

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

**Criminal Appeal No.S-126 of 2018**

Appellant : Haji Khan Notkani through  
**Mr.Noor ul Haq Qureshi,**  
**advocate.**

Respondent : The State through **Ms. Safa**  
**Hisbani, Assistant Prosecutor**  
**General, Sindh,** along with **ASi**  
**Muhammad Sharif PS City,**  
**Tando Muhammad Khan.**

Complainant : **Nemo.**

Date of Hearing : 29.08.2025

Date of Judgment : 20.10.2025.

**JUDGMENT**

**TASNEEM SULTANA, J:** Through this Criminal Appeal, the appellant Haji Khan Notkani has assailed the judgment dated 10.05.2018, passed by learned Sessions Judge, Tando Muhammad Khan (**Trial Court**), in Sessions Case No.05/2015, arising out of FIR No.34 of 2015 registered at Police Station Tando Muhammad Khan for offence under Section 302 PPC, whereby the appellant has been convicted and sentence to undergo R.I. for life and to pay compensation of Rs.200,000/- to the legal heirs of the deceased. Benefit of Section 382-B CrPC has also been extended to appellant.

2. The facts of the prosecution case are that the complainant Mehmood lodged FIR stating therein that his brother Muhammad Aslam, who lived in Karachi, used to visit his friend Manzoor Ahmed Buriro at Tando Muhammad Khan. On 04.03.2015, Manzoor Ahmed informed the complainant that Muhammad Aslam, who had stayed with him on the previous night, was brought to Civil Hospital Hyderabad with head injuries after a quarrel with another guest, Haji Khan Notkani. Upon reaching the hospital, the complainant found his brother dead. Manzoor Ahmed Buriro and Ahmed Buriro disclosed that they had all been chatting till 1:00 a.m., after which Manzoor Ahmed went home, leaving Muhammad Aslam and Haji Khan in the Otaq. Around 5:00 a.m., Ahmed Ali Buriro informed Manzoor Ahmed of a scuffle; on arrival, they found Muhammad Aslam injured and Haji Khan admitted to causing the injuries. The injured was shifted to Memon Hospital and then Civil Hospital, where he expired. After postmortem and burial, the complainant lodged the present FIR.

3. After usual investigation, police submitted the charge-sheet under section 173, Cr.P.C. against appellant.

4. Having been supplied requisite documents as provided under section 265-C, Cr. P.C., the Trial Court framed a formal charge against the appellant to which he pleaded not guilty and claimed to be tried.

5. To prove its case, prosecution examined seven witnesses. PW.1 complainant Mehmood at Exh.08, he produced the FIR and the receipt of the dead body at Exh.08/A and Exh.08/B respectively. P.W-2 Manzoor Ahmed was examined at Exh.09; he produced his statement under Section 164 Cr.P.C. comprising three pages, recorded before the Magistrate, at Exh.09/A, and the photostat copy of his CNIC at Exh.09/B. P.W-3 Ahmed Ali was examined at Exh.10; he produced his statement recorded before the concerned Magistrate at Exh.10/A, as well as his CNIC at Exh.10/B. P.W-4 Muhammad Aslam was examined at Exh.11; he produced the Danistnama and mashirnama of the blood-stained clothes of the deceased at Exh.11/A and Exh.11/B respectively. Thereafter, the learned ADPP for the State filed an application under Section 540 Cr.P.C. for calling WPC Tanveer Ahmed Bhatti for comparison of the signatures and handwriting of the deceased SIP Ishtiaque Ahmed Awan, which was allowed by consent. P.W-5 Muhammad Arif was examined at Exh.13; he produced the memo of arrest of the accused at Exh.13/A, as well as the memo of place of incident and recovery at Exh.13/B. P.W-6 WPC Tanveer Ahmed, well conversant with the handwriting and signatures of SIP Ishtiaque Ahmed Awan, was examined at Exh.14; he produced a letter at Exh.14/A and the chemical examiner's report at Exh.14/B respectively. Thereafter, the learned ADPP for the State filed another application under Section 540 Cr.P.C. for calling Dr. Baldev of Civil Hospital Hyderabad for comparison of the signatures and handwriting of the deceased Dr. Ayoub Wassan, which was allowed by consent. In consequence thereof, Dr. Baldev was examined as P.W-7 at Exh.16; he produced the postmortem report at Exh.16/A. Thereafter, the learned ADPP for the State closed the prosecution side vide statement at Exh.17.

6. The appellant in his statement recorded under Section 342 Cr.PC denied the allegations and pleaded his innocence. He neither examined himself on oath in disproof of allegations as required u/s.340(2) Cr.PC nor produced any witness in his defense.

7. The Trial Court after hearing learned ADPP and the learned counsel for the appellant/accused convicted the appellant and sentenced him, vide impugned judgment 10.5.2018 which has been impugned in this appeal.

8. Learned counsel for the appellant has contended that the impugned judgment is illegal, void, against the principles of natural justice, and liable to be set aside by this Court; that the appellant is innocent and has been falsely implicated in the present case; that none of the official who examined the injured (deceased) and then referred him to Hyderabad has been examined nor even shown in the calendar of the witnesses to justify the story; that opinion of the Chemical Examiner though shows about the human blood but it is not matched with the blood of the deceased; chain of events is missing in the present case and prosecution has miserably failed to prove the same; that Nazeer Ahmed whose house is also situated near the place of incident but he has not been examined showing that prosecution avoided to confirm from independent persons about the alleged scuffle. Hence, the prosecution case is doubtful, the impugned judgment is not sustainable in law, and the appellant/accused is entitled to acquittal.

9. Learned Assistant Prosecutor General while supporting the impugned judgment contended that the prosecution through consistent and confidence inspiring evidence has proved the charge against the appellant beyond the shadow of reasonable doubt; that the defence has failed to point out any contradiction, infirmity or dishonest improvement in the prosecution evidence. Hence, the appeal is liable to be dismissed.

10. I have heard the learned counsel for the appellant and the learned Assistant Prosecutor General for the State at considerable length, and have examined the available record with their valuable assistance.

11. Admittedly, the present incident of murder is unseen and without any direct eyewitness account. The prosecution's case primarily rests upon the testimony of Prosecution Witness Ahmed Ali (PW-3/Exh. No.10), who deposed that on 03.03.2015 and 04.03.2015 at about 05:00 a.m., he heard a commotion emanating from the *Otaque* of Manzoor Ahmed Buriro. He thereupon informed Manzoor Ahmed Buriro via mobile phone, as the latter and his companions were guests at his place. Manzoor Ahmed Buriro promptly arrived, and together they proceeded to the *Otaque*, where they found Muhammad Aslam (the deceased) lying injured on the ground, with blood oozing from his mouth.

12. Upon inquiry, the present appellant Haji Khan allegedly disclosed that a quarrel had taken place between them, during which he caused injuries to Muhammad Aslam. Thereafter, the witness along with Manzoor Ahmed shifted the injured Muhammad Aslam in an ambulance to Memon Hospital, Tando Muhammad Khan, where the medical officer on duty, finding the patient in a serious condition, advised his transfer to Liaquat Medical College Hospital (LMCH), Hyderabad. According to the witness, Muhammad Aslam was shifted in the same ambulance to LMCH;

however, Ahmed Ali (PW-3) got down at City Bridge, Tando Muhammad Khan, and went away. He later returned home to collect some money and subsequently travelled to LMCH, Hyderabad, by coaster, where he learned that during treatment, Muhammad Aslam had succumbed to his injuries. The statement of Ahmed Ali under Section 161, Cr.P.C. was recorded by the Investigating Officer, and subsequently his statement under Section 164, Cr.P.C. was recorded before the learned Magistrate. He produced the same in evidence as Exhibit 10/A.

13. From the testimony of the aforementioned prosecution witness, Ahmed Ali (PW-3), it transpires that neither he nor PW Manzoor Ahmed reported the incident to the police, nor was any entry recorded at the concerned police station in that regard. The witness stated that upon their arrival at Tando Muhammad Khan Hospital, it was the medical officer who informed the police about the incident. However, despite being so informed, the police failed to appear at the hospital to initiate legal proceedings or to issue any medical treatment letter to the duty officer.

14. PW Ahmed Ali further admitted that when the injured was shifted to LMCH, Hyderabad, he alighted from the ambulance midway and proceeded to his residence, and even at that stage, he neither informed the police nor visited the police station to report the occurrence. His alleged presence at the place of incident appears doubtful, as he merely stated that he heard commotion from the *Otaque* of Manzoor Ahmed Buriro, without explaining that he was asleep at that time or that his family members awoke upon hearing such noise. He further claimed that he awaited the arrival of PW Manzoor Ahmed, and only after Manzoor Ahmed's arrival did they both enter the *Otaque*, where the accused allegedly confessed to having caused injuries to the deceased. Such conduct is contrary to ordinary human behavior and does not appeal to a prudent mind, as it seems improbable that after committing such an offence, the accused would remain at the scene waiting for the witnesses, voluntarily confessing the act, and thereafter leaving the place peacefully without any attempt to flee.

15. Moreover, during cross-examination, PW Ahmed Ali admitted that in his statement under Section 161, Cr.P.C., as well as in his statement under Section 164, Cr.P.C. recorded before the Magistrate, he did not disclose the mobile number of PW Manzoor Ahmed, whereas he later introduced the same in his deposition before the Court, thereby attempting to improve and embellish his testimony. The police, on their part, failed to obtain the Call Data Records (CDRs) of either PW Ahmed Ali or PW Manzoor Ahmed to substantiate the claim that PW Ahmed Ali had indeed contacted PW Manzoor Ahmed on the night of the incident. PW Ahmed Ali further conceded that the house of PW Manzoor Ahmed was located within calling distance, and despite hearing the commotion, he did not proceed immediately to the *Otaque* to verify the situation but rather waited for PW Manzoor Ahmed to arrive.

He deposed that Manzoor Ahmed reached within five minutes, and upon their entry into the *Otaque*, which was already open, they found Muhammad Aslam (the deceased) lying injured on the ground.

16. The incident occurred in the month of March, when, as per local custom, people generally sleep inside rooms. PW Ahmed Ali admitted that the *Otaque* consisted of two constructed (*pacca*) rooms, where both the deceased and the accused were sleeping on the paved floor. Upon entering, they observed Muhammad Aslam in an injured state, yet PW Ahmed Ali failed to disclose any details regarding the cause or motive of the quarrel between the deceased and the Appellant, despite both being guests of Manzoor Ahmed. Both PW Ahmed Ali and PW Manzoor Ahmed stated that they slept on bedsheets, yet no blood-stained bedsheet was secured or recovered from the place of incident by the Investigating Officer (I.O.). Furthermore, the I.O. did not examine Nazeer Ahmed, the ambulance driver who had shifted the injured to Memon Hospital, and who too failed to inform the police about the incident.

17. The matter does not conclude here. Upon careful examination of the record, it transpires that the injured was initially shifted to Memon Hospital, Tando Muhammad Khan, by Prosecution Witnesses Ahmed Ali and Manzoor Ahmed, and for better medical treatment, he was subsequently transferred to Liaquat Medical College Hospital (LMCH), Hyderabad by the same witnesses. However, the postmortem report reveals that on 04.03.2015, the deceased was identified by Mehmood and Waseem, both real brothers of the deceased, and that the dead body was brought to the hospital by SIP Ishtiaq Ahmed of Police Station Tando Muhammad Khan.

18. A perusal of the inquest report (Exh. 11/A) further reflects that the police of Police Station Tando Muhammad Khan first received information regarding the incident on 04.03.2015 at 1140 hours, through Daily Diary Entry No. 10, and the identification of the body was carried out by the deceased's brothers, Mehmood and Waseem. Thus, the Station House Officer (SHO) of the said police station had knowledge of the incident at that point in time. Despite such awareness, no immediate steps were taken by him to visit the scene of occurrence or to secure any valuable evidence from the place of incident. It further appears from the record that only on 10.03.2015, after a delay of approximately seven (07) days, SIP Ishtiaq Ahmed, in the presence of mashirs Muhammad Arif and Muhammad Tariq, visited the place of incident and secured a wooden piece allegedly used in the commission of the offence.

19. As highlighted above, the material contradictions in the evidence of the prosecution witnesses have undermined the credibility of their testimonies, rendering the prosecution case highly doubtful. In this regard, reliance is placed

upon the judgment of the Hon'ble Supreme Court of Pakistan in the case of **Zafar v. The State (2018 SCMR 326)**, wherein it was 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 eyewitnesses 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.**

20. It is pertinent to mention that the statements of prosecution witnesses, namely P.Ws Ahmed Ali and Manzoor Ahmed under Section 161, Cr.P.C., were recorded after an unexplained delay of eight (08) days, i.e., on 11.03.2015. No justification or plausible explanation for such delay has been brought on record by the prosecution. This unexplained lapse renders the prosecution case highly doubtful. It is well-settled law that even a delay of one or two days in recording the statements of witnesses, if not satisfactorily explained, is considered fatal to the prosecution case and adversely affects its credibility. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court of Pakistan in the case of **Muhammad Asif v. The State (2017 SCMR 486)**, wherein it was held as under:

*“There is a long line of authorities/precedents of this Court and the High Courts that even one or two days unexplained delay in recording the Statement of eye-witnesses would be fatal and testimony of such witnesses Cannot be safely relied upon.”*

21. In this regard, reliance can also be placed on *Muhammad Sadiq v. The State* (PLD 1960 SC 223), *Tariq Gul v. Ziarat Gul* (1976 SCMR 236), *Muhammad Iqbal v. The State* (1984 SCMR 930) and *Haroon alias Harooni v. The State and another* (1995 SCMR 1627). Similarly, it has been settled by the august Supreme Court of Pakistan in **Muhammad Khan vs. Maula Bakhshah (1998 SCMR 570)** that:

*“It is settled law that credibility of a witness is looked with serious suspicion if his statement under Section 161, Cr.P.C. is recorded with delay without offering any plausible explanation.”*

22. It has been observed that the alleged incident occurred on 04.03.2015 at 0500 hours, whereas the First Information Report (F.I.R.) was lodged on 10.03.2015, reflecting an unexplained delay of approximately seven (07) days. The prosecution has failed to provide any plausible explanation for the delay in lodging the F.I.R., which reflects mala fide intention and lack of bona fides on the part of the complainant. The august Supreme Court of Pakistan in the case of **“G.M. Niaz v. The State” (2018 SCMR 506)**, was pleased to hold as under:

*“An FIR in respect of the alleged occurrence had been lodged after about seven hours and forty minutes which by itself was a circumstance doubting the claimed availability of the above mentioned eye-witnesses with the deceased at the time of occurrence.”*

23. Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of **Zafar v. The State and others (2018 SCMR 326)**, where the august Supreme Court of Pakistan was pleased to hold as under:

*“It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 3.00 a.m. (later half of night) and the matter was reported to the police on the same day at 8:30 am. i.e. after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and the police station is 09 miles. The post-mortem on the dead body of deceased was conducted on the same day at 2.00 p.m. i.e. After 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW-5) and Umer Daraz (PW6) in the FIR or while appearing before the learned trial Court qua the delay in lodging the FIR or for that matter the belated post-mortem of the deceased.”*

24. The complainant, who gave evidence as P.W.1, was not an eye-witness to the incident. His testimony is essentially hearsay. He deposed that he received information from Manzoor Ahmed Buriro that his brother had been injured and that the appellant admitted causing the injury. A complainant's reliance on information from others as to who committed the offence does not convert hearsay into direct evidence against an accused. The complainant himself did not witness the scuffle nor the assault and therefore, cannot identify contemporaneously the assailant with such certainty as would safely sustain a conviction for murder.

25. Prosecution Witness No.2 Manzoor Ahmed, who was the host of the deceased and was present in the house, has also not supported the case of the prosecution. He deposed that he was sleeping in his house situated a call distance from his otaq in an other street. He did not witness the actual occurrence. His statement also shows that he did not inform the police. This conduct is also unnatural and casts serious doubt upon

26. P.W.3, Ahmed Ali, who narrated the events in the course of cross-examination and corroboration, likewise does not furnish an independent and reliable eyewitness account implicating the appellant in the commission of the offence. P.W.4, the mashir who signed the danishtnama and the mashirnama of blood-stained clothes, and P.W.6 the police constable who identified signatures of the investigating officer, gave evidence of formal post-occurrence steps. Such evidence is of confirmatory or documentary character,

but it does not, by itself, prove the substantive fact of the appellant having committed the murder.

27. The alleged recovery of a wooden piece on the pointation of the appellant and his alleged confession before the police are of no legal consequence, as both were effected during police custody and are hit by the provisions of Article 39 of the Qanun-e-Shahadat Order, 1984. The memo of recovery (Exh.13/B) was prepared by the munshi of the police station, who was not an independent witness. The prosecution has also failed to produce any evidence to show that the wooden piece allegedly recovered was stained with human blood or that the blood matched with that of the deceased.

28. The medical evidence in the case is also not free from doubt. The postmortem of the deceased was conducted by Dr. Ayoub Wassan, who had expired before the trial. The prosecution examined Dr. Baldev, who merely verified the handwriting and signature of the deceased doctor and produced the postmortem report (Exh.16/A). Thus, the medical evidence has remained unsubstantiated, as the doctor who actually conducted the postmortem was not available for cross-examination. Moreover, the prosecution has failed to prove that the injury allegedly caused by the appellant was sufficient in the ordinary course of nature to cause death. The chain of custody regarding the blood-stained clothes of the deceased and their transmission to the chemical examiner has also not been proved through reliable evidence.

29. Material timing discrepancies and unexplained delays further undermine the prosecution case. The incident is said to have occurred in the early hours of 04.03.2015; the dead body was handed over after post-mortem on the same date; yet the FIR was lodged only on 10.03.2015. The complainant himself admitted that there was no communication with the police between 04.03.2015 and the date of lodging the FIR on 10.03.2015. No plausible explanation for this delay is offered on the record. Delay in lodging an FIR, especially in a case of homicide, weakens the evidentiary chain unless the prosecution satisfactorily explains the reason for the delay. Here the absence of any satisfactory explanation creates further room for doubt. In this regard, guidance has been sought from the judgments reported as '*Ch. Barkat Ali v. Major Karam Elahi Zia and another*' (1992 SCMR 1047), '*Sarfraz Khan v. The State*' (1996 SCMR 188) and '*Asadullah and another v. The State*' (1999 SCMR 1034). In the case of *Ch. Barkat Ali* (supra), at page 1055, it has been held as under:-

*“...Law relating to circumstantial evidence that proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused. See ‘Siraj v. The Crown’ (PLD 1956 FC 123). In a case of circumstantial*



*evidence, the rule is that no link in the chain should be broken and that the circumstances should be such as cannot be explained away on any hypothesis other than the guilt of the accused.” Similarly in the case of Sarfraz Khan (supra), at page 192, it has been held as under:-*

*“7....It is well settled that circumstantial evidence should be so inter-connected that it forms such a continuous chain that its one end touches the dead body and other to the neck of the accused thereby excluding all the hypothesis of his innocence.”*

Further reliance in this context is placed on the case of '*Altaf Hussain v. Fakhar Hussain and another*' (2008 SCMR 1103) wherein, at page 1105 it was held as under:-

*“7....Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of a complete chain, one corner of which should touch the body of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain.”*

30. In the case of **MUHAMMAD MANSHA v. THE STATE** reported in 2018 SCMR 772, the Hon'ble Supreme Court of Pakistan has held that:-

*“4. Needless 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 the accused, then the 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 guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of **Tarique Parvez 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)**.*

31. In view of the above discussion and perusal of the material available on record, it is clear that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt. The evidence produced by the prosecution is neither confidence-inspiring nor free from doubt. The chain of circumstances is incomplete and broken at several places, which makes it highly unsafe to maintain the conviction of the appellant on such shaky evidence. Resultantly, instant Criminal Appeal is allowed. The conviction and sentence awarded to the appellant under impugned judgment dated 10.05.2018 in Sessions Case No.05/2015, arising out of FIR No.34 of 2015 registered at Police Station Tando Muhammad Khan for offence under Section 302 PPC hereby is set aside. Appellant Haji Khan Notkani is acquitted of the charge. He shall be released forthwith if not required in any other custody case. aside.

**J U D G E**

Irfan Ali