

**7IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Appeal No.S-05 of 2022

Appellant: Mehboob Shah S/o Ghulam Mustafa Shah
present in person.

Complainant: Nemo.

The State: Mr. Irfan Ali Talpur,
Deputy Prosecutor General.

Date of hearing: 27.04.2026.
Date of judgment: 27.04.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through this Criminal Appeal, appellant has impugned the judgment dated 08.01.2022 passed by the learned Additional Sessions Judge-I, Tando Muhammad Khan in Sessions Case No.261 of 2020, whereby he has been convicted and sentenced to undergo R.I for two years and to pay Daman of Rs.50,000/- to injured/complainant Ismail Shah, failing which, he shall remain behind the bars till payment of said Daman; whereas, co-accused Ibrahim Shah, Hussain Shah and Aslam Shah were acquitted of the charge.

2. The facts of the prosecution case are that the complainant, a laborer by profession, had strained relationship with the accused persons, who are his relatives, due to ongoing matrimonial disputes. On 01.07.2020 at about 07:30 a.m, the complainant arrived on his motorcycle at the eastern side of Hasho Kolhi Patri after calling via telephone by Aslam Shah under the pretext of filing a compromise application in Court. Upon arrival, he was intercepted by Aslam Shah, Mehboob Shah, armed with a hatchet, Hussain Shah, armed with a lathi, and Ibrahim Shah, armed with a lathi. Aslam Shah grabbed the complainant by his collar, while Mehboob Shah struck him on the head with the hatchet with the intent to kill, causing a deep laceration and profuse bleeding. After the complainant fell to the ground, Hussain Shah struck his left wrist

with a lathi, and the other accused continued to assault him on his head and back. On arrival of witnesses Taj Muhammad Shah and Muhammad Shah after hearing complainant's cries, the assailants fled away from the scene. Consequently, instant FIR was registered at Police Station Bulri Shah Kareem.

3. After registration of the FIR, the appellant / accused obtained pre-arrest bail and joined the investigation. Upon completion of the usual investigation, the case was challaned, and the report under Section 173 Cr.P.C was submitted before the trial Court.

4. After providing the necessary documents to the appellant/accused as per legal requirement, a formal charge was framed against him at Exhibit-02. The accused pleaded not guilty and claimed to be tried.

5. At the trial, the evidence of PWs was recorded step by step. P.W-1 Complainant Muhammad Ismail Shah was examined at Exhibit-3. P.W-2 Taj Muhammad Shah was examined at Exhibit-4. P.W-3 Mehmood was examined at Exhibit-5. P.W-4 Dr. Muhammad Ayoub was examined at Exhibit-7. P.W-5 SIP Abdul Khalique Khoso was examined at Exhibit-8. The PWs produced various documents in their evidence and thereafter prosecution side was closed.

6. After recording evidence, the statements under Section 342 Cr.P.C of the accused were recorded at Exhibit-10 to 13, wherein they pleaded their innocence and denied the prosecution allegations. Neither they examined themselves on oath, nor produced any witness in their defence.

7. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing the learned Counsel for the respective parties, the learned trial Court, vide impugned judgment dated 08.01.2022, convicted and sentenced appellant Mehboob Shah as referred in the preceding paragraph, while co-accused were acquitted.

8. Being aggrieved and dissatisfied with the judgment of the trial Court, the appellant Mehboob Shah has preferred this appeal with prayer to acquit him by setting aside the impugned judgment.

9. In memo of appeal it is contended that the impugned judgment dated 08.01.2022 is opposed to the law, facts, and established principles of criminal justice; that the learned trial Court failed to exercise its judicial mind, basing its decision on conjectures and surmises rather than a correct appraisal of the evidence on record; that the FIR was delayed by four days without plausible explanation despite the proximity of the police station, suggesting malafide intention; that the existence of prior enmity reflecting from Crime No.53 of 2020 and the use of interested witnesses being near relatives, point toward false implication to pressurize the appellant; that prosecution's case is riddled with material contradictions and omissions, failing to prove guilt beyond a reasonable doubt; that by disregarding the statement of the appellant and failing to extend the benefit of doubt, the trial Court has arrived at a capricious conclusion, resulting in a grave miscarriage of justice that renders the conviction unsustainable and liable to be set aside.

10. Conversely, learned DPG while supporting the impugned judgment has argued that the prosecution has successfully established its case and the learned trial Court has rightly appreciated the evidence. The ocular account is fully supported by medical evidence which forms an unbroken chain of evidence.

11. I have heard learned Counsel for the appellant as well as learned Deputy Prosecutor General for the State and have carefully gone through the entire material available on the record, including the impugned judgment.

12. **The prosecution alleged that the appellant struck the complainant with the sharp side of a hatchet on the head. However, the doctor / medical certificate confirmed that injury was caused by a hard and blunt substance. This contradiction went to the root of the prosecution case because; sharp-edged weapon injury and blunt force injury are materially different; it falsified the mode and manner of assault narrated in FIR; it diminished credibility of the complainant as sole eyewitness.** Though conviction can legally rest on testimony of a single witness, such witness must be confidence inspiring, sterling and wholly reliable. Since the complainant's version conflicted with medical evidence, his testimony became doubtful. Despite accused being in custody, Investigating Officer

failed to recover the hatchet. This suggested the defective investigation; negligence or dishonesty. The benefit of defective investigation goes to accused. Where prosecution alleges injury by sharp weapon, but medical evidence shows blunt force trauma, conviction becomes unsafe unless discrepancy is satisfactorily explained. **Moreover, the Investigating Officer (I.O) has failed to effect recovery of the crime weapon, despite the appellant being in physical custody, which leads towards another benefit of doubt, which must go to the appellant.** These circumstances cast doubt on the prosecution's case, raising uncertainties that undermine its credibility. As a result, the benefit of such doubt must, by law, be granted to the accused. It is a settled principle of criminal jurisprudence the prosecution must prove its case beyond reasonable doubt and any single circumstance creating reasonable doubt in a prudent mind entitles the accused to its benefit as of right and not as a matter of grace. The benefit of doubt available to the accused in criminal jurisprudence is not confined to cases in which there are several circumstances creating doubt. The Hon'ble Supreme Court has held in the case of *Muhammad Hassan and another v. The State and others (2024 SCMR 1427)*, that it is not necessary for the defence to establish a multitude of doubts; even a single circumstance that creates reasonable doubt in a prudent mind about the guilt of an accused entitles him to be acquitted.

13. For what has been discussed above, this Criminal Appeal is **allowed**, and the conviction of appellant Mehboob Shah recorded by the learned Additional Sessions Judge-I, Tando Muhammad Khan in Sessions Case No.261 of 2020 is set aside. He is acquitted by extending benefit of doubt. He is on bail; his bail bond stands cancelled and surety discharged.

JUDGE