HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

CRIMINAL APPEAL NO. S - 133 OF 2020 (OLD)

CRIMINAL APPEAL No. S - 103 OF 2024

Loung Khan & others V. The State

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CRIMINAL APPEAL NO. S - 144 OF 2020 (OLD)

CRIMINAL APPEAL No.S-104 of 2024

Loung Khan & others V. The State

Appellant	:	Muhammad Siddique S/o Moula Bux Bhayo, Through Mr. Pervez Akhter Talpur, Advocate.
Respondent	:	The State. Through Mr., Shahzado Saleem Nahyoon Additional P.G., Sindh
Complainant	:	Muhammad Urs S/o Muhammad Umar, Through Mr. Waheed Lashari, Advocate.

Date of hearing & short order: 04.11.2026

Date of detailed reasons: 11.11.2026

J U D G M E N T

NISAR AHMED BHANBHRO, J.- The captioned Criminal Appeals are directed against the consolidated judgment dated 28.08.2020 **(impugned judgment)**, passed by the learned Additional Sessions Judge-I/MCTC, Sanghar (**Trial Court**), in Sessions Case No.382/2017 Re: The State v. Mazhar Chandio and others, arisen out of Crime No.46/2017 of P.S

Perumal for the offence U/s 302, 324, 147, 148, 149, 170, 120-B, 337-F(v)(vi), L(ii), F(ii) P.P.C. and Sessions Case No.121/2019 Re: Muhammad Urs v. Mazhar Chandio and others, arising out of a private complaint for the offence under Sections 302, 324, 368, 147, 148, 149, 170, 120-B P.P.C.. The appellant was proceeded in single trial for same incident, however on conviction he along with other convicts namely 1) Loung Khan, 2) PC Qurban Ali, 3) PC Piyaro Khan, 4) Abdul Karim and 5) Ali Ahmed filed captioned separate appeals. Since the appellants were convicted in a consolidated trial, therefore, a single appeal was maintainable, as complaint case proceeds first, therefore, on conviction the F.I.R case stood abated in terms of the provisions contained under section 403 of Cr.P.C., hence this single judgment will serve the purpose of the captioned appeals.

2. The appellant was tried and convicted for an offence U/s 302(b), 324, 120-B, 147, 149, 170 P.P.C. to suffer R.I for Life Imprisonment on two counts for the murder of Mst. Azizan and Khadim Hussain @ Sahib, and imposed an amount of Rs.3,00,000/- (Three Lacs) as compensation under Section 544-A Cr.P.C., payable to the legal heirs of deceased, he was also convicted for an offence under section 120-B P.P.C., R.I for five (5) years for offence under section P.P.C., S.I for two years for offence under section 170 PPC, and S.I for three years for offence under section 148 P.P.C., with benefit of Section 382-B Cr.P.C.

3. The facts of the FIR case in brief are that on 27.07.2017, SHO of P.S Perumal received information that incident of firing has taken place in the houses of Chandio Community. On receiving such information, SHO along with his sub ordinate staff left P. S. Perumal at about 0500 hours and reached at Hingorno Link Road via Perumal-Kandyari Road, where ASI Nabi Bux Lashari along with staff joined them, together they

proceeded and reached near the house of Khadim @ Sahib Khan Chandio situated at the land of Anwar Wassan. They saw parked there one Government Vehicle No. SPD-948 and White High Roof Suzuki Bolan Registration No. CV3393 and two persons in civilian dress. On inquiry, one of them introduced himself as Sajjan Khan Panhwar driver of the CIA Mobile Naushahro Feroze PC-2703, while the other introduced himself as Imam Ali S/o Muhammad Yaseen Rajpar R/o Muhammad Moosa Rajpar, being the driver of the High Roof. Nine Police personnel also seen positioned in front of vehicles that had encircled the land. Police proceeded to the house of the Khadim Chandio, they saw one dead body lying on table (Sandal) another dead body was lying in the Joaar crop (Sorghum) and one more dead body was lying on the cot in front of the house. One injured person was seen sitting by the cot and one injured was seen sitting on the land in front of the house. There were four Police personnel in uniform present there, three police constables, one Inspector and four private armed persons. On inquiry, Police Inspector introduced himself as Loung Khan Shar Incharge CIA Naushahro Feroze, and disclosed that he had come with police party to arrest the proclaimed offender of his district Khadim Chandio. He further disclosed that at about 0400 hours, encounter took place in which Khadim Chandio, informer Akbar Chandio and one lady have been killed while informer Shahnawaz @ Shahan and one person from other party has been injured. Police proceeded towards the female's dead body and from the injured siting near her dead body inquired about her. He disclosed his name as Muhammad Uris S/o Muhammad Umer Chandio and revealed that the deceased is his wife Mst. Azizan. He further disclosed that four police personnel present there, deceased Akbar, injured Shahnawaz Chandio along with other private persons made firing, due to which

murders took place and he got injured. Police inspected the injuries of injured persons and prepared separate Memos, thereafter injured were sent for treatment under police protection. Police personnel and private persons present at the place of incident were arrested along with weapons. They were separately asked about their names, parentage, caste and residence, Inspector disclosed his name as Loung Khan Shar Incharge CIA Naushahero Feroze, official SMG closed butt 19485 with magazine having 20 bullets was recovered from his possession. Second policeman disclosed his name as PC-1082 Hazoor Bux Gopang, official G3 Riflle G.88703 with two magazines having 20 bullets in one magazine while the other was empty was recovered from him. Third policeman disclosed his name as PC-1985 Piyaro Khan Gopang, official G3 Rifle 65418 having damaged magazine with 17 live bullets was recovered from his possession. Fourth policeman disclosed his name as PC-2288 Qurban Ali Shar, official SMG with magazine having 27 live bullets was recovered from his possession. First private person disclosed his name as Ali Ahmed S/o Kher Muhammad Chandio, Tula Tokarev Pistol (TT Pistol) 3366 of 30 bore with magazine having two live bullets was recovered from his possession. Second private person disclosed his name as Abdul Karim S/o Kher Muhammad Chandio, number rubbed Repeater of 12 bore with magazine having two live bullets was recovered from him. Third private person disclosed his name as Mehar s/o Muhammad Ayoob chandio, Repeater 542792 of 12 bore having one cartridge and cartridge bag containing 24 cartridges was recovered from his possession. Fourth private person wearing police cap disclosed his name as Muhammad Siddique S/o Moula Bux Bhayo from him SMG 37238 with pouch of three magazines attached, single magazine had 20 bullets in it and from three magazines 60 bullets were recovered. Arrested police

officials disclosed that their weapons recovered by police were official and on inquiry about the license(s) of private persons recovered by police they disclosed that weapons were unlicensed. After that police inspected the dead body of Akbar Chandio lying in joaar (sorghum) crop, he had received fire arm injury on head which crossed from the back, bone was broken and cerebrum popped out of his head and blood was oozing. After conducting necessary formalities, blood stained mud was taken and sealed in parcel. After that, they inspected the dead body of Khadim Chandio that had received fire on the left side of his back it passed through right side of the chest, he also had received another fire on the left eye which was crossed through left side of the nose, blood was oozing and his cerebrum popped out of its place, 12 bore empty Repeater was lying near him, which was taken in custody by police. After necessary formalities, due to non-availability of mud, piece of pillow was taken out and sealed in parcel. Thereafter, they inspected dead body of Mst. Azizan who had received one fire on her left cheek near her nose and another fire on her neck, the blood was oozing. After necessary formalities, due to non-availability of mud, piece of pillow was taken out and sealed in parcel. Recovered weapons were sealed separately and place of incident was inspected, where from Three G3 Cartridges, Five SMG Cartridges, Three 12 bore Cartridges and Five 30 bore Cartridges were secured and sealed separately. Police officials sitting at some distance from the house were asked about their names who disclosed their names as ASI Gulzar Ali Mari, HC-153 Shukat ali Arejo, HC-1650 Gulab Ujan, PC-790 Shah Muhammad Mari, PC-952 Ali Asghar Rind, PC-323 Yaseen Panhwar, PC-3168 Muhammad Ali Bozdar, PC-2825 Abdul Ghaffar Wagan & PC-1994 Muhammad Ali Shah. They disclosed that their incharge Inspector Loung Khan directed them to guard the place when he went inside the house,

they further disclosed that they did not make any firing. Thereafter, police secured the high roof van used in the commission of the offence while driver Imam Ali Rajpar was arrested and on his personal search nothing was secured. Due to non-availability of private mashirs, such joint Memo was prepared under the signatures of SIP Nabi Bux Lashari and ASI Suhrab Channa. Thereafter, the dead bodies of Khadim Chandio and Akbar Chandio were sent to RHC Kandyari through ASI Suhrab for Post Mortem while dead body of Mst. Azizan was sent to the Civil Hospital Sanghar for her Post Mortem through SIP Nabi Bux Lashari. Arrested accused and case properties were sent to P. S. Perumal through ASI Qamar Ud Din. After the Post Mortem of the deceased persons, the Complainant returned to P. S. and lodged FIR on behalf of state against the aforesaid accused.

4. Facts of the Complaint case instituted by Muhammad Urs who was injured and his wife Mst. Azizan was killed. He was star witness of the incident, being dissatisfied with the police case he maintained complaint under section 200 Cr.P.C for offence punishable 302, 324, 148, 149 P.P.C., with the following facts:

> *"That there has been a dispute between the Complainant and accused Mazhar Chandio over the love marriage of the Complainant, as the Complainant had contracted love marriage with Late Mst. Azizan without the consent of her parents and family. On 27.7.2017 (in the body of private complaint wrongly mentioned as 27.07.2014), the Complainant was sleeping with his wife, sister and daughter in the courtyard of his house, close to them, Khadim Hussain @ Sahib Khan Chandio and his wife Mst. Kulsoom were also sleeping in straw hut. At about 0230 hours, the Complainant woke up by the heavy sound of gun fire and saw that Mazhar Chandio duly armed with Repeater, Aaqib Chandio duly armed*

with TT Pistol, Arbailo @ Inayat Chandio duly armed with Kalashnikov, Abdul Jabbar Chandio duly armed with TT Pistol, Muhammad Siddique Bhayo duly armed with Kalashnikov, Ali Ahmed duly armed with Repeater, Abdul Karim duly armed with TT Pistol, Mehar duly armed with Kalashnikov, Shahan @ Shahnawaz duly armed with Repeater and Niaz Hussain duly armed with TT Pistol had encircled his cot and they were making straight rapid firing on him and on his wife. Due to the heavy fire, Mst. Azizan and Complainant received severe bullet injuries, resultantly Mst Azizan died at the spot while Complainant was badly drenched in blood that was oozing out of him and his wife. The Complainant saw the accused were in police uniform and it also appeared to him that the heavy weapons were supplied to them by Police. The Complainant saw another group of persons heavily armed and in police uniforms as well as in plain clothes attacked straw hut of Khadim Hussain @ Sahib Khan Chandio and killed him, his son Motabir Khan received severe bullet injuries while his wife was unhurt. Police also killed one of their own accomplice Akbar Chandio in blind fire. After the massacre, both groups of killers took the Complainant and Motabir Chandio in their custody and brought them to RHU Hospital where from they were referred to Hyderabad for further treatment. During his treatment at Hyderabad Hospital the Complainant was arrested by the Nasuhero Feroze Police in a false case registered against him viz FIR No.37 of 2017 U/s 365-B, 452 PPC at P. S. Naushahro Feroze and the Complainant had been behind the bars till his release on bail on 27.09.2018. Whereas, the second injured Motabir Chandio S/o Khadim Hussain @ Sahib Khan Chandio was taken by police in injured condition but he has gone missing after the incident. The Complainant has strong reasons to believe that the above named uniformed or civilian persons kidnapped and murdered him in order to remove him being eyewitness. The Complainant further stated

in the Complaint that after the incident, local Police lodged FIR No.46/2017 at P.S. Perumal excluding all the eyewitnesses of victim families including the Complainant, his sister Mst. Zubaida, Motabir Chandio and Mst. Kulsoom Chandio from the case. Police also ignored accused Mazhar Chandio, Aaqib Chandio, Arbailo Alias Inayat Chandio, Abdul Jabbar Chandio and Muhammad Siddique Bhayo who cold bloodedly murdered wife of the Complainant and attempted to murder him with common intention. The Investigation Officer showed long list of accused persons in Column-2 of the Charge Sheet to save the skins of his colleagues and their civilian companions by taking bribe. After the incident, the Complainant was injured but he was conscious yet the Police avoided to make him the Complainant and police also kept him away from all the surviving family members of deceased victims to act as Complainant of the case to give benefit to policemen. The Police also tempered with the original time of the incident as in actual the incident took place at 02:30 hours while the time of incident mentioned in FIR as 04:00 hours is contrary to it. Police have adopted the version of Inspector Loung Khan who himself is a prime accused of the case. Also this act of CIA Police Naushero Feroze are unquestionably illegal because neither they took permission from SSP Sanghar for such raid nor did they inform local Police Station as per law.

The Complainant further stated that he had no knowledge about the grave of his wife who was killed in above massacre. Daughter of the Complainant baby Shazia was looked after by Mst Zubaida (sister of complainant) but she also died on 05.04.2018. Finally the Complainant stated that he was unaware of all these facts and circumstances till his release on bail and after his release he filed this instant complaint in this Court."

5. The complaint, after preliminary inquiry was brought on record and summons were issued to the accused to face trial. As a matter of propriety complaint case proceeded alongwith the state case bearing Sessions Case No.382/2017. Since, the appellant was already in custody in State case, therefore, he was summoned to face trial. At trial, papers were supplied to the appellant and consolidated charge in both the Sessions Cases was framed to which the appellant pleaded not guilty and claimed trial.

6. During trial, prosecution initially examined three (03) witnesses namely Muhammad Urs, complainant of the direct complaint as P.W-01, Inspector Akhtar Hussain Bijarani as P.W-02 and Mst. Zubaida Chandio as P.W-03. Then Advocate for the Complainant filed statement dated 30.10.2019 for closing his side. Further, during the trial in the case, Learned Counsel for the Complainant Muhammad Urs filed Application U/s 540 Cr.PC for examining the witnesses mentioned in the charge sheet which was allowed by order dated 24.1.2020, Dr. Muhammad Anwar was examined as P.W-04, Dr.Diyal Das was examined as P.W-05, Tapedar Ali Murad Keerio was examined as P.W-06, Dr. Shabbir Ahmed Cheena was examined as P.W-07, Dr. Hina Shabbir Awan was examined as P.W-08 Ex.14, SIP Nabi Bux Lashari Mashir was examined as P.W-09, Zubair Ali Mari was examined Mashir was examined as P.W-10, Allah Warrayo Kunbhar Mashir was examined as P.W-11, Sohrab Channa corpse bearer was examined as P.W-12, Inspector Muhammad Nadeem Arain investigation Officer was examined as P.W-13. Thereafter, learned DDPP for the state filed statement and closed the side on behalf of the Complainant.

7. The statement of accused U/S 342 Cr.P.C were recorded by trial Court, whereby the appellant/accused denied the allegations of the

Complainant Case, claimed his innocence and did not opt to examine himself on oath and lead evidence.

8. The learned trial court after hearing the parties and their respective counsels, convicted the appellant as aforementioned.

9. Learned counsel for the appellant mainly argued that during trial the star witness Muhammad Urs and lady Mst. Zubaida neither named the appellant as an assailant responsible for commission of murders nor identified him as an accused. The direct evidence connecting the appellant was lacking, therefore, it was a fit case for his acquittal. In support of his contentions, he has relied upon case of **Muhammad Amjad and another V. The State and others** (2026 S C M R 921) and **Maqsood Alam and another V. The State and others (**2024 S C M R 156). He prayed to allow the appeal and acquit the appellants.

10. Learned counsel for complainant Muhammad Urs controverted the contentions of learned counsel for appellant and argued that prosecution proved its case beyond shadow of doubt, as both the witnesses remained consistent on material point and the appellant was arrested from the spot alongwith the weapon, as such no exception can be taken from the findings of learned trial court. Hence, prayed for dismissal of appeal.

11. Learned A.P.G after going through the evidence of the prosecution conceded to the factual position that the prosecution witnesses had not identified the appellant during trial as culprits; therefore the impugned judgment was not sustainable.

12. I have heard the arguments of both sides and perused the material available on record.

13. From meticulous perusal of material on record and appraisal of evidence it revealed that appellant was doubt arrested from the place of incident alongwith the SMG, with four magazines having bullets belonging to the police. He was implicated in the FIR as well as complaint instituted under section 200 Cr.P.C. by the injured witness Muhammad Urs being dissatisfied with the police case. In the complaint, Muhammad Urs specifically named present appellant at Serial No.5 responsible for assault and commission of murders. However, while recording his evidence before the trial court, he deposed that accused Mazhar Chandio, Aqib Chandio, Arbelo @ Inayat Chandio and Abdul Jabbar Chandio, opened fires jointly upon him and his wife Mst. Azizan, who died at the spot, whereas from the police side he named Shoukat Arejo, Gulzar Mari and Muharram Zardari, who instigated the accused to do away with the complainant party. The appellant was produced in custody, however he was not identified by the complainant Muhammad Urs. For the sake of convenience, relevant part of his evidence is reproduced hereinunder:

> *"Suddenly four person entered into my hut having weapons with them and I identified all four accused who were already known to me namely Mazhar Chandio who was holding repeater, Aqib Chandio holding pistol, Arbelo @ Inayat Chandio who was holding Kalashnikov and Abdul Jabbar Chandio who was holding Pistol and all four accused opened fires jointly upon me and my wife. And on account of such firirng my wife Mst Azizan died at spot while, I received injuries. And in the meantime police party also reached I at at spot and out of them I heard and seen the accused Shoukat Arejo, Gulzar Mari an 263K and Muharram Zardari instigated the four accused to further fire upon me as still I was alive. And in the meantime my sister Zubaida reached at spot and saved me from the accused by beseeching and lying on to accused. The accused present before Court are not same Deposition of Mst. Zubaidah (P.W-03)"*

14. Mst. Zubaidah, another eye witness of the incident was also examined as P.W-03 and she in her statement did not identify or named

any of the accused present in the court, which included the appellant. For the sake of convenience, the relevant part of her evidence is also reproduced hereinunder:

> *"I identified four private persons to be namely each 1. Arbelo S/o Janan Chandio, 2. Mazhar S/o Janan Chandio, 3. Aqib S/o Arbelo Chandio, 4. Jabbar S/o Mithal Chandio. The accused Arbelo, Mazhar, Aqib and Jabbar made firing upon my sister-in-law Mst. Azizan and my brother Muhammad Uris. I raised cries that attracted co-villagers as well"*

15. As far as the evidence of rest of the P.Ws namely PW 4 Dr. Muhammad Anwar, PW 5 Dr.Diyal Das, PW 6 Tapedar Ali Murad Keerio, PW 7 Dr. Shabbir Ahmed Cheena, PW 8 Dr. Hina Shabbir Awan, PW 9 SIP Nabi Bux Lashari, PW 10 Mashir Zubair Ali Mari, PW 11 Mashir Allah Warrayo Kunbhar, PW 12 Sohrab Channa corpse bearer and PW 13 Inspector Muhammad Nadeem Arain investigation Officer are concerned, none of them was the eye witness of the incident. The alleged arrest of the accused from the scene of offence, cannot hold him responsible for commission of murders when ocular account was not available, the arrest of the accused from spot has also become doubtful when injured witness Muhammad Urs in his evidence did not allege the presence of appellant at the place of incident. Moreover, it is the prosecution case that weapon recovered from the appellant belonged to the police, however the name of the said police personnel to whom the said weapon was allotted did not find mention, to say that any disciplinary proceedings were taken against the said official responsible to release his official weapon to a private person. Since the star witness injured PW 01 Muhammad Urs and eye witness PW 03 Mst. Zubaida during trial did not support the prosecution case to the extent of present appellant by not implicating him and not identifying him as an accused of the commission of crime, therefore, it

cannot be held safely that appellant/accused is responsible for killing of Mst Azizan and Khadim Hussain.

16. Learned Trial Court though conceded to the factual position that ocular account in the case was absent, however convicted the appellant, by holding that sufficient circumstantial evidence was available on record to award conviction. In cases where prosecution case hinged upon ocular and circumstantial evidence, and in case the ocular account does not qualify the basic test of "proof beyond reasonable doubt" then the conclusion of guilt cannot be drawn on the basis of circumstantial evidence that too of recovery of weapon only. More particularly, in the present case, when the same set of evidence was disbelieved for the co-accused Mehar, Shahnawaz @ Shahoo and Hazoor Bux, and they were acquitted of the charge. It transpired from the evidence of PW 2 Akhtar Hussain Bijarani SHO Police Station Perumal that he proceeded promptly to the place of incident and arrested on spot accused every one namely SIP Loung Khan Shar with SMG, PC Hazoor Bux with G3 rifle, PC Piyaro with G3, PC Qurban with SMG, Ali Ahmed with TT pistol, Abdul Karim with 12 bore gun, Mehar with repeater and Siddiq Bhayo with SMG. Learned Trial Court acquitted the accused Mehar, Hazoor Bux and Shahoo @ Shahan on the same set of evidence, however convicted the appellant and others but failed to appreciate that how the case of appellant differentiated to that of the acquitted co-accused thus a considered opinion is formed that the prosecution has failed to satisfactorily and firmly establish the guilt of the appellant.

17. It further transpired from the record that appellants 1) Loung Khan, 2) PC Qurban Ali, 3) PC Piyaro Khan, 4) Abdul Karim and 5) Ali Ahmed entered into compromise with the legal heirs of deceased and their compromise application was accepted vide order dated 05.04.2021 and

they were acquitted of the charge by way of compromise and appeal to the extent of present appellant was adjourned for adjudication on merits.

18. It is settled law that benefit of doubt, if any arising out of the case, should go in favour of accused. Article 71 of Qanoon e Shahadat Order, 1984 enunciated that the ocular evidence must be direct in nature and in the present case, the direct evidence to connect the appellant with commission of offence is lacking, therefore, the benefit of doubt must be given to him as a matter of right and not grace. Reliance in this regard is placed upon the dicta laid down by Honorable Supreme Court of Pakistan in the case of **Munir Ahmed and 3 others V. The State and others (2026 S C M R 1498)**, wherein while appreciating the prosecution evidence it is held that:

> *13. The cumulative effect of the foregoing discussion is that the prosecution has miserably failed to prove the guilt of the appellants through cogent, confidence-inspiring direct evidence duly corroborated by reliable circumstantial evidence and supported by medical evidence. The learned courts below, while overlooking the material contradictions and glaring discrepancies in the prosecution evidence which created serious doubt in the prosecution case, arrived at an erroneous conclusion by holding the appellants guilty of the offence. It is settled law that while giving the benefit of doubt to an accused, it is not necessary that multiple circumstances creating doubt must exist. If a single circumstance raises a reasonable doubt in the mind of a prudent person regarding the guilt of the accused, the accused is entitled to such benefit, not as a matter of grace or concession, but as a matter of right. This principle is founded on*

> *the maxim that it is better that ten guilty persons be acquitted than that one innocent person be convicted.*
>
> 14. *Consequently, Criminal Appeals Nos. 11-L and 12-L of 2021 are allowed. The convictions and sentences of the appellants recorded by the courts below are set aside, and while extending them benefit of doubt, they are acquitted of the charge levelled against them. They shall be set at liberty forthwith, if not required to be detained in connection with any other case.*

19. For the forgoing reasons, the captioned Appeals are allowed; result thereof, the impugned judgment dated 28.08.2020 passed by the learned Additional Sessions Judge-I/MCTC, Sanghar, in Sessions Case No.382/2017 Re: The State v. Mazhar Chandio and others, arisen out of Crime No.46/2017 of P.S Perumal for the offence U/s 302, 324, 147, 148, 149, 170, 120-B, 337-F(v)(vi), L(ii), F(ii) PPC and Sessions Case No.121/2019 Re: Muhammad Urs v. Mazhar Chandio and others, arising out of a private complaint for the offence under Sections 302, 324, 368, 147, 148, 149, 170, 120-B PPC, is hereby set aside and appellant namely Muhammad Siddique son of Moula Bux Bhayo is acquitted from the charge. He is directed to be released forthwith, if not required in any custody case.

20. These are the reasons for the short order dated 04.11.2026, vide which the captioned appeals were allowed. Office to keep signed copy of the judgment in connected appeal.

JUDGE

Approved for reporting

Salik