

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S-140 of 2024

Appellant : Nano @ Razi Khan son of Mithal @ Wahab
Through M/s Rukhsar Ahmed Junejo,
learned Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG,
Mr. Badaruddin Memon, learned Advocate for
legal heirs of deceased

Date of hearing : 11.09.2025
Date of short order : 11.09.2025
Reasons recorded : 15.09.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This criminal appeal is directed against the judgment dated 20.12.2024 passed by the learned Additional Sessions Judge-IV/Special Court (Anti-Rape)/GBV, Khairpur in Sessions Case No. 523/2019, whereby the appellant has been convicted under sections 302 and 311 PPC and sentenced to rigorous imprisonment for life as *Ta'zir* on two counts with compensation of Rs.400,000/- to the legal heirs of the deceased.

2. The prosecution case, as narrated in the FIR No.69/2019 dated 05.04.2019, is that on 04.04.2019, complainant ASI Safeer Ali Jumani along with his staff left the police station for routine patrolling. Near Railway Station Luqman, the complainant received spy information that about 07-08 months earlier, Ali Nawaz s/o Hussain Bux Marfani had contracted a love marriage with Mst. Sameena d/o Ghulam Sarwar alias Kandero Marfani. The couple had subsequently moved to Luqman and were residing in a rented house. The informant disclosed that the relatives of Mst. Sameena, annoyed by the love marriage, had repeatedly threatened to kill the couple on allegations of *karap*. According to the spy information, accused persons including Nazeer, Akbar, Zubair, Sahib, Makhno, Nano @ Razi Khan (the appellant), and two unidentified individuals had entered the house and murdered both Ali Nawaz and Mst. Sameena by shooting them with firearms.

3. Acting upon this information, the police party proceeded to the scene at about 1900 hours and discovered the dead bodies of both deceased persons with multiple firearm injuries. The bodies were shifted to Civil Hospital, Khairpur for post-mortem examination. During this process, Mst.

Sughran, the mother of deceased Mst. Sameena, appeared and identified the bodies. Subsequently, the FIR was lodged against the named accused persons on behalf of the State.

4. After completion of investigation, the Investigating Officer submitted final report for offences under sections 302 and 311 PPC against the accused persons. While most accused remained absconders and were declared proclaimed offenders, the present appellant Nano @ Razi Khan surrendered and his case was reopened. Charges were framed against him under sections 302 and 311 PPC, to which he pleaded not guilty and claimed trial.

5. During the trial, prosecution examined 10 witnesses including the complainant ASI Safeer Ali Jumani (PW-1), Mst. Sughran (PW-2) who was declared hostile, police officials who acted as mashirs, medical officers who conducted post-mortems, and other supporting witnesses. The statement of the accused was recorded under section 342 Cr.P.C, wherein he denied all allegations and stated that he had never visited District Khairpur in his entire life.

6. The learned counsel contended the appellant has been falsely implicated in this case without any corroborative evidence. The mere inclusion of his name in the FIR, based solely on uncorroborated spy information, is insufficient to establish his involvement in the alleged offence. The alleged incident is completely unseen, with no eyewitnesses to the actual commission of the crime. The prosecution has failed to produce any direct evidence linking the appellant to the murders.

7. Mst. Sughran, the mother of deceased Mst. Sameena and the most crucial prosecution witness, categorically denied during her testimony that she disclosed the appellant's name to the police. Her statement creates a fundamental contradiction in the prosecution case, as she explicitly stated that the police arbitrarily implicated the appellant. The prosecution case is based entirely on a fabricated story created by police officials. The investigation lacks transparency and appears to have been conducted with mala fide intentions to implicate the appellant in an unseen and unproven incident.

8. There are significant contradictions in the depositions of prosecution witnesses which render their testimonies unreliable and cast serious doubt on the credibility of the prosecution case. The learned trial court erred in believing the evidence of prosecution witnesses who are interested parties and police officials, while giving undue weight to their testimony and completely

ignoring the defense. The appellant has never visited District Khairpur and has no connection whatsoever with the alleged offence. His residential address is in District Shikarpur, and there is no evidence of his presence at the scene of crime. The case is not free from doubt, and the prosecution has miserably failed to prove the charges beyond reasonable doubt. The appellant is therefore entitled to the benefit of doubt as a matter of right.

9. The learned Deputy Prosecutor General has opposed the appeal mainly contending, the complainant has fully supported the version of the FIR in his evidence, and all prosecution witnesses (except Mst. Sughran) have consistently supported the prosecution case. Mst. Sughran appears to have been compromised and has made a deal with the accused outside the court, as she is the wife of absconding accused Ghulam Sarwar @ Kadero. The accused committed this heinous offence of double murder on the pretext of honor killing, purely due to their disapproval of the love marriage between the deceased persons. Minor contradictions in witness testimonies, if any, do not make the prosecution case doubtful, and the prosecution has successfully proved its case beyond the shadow of reasonable doubt. The conviction should be maintained as the prosecution has established the guilt of the accused through reliable evidence.

10. Having heard the learned counsel for both sides and after careful examination of the entire record, this Court finds itself compelled to interfere with the impugned judgment for the reasons that follow. The most glaring weakness in the prosecution case is the complete absence of any direct evidence connecting the appellant to the commission of the alleged offence. The entire case rests upon spy information received by the complainant, which by its very nature is hearsay evidence. No eyewitness to the actual murders was produced, nor could the prosecution establish the presence of the appellant at the scene of crime through any reliable means.

11. The Hon'ble Supreme Court of Pakistan in *Muhammad Arshad v. The State* (PLD 2011 SC 350) has held that while the testimony of a hostile witness cannot be taken at face value, portions of it that are corroborated by other unimpeachable evidence may still be relied upon. However, in the present case, even this principle cannot save the prosecution case, as the hostile witness (Mst. Sughran) has actually exonerated the appellant rather than providing any incriminating evidence.

12. The testimony of PW-2 Mst. Sughran, the mother of deceased Mst. Sameena, creates an insurmountable obstacle for the prosecution case. This witness, who should have been the most natural and reliable witness, was declared hostile by the prosecution itself. More importantly, she categorically stated in her examination-in-chief that she did not disclose the name of present accused before the police, but police their own occurred, nominated and arrested the present accused. She further stated that she sees accused Nano @ Razi Khan present in court and says that he is known to her, but he is not real culprit of the case.

13. Even during cross-examination by the learned ADPP, Mst. Sughran maintained her position and voluntarily stated that accused Nanoo @ Razi Khan is not my culprit. She also admitted that she had not submitted any application before any authority stating that the present accused was not the culprit, which further undermines the prosecution's theory of compromise.

14. The Hon'ble Supreme Court in *Shamshad v. The State* (1998 SCMR 854) has reaffirmed that a hostile witness's testimony is not to be entirely discarded but must be weighed against the totality of evidence available on record. However, in this case, the hostile witness actually supports the defense case rather than the prosecution.

15. While the prosecution has attempted to establish a motive based on the alleged displeasure of family members over the love marriage, this motive is entirely generic and could apply to numerous persons from both families. The prosecution has failed to establish any specific grudge or animosity between the appellant and the deceased persons. More critically, the prosecution has completely failed to establish the presence of the appellant at the scene of crime or even in District Khairpur on the relevant dates. The appellant consistently maintained in his statement under section 342 Cr.P.C that he had never visited District Khairpur in his entire life, and the prosecution could not contradict this claim with any evidence.

16. The prosecution case relies entirely on the testimony of police officials who claim to have received spy information and subsequently discovered the bodies. While evidence of police officials cannot be discarded solely on the ground of their being police personnel, their testimony requires careful scrutiny, particularly when it forms the sole basis for conviction in a capital case. In the present case, the police officials' testimony suffers from several infirmities. The spy informer was never produced or identified. No

independent witness was available at the scene despite the area being populated. The information was based entirely on hearsay. The police failed to make any effort to verify the information through independent sources.

17. A careful reading of the evidence reveals several material contradictions that cast serious doubt on the prosecution case. The complainant ASI Safeer Ali admitted during cross-examination that the spy informer did not disclose the specific date and time of killing, yet he proceeded to implicate specific individuals based on this vague information. The witness admitted that he was not an eyewitness to the murders and had received information that the murders were committed 2-3 days before his arrival. Despite the serious nature of the allegation, no effort was made to verify the information or to locate and produce the house owner Piyaro Khan, in whose premises the bodies were allegedly found.

18. A critical analytical distinction must be drawn between the concepts of hearsay evidence and spy information as these represent fundamentally different categories of information within the framework of Pakistani criminal jurisprudence. This distinction is not merely semantic but carries profound implications for the admissibility, reliability, and probative value of evidence in criminal proceedings.

19. Hearsay evidence, as conceptualized under the Qanun-e-Shahadat Order, 1984, refers to statements made by persons other than the witness who is testifying, offered to prove the truth of the matters asserted therein. The fundamental characteristic of hearsay evidence is that it lacks the immediate perception and direct knowledge of the witness presenting it to the court. Article 44 of the Qanun-e-Shahadat Order, 1984 provides that oral evidence must, in all cases whatever, be direct; that is to say if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. The legislative intent behind the hearsay rule is to ensure that evidence presented before the court is based on direct, first-hand knowledge that can be subjected to cross-examination and tested for its veracity, accuracy, and reliability.

20. Spy information, conversely, constitutes a distinct category of intelligence gathering that operates within an entirely different legal framework. Unlike hearsay evidence, spy information is specifically addressed under Article 8 of the Qanun-e-Shahadat Order, 1984, which provides that no

Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence. This provision creates a statutory privilege that recognizes the unique nature of informant-based intelligence in law enforcement. The legal rationale for this privilege is founded on public policy considerations that prioritize the detection and prevention of crime over the general principles of evidence disclosure.

21. The theoretical and practical distinctions between hearsay evidence and spy information can be categorized in several ways. Regarding source and nature of information, hearsay evidence originates from identifiable sources who made statements about observed facts, where the original declarant had direct knowledge or purported knowledge of the events, the information is transmitted through a chain of communication, and the focus is on proving the truth of the facts asserted in the original statement. Spy information originates from confidential sources whose identity is protected by law, where the informant may have direct, indirect, or even speculative knowledge, the information serves as an investigative lead rather than substantive proof, and the focus is on initiating legitimate law enforcement action, not proving guilt.

22. Concerning legal purpose and function, hearsay evidence is intended to establish facts material to the case, offered as substantive evidence to prove or disprove elements of the offense, must meet strict admissibility criteria, and is subject to the general exclusionary rule with limited exceptions. Spy information serves as an investigative tool for crime detection, provides justification for police action and surveillance, is not intended as substantive proof of guilt, and is protected under statutory privilege to encourage public cooperation.

23. Regarding reliability and corroboration requirements, hearsay evidence is generally inadmissible unless falling within recognized exceptions, when admitted must be corroborated by independent evidence, is subject to rigorous reliability assessment, and the absence of cross-examination opportunity affects its probative value. Spy information is not subject to the same reliability standards as evidence, serves as a starting point for investigation that must yield independent corroboration, its value lies in directing investigative efforts not in establishing facts, and the reliability of subsequent investigation matters more than the reliability of the initial tip.

24. The Hon'ble Supreme Court of Pakistan in *Islamic Republic of Pakistan v. Abdul Wali Khan* (1976 PLD SC 57) has distinguished between

different categories of information and evidence, observing that the oral evidence, which is based purely on hearsay, cannot of course be admissible unless the informant or the source from whom the evidence was obtained is himself produced to give evidence. In most cases, those sources are either spies or informers and therefore the authenticity of the source of such information cannot be placed on any higher level than the evidence of the spy or the informer. This precedent recognizes that while spy information may initiate investigation, it cannot serve as the foundation for conviction without independent corroboration and verification through admissible evidence.

25. The distinction between hearsay evidence and spy information has significant practical implications. For hearsay evidence, it must comply with the direct evidence requirement under Article 44, is subject to cross-examination rights of the accused, is generally inadmissible unless within statutory or common law exceptions, and when admitted its weight depends on corroboration and reliability factors. For spy information, it is protected from disclosure under Article 8 privilege, cannot form the sole basis for conviction, must lead to independent investigation yielding admissible evidence, and its non-disclosure does not create adverse inference against prosecution.

26. In the instant case, the prosecution's reliance on uncorroborated spy information demonstrates a fundamental misunderstanding of these legal categories. The complainant ASI Safeer Ali admitted during cross-examination that he received spy information about the alleged murders. However, the prosecution failed to distinguish between the spy information as an investigative lead protected under Article 8, the need for independent admissible evidence to prove the charges, and the requirement that subsequent investigation must yield reliable evidence beyond the initial tip. The prosecution's case suffered from the fatal flaw of treating spy information as if it were substantive evidence, without producing independent corroboration that could withstand legal scrutiny.

27. Although the prosecution has not explicitly relied on circumstantial evidence, the nature of their case essentially falls within this category as there is no direct evidence of the commission of the offence by the appellant. The Hon'ble Supreme Court in *Azeem Khan and another v. Mujahid Khan and others* (2016 SCMR 274) has laid down the well-settled principle that the entire case of the prosecution is based on circumstantial evidence. The principle of law consistently laid down by this Court is that different pieces of such evidence has to make one chain, an unbroken one where one end of it touches the dead

body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment.

28. In the present case, even if all the prosecution evidence is taken at its face value, it fails to establish an unbroken chain connecting the appellant to the commission of the offence. The crucial links of presence at the scene, motive against the specific appellant, and reliable identification are all missing. The principle of benefit of doubt is a fundamental tenet of criminal jurisprudence. When the prosecution case is not free from reasonable doubt, the accused is entitled to acquittal as a matter of right, not as a matter of grace or concession.

29. The Hon'ble Supreme Court in *Allah Bux v. Shammi and others* (PLD 1980 SC 225) has held that conviction even in murder cases can be based on the testimony of a single witness if the court is satisfied as to the witness being reliable, with emphasis laid on quality of evidence rather than quantity. However, this principle presupposes that such single witness is reliable and credible. In the present case, even the key prosecution witness has turned hostile and exonerated the appellant.

30. It is significant to note that the learned trial court itself acknowledged mitigating circumstances when it observed that the mitigating circumstance for not awarding major punishment of death is that one of the PWs namely Mst. Sughran turned hostile during the course of evidence. If the turning hostile of a key witness constitutes a mitigating circumstance sufficient to avoid the death penalty, it logically follows that such circumstances should lead to a more fundamental reconsideration of the conviction itself, particularly when that witness has actually exonerated the accused.

31. In cases involving capital punishment or life imprisonment, the standard of proof required is even higher than in ordinary criminal cases. The prosecution must prove its case beyond the shadow of reasonable doubt, leaving no room for alternative hypotheses consistent with the innocence of the accused. In the landmark case of *Abdul Majeed v. The State* (2011 SCMR 941), the Hon'ble Supreme Court observed that the basic principle of criminal law is that it is the burden of the prosecution to prove its case against the accused beyond reasonable doubt. This burden remains throughout and does not shift to the accused, who is only burdened to prove a defense plea, if he takes one. In the absence of any positive prosecution evidence, the appellant cannot be convicted on presumption.

32. The present case falls squarely within the ambit of this principle, as the prosecution has failed to adduce any positive evidence connecting the appellant to the commission of the offence. The constitutional framework of Pakistan, particularly Article 10-A guaranteeing fair trial rights, requires that the distinction between investigative leads and substantive evidence be strictly maintained. The Supreme Court in *Ghulam Sarwar v. The State* has emphasized that the right to fair trial is a fundamental right guaranteed under Article 10-A of the Constitution, which encompasses the right of an accused to be tried by an independent and impartial tribunal, to have adequate time and facilities for the preparation of defense, and to cross-examine witnesses.

33. When spy information is improperly treated as evidence without affording the accused the right to challenge its source, reliability, or accuracy, it undermines these fundamental constitutional guarantees. This distinction finds support in international legal systems. The English common law, from which Pakistani evidence law derives, maintains similar distinctions between investigative information and admissible evidence. The European Court of Human Rights has consistently held that anonymous informant information cannot form the sole or decisive basis for conviction without adequate procedural safeguards.

34. The theoretical and practical distinction between hearsay evidence and spy information is not merely academic but represents a cornerstone of evidence law designed to protect the rights of accused persons while facilitating legitimate law enforcement activities. Hearsay evidence concerns statements offered to prove the truth of their contents, subject to strict admissibility rules and the fundamental requirement of cross-examination opportunity. Spy information represents protected investigative intelligence that serves to initiate lawful police action but cannot substitute for independent, admissible evidence required to sustain a conviction.

35. In the present case, the prosecution's failure to appreciate this distinction, combined with their inability to produce corroborating evidence beyond the initial spy information, renders their case fundamentally deficient in law. The mere receipt of spy information, regardless of its source or content, cannot bridge the evidentiary gap necessary to establish guilt beyond reasonable doubt. Therefore, this Court finds that the trial court's reliance on uncorroborated spy information, treated as if it were admissible evidence,

constitutes a material error in law that undermines the safety and reliability of the conviction.

36. After careful consideration of the entire evidence, arguments advanced by both sides, and the applicable legal principles, this Court is constrained to hold that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The case suffers from fundamental weaknesses that cannot be cured by drawing inferences favorable to the prosecution. The key witness turning hostile and actually exonerating the appellant, combined with the complete absence of direct evidence, failure to establish presence at the scene, and reliance solely on uncorroborated hearsay information, creates more than reasonable doubt about the appellant's guilt.

37. The principle that it is better that ten guilty persons escape than one innocent person suffer is a cornerstone of our criminal justice system. In the present case, the evidence is so weak and contradictory that convicting the appellant would amount to speculation rather than legal conclusion based on evidence. The distinction between these categories of information is essential for maintaining the integrity of the criminal justice system and protecting the constitutional rights of accused persons.

38. For the reasons stated above, this criminal appeal is/was allowed vide short order dated 11.09.2025. The judgment dated 20.12.2024 passed by the learned Additional Sessions Judge-IV/Special Court (Anti-Rape)/GBV, Khairpur in Sessions Case No.523/2019 is/was set aside. The appellant Nano @ Razi Khan s/o Mithal @ Wahab is/was acquitted of all charges by extending benefit of doubt with directions to be released forthwith unless required in any other case. These are the detailed reasons for short order.

J U D G E