

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(*Judicial Department*)

Cr. A No. 413-P/2024

Asif Vs the State & another

JUDGMENT

Date of hearing: **25.11.2025**

**Appellant by: M/S. Ashfaq Ahmad Daudzai
and Adnan Khan Yousafzai, Advocates.**

The State by: Mr. Ayub Zaman, AAG.

**Respondent/complainant by: - Mr. Irfan Ali
Khan, Advocate.**

SAHIBZADA ASADULLAH, J.- Through this single judgment, this court is intending to decide the instant appeal and the connected Cr.A No. **449-P/2024** titled “*Mumtaz Bahadar vs Hamza & another*” as well as the connected Criminal Revision No. **141-P/2024** titled “*Mumtaz Bahadar vs Asif & another*” as all the matters are arising out of one and the same judgment dated 29.04.2024 passed by the learned Additional Sessions Judge-III/JMTC, Swabi delivered in case FIR No. 305 dated 07.03.2022 under sections 302/34 PPC at police station

Swabi, District Swabi whereby respondent/accused Hamza was acquitted of the charge while the appellant was convicted and sentenced as under:

“Under section 302(b) PPC to imprisonment for life as Tazir and to pay a fine of Rs.5,00,000/- (five lac) as compensation to the legal heirs of the deceased within the meaning of section 544-A CrPC and in default whereof, to further undergo simple imprisonment for six months. Benefit of section 382-B Cr.P.C is extended in favour of the appellant.

2. As per the contents of the *murasila*, on 07.03.2022, complainant Mumtaz Bahadar, produced the dead body of his grandson, Fardeen Khan at DHQ Hospital, Swabi and reported the matter to the effect that after offering *Asr* prayer at Cheena Masjid, he was returning home while his grandson Fardeen Khan was walking along a pathway near Waqas Karyana Store in village Bamkhel, the accused Misri Khan son of Sher Muhammad, Ali Sarwar son of Misri Khan, and Asif son of Pervez, who

were armed with deadly weapons came there and started firing at his grandson as a result of which he was hit and died on the spot; that the occurrence was witnessed by his brothers Javed Muhammad and Fazal Bahadar alongwith several other persons; that motive behind the occurrence is that Mst. Madina, daughter of accused Misri Khan, had allegedly eloped with Shah Rukh Khan, brother of the deceased, which led to the tragic occurrence, leading to the registration of the instant FIR.

3. It is pertinent to mention that on 04.07.2022, complainant recorded his statement under section 164 CrPC before the court of competent jurisdiction wherein, acquitted co-accused Hamza was charged for the commission of offence while accused Misri Khan and Ali Sarwar were exonerated from the charges. During the course of trial, co-accused Misri Khan and Ali Sarwar, on no objection of the complainant, were acquitted under section 265-K CrPC vide order dated 06.04.2024. It was on arrest of the appellant and acquitted co-accused that they were put to the trial. Provisions of

section 265-C CrPC were complied with and, the appellant alongwith acquitted co-accused was charge sheeted to which they pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 12 witnesses. After closure of prosecution evidence, statements of the appellant and acquitted co-accused Hamza were recorded under section 342 CrPC, wherein they posed innocence, however, neither they wished to be examined on Oath as required under section 340 (2) CrPC, nor wanted to produce evidence in defence. The learned trial Court, after full-fledged trial, acquitted co-accused Hamza while convicted and sentenced the appellant Asif vide the impugned judgment, hence, instant appeal.

4. Arguments heard and record scanned through.

5. The unfortunate deceased succumbed to his injuries, losing his life in the aftermath of the grievous incident. The dead body was forthwith shifted to the hospital, where the complainant reported the matter. The

injury sheet and inquest report were prepared, and the dead body was thereafter dispatched for post-mortem examination. The investigating officer proceeded to the scene, and on the pointation of the complainant and eyewitnesses, prepared the site plan. During spot inspection, blood through cotton was collected and one spent bullet of 9 MM and one spent bullet of .30 bore from the place of the deceased were recovered. The investigating officer also collected 05 empties of .30-bore and 08 empties of 9 MM bore lying scattered and also took into possession a motorcycle belonging to the deceased. CCTV cameras installed on the premises were identified, and the DVR, together with the recorded footage, was duly seized. The video recording was subsequently converted and preserved as evidence, and all such material was formally taken into possession. On the following day, the investigating officer summoned the witnesses to the police station. When the recording was played, to the astonishment of all concerned, it became evident that, contrary to the earlier charge against Misri Khan, Ali

Sarwar and Asif, another accused Hamza was found present on the spot. It was in the light of this revelation that the complainant recognized the error in charging the innocent persons. Consequent thereto, statement was recorded under Section 164 CrPC, whereby Misri Khan and Ali Sarwar were exonerated and accused Hamza was implicated together with the appellant in the murder of the deceased. Acting upon information received regarding the presence of the accused on a nearby hill, SHO Altaf Khan, accompanied by police officials, proceeded to the location, apprehended the accused. From the possession of acquitted co-accused Hamza, one 9 MM pistol alongwith charger containing 08 live rounds, whereas from the appellant one .30 bore pistol alongwith charger containing 05 live round were recovered and in that respect another FIR No. 378 dated 22.03.2022 under section 15 of the Arms Act was lodged. The weapons were transported to the police station, kept in safe custody, and subsequently taken into possession, being the weapons of offence in the instant case. The

recovered firearms, together with the collected empties, were forwarded to the firearms expert and a report was received telling that the pistols recovered from the appellant as well as acquitted co-accused Hamza matched with the empties of .30 bore and 9 mm collected from the scene. It is pertinent to observe that, upon their exoneration, Misri Khan and Ali Sarwar submitted an application under Section 265-K CrPC and expressing no objection thereto by the complainant, they were acquitted of the charge.

In the course of investigation, the investigating officer took into possession the DVR from the shelf of a bookcase and collected the CCTV footage installed upon the premises. On the very day following the occurrence, the investigating officer summoned the witnesses to the police station. When the video recording was exhibited, to the profound surprise of all concerned, the appellant, Asif was found to be present, together with the acquitted co-accused, Hamza, rather than the previously implicated accused Misri Khan and Ali Sarwar. Accused Misri Khan, apprehensive of the fairness of the

investigation, submitted an application to the investigating agency. In response, the investigating officer revisited the premises, recorded statements of all concerned, and collected affidavits from impartial witnesses in their favour. Upon realization that the charges against these accused were unfounded, the complainant recorded his statement under section 164 CrPC and exonerated them of the charges while accused Hamza and the appellant Asif were charged for the murder of the deceased. Upon conclusion of the proceedings, the learned trial court, having precisely appreciated the evidence on record, convicted and sentenced the appellant while acquitting co-accused Hamza.

6. This Court is now called upon to examine the judicial discretion exercised by the learned trial court in bifurcating the cases of the acquitted and convicted accused. It is necessary to ascertain the justification that led the learned trial court in distinguishing the culpability of the appellant from the acquitted co-accused and the evidence that substantiated such a conclusion.

While the presence of eyewitness testimony is undisputed, this Court must weigh the exoneration of two accused and the subsequent charges against the appellant and co-accused Hamza. Critical scrutiny is required to determine whether the statements of witnesses, once failed to sustain charges against Misri Khan and Ali Sarwar, could legitimately be relied upon against the appellant, and whether the learned trial court was justified in doing so.

In the exercise of its appellate jurisdiction, this Court is anxious to re-examine the essential aspects of the case and to ensure that no miscarriage of justice occurs and that the scales of justice remain duly balanced.

7. The points for determination before this Court are as to whether the incident occurred in the mode, manner and at the time; whether the complainant and the eyewitness were present at the scene, and whether it was indeed the complainant who reported the matter to the authorities; whether the subsequent statements of the complainant, exonerating the acquitted co-accused Misri Khan and Ali

Sarwar, could in any manner prejudice the case of the prosecution; whether, in the light of such exoneration, the statements of these witnesses could still be relied upon in respect of the other accused; whether the evidence obtained through modern devices, forwarded to the laboratory, would, in isolation, suffice to hold the appellant responsible for the commission of the offence; whether the medical evidence adduced supports the case of the prosecution; and whether the prosecution has succeeded in establishing the guilt of the appellant beyond reasonable doubt.

8. In order to appreciate the peculiar circumstances of the present case, it is essential to examine the statements of the complainant and the eyewitness, to ascertain whether they succeeded in establishing their presence at the scene and whether it was in their presence that the deceased met his tragic end. The complainant was examined as PW-7, who deposed that on the day of incident, after performing *Asr* prayer, he, alongwith the eyewitness, emerged from the mosque and heard gunshots. He further stated that he observed the

accused Asif, Misri Khan, and Ali Sarwar firing at the deceased, as a result of which, the deceased sustained fatal injuries, fell to the ground, and the accused decamped from the scene. The dead body was hurriedly shifted to the hospital, where the complainant reported the matter. The motive, according to the complainant, was that the daughter of Misri Khan had eloped with the brother of the deceased, Shah Rukh Khan, and that this incident precipitated the unfortunate death of the deceased. The eyewitness was examined as PW-8, who corroborated the version of the complainant and explained in detail the manner in which the incident occurred. He further stated that on the following day, they went to the police station, where they viewed the video recording. To their surprise, the recording did not depict accused Misri Khan and Ali Sarwar among those present at the scene, instead it showed the appellant Asif together with another accused, subsequently identified as Hamza, firing at the deceased. This Court has noted that the subsequent video

recording formed the basis for the exoneration of Misri Khan and Ali Sarwar, a determination made after the complainant recorded his statement before the competent court and expressed no objection to the acquittal under Section 265-K CrPC. These aspects are of critical significance to the present case. Initially, three accused were charged, subsequently, two were exonerated, and implicated another accused Hamza. Given these circumstances, this Court must carefully consider whether the prosecution has succeeded in establishing the presence of the complainant and eyewitness at the scene and whether the incident occurred in their immediate view. When the witnesses themselves were unable to accurately identify the actual culprits responsible for the death of the deceased, then this Court is compelled to apply utmost care in assessing and appreciating their testimony, so as to avoid any miscarriage of justice. This Court is further tasked with determining whether, having extended the benefit of doubt to the acquitted co-accused Hamza, the learned trial court was justified in

convicting the appellant, and which evidence was deemed sufficient to support such conviction. The question arises whether the evidence collected through modern devices alone, in the absence of reliable eyewitness testimony, is adequate to hold the appellant responsible for the commission of the offence.

In view of the peculiar circumstances of the case, and the conduct of the witnesses who, though claiming to have been present at the time of occurrence, erred in initially implicating two accused who were subsequently acquitted under Section 265-K CrPC, this Court finds that the totality of the circumstances necessitates a cautious and careful appraisal. When considered from this perspective, this Court is constrained to conclude that the witnesses have not satisfactorily established their presence at the scene at the relevant time. Their testimony, therefore, must be assessed with extreme caution by applying the highest degree of judicial scrutiny.

9. The investigating officer was examined as PW-9. He described his arrival at

the scene of occurrence and confirmed that the site plan had been prepared on the pointation of the complainant and eye witness. He further deposed that he collected the DVR from the shop adjoining the place of occurrence and secured the CCTV footage, having noticed that cameras were installed at the premises. He explained that on the following day of the occurrence, the complainant and the eyewitnesses were summoned to the police station, where the video recording was displayed. Upon viewing the footage, it transpired that, contrary to the initial version implicating Misri Khan and Ali Sarwar, the appellant alongwith another accused, was present at the scene. The investigating officer further disclosed that, upon considering the locations reflected in the video recording, an explanatory note was appended to the site plan, acknowledging that the scene as depicted in the footage stood in marked contrast to the site plan originally prepared on the pointation of the complainant. During cross-examination, the investigating officer conceded that the site plan,

prepared at the instance of the complainant, did not correspond with the locations visible in the video recording, thereby confirming in essence that the incident had occurred in a manner different from that described by the complainant and the eyewitness. The scribe was examined as PW-3. He stated that on receiving information, he proceeded to the hospital, where he found the deceased and the complainant and the complainant reported the matter. He confirmed that it was he, who prepared the injury sheet and the inquest report, following which the dead body was sent for post-mortem examination.

During cross-examination on essential aspects, he reiterated that the report had been lodged by the complainant and that it was the complainant who initially implicated the appellant alongwith the acquitted co-accused Misri Khan and Ali Sarwar. When the complainant was cross-examined with regard to his initial accusation, he sought to explain that the report had been lodged under extreme pressure; yet, in the same breath, he admitted that he was in full senses at the time of reporting the occurrence. The

conjoint reading of the testimony of the complainant with that of the scribe leaves no ambiguity that the report was made by the complainant and faithfully reduced into writing by the scribe, without omission or interpolation.

The circumstances further reveal that the complainant and the eyewitness first charged certain accused and thereafter exonerated two of them, so this Court is constrained to observe that the eyewitness account has suffered serious erosion, thus, it becomes incumbent upon this Court to consider whether, once the eyewitness version stands substantially discredited, conviction can safely be sustained solely on the basis of evidence collected through modern devices. These are the essential aspects of the case that demand close and cautious appreciation. This Court is therefore, inclined to subject the prosecution case to heightened scrutiny, particularly in view of the fact that, in the same occurrence, two accused were exonerated with no objection from the complainant, and another accused was acquitted when the learned trial court itself observed that

his identity could not be established from the video recording played in court in the presence of learned counsel for the parties. In such a factual matrix, the question that squarely arises is whether the appellant alone can be held responsible for the commission of the offence, and what evidentiary value may reasonably be assigned to witnesses, who admittedly committed material error in initially implicating persons not involved in the crime. In the opinion of this Court, such an error attacks at the very basis of their credibility. Once witnesses attempt to fasten liability upon innocent persons, their veracity and trustworthiness stand gravely impaired, and this Court is not inclined to treat them as reliable witnesses upon whose testimony conviction may safely rest. Reliance is placed on the judgment of Apex Court titled “*Ghulam Mustafa Alias Raja Buledi vs The State*” 2025 SCMR 1633 wherein, it has been held as under:

“We have already concluded that the facts and circumstances of this case show that the prosecution eye-witnesses were not present at the spot

at the relevant time and there are glaring contradictions in the statements of the prosecution eyewitnesses, hence their evidence is highly doubtful and unreliable.”

10. This case is singular, both in its appreciation and in its evidentiary complexion as on one hand, it stands on the account of the eyewitnesses; while on the other, the evidence procured through modern technological devices. The core question before this Court is whether these two strands of evidence travel in harmony, and whether what the witnesses claim to have seen accords with what is depicted in the video recordings obtained by the investigating officer from the shop at the premises. In addressing this question, this Court has examined, with due care, the statements of the witnesses. The record reveals that the initial narrative set forth by the prosecution did not proceed on an even course. It was the complainant who, at the very outset, nominated the appellant Asif alongwith the subsequently acquitted co-accused, Misri Khan and Ali Sarwar, alleging that they had fired upon the deceased. This version was expressly

affirmed by the eyewitness, which lends support to the case of the prosecution at its inception. However, the very next day introduced a turning point. The complainant and the eyewitness were summoned to the police station, where the video recording was played in their presence. Upon viewing the footage, they acknowledged the presence of the appellant Asif and another accused, Hamza (since acquitted), but conceded that Misri Khan and Ali Sarwar did not appear in the recording. It was at this juncture that the earlier account began to unravel. The visual record contradicted the original ocular narrative, compelling a reassessment of the facts. It was as a consequence of this revelation that Misri Khan and his son Ali Sarwar approached the investigating officer with an application asserting their innocence. An inquiry followed; statements of relevant witnesses were recorded; and the conclusion reached was unequivocal: these accused were not present at the scene on the day of the incident. Their arrest having been deferred, and the complainant having realized his error, recorded his statement under Section

164, CrPC exonerated them of the charge.

During the course of trial, when an application for their acquittal was submitted, the complainant, with the concurrence of the legal heirs of the deceased, offered no objection, which led to their acquittal under section 265-K CrPC.

11. The crucial question that now confronts this Court is whether, once the eyewitness account is found to suffer from material inconsistencies and inherent infirmities, and once it is established that the witnesses did not place the entire truth before the Court at the earliest stage, such testimony can still be relied upon, even partially, by drawing sustenance from the video recording. More particularly, where the witnesses themselves admitted that the acquitted co-accused Hamza was not visible in the recording, can the same witnesses be believed to the extent of fixing culpability upon the appellant alone. It bears emphasis that during the trial, the video recording was played before the learned trial court and counsel for the parties. In the impugned judgment, the learned

trial judge recorded that the identity of accused Hamza could not be confirmed from the footage and, on that basis, extended him the benefit of doubt. Paradoxically, however, the same court concluded that the identity of the appellant Asif stood established, both through the witnesses and the video recording, thereby denying him similar indulgence. When such an approach is discernible from the record, this Court is duty-bound to examine whether the learned trial court was justified in drawing such distinction, and whether, in the presence of modern technological evidence, the weakness or unreliability of the ocular account can be overlooked and selectively relied upon. The matter thus calls for careful articulation of the standard of appreciation to be applied when traditional testimonial evidence is at variance with digital proof. In these circumstances, this Court finds itself constrained to revisit the essential aspects of the case, to determine how such anomalies are to be resolved, and to ensure that the ultimate conclusion rests upon evidence that inspires confidence, satisfies the dictates of

law, and safeguards the administration of justice from the risk of error. Before proceeding to dilate further upon this aspect of the case, it is necessary to notice an additional and significant circumstance that co-accused Hamza, who ultimately stood acquitted, was admittedly not a stranger to the prosecution narrative. At the same time, the motive attributed in the case was squarely directed against the acquitted co-accused, namely Misri Khan and Ali Sarwar. It was alleged, and brought on record that the daughter of Misri Khan had eloped with the brother of the deceased, and that this grievance constituted the genesis of the unfortunate occurrence. This Court finds it striking that once those accused, who were assigned clear and direct motive stood exonerated, no satisfactory explanation emerges as to what nexus Hamza and the appellant Asif bore with that motive. Equally perplexing is the absence of any independent evidence suggesting that either Hamza or the appellant shared the alleged motive of the acquitted co-accused, or harboured any separate reason to bring about the

death of the deceased. This inconsistency is not insignificant; rather, it is this very circumstance, which has compelled this Court to examine the case from multiple angles and to exercise heightened caution, lest an innocent person suffer or the guilty escape.

12. The investigating officer, examined as PW-9, detailed the manner in which the DVR was collected from the shop, the recording transferred first into a USB and thereafter, to a disc, and the manner in which these articles were taken into possession and forwarded to the forensic science laboratory for verification of authenticity, however, when questioned as to whether Hamza was known to the complainant, the investigating officer asserted that Hamza had been nominated because of such familiarity. Curiously, when the complainant himself was confronted with this assertion, he categorically stated that Hamza was a resident of village Swabi and was, in fact, unknown to him. This contradiction places the conduct of the investigating officer under scrutiny. If Hamza was indeed related to or known by the

complainant and the eyewitness, it is difficult to comprehend why he was not nominated at the very first instance, if he was present at the scene as alleged. These inconsistencies heighten the concern of this Court and reinforce the need for circumspection. There can be no dispute with the proposition that evidence collected through modern technological means possesses evidentiary worth and relevance. Yet, such evidence cannot be assessed in isolation, particularly where the ocular account is tainted by concealment, contradiction and partial disclosure of truth. This Court must therefore weigh, on one side, the credibility, consistency, and presence of the witnesses, including their initial report in which the appellant was nominated alongside Misri Khan and Ali Sarwar; and, on the other, the subsequently collected digital evidence from the DVR and CCTV system, which, when viewed on the following day, altered the very contours of the prosecution case, both in respect of the number of accused and their alleged roles. In such a situation, this Court is constrained to apply an

elevated standard of scrutiny. Responsibility for a grave offence cannot be fixed upon the appellant merely in isolation or by selective reliance upon evidence. It must be examined whether due precautions were observed in the collection and preservation of the digital evidence; whether the relevant persons involved in transferring the data were associated with the investigation; and whether the statement of the person from whose premises the DVR was seized was recorded under Section 161, CrPC. Only after satisfying these foundational requirements, can this Court place reliance upon such material and arrive at a conclusion that is both just and legally sound.

13. Both sides have earnestly invited the attention of this Court to determine whether the facts emerging from the record attract the doctrine of *falsus in uno, falsus in omnibus*, or whether, having regard to the peculiar and exceptional circumstances of the present case, the principle of *sifting grains from the chaff* ought to be applied. In order to place the parties at rest on this issue, the Court considers it

appropriate to closely examine the surrounding circumstances, the character and standing of the witnesses, and the manner in which the accused initially nominated were subsequently exonerated. It is an admitted position that at the inception, one set of accused was charged with the commission of the offence, however, on the very next day of the incident, when the witnesses were summoned to the police station and the video recording was played before them, two of the initially nominated accused, namely Misri Khan and Ali Sarwar, were exculpated, while another accused Hamza, was introduced through a supplementary statement recorded under section 164 CrPC. The explanation advanced was that although Hamza was allegedly present at the time of occurrence, he could not be identified earlier and was therefore, not nominated in the initial report, and that his subsequent nomination was occasioned by his appearance in the video footage. This Court is further inclined to attach significance to the fact that the ocular account failed in material particulars regarding the presence of the

witnesses themselves, and that innocent persons were initially charged in a crime of the gravest nature. More importantly, out of the three originally accused, two were acquitted under section 265-K CrPC not only facilitated by the investigating agency but also by the complainant and the legal heirs of the deceased, who expressly raised no objection. Such exoneration was premised upon the finding that those accused were not visible in the video recording and were wrongly implicated. Once the witnesses were confirmed to have made false statements in respect of some of the accused, and once the surrounding circumstances indicated that the incident did not occur in the manner as initially narrated, this Court is left with no option but to scrutinise the conduct of the witnesses, their credibility, and their claim of impartiality. The investigating officer candidly acknowledged that the site plan was initially prepared on the pointation of the complainant and the eyewitnesses; however, upon subsequently viewing the video footage, clear discrepancies surfaced. The positions

earlier attributed to certain accused were contradicted by the visual record, and the presence of Misri Khan and Ali Sarwar could not be discerned at all. These circumstances irresistibly lead to the conclusion that the complainant was unable to satisfactorily explain the absence of some accused and the subsequent introduction of others, particularly when no objection was voluntarily extended for the acquittal of those earlier nominated accused. It can be presumed that the subsequently charged accused was nominated on the basis of information conveyed from an undisclosed source only strengthens the inference that the witnesses were not present at the scene at the stated time and that the occurrence did not occur in their immediate presence. Had the witnesses actually been present, they would have nominated the true perpetrators from the outset and would have not implicated persons who were later found to be entirely uninvolved. This inference gains further force from the fact that the alleged motive was attributed to the acquitted co-accused and not to the appellant or

the subsequently charged accused Hamza, and the prosecution altogether failed to establish why these latter persons would undertake the commission of the offence. Equally unexplained remains the absence of any linkage between the appellant or Hamza and the circumstances relating to the elopement of the daughter of the acquitted co-accused. In this backdrop, the Court is persuaded to hold that although one segment of the prosecution evidence i.e. the ocular account, fails to inspire confidence and is liable to be discarded, such rejection does not inevitably attract the doctrine of *falsus in uno*, *falsus in omnibus*. Reliance is placed on the judgment of august Supreme Court of Pakistan cited as **2004 SCMR 1185** titled “*Iftikhar Hussain and Others Vs The State*” wherein, it has been held as under:

“It is true that principle of falsus in uno falsus in omnibus is no more applicable as on following this principle, the evidence of a witness is to be accepted or discarded as a whole for the purpose of convicting or acquitting an accused person, therefore, keeping in view prevailing

circumstances, the Courts for safe administration of justice follow the principle of appraisal of evidence i.e. sifting of grain out of chaff i.e. if an ocular testimony of a witness is to be disbelieved against a particular set of accused and is to be believed against another set of the accused facing the same trial, then the Court must search for independent corroboration on material particulars as has been held in number of cases decided by the superior Courts. Reference may be made readily to the case of Sarfraz alias Sappi and 2 others v. The State 2000 SCMR 1738.”

14. The present case stands on a somewhat different footing, as the prosecution has relied not only upon oral testimony, but also upon material collected through modern technological means. With the passage of time and the advancement of technology, the law has duly acknowledged the evidentiary value of such material, a recognition reflected in the relevant statutory provisions. It is now well settled that electronic evidence, if found to be genuine, lawfully collected, properly preserved, and proved in accordance with law, may be

relied upon even in the absence of trustworthy testimony of eye witnesses. The crucial enquiry, therefore, is not whether the oral evidence has failed, but whether the electronic evidence itself meets the legal standards of reliability and admissibility. In the present case, this Court is thus required to examine the evidentiary worth of the material produced in the form of video recordings, DVR footage subsequently transferred to a USB device and then to a disc, CCTV footage obtained from cameras installed at the relevant premises, and still images extracted from such footage. This Court must further determine whether the forensic report, by itself, provides a clear and convincing answer regarding the involvement of the accused. In this context, learned counsel for the parties have relied upon two important judgments of the Apex Court: **Ishtiaq Ahmed Mirza's case** and **Zahir Zakir Jaffar's case**. Learned counsel for the appellant has placed reliance upon **Ishtiaq Ahmed Mirza's case**, in which the Supreme Court laid down detailed guidelines governing the collection, handling, preservation, and

1. Ishtiaq Ahmed Mirza & 2 others v. The Federation of Pakistan and others (PLD 2019 SC 675)

2. Criminal petition No. 467/2023 titled Zahir Zakir Jaffar vs the State & another

forensic examination of electronic evidence. This Court emphasized that strict compliance with these safeguards is essential to ensure the reliability of such material. It was further held that where these safeguards are duly observed, electronic evidence may sustain conviction even if the eyewitness account is disbelieved. On the other hand, learned counsel for the complainant/respondent relied upon **Zahir Zakir Jaffar's case**, contending that the principle of the “silent witness” applies, particularly since the forensic report has no tampering or manipulation. On this basis, it was argued that decisive weight must be given to the electronic evidence. With respect, this Court is unable to accept either contention in its absolute form. The difficulty arises from reading the two judgments, as if they were competing or contradictory. In fact, they are complementary. The judgment in **Ishtiaq Ahmed Mirza's case** deals with the foundational requirements for electronic evidence to become reliable in the eyes of law. It lays down how such evidence must be collected, preserved, converted, and

proved. These requirements are not optional; they are essential. The judgment in **Zahir Zakir Jaffar's case** operates at a later stage. The concept of a “silent witness” can be applied only after the foundational safeguards have been fully satisfied. A video recording does not become conclusive merely because it exists or because a forensic report confirms the absence of apparent tampering. Before electronic evidence can be treated as a silent and reliable witness, the prosecution must clearly establish the source of the recording, the method of its extraction, the continuity of its custody, the transparency of its conversion, and the reliability of the forensic process. Unless these conditions are met, the invocation of the silent witness doctrine would be premature and legally unsound. It would, therefore, be incorrect to assume that once electronic evidence is produced, it automatically becomes conclusive. Equally, non-compliance with the safeguards laid down in **Ishtiaq Ahmed Mirza's case** cannot be cured by a mechanical reliance upon **Zahir Zakir Jaffar's case**. The latter

presupposes the former; it does not replace it.

Electronic evidence must first earn its admissibility through careful and lawful handling before it may claim probative strength.

The legislative framework supports this cautious approach. In Pakistan, Article 164 of the Qanun-e-Shahadat Order, 1984, permits courts to admit evidence derived from modern devices, subject to satisfaction regarding its authenticity and reliability. The provision allows judicial discretion, requiring courts to examine whether the evidence has been collected and preserved in a trustworthy manner. Similarly, under Indian law, Sections 65-A and 65-B of the Indian Evidence Act, 1872, prescribe detailed requirements for the admissibility of electronic records, including certification and proof of device integrity. While the procedural approach differs, the principle in both jurisdictions is the same: technology does not guarantee truth; lawful procedure does. In the instant case, therefore, although the collection of CCTV footage, its conversion into different formats, and the extraction of images may strengthen the

evidentiary record, such material cannot be assessed in isolation. It must be examined alongside the manner of its collection, the safeguards observed during its handling, the forensic verification, and the credibility of those involved in the process. Only where these elements converge, can electronic evidence safely inform a finding of guilt. In conclusion, modern technology has become an important aid to criminal justice, but it cannot operate as a substitute for legal safeguards. Courts must strike a careful balance, welcoming technological assistance, yet remaining vigilant to ensure fairness, reliability, and the protection of the rights of the accused. Justice, even in a digital age, must proceed with caution, clarity, and care.

15. One cannot lose sight of the fact that, at the time of lodging the report, the complainant attributed a clear motive to the two co-accused, who were later acquitted under section 265-K CrPC. The complainant was categorical that Misri Khan and his son, alongwith the present appellant, had come to the

spot and fired upon the deceased, and that the motive of Misri Khan was directly connected with the brother of the deceased. When the complainant himself was so certain about the presence and involvement of the subsequently acquitted co-accused, and when a specific motive was consistently assigned to them, it remains unexplained why such extraordinary concession was later extended in their favour. It is equally perplexing that the complainant, after having appeared before the Magistrate and recorded his statement under section 164 CrPC thereby, exonerating those accused, raised no objection when an application for their premature acquittal was moved and allowed. In this context, a pertinent question arises as to whether the appellant had any nexus with the alleged motive at all. The complainant has failed to explain on what basis the appellant allegedly joined hands with the acquitted co-accused, particularly when the motive, as originally narrated, was personal to them and not to the appellant. Once the co-accused, who were admittedly seen at the spot alongwith the

appellant by the complainant and the eyewitnesses, were acquitted on the basis of concessions extended by the prosecution witnesses themselves, the motive attributed to them cannot, by implication, be used against the appellant alone. In such circumstances, it was incumbent upon the prosecution, especially the complainant, to satisfactorily explain why and how the appellant allegedly associated himself with the acquitted co-accused and participated in the commission of the offence. On this crucial aspect, the prosecution case suffers from serious infirmities. Neither the investigating officer recorded the statements of any independent witnesses, nor the complainant could establish that the appellant had any personal motive against the deceased. This deficiency is further aggravated by the fact that one of the accused was implicated after a considerable lapse of time, without any convincing explanation. It is true that motive, even if weak, may be taken into consideration where the prosecution otherwise proves its case beyond reasonable doubt. However, where the prosecution

witnesses fail to inspire confidence regarding the occurrence itself, and where they take a clear volte-face by extending extraordinary concessions to the co-accused, the burden squarely lies on the prosecution to firmly establish motive.

16. Applying these principles to the present case, it is evident that the eyewitness account does not merely suffer from inconsistencies; rather, it stands fundamentally discredited. The complainant and the eyewitness initially charged persons, who were later found innocent as they were not visible in the CCTV footage, and ultimately were acquitted with the express consent of the complainant himself. This conduct hits at the very foundation of their claimed presence and observation. Such a scenario squarely attracts a heightened duty of caution. Once witnesses admittedly erred in identifying the assailants and conceded their mistake upon viewing the video recording, their testimony ceases to be a dependable foundation. In this setting, the prosecution cannot selectively rely upon the same witnesses to authenticate,

interpret, or identify persons in the electronic footage. The prosecution therefore, invites the Court to accept the electronic evidence in isolation. Even under Article 164, this is permissible only if the following cumulative conditions are satisfied: the origin of the recording is conclusively proved. In the present case, the DVR was allegedly collected from a shop, yet the owner or custodian of that shop was not examined, nor his statement was recorded under section 161 CrPC. This omission truncates the chain at its very inception. The process of transfer and preservation is transparent, the DVR footage was converted into a USB and thereafter into a disc, but no independent witness to this conversion was associated, nor the possibility of interpolation or editing was conclusively ruled out. The identity of the accused is unmistakable and self-evident. The identification derived from electronic footage cannot rest upon conjecture or retrospective recognition, especially where the identifying witnesses have already shown unreliability. If one accused appearing in the

same footage was extended benefit of doubt on the ground of doubtful identity, the selective confirmation of another accused appearing in the same recording becomes legally suspect.

17. This Court is mindful of the evolving role of electronic and digital evidence in contemporary criminal adjudication. It is now well accepted that, where lawfully collected and properly preserved, such evidence may, in appropriate cases, form the sole basis of conviction, but this relaxation, however, is neither automatic nor unconditional. It is predicated upon the prosecution's strict compliance with the foundational safeguards governing the collection, transmission, preservation, and forensic examination of electronic data. These safeguards are not matters of form, but of substance, devised to ensure the authenticity, integrity, and reliability of evidence that is, by its very nature, unusually susceptible to manipulation and contamination. The jurisprudence developed by this Court beginning with **Ishtiaq Ahmed Mirza's case** and subsequently, refined and consolidated in

Zahir Zakir Jaffar's case, clearly delineates the parameters that must be satisfied before such evidence can be safely relied upon. The prosecution is required to prove, through cogent and convincing material, that the device from which data was retrieved was secured; that recognized protocols were followed at the time of extraction; that the chain of custody remained unbroken; and that the data was transmitted for forensic analysis in a manner that excluded the possibility of tampering. Only when these conditions are affirmatively established does electronic evidence acquire the degree of credibility necessary to inspire judicial confidence. Tested on this settled touchstone, the evidence relied upon in the present case falls short. The prosecution has failed to establish the manner in which the data retrieved from the device was secured at inception, how it was preserved thereafter, how its integrity was maintained during transmission for forensic examination. The record is silent on essential procedural safeguards, and the forensic report, even if taken at face value, stops short of

offering a definitive and conclusive opinion. These deficiencies are not peripheral; they hit at the very basis of the evidentiary value sought to be attributed to the material. In criminal proceedings, suspicion, however strong, cannot be permitted to displace proof. Where the evidence relied upon does not meet the minimum threshold of reliability prescribed by law, the benefit of such infirmity must necessarily be extended to the accused. To base findings of guilt solely on the available evidence that neither inspires confidence, nor satisfies the mandatory safeguards would be to dilute the demand of proof beyond reasonable doubt. For these reasons, this Court is constrained to hold that reliance cannot safely be placed upon the electronic evidence in isolation. In the absence of corroboration and in light of the unresolved deficiencies attending its collection and analysis, such material is legally insufficient to sustain conviction or to fasten criminal liability upon the co-accused.

18. It is pertinent to state that the SHO of the concerned police station claims to have

apprehended the accused on a hilltop and to have effected the recovery of the alleged weapons of offence from their possession. The pistols so recovered were taken into possession, whereupon a separate F.I.R. was registered. These weapons were thereafter, deposited at the police station for safe custody and were subsequently handed over to the investigating officer of the present case. The circumstances attending such arrest and recovery, however, merit close judicial scrutiny. The prosecution has offered no satisfactory explanation as to the source of information, which led to the arrest, the manner in which the police party approached the place of occurrence, or the mode by which the accused were apprehended, particularly when they were positioned at a vantage point from which the approach of the police could reasonably have been perceived. Equally, unexplained is the failure to associate any independent person to witness the arrest and recovery, despite the apparent availability of such safeguards. This omission assumes added significance when examined in conjunction with

the question of custody and preservation of the recovered weapons. The record is devoid of any dependable material to show that the pistols were sealed at the spot, kept in uninterrupted and secure custody, or transmitted with due expedition to the Forensic Science Laboratory for examination in a manner that effectively excluded the possibility of tampering or substitution. While it is well settled that police officials are not, by virtue of their official status alone, to be regarded as unreliable witnesses, the peculiar facts and surrounding circumstances of the present case demanded a heightened degree of caution. It was incumbent upon the investigating officer, and more particularly upon the Station House Officer, to associate independent witnesses and to place on record cogent evidence establishing the safe custody and secure transmission of the recovered weapons to the office of the firearms expert. These deficiencies are neither inconsequential nor insignificant, which materially damage the evidentiary value of the recovery. In such circumstances, mere existence of a matching

report from the forensic authority, cannot cure the foundational flaws attending the recovery proceedings. This piece of evidence, therefore, fails to inspire confidence and cannot be safely relied upon.

19. The attending circumstances of the present case unmistakably show that the prosecution has failed to establish any credible link connecting the appellant with the commission of the alleged offence. The prosecution story rests substantially upon ocular testimony which, upon careful scrutiny, is found to be riddled with material infirmities. The conduct of the eyewitnesses, coupled with the inherent contradictions in their statements, reveals malafide considerations and to falsely implicate the appellant. Evidence emanating from such a tainted source, even if taken at its highest, cannot be afforded any serious evidentiary value. These circumstances leave no room for conclusion other than that the prosecution has fallen far short of the standard of proof required in criminal trials. Suspicion, however grave, cannot substitute proof, and

where doubt persists, it must necessarily operate to the benefit of the accused. The present case, when tested on the anvil of these settled principles, discloses grave and fundamental misappreciation of evidence, warranting interference by this Court. Accordingly, the instant appeal is allowed and the impugned judgment of conviction is hereby set aside. The appellant is acquitted of the charge and shall be released forthwith, if not required to be detained in any other criminal case. Consequent thereto, the connected **Cr.A No. 449-P/2024** titled “*Mumtaz Bahdar vs Hamza & another*” filed by the complainant challenging the acquittal of respondent/accused Hamza, stands dismissed, in view of the observations and conclusions recorded herein.

20. Now diverting to the **Criminal Revision No. 141-P/2024** titled “*Mumtaz Bahadar vs Asif & another*” which has been filed by the complainant for enhancement of the awarded sentence, as the accused succeeded in earning acquittal and the impugned judgement is

set aside, so the instant criminal revision has lost its utility, the same is dismissed as such.

Announced
25.11.2025

J U D G E

J U D G E

Muhammad Fiaz ***D.B*** Hon'ble Mr. Justice Sahibzada Asadullah, J
Hon'ble Mr. Justice Dr. Khurshid Iqbal, J