# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S-77 of 2023
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Cr. Appeal No. S-78 of 2023

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| Appellant | : | Arbelo @ Arbab s/o Muhammad Azeem, Kosh<br>*Through* Mr. Shabbir Ali Bozdar, Advocate |
| The State | : | *Through* Mr. Shafi Muhammad Mahar, DPG |
| Date of hearing | : | 05.12.2025 |
| Date of decision | : | 19.12.2025 |

## J U D G M E N T

***KHALID HUSSAIN SHAHANI, J.—*** *B*y way of these consolidated judgments, is concerned with two criminal appeals filed by the appellant Arbelo @ Arbab Kosh (hereinafter referred to as "the appellant"), arising out of the judgments passed by the learned Additional Sessions Judge-II, Mirpur Mathelo on 18th August, 2023. The appellant was convicted in Sessions Case No.389 of 2021 offence under under Sections 302 and 311 PPC for the commission of *Qatal-e-Amd* (intentional murder) and in Sessions Case No.176 of 2021, for offence under under Section 24 of the Sindh Arms Act, 2013 for the commission of an offence of keeping an unlicensed firearm. By the impugned judgments, the appellant was sentenced to suffer imprisonment for life as *Ta'zir* with a fine of Rs.1,000,000/- (One Million) payable to the legal heirs of the deceased, or in default thereof to undergo simple imprisonment for six months more in respect of the murder charge, and to suffer rigorous imprisonment for seven years with a fine of Rs.30,000/- in respect of the arms charge, both sentences running concurrently with the benefit of Section 382-B Cr.P.C.

2. The appellant has assailed these convictions on the grounds that the prosecution has failed to establish its case against him beyond any shadow of reasonable doubt, that the evidence recorded is wholly circumstantial and has been procured through questionable investigative procedures, that the

entire case is a fabrication of the police authorities to suppress the real facts and circumstances underlying the occurrence, and that the trial court has completely misappreciated the evidence on record. He has further contended that the compromise which has already been effected between the appellant and the legal heirs of the deceased, sanctioned by the High Court's order dated 31st May, 2024, necessitates the acquittal of the appellant and his immediate release from custody.

3. Learned Counsel for the appellant, has presented spirited arguments contesting the conviction with references to numerous precedents and has emphasised the inherent legal weaknesses in the prosecution's case. The learned Deputy Prosecutor General for the State has, however, sought to defend the conviction and sentence, arguing that the evidence on record is sufficient to sustain the conviction beyond reasonable doubt and that the compromise cannot be given effect to in view of the principle of *Fasad-Fil-Arz* (spreading mischief and disorder in society) embedded in the nature of the offence.

4. Before proceeding to a detailed analysis of the evidence and the contentions of the learned counsel, it is essential to succinctly recount the facts of the case as brought on record.

5. On 1st September 2021, at about 1300 hours, an incident occurred at the village of Raunti, situated in the jurisdiction of Police Station Wasti Jiwan Shah, District Ghotki, Sindh. The occurrence took place outside the house of the appellant. According to the prosecution, the appellant, being armed with a 12-bore shotgun, committed the murder of his step-sister, Mst. Fatima (deceased), then aged about 19-20 years, by firing a gunshot at her. The alleged motive behind the occurrence, as set out in the FIR and the prosecution's narrative, was the deceased's alleged involvement in an illicit relationship with one Abdul Majeed Kosh, a matter which the appellant and

his family viewed through the lens of the customs of *"Karo-Kari"* (an honour killing practice). It is further alleged that the appellant, in the course of committing the murder and thereafter escaping from the scene, managed to take the firearm with him. The case was reported to the police authorities by ASI Muhammad Ameen Leghari (who later became the complainant) in his capacity as a police officer. According to the FIR, at the time the incident occurred, the complainant, along with PC Shahnawaz Jalbani, PC Allah Ditto Panhwar, and PC Rab Nawaz Mirani, all in police uniform and armed with service weapons, were on patrol duty in the remits of the police station in a government vehicle bearing registration number SPF-727. The complainant claims that while on patrol, and in the course of passing through the locality, they received what is termed as "spy information" at about 1230 hours that the appellant was attempting to murder his step-sister. The complainant states that upon receipt of this information, the police party immediately proceeded towards the indicated location. It is alleged that when the police reached the vicinity of the appellant's house at about 1300 hours, they witnessed the appellant in the act of dragging his step-sister out of his house whilst armed with a shotgun, and that in their very presence, the appellant fired the gun at the deceased, causing her to fall to the ground and ultimately succumb to her injuries despite efforts to transport her to the hospital for medical treatment. The deceased was subsequently sent for post-mortem examination to the Taluka Hospital, Daharki, where it was confirmed by the Medical and Health Officer, Dr. Sumaira Naveed Soomro that death had resulted from gunshot injuries. The police subsequently launched an investigation into the matter, during the course of which, the appellant was apprehended on 02nd September 2021 at 1630 hours from the vicinity of Koshan Waro Damdamo. At the time of his apprehension, the police claim to have recovered from the appellant's possession an unlicensed 12-bore shotgun (with an erased serial number)

along with four live cartridges of the same calibre. This recovered firearm and ammunition were later sent for forensic examination to the Forensic Science Laboratory (FSL) at Larkana, where it was determined, through ballistic analysis, that the crime empty (shell) recovered from the scene of the occurrence matched with the firearm recovered from the appellant's possession.

6. The case was challan'd before the learned 1st Civil Judge and Judicial Magistrate, Ubauro. The learned Magistrate, after preliminary examination, referred the case to the learned Sessions Judge, Ghotki, who in turn referred the case to the learned Additional Sessions Judge-II, Mirpur Mathelo for trial. The charge against the appellant was formally framed on 18th January, 2022 for the offence of *Qatal-e-Amd* (intentional murder) under the substantive law. The appellant pleaded not guilty and claimed trial.

7. Subsequently, the record of the case was received at the court of the learned Additional Sessions Judge-II, Mirpur Mathelo, under letters dated 18th and 21st June, 2022 for disposal according to law. To substantiate its case prosecution examined five prosecution witnesses, namely: (1) ASI Muhammad Ameen Leghari, the initial complainant who lodged the FIR on behalf of the State; (2) PC Allah Ditto Panhwar, a constable who accompanied the complainant and claims to have witnessed the occurrence; (3) SIP Muhammad Azeem Soomro, the Investigation Officer who led the inquiry and later apprehended the appellant with the alleged crime weapon; (4) Dr. Sumaira Naveed Soomro, the Medical and Health Officer who conducted the post-mortem examination of the deceased; and (5) Mian Ghulam Murtaza Bharo, the Tapedar (land surveyor) who prepared the site plan of the incident location.

8. The statement of the appellant was recorded under Section 342 of the Criminal Procedure Code on 06th May, 2023. In his statement, the

appellant denied all allegations levelled against him by the prosecution and claimed that he had been falsely implicated in the case by the police authorities. He asserted that he was innocent and prayed for justice. The appellant did not choose to examine himself on oath nor did he lead any evidence in his own defence.

9. After the prosecution evidence was recorded and the appellant's statement under Section 342 Cr.P.C was taken, the learned counsel for the appellant presented oral arguments emphasising the weaknesses in the prosecution case, whilst the learned Deputy District Public Prosecutor presented arguments in support of the prosecution's narrative. The learned trial judge, after hearing both sides and undertaking an examination of the evidence on record, formulated the following points for determination:

> *(1) Whether the deceased Mst. Fatima, aged about 19-20 years, died an unnatural death on 1st September, 2021.*
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> *(2) Whether on 1st September 2021 at 1300 hours, outside the house of the appellant situated in Deh Rounti, the present appellant, being duly armed with a gun, committed Qatal-e-Amd of his step-sister Mst. Fatima by causing her firearm injuries as alleged by the prosecution.*
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> *(3) What should be the judgment?*

On the *first* point, the trial court found in the affirmative that the deceased had died an unnatural death. On the second point, the trial court again found in the affirmative that the appellant had committed the said offence. The trial court accordingly convicted the appellant under Sections 302 and 311 PPC and sentenced him as indicated above.

10. Learned counsel for the appellant mainly contended that the entire case rests on the foundation of the testimony of police officials who claim to have witnessed the occurrence by sheer coincidence whilst on patrol duty. He has emphasised that there is an absence of any independent private witness or any member of the public from the vicinity to corroborate the version put forward by the police. He has argued that in a densely populated village setting

where the incident allegedly occurred in broad daylight at about 1300 hours, it is highly improbable and unnatural that no civilian resident would have come forward to witness or support the police account. This lacuna, according to the learned counsel, creates a significant doubt regarding the veracity of the police narrative and suggests that the case is a fabrication designed to expeditiously dispose of a matter that would otherwise have remained uninvestigated given the family's apparent lack of enthusiasm in pursuing justice through the legal system. *Second,* the learned counsel has asserted that there are material contradictions and inconsistencies in the testimony of the prosecution witnesses, particularly regarding the timing of the incident, the distance from which the police witnessed the alleged shooting, and the precise sequence of events. He has pointed out that in the examination-in-chief, the witnesses spoke of witnessing the appellant dragging the deceased and firing the weapon at her, yet under cross-examination, their testimonies became vague and non-committal on several material particulars. He has argued that these contradictions are not mere minor discrepancies but material inconsistencies that strike at the very heart of the prosecution's case *Third,* the learned counsel has highlighted that the post-mortem report reveals that no blackening or charring was found on the entry wound of the deceased. According to established medical jurisprudence, blackening on a firearm entry wound is indicative of firing from a close range (within 1-2 feet). The absence of blackening, the learned counsel submits, suggests that the shot was fired from a considerable distance. Yet, the prosecution witnesses have not adequately explained the distance from which the shot was allegedly fired, thereby creating a lacuna in the chain of causation and medical-ocular correlation. Fourth, the learned counsel has objected to the procedure adopted in the recovery of the allegedly incriminating items. He has pointed out that in the matter of the murder itself, no private Mashir (witness to the

recovery/seizure) was associated, which was a clear violation of the spirit of Section 103 of the Criminal Procedure Code, even though the immediate recovery at the scene was not strictly mandatory. More critically, when the appellant was apprehended on 02nd September, 2021 with the alleged crime weapon, again, no private citizen was associated as a Mashir, and instead, the police themselves acted as both the investigating officer and the witness to the recovery, a practice which, whilst not strictly illegal under the Sindh Arms Act, 2013 (which excludes the mandatory application of Section 103 Cr.P.C), is highly suspect and suggestive of an orchestrated proceeding. Fifth, the learned counsel has emphasised a critical and most telling fact: the legal heirs of the deceased, who are the natural stakeholders in seeking justice for the victim, never came forward to lodge a complaint with the police. Rather, it was the police who registered the FIR on behalf of the State without any initiative from the family members. This extraordinary fact, the learned counsel submits, is indicative of the family's knowledge or complicity in the matter and demonstrates that they did not consider the appellant the perpetrator or, alternatively, that they had reconciled themselves to the occurrence. The subsequent offer by the family to enter into a compromise, sanctioned by the High Court's order dated 31st May 2024, further underscores the fact that the family itself does not view the appellant as warranting capital or severe punishment, a view which ought to have considerable evidentiary weight in the determination of the appeal. Sixth, the learned counsel has argued that the investigation itself was compromised by the failure to record the statements of the natural witnesses, namely the residents of the village where the incident occurred, the co-villagers, and most significantly, the parents and close relatives of the deceased. The Investigation Officer, when cross-examined, admitted that he had not recorded the statement of a single civilian witness or any member of the family of the deceased. This gross

dereliction in investigative duty, the learned counsel contends, is indicative of a police-led case fabrication aimed at swiftly closing the file. Seventh, the learned counsel has laid considerable emphasis on the principle deeply embedded in the jurisprudence of the Supreme Court of Pakistan that when a conviction is sought for a capital offence (such as murder), and when there exists even a shadow of doubt in the evidence, the benefit of such doubt must be extended to the accused. He has cited several leading precedents, including *Muhammad Ilyas v. The State* (2011 SCMR 460), wherein the Supreme Court has held that mere contradictions in witness testimony, if not grave or material in nature, can be safely ignored, but that the totality of circumstances and the inherent probabilities of the case must be considered. He has submitted that in the instant case, not only are there contradictions, but the very foundation of the case, the eyewitness account of the police, is rendered improbable and suspect by the absence of independent corroboration and the numerous procedural irregularities. Eighth, the learned counsel has drawn attention to the fact that the prosecution has failed to establish any clear and convincing motive for the appellant to commit the murder. Whilst the FIR alleges that the appellant acted out of the tradition of *"Karo-Kari,"* there is no evidence on record to demonstrate that the appellant harboured any animosity towards the deceased or that he was the principal decision-maker in the family regarding matters of family honour. The learned counsel has submitted that the absence of a proven motive significantly weakens the prosecution's case and that, in such circumstances, the court should hesitate before imposing the ultimate penalty. Finally, the learned counsel has argued that the appellant is entitled to the benefit of the compromise effected between him and the legal heirs of the deceased, as approved by the High Court's order dated 31st May, 2024. According to the learned counsel, once a compromise has been sanctioned by the court on the strength of the voluntary and uncoerced consent of the legal

heirs, the court is bound by the provisions of Section 345 of the Criminal Procedure Code to give effect to such compromise, notwithstanding any consideration of the principle of *Fasad-Fil-Arz.* The learned counsel has argued that the earlier order rejecting the compromise was based on a finding that the family's conduct in remaining silent and not approaching the police initially was indicative of complicity, but that such a finding does not vitiate the subsequent voluntary consent given by the family for the settlement. The learned counsel has thus prayed for the acquittal of the appellant and his immediate release from custody.

11. The learned Deputy Prosecutor General for the State, whilst acknowledging the contentions raised by the learned counsel for the appellant, has sought to defend the convictions on the following grounds: *First,* the learned Deputy Prosecutor General has contended that the police are competent and credible witnesses just as any private citizen would be, and that merely because the witnesses are police officials does not render their evidence suspect or inadmissible. He has argued that it is a well-established principle of criminal jurisprudence that police officers, unless shown to have acted with malice or bias, are to be treated as reliable witnesses. He has submitted that the appellant has failed to establish any animosity or improper motive on the part of the police witnesses for falsely implicating him in the case. *Second,* the learned Deputy Prosecutor General has submitted that the minor contradictions highlighted by the learned defence counsel are not material in nature and do not detract from the core elements of the prosecution's case. He has relied upon the trial court's reasoning that such minor variations in witness testimony are inevitable over the passage of time and do not warrant the wholesale rejection of the evidence. He has argued that the sequence of events, as narrated by the prosecution witnesses, remains substantially consistent and that the core facts, namely, the presence of the

police at the scene, the witnessing of the occurrence, and the subsequent recovery of the crime weapon, stand unshaken. *Third,* the learned Deputy Prosecutor General has countered the argument regarding the absence of blackening on the entry wound by citing the trial court's reliance on the case of *Muhammad Zaman v. The State* (2014 SCMR 749), wherein the Supreme Court held that blackening is indicative of firing from a distance of not more than 3 feet, and that in the FIR and the ocular account of the police, there is no assertion that the shot was fired from such a close range. He has submitted that the Defence's argument on this point is therefore without foundation. *Fourth,* the learned Deputy Prosecutor General has argued that the compromise cannot be given effect to in view of the overriding principle of *Fasad-Fil-Arz*, which operates as a bar to the compounding of certain grave offences, particularly those committed in the name of *"Karo-Kari"* or similar honour-based practices. He has relied upon the High Court's own earlier order dated 31st May 2024, wherein it was held that the family's conduct in remaining silent and not reporting the matter to the police, combined with their subsequent volte-face in seeking to compound the offence, was indicative of either complicity or fear, rendering them incompetent to effect a compromise. *Fifth,* the learned Additional Prosecutor General has submitted that the FSL report is corroborative of the ocular evidence and that the ballistic match between the crime empty and the recovered firearm is scientific confirmation of the prosecution's version.

12. Having heard the learned counsel for the appellant and the learned Deputy Prosecutor General for the State, and having carefully perused the entire record of the case, including the testimony of the prosecution witnesses, the documentary evidence, the post-mortem report, the FSL report, and the site plan, this Court is now in a position to undertake a comprehensive analysis of the evidence and determine whether the prosecution has discharged its burden of proving the guilt of the appellant beyond a shadow of reasonable doubt.

13. It is an unquestionable and cardinal principle of criminal jurisprudence, deeply rooted in the legal traditions of the Islamic Republic of Pakistan and affirmed repeatedly by the Supreme Court, that the burden of proving the guilt of an accused person lies squarely and continuously upon the shoulders of the prosecution. This burden is not a mere technical obligation but a fundamental safeguard of the rights of the accused. The accused is presumed to be innocent until proven guilty, and this presumption is not merely a legal fiction but a substantive right that permeates the entire criminal trial. If, at the end of the prosecution's evidence, even a shadow of doubt remains, be it in the interpretation of facts, the credibility of witnesses, the chain of custody of evidence, or the logical consistency of the narrative, the benefit of that doubt must be extended to the accused, and he is entitled to acquittal.

14. The instant case presents several features which, when viewed cumulatively, raise grave and compelling doubts regarding the veracity of the prosecution's account and the safety of the conviction. These doubts strike not at peripheral matters but at the very core of the prosecution's narrative. The most striking and troubling aspect of the prosecution's case is the complete and utter absence of any independent eyewitness evidence. The entire ocular account rests on the testimony of four police officials: ASI Muhammad Ameen Leghari, the complainant; PC Allah Ditto Panhwar; PC Shahnawaz Jalbani; and PC Rab Nawaz Mirani. According to the complainant's own testimony, the incident occurred at about 1300 hours on a day in the month of September, at a location described as a village ("Deh Rounti") with multiple houses in the vicinity. The respondent's own counsel admitted during cross-examination that there were about 8-10 houses in the vicinity of the incident, and the complainant himself mentioned that about 23 ladies had gathered at the place of the incident after the occurrence. This raises an immediately

apparent contradiction within the prosecution's own case. If 23 ladies had gathered at the place of the incident, how is it possible that no single male member of the village, no family member of the appellant, no relative of the deceased, and no independent civilian came forward to be examined as a witness in the case? The prosecution's explanation that the police did not wait to involve civilians because they were on an urgent mission to save the victim's life is plausible on the face of it, but it does not explain why, in the course of the subsequent investigation spanning several months, not a single civilian from the locality was examined as a witness. The Investigation Officer, when cross-examined on this critical point, admitted that he had recorded the statement of not a single civilian resident of the area.

15. This lacuna is not a minor procedural oversight but a substantive defect in the prosecution's case. When a crime is alleged to have occurred in daylight in a populated area, and the only eyewitnesses are the investigating officers themselves, the Court must be exceedingly cautious. The potential for bias, the temptation to construct a narrative that expeditiously closes a case, the lack of any independent verification of the account, all these factors create an atmosphere of suspicion. This is not to say that police officers are dishonest, but it is to acknowledge that when police officers are the sole witnesses to an occurrence, the evidence should be approached with a degree of circumspection greater than that which would ordinarily be afforded to the testimony of disinterested civilians. The fact that the family of the deceased, who would ordinarily be the most motivated to secure justice for the victim, abstained entirely from reporting the matter to the police and remained aloof from the investigation is a fact of considerable significance. The complainant himself testified that no member of the family of the deceased approached the police station for the lodging of a complaint. Instead, it was the police who registered the FIR on behalf of the State. This extraordinary fact suggests that

either the family had no desire for the appellant to be prosecuted or that they did not believe him to be the perpetrator. Either way, this is a powerful circumstance that militates against the conviction.

16. The recovery of the crime weapon on 02nd September, 2021 is alleged to have been made in connection with the arrest of the appellant. According to the prosecution, when the appellant was apprehended at about 1630 hours near Koshan Waro Damdamo, a 12-bore shotgun without a license and bearing an erased serial number was recovered from his possession, along with four live cartridges. The record reveals that at the time of the recovery, no private Mashir was associated with the proceedings, and instead, PC Allah Ditto Panhwar and PC Rab Nawaz Mirani, both subordinate police constables, were deputed as Mashirs by the Investigation Officer himself. Whilst the Sindh Arms Act, 2013 excludes the mandatory applicability of Section 103 of the Criminal Procedure Code, this exclusion does not render the procedure unquestionable or beyond scrutiny. The very fact that the law has carved out an exception for the Arms Act suggests that the legislature was aware of the difficulties in securing private Mashirs in such cases, but the fact remains that when the police themselves act as both the investigating officer and the witnesses to the recovery, the potential for the planting or manipulation of evidence becomes palpable. Furthermore, the manner in which the weapon was described as being recovered during a "spy information" operation and the assertion that the appellant was apprehended with the weapon in his possession, whilst containing the elements of a plausible narrative, are nonetheless features which warrant careful examination in the context of the entire case. The appellant's own statement under Section 342 Cr.P.C indicates that he denied the recovery and contended that the weapon had been foisted upon him to corroborate the evidence in the main murder case.

17. The Court is not unmindful of the FSL report, which purportedly established that the crime empty matched with the recovered firearm. However, the reliance on such scientific evidence, whilst ordinarily compelling, is nonetheless dependent on the integrity of the chain of custody and the veracity of the initial recovery. If the recovery itself is tainted or suspect, the scientific evidence becomes merely corroborative of a fabricated narrative rather than independent confirmation of guilt.

18. When the testimony of the prosecution witnesses is subjected to careful scrutiny, several contradictions and improbabilities emerge that cannot be lightly brushed aside. In his examination-in-chief, ASI Muhammad Ameen Leghari testified that he received the spy information at 1230 hours whilst on patrol near Eidgah Ranwati. He then proceeded to the place of the incident and arrived at 1300 hours. However, during cross-examination, when pressed on the matter, the complainant's testimony became somewhat confused regarding the precise timings and the distance covered. More significantly, the complainant testified that at the time of the alleged occurrence, he was armed with a service weapon, yet he did not fire any warning shot or take any evasive action to prevent the appellant from firing at the deceased. The complainant simply states that upon seeing the police, the appellant fled. This passivity on the part of armed police officers, when confronted with an imminent threat to the life of a civilian, is highly unnatural and strains credibility. Dr. Sumaira Naveed Soomro, the Medical and Health Officer who conducted the post-mortem, testified that the time between the injury and death was approximately two hours. However, in her cross-examination, when asked regarding her opinion on the time of death, she stated that in her opinion, the incident had occurred between 11 p.m. and 11:30 p.m., a statement which, if taken at face value, would place the incident in the evening rather than at midday as asserted by the police. The trial court sought to reconcile this

discrepancy by relying on the established principle that the medical opinion on time of death is necessarily approximate and may be erroneous by two to three hours. Whilst this principle is well-established, the fact remains that the post-mortem evidence and the ocular evidence are in potential conflict on a material particular, and such conflict is a circumstance that warrants caution. Most significantly, Dr. Sumaira Naveed Soomro admitted during cross-examination that there was no blackening or charring on the entry wound of the deceased. This is a fact of considerable forensic significance. According to established principles of medical jurisprudence, the presence of blackening on a firearm entry wound is indicative of firing from a very close range, typically within one to two feet. The absence of blackening, conversely, suggests firing from a greater distance. Yet, the prosecution witnesses, including the complainant, have not clearly articulated the distance from which the shot was allegedly fired. The complainant's own testimony suggests that he was at a distance of about 50 paces from the appellant, yet the firearms evidence suggests that the shot could have been fired from a considerable distance. This lack of clarity and the potential mismatch between the ballistic evidence and the ocular account creates a material doubt.

19. Whilst the prosecution has alleged that the motive behind the alleged murder was the tradition of "*Karo-Kari,"* there is no credible evidence on record to establish this motive. The Investigation Officer admitted during cross-examination that he had not recorded the statement of Abdul Majeed Kosh, the person with whom the deceased was allegedly involved. He had also not recorded the statements of the parents or close relatives of the deceased, nor had he recorded the statements of any villager regarding the alleged illicit relationship between the deceased and Abdul Majeed. The law is clear that whilst motive is not an essential ingredient of an offence, the absence of a proven motive, particularly in a case where the prosecution relies heavily on

the narrative of an eyewitness account, is a circumstance that must weigh in the evaluation of the evidence. In the instant case, not only has the motive not been established, but the entire basis for attributing a motive to the appellant his alleged belief in the tradition of *"Karo-Kari"* remains unproven. Moreover, the fact that the appellant's own family, who are the presumed custodians of family honour in traditional societies, did not report the matter to the police and indeed appear to have reconciled with the deceased's family suggests that the motive attributed by the prosecution is not grounded in reality.

20. Whilst the Sindh Arms Act, 2013 excludes the mandatory applicability of Section 103 of the Criminal Procedure Code in respect of the recovery of arms, the spirit of the criminal justice system demands that recoveries, particularly of incriminating items, be witnessed by disinterested persons whenever practicable. In the instant case, the recovery of the weapon was made in an area which the prosecution itself describes as having multiple houses. The Investigation Officer, during cross-examination, admitted that he had not made any effort to associate a private Mashir from among the residents of the locality. This failure to involve civilians, when it was clearly practicable to do so, creates a reasonable suspicion that the recovery was stage-managed or that the weapon was planted. The fact that the police themselves acted as witnesses to the recovery only compounds this suspicion.

21. During the pendency of these appeals, the appellant and the legal heirs of the deceased filed applications seeking the compounding of the offence on the basis of a compromise reached between them. This Court, by order dated 31st May 2024, rejected these applications on the ground that the offence was committed in the name or on the pretext of *"Karo-Kari"* and that the conduct of the legal heirs in remaining silent and not reporting the matter to the police was indicative of either complicity or fear, rendering them incompetent to effect a compromise. Whilst this Court is cognisant of the

principle of *Fasad-Fil-Arz* and the public interest considerations involved in the compounding of offences committed in the name of honour killing, the rejection of the compromise applications does not alter the fundamental question before this Court, which is whether the prosecution has proven the guilt of the appellant beyond a shadow of reasonable doubt. The rejection of the compromise, whilst it may preclude the release of the appellant on the basis of settlement, does not render the conviction safe if the evidence does not warrant conviction in the first instance. However, it must also be noted that the offer of compromise by the legal heirs, and their apparent lack of enthusiasm in pursuing the prosecution, is itself a significant circumstance. The law permits the legal heirs to compound certain offences, and the fact that they have now voluntarily sought to do so indicates their own assessment of the culpability of the appellant. Whilst this Court cannot accede to the release of the appellant purely on the basis of compromise in view of the *Fasad-Fil-Arz* considerations, the willingness of the legal heirs to settle is a circumstance that must be factored into the overall evaluation of the case.

22. When each of the above infirmities is considered in isolation, it might be possible to construct a defence for the prosecution. However, when considered cumulatively and in their totality, they paint a picture of a case that is riddled with suspicions and lacks the hallmark of authenticity that ought to characterise a case resting on eyewitness evidence. The prosecution has failed to produce a single independent civilian witness from a locality where the crime is alleged to have occurred in daylight in a populated area. The procedural manner in which the weapon was recovered is irregular and lacking in the safeguards ordinarily expected. The post-mortem evidence, in certain material particulars, sits uncomfortably with the ocular account. The motive for the alleged offence remains unproven. The family of the deceased, who are the natural seekers of justice, abstained from reporting the matter and have

since sought a compromise. The police, who are the sole witnesses, are also the investigating officers, creating a potential for bias. In the jurisprudence of the Supreme Court of Pakistan, when a case presents such an accumulation of doubt, the benefit must go to the accused. The Supreme Court has repeatedly held that conviction in a capital case must be based on evidence that is not merely probable but credible and confidence-inspiring.

23. It is trite law that the burden of proving the guilt of an accused beyond a shadow of reasonable doubt lies upon the prosecution. This is not a burden that shifts or diminishes as the case progresses. The accused need not prove his innocence; rather, it is the prosecution that must prove guilt. If, at the end of the trial, a reasonable doubt exists, the accused is entitled to the benefit of such doubt. In the instant case, this Court is of the considered opinion that reasonable doubts do exist and that these doubts are not merely speculative or fanciful but are grounded in the inherent improbabilities of the prosecution's narrative and the procedural irregularities that characterise the investigation. The principle of doubt, as established in the jurisprudence of the Supreme Court, operates not merely at the level of eyewitness testimony but at the level of the entire case. When a case presents features that are unusual, when the only witnesses are interested parties (the police), when the procedural safeguards are bypassed, and when the family members who are the presumed stakeholders in justice abstain from pursuing the case, the cumulative effect is to create a reasonable doubt that warrants acquittal.

24. For the reasons set out above, this Court is of the firm opinion that the prosecution has failed to discharge its burden of proving the guilt of the appellant beyond a shadow of reasonable doubt. The case is replete with irregularities, improbabilities, and suspicious features that render the evidence unreliable and the conviction unsafe. The absence of independent eyewitness evidence is a critical defect that cannot be overlooked. The procedural manner

in which the weapon was recovered raises serious questions regarding the integrity of the investigation. The contradictions in the ocular and medical evidence, the failure to establish motive, and the apparent lack of interest on the part of the family of the deceased in pursuing the case are all circumstances that must weigh heavily in the evaluation of the evidence. Accordingly, this Court is constrained to allow both criminal appeals and to set aside the convictions and sentences imposed by the trial court. The appellant, Arbelo @ Arbab Kosh, is hereby acquitted of the charges against him under Sections 302 and 311 of the Pakistan Penal Code and under Section 24 of the Sindh Arms Act, 2013. The property seized in connection with the case, namely the 12-bore shotgun and the cartridges, shall be confiscated and disposed of in accordance with the law. The judgments of the trial court dated 18th August, 2023 are hereby set aside. The appellant shall be released forthwith if he is not required in any other custody case.

**J U D G E**