehmat Ali while coming near to his brother Barkat @ Baro @ Ali Akbar raised hakal that today he will not be spared. Saying so, he instigated rest of the accused to kill Barkat @ Baro @ Ali Akbar, on which accused Rehmat Ali Balhro made pistol shot straightly at him with intention to commit his murder, which hit him on back of his neck and he fell down while screaming. The complainant party raised hakals, whereupon accused Ali Gohar and Shakeel made aerial firing at them. On their cries and fire-shot reports, the other people came there and on seeing them, the accused went towards the southern side. They then saw Barkat @ Baro @ Ali Akbar having sustained firearm injury on back of his neck, which was crossed through and through near the right side of his nose with the blood oozing and was lying dead. The complainant after intimating the incident to

the police, shifted the dead body of his brother to Taluka Hospital Kamber, and after getting conducted his postmortem and performing the funeral rituals, the complainant came at police station and reported the incident with police.

3. The police on completion of usual investigation submitted the final report under section 173 Cr.PC (challan) against all the accused before the competent Court of law. In first round, the trial commenced against co-accused Shakeel and Ali Gohar, who after full dress trial were acquitted vide judgment dated 03.02.2020. Subsequently, the present appellant joined the trial after his arrest by the police and the formal charge was framed against him to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to establish its' case, examined PW-1 complainant Abdul Qadir at Exh.22, he saw the FIR already produced at Exh.14/A. PW-2 eye-witness Zameer Hussain at Exh.23. PW-3 eye-witness Abdul Fattah at Exh.24. PW-4 Corpse bear/PC Abdul Latif at Exh.25, he saw receipt of delivery of dead body of the deceased already produced at Exh.12/A. PW-5 Mashir Abdul Hameed at Exh.26, he saw memo of place of incident, Danistnama, memo of arrest of accused already produced at Exh.13/A to C. PW-6 Author of FIR namely SIP/I.O Muharram Ali Mugheri at Exh.27, he saw all the relevant documents relating to the investigation already produced at Exh.14/A to 14/G respectively. PW-7 Tapedar Ghazi Khan at Exh.28, he produced sketch of vardat at Exh.28/A, and PW-8 Dr. Ali Gohar Chandio at

Exh.29, he saw inquest report and postmortem report already produced at Exh.11/A and 11/B. Thereafter, learned State counsel closed its' side.

5. The appellant in his statement recorded in terms of Section 342 Cr.P.C, denied the prosecution's allegations by claiming his innocence, stating therein that he has been implicated in false case due to old murderous enmity and lastly prayed for expeditious justice. However, he neither examined himself on oath in disproof of the charge, nor led any evidence in his defence.

6. The learned trial Court after hearing counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant vide impugned judgment dated **22.10.2020**, which the appellant has assailed before this Court by preferring the instant criminal appeal through jail.

7. Learned counsel for the appellant submits that the impugned judgment is against the law and facts of the case; that F.I.R is delayed for one day, for which no plausible explanation has been furnished by the complainant; that the prosecution has relied on interested witnesses (the deceased's brother and cousins), whose testimonies were inherently biased due to previous murderous enmity; that all the witnesses cited in the case being closely related inter-se are chance witnesses; that the medical evidence conflicts with the ocular account; that the unnatural conduct of the witnesses appeared in the evidence as they were three in numbers but they did not try to save the deceased; that no independent

witness has been cited by the prosecution; that the same mashir has acted in all mashirnamas; that two of the co-accused have already been acquitted in this case in earlier round. Summing up his contentions, the learned Advocate submitted that the present accused was roped on account of earlier murderous enmity which is discernible from the narration given in the FIR itself. He thus concluded that the case of prosecution was not free from doubt and the appellant deserved to be acquitted in the circumstances.

8. Conversely, learned D.P.G for the State argued that present appellant is named in the FIR with specific role of firing at the deceased which proved fatal and that the recovery of crime empty from the venue of occurrence, has justified the involvement of present appellant with commission of the incident; the ocular account is fully consistent with medical as well as circumstantial evidence; that the delay in FIR has properly been explained and that no any single infirmity or contradiction has been pointed out by learned defence counsel to show false implication of the appellant in this case, in that situation, the learned trial Court has rightly awarded the death penalty to the appellant, which needs no interference by this Court, therefore, the appeal filed by the appellant merits no consideration, which is liable to its dismissal.

9. We have heard the learned counsel for the respective parties and have gone through the evidence available on record with their able assistance.

10. On meticulous analysis of the material brought on the record, it is discernible from the FIR (Exh.14/A) that on 07.02.2018, at about 1730 hours, the complainant, his cousins/PWs Zameer Hussain, Abdul Fattah and his brother Barkat @ Baro @ Ali Akbar (deceased) had come on their motorcycles to Khairpur Juso. His brother Barkat @ Baro @ Ali Akbar was purchasing kiryana commodities from a shop near Bus Stand and they were waiting for him at some distance, where they saw four accused namely Rehmat Ali, Rustam Ali, both armed with pistols, Ali Gohar and Shakeel Ahmed with guns. As soon as accused came, accused Rustam instigated rest of the culprits to commit murder of Barkat @ Baro @ Ali Akbar which hit him at back side of his neck (kiyari) and he fell down while crying. After that all the accused made aerial firing upon them. Thereafter, they made cries which attracted the people of vicinity. Seeing so, all the accused escaped from the scene of occurrence towards the southern side. After their escape, he found that his brother Barkat @ Baro @ Ali Akbar had sustained a fire at back side of his neck (Kiyari) which crossed below his right eye near nose(through and through), he was bleeding heavily and died on the spot.

11. After their escape, he while leaving PWs/cousins Zameer Hussain and Abdul Fattah at the dead body of his brother Barkat @ Baro @ Ali Akbar Balhro went to P.P Pakho P.S Kamber where he intimated the police about murder of his brother Barkat @ Baro, wherefrom, SIP/I.O Muharram Ali inspected the place of incident

on his pointation. Later, the dead body of his brother was delivered to him after getting conducted its postmortem. Hence, the prosecution case solely depends upon the ocular testimony of complainant Abdul Qadir (PW-01) and his cousins/witnesses PW-02 Zameer Hussain and PW-03 Abdul Fattah, who both tried to support the case of prosecution but their evidence on deeper scrutiny was found coupled with serious infirmities. For the instance, the complainant and his eye-witnesses Zameer Hussain and Abdul Fattah in their examination-in-chief (Exh.08, 09 & 10) recorded in earlier round of the trial against co-accused Ali Gohar and Shakeel Ahmed deposed that they identified only accused Rustam and Rehmat Ali and the remaining two were unknown, while in their cross examination they deposed that accused Ali Gohar and Shakeel Ahmed were not present at the scene of occurrence and were not involved in the incident and that said accused are innocent and they had not committed murder of Barkat @ Baro but it is quite astonishing that when the trial commenced against the present appellant, the said complainant and his eye-witnesses when were stepped into the witness box, nominated co-accused Ali Gohar and Shakeel Ahmed while recording their evidence. Such conflict in their stance has rendered the credibility of their evidence at stake.

12. It is surprising to mention that the complainant in his FIR has stated that four accused came from front side and one of them fired at his brother Barkat @ Baro @ Ali Akbar which hit him on

back of his neck but such stance of the complainant does not appeal to the judicious mind that how a fire made from the front could be sustained by the deceased at his back. This single infirmity in the case has demolished the entire ocular account of the complainant as doubtful.

13. The contradictory version of above said eye-witnesses has totally been negated by the medical officer Dr.Ali Gohar Chandio (PW-08) who in his evidence has deposed that 07.02.2018, he received the dead body of deceased Barkat @ Baro @ Ali Akbar through PC Abdul Latif for postmortem examination and report. On external examination of dead body of deceased, he found the following injuries;-

1. *Punctured wound 01 cm x 01 cm at back of neck on the centre (wound of entry).*
2. *Wound of exit 02 cm x 01 cm on the right side between nose and eye.*

Internal injuries: Cervical Spinal Cord was damaged and base of skull was also damaged.

14. The medical officer in his cross examination (Exh.11) deposed that the deceased might have sustained fire at short distance, while Tapedar in sketch of vardat stated that the accused is said to have fired at the deceased from distance of two feet but the said medical officer in cross examination of his subsequent round (Exh.29) deposed that he did not find blackening or charring on the injury. Thus, as per Modis' Medical Jurisprudence, the injury with blackening can be caused from a distance of less than 03 feet, hence it conflicts the ocular, medical and circumstantial evidence.



15. Moreover, it is worth to mention here that as per inquest report, in its' Column No.11, the condition of the body was shown as "**warm**". As per FIR, the incident had taken place at 07.02.2018, at 1730 hours and the dead body of the deceased was received by the medical officer at 1950 hours on the same day that too with a gap of 02 hours and 20 minutes but the medical officer in postmortem report has stated that the rigor mortis was present/visible in the body of deceased and it was an established position in medical jurisprudence and toxicology that usual duration of rigor mortis was 24 to 48 hours in winter and 18 to 36 hours in summer. As the incident took place in winter and dead body already showed signs of rigor mortis, it suggested that the death must have taken place any time in the past 24 to 48 hours, which contradicted prosecution's story. The Medical Officer mentioned the time of the death and postmortem about two and half hours which is totally against the ocular account but he only mentioned the date and time of starting of post mortem and finishing the same. The reliance is placed upon case of **Zaffar Ali Abbasi v. Zaffar Ali Abbasi (2024 SCMR1773)**, wherein the Honourable Supreme Court of Pakistan has observed that:-

*S.302(b)---Qatl-i-amd---Reappraisal of evidence---  
Medical evidence---rigor mortis, development of---  
Postmortem report and opinion of doctor negating  
version of the complainant---In the present case the  
doctor who conducted the postmortem of the  
deceased, while appearing as a witness before the  
Trial Court, submitted that rigor mortis was  
developed and eyes of the deceased were semi  
opened---Considering the contention of the  
complainant that the injured was immediately*

*taken to the hospital for treatment in his jeep, question arose as to how rigor mortis was developed and why eyes of the deceased were not closed---Postmortem report, the statement of the doctor and his opinion did not support the contention of the complainant regarding immediate shifting of the injured to the hospital---Had the complainant and eye-witness been present at the place and time of the occurrence, the injured could have been taken to the hospital, without loss of time and thereby, rigor mortis could not have developed---Doctor explained that the injuries were lunar shaped, which meant that probably, the injuries were caused through lunar shaped weapon---On the contrary, the complainant and the eye-witnesses alleged that the appellant (accused) inflicted dagger blows on the deceased---Their statements regarding nature of the injuries sustained by the deceased and the weapon used contradicted the postmortem report and the statement of the doctor---Presence of the witnesses at the time of the crime was doubtful, as such the occurrence seemed to be unseen---Prosecution had failed to establish its case against the appellant beyond a reasonable doubt---Appeal was allowed, and appellant was acquitted of the charges”.*

16. Turning to the motive as setup by the complainant in his FIR (Exh.14/A) was with regard to previous murderous enmity. For this account, no any substance was brought on record by the prosecution to justify the version/motive of the complainant. Further, the incident is said to have taken place near bus stop which is frequented by the traffic and public, yet no any passerby there-from was cited as witness/mashir to prove the version of complainant party and all the witnesses cited in this case are cousins to the complainant as well as the deceased. Over and above this, co-accused Ali Gohar and Shakeel Ahmed have already been acquitted after full dress trial in earlier round that too on the same set of evidence. Thus, all these contradictions as pointed above in

the evidence of prosecution witnesses discarded the veracity of their statements, which are sufficient to render the entire case of prosecution to be highly doubtful. In this context, the reliance is placed upon case of **Zafar vs. The State (2018 SCMR-326)**, wherein the Hon'ble Supreme Court of Pakistan has held that:-

**11. Having discussed all the aforesaid aspects of the case, it has been observed by us that medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/corroborative piece of evidence and presence of eye witnesses at the place of occurrence at the relevant time has been found by us to be doubtful, no reliance can be placed on the supportive/corroborative piece of evidence to convict the appellant on capital charge.**

17. Having concluded above, the prosecution has failed to establish the guilt against the present appellant beyond any reasonable doubt and it is well settled principle of law that for creating shadow of doubt, it is not necessary that there should be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused not as a matter of grace or concession, but as the matter of right. The reliance is placed on the case of **Muhammad Masha v. The State (2018 SCMR-772)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

**4.--- Needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to**

***the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, "it is better that ten guilt persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR-1345), Ghulam Qadir and 2 others v. The State (2008 SCMR-1221), Muhammad Akram v. The State (2009 SCMR-230) and Muhammad Zaman v. The State (2014 SCMR-749).***

18. Based upon above discussion, we have no hesitation to say that the learned trial Court has failed to evaluate the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellant as guilty of the offence. Consequently, the instant criminal jail appeal is **allowed**. The conviction and sentence awarded to the appellant is set-aside and he is acquitted of the charged offence by extending him benefit of doubt. The appellant shall be released forthwith, if he is no more required in any other custody case.

19. As a sequel to above, the Criminal Confirmation Case bearing No.D-35 of 2020 is answered in "**NEGATIVE**".

**JUDGE**

**JUDGE**