IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No S - 87 of 2015(old)

Criminal Appeal No.S-13 of 2024 (new)

(Abdullah vs. The State)

Appellant	:	Abdullah son of Muhammad Hanif Through Mr. Ishfaque Ahmed Lanjar advocate & Mr. Ali Hyder Shah advocate
Complainant		Nemo
Respondent	:	The State Through Mr. Neel Parkash Deputy P.G.

Date of hearing & short order: 02.11.2026

Date of detail Order: 11.11.2026

JUDGMENT

NISAR AHMED BHANBHRO, J: Instant criminal appeal is directed against the judgment dated 14.05.2015 (**impugned judgment**) passed by the learned Sessions Judge, Umerkot (**Trial Court**) in Sessions Case No.73 of 2012, titled *"The State versus Abdullah & others,"* arising out of Crime No.136/2012, registered at Police Station, Kunri for offence under Section 302, 504, 34 PPC, whereby the appellant was convicted for the charge and sentenced to suffer imprisonment for life under section 302(b) PPC for committing murder of Abdul Razak and also to pay Rs.2,00,000/- (Two lacs) as compensation to the legal heirs of deceased Abdul Razak as provided by section 544-A Cr.P.C. In case of default in payment of compensation, to suffer simple imprisonment for six months more. The benefit of section 382-B Cr.P.C was also extended to the accused/appellant.

2. Concisely, the facts of the prosecution case as depicted in the FIR are that on 06.08.2012 at 1700 hours complainant Sardar Kapri lodged FIR at P.S, Kunri alleging therein that three months prior to the incident his brother deceased Abdul Razak had contracted love marriage with Mst. Zohra daughter of Ghulam Rasool and she recorded such statement before Honourable High Court of Sindh Hyderabad. That Ex-Husband of Mst. Zohra Abdullah Gishkori, Imtiaz alias Imto and Ghulam Ali Gishkori were annoyed on such unceremonious marriage. That on the day of incident, complainant Sardar, his deceased brother Abdul Razak, Riaz and Abbas came to Kunri town to sell cotton crop. That after selling the cotton crop to Jai Parkash, they left the shop of Jai Parkash, when at about 4-00 pm they reached over road accused every one namely Abdullah, Imto alias Imtiaz and Ghulam Ali all armed with hatchets came there, who within their sight caused hatchet blows to Abdul Razak on his head and neck, who fell down on the ground, due to fear complainant party did not go near to them. Abdul Razak succumbed to the injuries at the spot, thereafter, they brought dead body to Government hospital Kunri, leaving Riaz and Abbas over dead body Sardar went to P.S and lodged the FIR.

3. Investigation followed its course and after its completion, police submitted report under section 173 Cr.P.C before the concerned Magistrate and after adopting legal formalities, case was sent up to Learned District & Sessions Court being exclusively sessions trial, where form it was made over to the Trial Court.

4. In compliance to the provisions of Section 265-C Cr.P.C. necessary documents were supplied to the accused, and indicted for a formal charge, to which the accused pleaded not guilty and claimed to be tried.

5. At trial, to substantiate charge, prosecution examined **PW-01** complainant Sardar, who produced FIR, **PW-02** Riaz, **PW-03** Tapedar Chainsingh, who produced sketch of the place of incident, **PW-04** Dr. Mubarik Ali, who produced police letter and post mortem report, **PW-05** PC Ghulam Murtaza, he produced receipt of handing over dead body to complainant, **PW-06** Muhammad Saleem, he produced mashirnama of inspection of dead body, inquest report, form of inspection of dead body, mashirnama of clothes of deceased, mashirnama of place of incident, mashirnama of arrest of accused, and mashirnama of recovery of hatchets, and **PW-07** IO/ASI Ali Nawaz was examined, who produced report of chemical examiner. Thereafter, prosecution closed its side for evidence.

6. The statements of the accused u/s 342 Cr.P.C were recorded. Accused denied charge and claimed innocence. Accused Abdullah produced photo copy of order of Crl. Misc. Appl. No.209/2012, certified true copy of FIR No.47/2005 of P.S, Kunri, FIR No.99/2010 of P.S, Kunri, FIR No.66 of 2008 of P.S Pangrio and 108/2008 of PS Pangrio. However the accused neither examined themselves on oath nor led any evidence in defense.

7. Learned Trial Court, after hearing the parties through Learned Counsel, convicted appellant Abdullah as aforementioned and acquitted the co-accused Imtiaz @ Imto and Ghulam Muhammad @ Ghulam Ali. Hence this appeal.

8. Learned counsel for the appellant contended that there are material contradictions in the evidence of prosecution witnesses. He contended that in the FIR, it has been alleged that all three accused namely Abdullah, Imtiaz and Ghulam Ali caused hatchet blows to the deceased Abdul Razak; however, while recording their evidence the witnesses deposed that only accused Abdullah caused injury to the deceased. He contended that no proof as to the selling of cotton in the market was furnished in during evidence and investigation as well,

the presence of witnesses at the site of the offence was doubtful. He further contended that the recovery was effected jointly from the possession of all three accused and was sent to the forensic laboratory, which confirmed that it contained human blood; however, the said hatchet was not sent for matching the blood recovered from the place of incident or with the blood stained clothes. He contended that the place of incident was a busy area, but none from the public was associated to authenticate the prosecution story. He further contended that prosecution failed to establish motive, and prosecution case was that of improvements and contradictions benefit of which ought to have been given to the accused, in particular when on the same set of evidence co-accused facing similar charge were acquitted. He prayed for acquittal of the appellant.

9. Learned Deputy Prosecutor General, controverting the submissions, contended that the prosecution witnesses fully supported the case and remained consistent on material points; that the F.I.R was promptly lodged and it was not a case of deliberations or consultations. He contended that despite lengthy cross-examination to witnesses, their evidence could not be shattered. He contended that the appellant was assigned the specific role of causing hatchet injury over the head of the deceased, which proved fatal. He contended that hatchet used in commission of offence was recovered from the appellant and was found blood stained. He contended that it was a day time incident and question of mis-identification or substitution of the accused did not arise. Therefore, he prayed for dismissal of the appeal.

10. Heard arguments and perused the material available on record.

11. Scanning of the prosecution evidence revealed that incident took place on 06.08.2012 at about 1600 hours and was promptly reported to police at 1700 hours on the same day by Sardar brother of deceased Abdul Razak. In their

evidence before Trial Court PW 01 Sardar and PW 02 Riaz deposed that accused assaulted deceased at 1600 hours and he died on the spot, deceased was removed to hospital, where complainant left PW 02 Riaz and given up witness Abass and he came to police station and recorded F.I.R. The narration of PW 01 Sardar and PW 02 Riaz has been negated by PW 04 Dr Mubarak Ali who conducted post mortem of the deceased. In his evidence (page 47 of the paper book), he deposed that dead body of the deceased was referred by Kunri Police through PC Ghulam Murtaza vide letter No CR.136/2012 dated 06.08.2012. He further deposed that dead body was identified by Noor Muhammad and Nadeem uncle and cousin of deceased respectively. Police Report produced in evidence by PW 04 Dr Mubarak Ali (page 50 of paper book) shows that F.I.R was lodged at police station prior to the referral of deceased for post mortem, as the referral letter contained FIR No 136 of 2012 as its reference. Absence of prosecution witnesses in the hospital at the time of post mortem creates doubt as to the veracity of their statements, moreover it is not the prosecution case that Noor Muhammad and Nadeem were also the witnesses of occurrence. From the analysis of evidence of prosecution, a definite conclusion can be drawn that F.I.R was not promptly lodged but was the result of management between police and complainant party.

12. Moreover, the prosecution witnesses have contradicted each other on the material points. PW-01 Sardar deposed before Trial Court that he, along with Riaz, Abbas and Abdul Razak, went to Gurmandi by motorcycle, whereas PW 02 Riaz deposed that they went to the place of incident in a Shehzor Jeep. PW - 01 Sardar deposed that while they were travelling by bike, Haris Soomar Bheel, Magho Bheel and Dayaram Kolhi followed them in a Shehzor Jeep, whereas PW 02 Riaz deposed before the trial Court that the complainant party, along with one lady passenger, were travelling in a Shehzor Jeep. It is the case of the prosecution that the incident had occurred on a road near Gurmandi and

adjacent to shop of Jai Parkash, after the cotton was sold to Jai Parkash, but the said Jai Parkash, including Soomar Bheel, Magho Bheel, Dayaram Kolhi and the driver of the Shehzore vehicle were not cited as witnesses in the prosecution car nor produced before the police during investigation or even before the trial Court. This omission to record the neutral and important piece of evidence leads to the inference that had the evidence of the above-named witnesses been brought before the trial Court, they may not have supported the prosecution case, so set up. If the prosecution did not want to produce all the witnesses as cited above, Jai Parkash ought to have been examined to establish the presence of Complainant and PW - 02 Riaz at the place of incident. The presence of witnesses Abbas and Riaz at the place of incident is also doubtful, as the statement of Riaz under Section 161 Cr.P.C. was recorded on 07.08.2012, one day after the incident, for which he failed to assign any reason, though he shows his presence with the deceased right from the time of departure from village to Gurmandi for selling cotton. Reliance in this regard can be made to the dicat laid down by Honorable Supreme Court of Pakistan in the case of **Bashir Ahmad alias Phero V. The State (2026 S C M R 1463),** wherein it is held that:

> *9. "It is also a matter of record that all the witnesses are close relatives of the complainant and that Sajid Ali was exonerated by the complainant party though he was the only accused who was nominated in the FIR whereas, the petitioner was not named therein. No motive has been proved in the instant matter for the murder of Samar Iqbal deceased, as the aspect of robbery has not been proved nor does there appear to be any other apparent motive that could be considered confidence-inspiring or attributable to the petitioner for killing Samar Iqbal deceased.*
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> *10. If all these factors are considered in juxtaposition it would reveal that the present case is full of doubts, conjecture and surmises and the depositions of the PWs could also not be considered to be confidence-inspiring. The discussion above clearly demonstrates the material flaws in the prosecution case, rendering it doubtful. Since the instant case is one that is replete with reasonable doubts we are of*

the view that the prosecution has failed to prove its case against the present petitioner beyond reasonable doubt.

13. Prosecution evidence is fraught with material contradictions as to the manner in which deceased sustained injuries. As per the FIR, PW 01 Sardar alleged that all three accused namely Abdullah, Ghulam Ali and Imtiaz @ Imto caused hatchet injuries on the person of deceased, however while recording evidence before Trial Court he deposed that only accused Abdullah caused hatchet injuries to the deceased. PW 02 Riaz in his 161 Cr.P.C statement and evidence before Trial Court deposed that accused Abdullah, Imtiaz @ Imto and Ghulam Ali caused hatchet injuries to the deceased, on sustaining injuries he fell down and died. Learned Trial Court in para 32 of the judgment observed that since ocular account to the extent of accused Ghulam Ali and Imtiaz was doubtful, therefore by extending benefit of doubt they are acquitted of the charge. Question now arises, when on the same set of evidence, the prosecution evidence was disbelieved to the extent of co-accused (since acquitted), how the same evidence can be relied upon to maintain conviction of the appellant. More particular when the acquittal of co-accused remained unchallenged and attained finality.The improvements and material contradictions in the evidence of prosecution witnesses is fatal to the case and leads to draw an inference that the witnesses were not present at the scene of occurrence and were set up later on to depose against the accused to settle the scores of enmity. Reliance in this regard may be placed on the case of **Munir Ahmad and 3 others V. The State** (**2026 S C M R 1498),** wherein Honorable Supreme Court of Pakistan has been pleased to hold that:

"10. The cumulative effect of the material contradictions, inconsistencies, and dishonest improvements noted above creates serious doubt regarding the presence of the alleged eye-witnesses at the place of occurrence at the relevant time. The unnatural conduct of the alleged eye-witnesses is yet another strong circumstance which negates their presence at the crime scene. Both the alleged eye-

witnesses have given minute details of each shot fired by each appellant and parts of body of the deceased hit by each bullet. Such conduct is wholly inconsistent with normal human behaviour. In the ordinary course of human conduct, a father witnessing his son being attacked would instinctively attempt to rescue him, even at the risk of his own life, rather than act as a passive spectator meticulously observing and memorising the details of each fire shot of the assailants. Even otherwise, keeping in view the speed and velocity of a firearm projectile, it is highly improbable for a person to notice and accurately attribute each bullet fired by different assailants to specific injuries on the body of the deceased. This Court has repeatedly observed that in many criminal cases of murder and attempt to murder, particularly from the Province of Punjab, FIRs and ocular accounts contain stereotyped narrations assigning specific roles to each accused by detailing each fire shot and its corresponding injury on the person of the victim/deceased, which is an exercise humanly impossible and indicative of subsequent deliberation, often aimed at roping in as many accused as possible with assigned roles. The learned courts below have squarely overlooked the material contradictions, inconsistencies, and dishonest improvements appearing in the testimony of the alleged eye-witnesses and have, thus, wrongly believed and relied upon their evidence. The peculiar facts and circumstances of the case, coupled with the admitted position that the village of the alleged eye-witnesses is situated at a distance of about two kilometers from the place of occurrence, strongly suggest that their presence at the spot was procured after the incident and that they were subsequently introduced as eye-witnesses to the occurrence."

14. The prosecution also relies upon the extra judicial confession and recovery of blood stained hatchets allegedly recovered on the pointation of appellant and acquitted co-accused during interrogation. Article 40 of the Qanun-e-Shahadat Order, 1984 (Order of 1984), provides that when any fact is discovered in consequence of information provided by an accused to the investigating officer, such information may be used against the accused to the extent that it distinctly relates to the fact thereby discovered, provided that the said fact was not previously within the knowledge of the police.

According to the prosecution, the appellant disclosed two facts before the police, i.e., he confessed his guilt and secondly, he led to the recovery of weapon of crime. It is a fact on record that the PW1 and PW2, during the investigation, had already informed the police that the petitioner committed the offence. Since this fact was already in the knowledge of the I.O., such portion of the alleged disclosure does not qualify the test of Article 40 of the Order of 1984. No doubt recovery of crime weapon is of great importance to the outcome of any criminal case, provided that its connection with the accused is established beyond a shadow of doubt. According to the I.O. and the recovery witness PW 06 Muhammad Saleem, the hatchet was recovered after six days of the occurrence on the pointation of the appellant from outer hedge (protection wall of plant leaves) erected surrounding the house of appellant. It is not acceptable to a prudent mind that after the commission of crime, the accused will hide the weapon in hedge of the house. Besides, it is alleged by the prosecution that the hatchets were stained with human blood, but no effort was made to match it with the blood of the victim, nor the fingerprint examination was conducted to connect the appellant with the recovered weapon. Reliance of the prosecution on the recovery is also not helpful, as allegedly, the accused jointly led the police to the place of recovery and produced the alleged hatchets, and a joint recovery memo was prepared. Therefore, it cannot safely be held that the joint recoveries pertain to any particular accused, this makes the joint recovery inadmissible in evidence. Moreover, the clothes of deceased and blood stained earth were secured on 06.08.2012, the hatchets were allegedly recovered on 12.08.02012 and were sent for forensic analysis on 16.08.2012 without assigning any reasons. The delayed recovery of the hatchets from an open and accessible place, the absence of forensic corroboration for the purpose of its connection with the appellant renders this piece of evidence doubtful, which cannot be relied upon. Reliance in this regard is placed upon the case of **Muhammad Shadeed V.**

The State (**2026 S C M R 1255),** wherein Honorable Supreme Court of Pakistan has held that**:**

> *"5. One of the evidence, upon which the prosecution is strongly relying upon is the recovery of the crime weapon on the pointation of the petitioner during his alleged extrajudicial confession. No doubt recovery of crime weapon is of great importance to the outcome of any criminal case, provided that its connection with the accused is established beyond a shadow of doubt. According to the I.O. and the recovery witness, the weapon was recovered after 12 days of the occurrence on the pointation of the petitioner from a dustbin situated approximately two minutes away from his house. It is a fact that the dustbin is accessible to everyone and the witnesses admitted that it was cleaned between 21st April 2019 and 3rd May 2019, before the recovery of the alleged crime weapon. Under such circumstances, it is not acceptable to a prudent mind that after the cleaning of the dustbin, which is accessible to everyone as well, how the weapon remained lying therein for so many days. Besides, it is alleged by the prosecution that the weapon was stained with human blood, but no effort was made to match it with the blood of the victim, nor the fingerprint examination was conducted to connect the petitioner with the recovered weapon. The delayed recovery of the weapon from an open and accessible place, the absence of forensic corroboration for the purpose of its connection with the petitioner and the circumstances surrounding the sealing and custody of the weapon, renders this piece of evidence doubtful, which cannot be relied upon."*

15. The re-appraisal of evidence further revealed that the prosecution has specified the motive for murder of deceased Abdul Razak, his love marriage with Zohra d/o Ghulam Rasool Gishkori ex-wife of accused Abdullah. The Prosecution witnesses in the case are Sardar brother of deceased Abdul Razak

and Riaz a close relative. In their evidence recorded before Trial Court Complainant PW 01 Sardar and PW 02 Riaz deposed that three months prior to the incident deceased had contracted love marriage with Mst. Zohra Ex-wife of Accused Abdullah. In defence, accused Abdullah stated in his statement under section 342 Cr.P.C that he had divorced Mst. Zohra in year 2011, therefore, no question of annoyance arose over her second marriage. In such circumstances the evidence of Mst. Zohra was necessary to establish motive of the offence and to believe that deceased was done to death for an enmity on matrimonial affairs or love marriage of Mst. Zohra Gishkori. Prosecution's failure to produce such important piece of evidence firstly during investigation and then at Trial, led to an inference, that had Mst. Zohra been produced for recording evidence, she may not have supported the prosecution case. The motive of the case thus remained shrouded in mystery and could not be established by the prosecution. Moreover, from criminal record of complainant party produced by the defence, it elucidated that complainant party was on inimical terms with one Khadim Hussain Kapri over the alleged abduction of his wife Mst. Naseeban, for which he had recorded FIR No 68 of 2008 at police station Pangrio against deceased Abdul Razak and others. The most crucial aspect of the case, being the motive to do away with the life of deceased which prosecution miserably failed to prove, dents the prosecution story. Though absence of motive or failure to establish motive was not always fatal to the prosecution case, specially when the occurrence has been fully proved through confidence inspiring evidence, but nevertheless, prosecution is burdened to prove motive if specifically alleged being the reason of commission of crime. In this regard reliance may be placed on the case of **Khuda Bux V. The State** (**2026 S C M R 1532),** wherein Honorable Supreme Court of Pakistan held that:

> *"17. As to factor (i), absence of motive may in an appropriate case assume significance at the stage of sentence, particularly where there is doubt about the genesis of the occurrence or where surrounding circumstances reduce moral culpability. It cannot,*

however, operate as an automatic rule of commutation. In the present case, the petitioner was identified by natural witnesses, including his own injured son. The occurrence took place inside the family house. The medical and forensic evidence corroborates the ocular account. The manner of occurrence, namely repeated firing upon multiple family members including a minor child, itself demonstrates deliberation and extreme brutality. Absence of proved motive, therefore, does not constitute a mitigating circumstance of sufficient weight."

16. In the present case since prosecution evidence as to the place of occurrence, role played by each accused and manner in which the occurrence took place were not confidence inspiring, and absence of independent corroboration render the prosecution evidence shabby, therefore, failure to establish motive was fatal to the prosecution case. Reliance in this regard is placed on the case of **SAJJAD and another V. The State (2026 S C M R 1483), wherein Honorable Supreme Court of Pakistan has been pleased to hold that:**

13. As for motive, the edifice erected by the prosecution does not inspire confidence and, on the material available, stands unproved. This has already been noticed by the High Court in the impugned judgment. The alleged prior altercation was not established through independent corroboration, and the investigation yielded no reliable proof to sustain it. In a case where the ocular account itself is beset with doubts, the failure to prove motive further erodes the veracity of the allegations against the appellant.

14. The foregoing paragraphs highlight material flaws in the prosecution case. It cannot then safely be said that the guilt of the appellant has been proved beyond reasonable doubt. Since the matter is rife with doubt and replete with contradiction, the appellant is to be extended the benefit of the same; making his case one that merits acquittal.

17. The golden principle of criminal jurisprudence is that the prosecution must prove its case beyond reasonable doubt. The cumulative effect of the evidence produced by the prosecution, shows that the ocular account,

circumstantial evidence lacks corroboration, hence, fails to inspire confidence. The benefit of doubt is a matter of right for the accused, not a matter of grace or concession. Given that the prosecution's case is replete with doubts, the forum below failed to properly consider the facts and appraise the evidence, and did not extend the benefit of doubt to the appellant, hence, reached at a wrong conclusion. It is a settled proposition of law that a single circumstance creating reasonable doubt in a prudent mind is sufficient to disbelieve the prosecution story. Reliance in this regard is placed upon the case of **Iftikhar alias Puppi V. The State** (**2026 S C M R 891),** wherein Honorable Supreme Court of Pakistan has held that**:**

> *17.To conclude, it is a settled principle of law that where there is a doubt in the case against the accused, the benefit of that doubt must accrue as of right in the accused's favour. In keeping with this principle, it is clear that the improvements in the complainant/ PW-7's testimony; alongside the other eye-witness, Mulazim Hussain (PW-8), being a chance witness; the recoveries of the crime empty, firearm, gold ring, wallet (containing cash and CNIC copy) being inconsequential and doubtful, the case against the petitioner-Iftikhar is rife with doubt. By extending the benefit of that doubt it is evidence that the accused's is a case for acquittal.*

18. In view of what has been discussed above, the instant appeal is allowed and the impugned judgment dated 14.05.2015 passed by the learned Sessions Judge, Umerkot (**Trial Court**) in Sessions Case No.73 of 2012, titled *"The State versus Abdullah & others,"* arising out of Crime No.136/2012, registered at Police Station, Kunri for offence punishable under Section 302, 504, 34 PPC, is set aside. Appellant Abdullah is acquitted of the charge leveled against him, and he shall be released from jail forthwith if not required to be detained in any other custody case.

19. These are the reasons for the short order dated 02.11.2026 vide which instant appeal was allowed and appellant was acquitted of the charge.

JUDGE

Approved for reporting

"Chander Kumar"