IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN
MR. JUSTICE SALAHUDDIN PANHWAR

Criminal Appeal No. 94 of 2023
(On appeal against the judgment dated 22.03.2017 passed by the High Court of Sindh, Circuit Court, Hyderabad in Cr. Appeal No. D-45/2014 and Confirmation Case No. 09/2014)

Chetan

…Appellant(s)

Versus

The State

…Respondent(s)

For the Appellant(s): Ms. Aisha Tasneem, ASC

For the State: Mr. Khadim Hussain, Addl. P.G. Sindh

For the Complainant: Prem (In-person) a/w Kanta, Sahil, and Davsi
(Via video link Karachi)

Date of Hearing: 06.03.2025

…

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.-Chetan s/o Mengho Meghwar, appellant, was tried by the learned Sessions Judge, Badin, pursuant to a case registered vide FIR No. 09/2011 dated 12.01.2011 under Sections 302/34 P.P.C. at Police Station Badin, District Badin. The learned Trial Court vide judgment dated 19.04.2014 convicted the appellant under Section 302(b) P.P.C and sentenced him to death for causing the murder of Ramesh (deceased). He was also directed under Section 544-A Cr.P.C to pay compensation amounting to Rs.200,000/- to the legal heirs of Ramesh (deceased) or in default thereof to further undergo RI for

two (2) years. In appeal, the learned High Court while maintaining the conviction and sentence of death of the appellant under Section 302(b) P.P.C., altered the sentence in default of compensation to SI for six (6) months.

2. Arguments heard. Record perused.

3. The brief facts of the case as per contents of the FIR (Ex. 11/A) registered on the statement of the complainant Prem (PW-1), are that the complainant was a tailor by profession and his brother Ramesh (deceased) was also working with him. A few days prior to the occurrence, there was a quarrel between Ramesh (deceased) and Chetan appellant following which there was a private settlement between the parties, however, the appellant kept this grudge in his mind against Ramesh (deceased). Ramesh (deceased) had informed Prem (complainant) (PW-1) that the appellant Chetan had declared that he (Ramesh) would not be spared alive. As per contents of the FIR, on the night of 11.01.2011, Prem complainant (PW-1) along with Ramesh (deceased) after closing their shop proceeded to the fruit chowk, Badin where Haboo (PW-3) and Devsi (PW-2) also joined them. The complainant party when reached at the Quaid-e-Azam road near Shahi Bazaar at 20:15 hours, Chetan (appellant) armed with pistol and Fakeero (co-accused since acquitted) armed with *lathi* appeared at the spot. Fakeero attempted to inflict a *lathi* blow upon the complainant but the same hit on the head of Ramesh (deceased) who fell down on the ground. Appellant Chetan then made fire shots with his pistol which landed on the abdomen and near the waist of Ramesh (deceased). The appellant thereafter made four (04) fire shots from his pistol upon Ramesh (deceased)

which hit him on abdomen and arm. The complainant party raised hue and cry on which Chetan appellant and Fakeero (co-accused since acquitted) ran away from the spot. The complainant (Prem PW-1) took the then-injured Ramesh (deceased) to the Civil Hospital Badin from where he was referred to Hyderabad but on the way to Civil Hospital Hyderabad, Ramesh (deceased) succumbed to the injuries where after dead body was brought back to the Civil Hospital Badin. After post-mortem examination the dead body was handed over to the complainant and upon burial of the dead body of Ramesh (deceased), the complainant went to the Police Station to lodge the FIR.

4. The occurrence took place on the night of 11.01.2011 at 20:15 p.m, however, no source of light has been mentioned in the FIR. In the absence of any source of light, the identification of the appellant in the darkness of night is not free from doubt. No recovery has been effected insofar as the source of the light is concerned. It has been time and again held by this Court that in the absence of the source of light having been mentioned in the FIR and recovery of such source, the identification of the Accused is not free from doubt. Reliance in this regard can be placed on the case reported as Usman alias Kaloo v. The State' (**2017 SCMR 622**) wherein it was observed as under:

> "3. The occurrence in this case had taken place in the dead of a night, i.e. at 11.30 p.m. on 05.03.2005 and the investigating officer had stated before the trial court in black and white that no electric light was available at the spot. The occurrence in issue had taken place outside the house of the deceased and in the absence of any source of light at the spot the question regarding identification of the assailant had assumed pivotal importance but the prosecution had paid no heed to the same."

Further reliance can be placed on Najaf Ali Shah v. The State (**2011 SCMR 1473**) wherein it was observed that:

> "[I]t was a night occurrence and the source of light was allegedly a torch which was never taken into possession … which adversely reflected on the credibility of the prosecution version.

5. We have also noted that there are glaring contradictions between the medical evidence and the ocular account of the prosecution. According to the contents of the FIR (Ex. 11/A), as well as, the depositions of the alleged eye-witnesses Prem (PW-1), Devsi (PW-2), and Haboo (PW-3), accused Fakeero (since acquitted) inflicted a *lathi* blow on the head of Ramesh (deceased) due to which he fell on the ground. However, as per the Post-Mortem Report (Ex. 18/A-D) and the deposition of Dr. Nawaz Ali (PW-6), there was no injury on the head of Ramesh (deceased). It is further noteworthy that as per contents of the FIR (Ex. 11/A), total six (06) fire-arm injuries were inflicted upon Ramesh (deceased) by the appellant, however, according to the Post-Mortem Report, as well as, the deposition of Dr. Nawaz Ali (PW-6), Injuries No. 1, 3, and 5 on the body of the deceased were entry wounds whereas Injuries No. 2, 4, and 6 were the corresponding exit wounds thereby making a total of three (3) fire-arm entry wounds on the body of the deceased and as such there is glaring contradiction between the ocular account and medical evidence of the prosecution regarding the number of injuries sustained by the deceased during the occurrence.

We have further observed that the testimony of Prem (PW-1) is in conflict with his stance in the FIR, as well as, the ocular account of Devsi (PW-2) and Haboo (PW-3). Prem (PW-1)

stated in the FIR and deposed in his examination-in-chief that the firstly fire-shot made by Chetan appellant hit Ramesh (deceased) on his abdomen and flank after which the appellant Chetan fired four (4) other shots and as such the appellant made total five (5) fire-shots. However, in his cross-examination, Prem (PW-1) contradicted his own stance taken in his examination in chief and FIR (Ex. 11/A) wherein he stated that the appellant Chetan fired four (4) instead of five fire shots. Moreover, as per the contents of the FIR as furnished by Prem (PW-1), five (5) fire-shots hit Ramesh (deceased) on his abdomen/flank and arm. This however is contradicted by the Post-Mortem report wherein there was only one injury i.e., injury No. 2 on the abdomen of Ramesh (deceased), but the same was an exit wound thereby further casting serious doubt about the story as advanced by the prosecution. Furthermore, as per contents of the FIR, the appellant and Fakeero Meghwar (co-accused since acquitted), caused six (06) injuries on the body of the deceased but according to the postmortem report, there were only three entry wounds on the body of the deceased and the remaining injuries were exit wounds. There was no injury on the head of the deceased negating the role attributed to Fakeero Meghwar (co-accused since acquitted) that he inflicted a *lathi* blow on the head of the deceased due to which he fell on the ground. Such glaring conflicts between the ocular account and medical evidence cast serious doubts on the prosecution story.

7. It has been held time and again by this Court that a medico-ocular conflict regarding the number of injuries sustained by the deceased is fatal to the prosecution case. Reference in this

regard may be made to the case reported as 'Usman alias Kaloo v. The State' (**2017 SCMR 622**) wherein it was held that:

> "… Some of the above mentioned eye-witnesses had maintained that the deceased had received only one injury at the hands of the appellant but the Post mortem Examination Report shows that the deceased had received as many as 8 injuries on different parts of his body … the medical evidence had created many dents in the prosecution's case rather than providing support to it""

Further reliance in this regard can be placed on the case reported as 'Muhammad Ali v. The State' (**2015 SCMR 137**) wherein it was observed:

> "The medical evidence also does not support the ocular account qua the number of injuries as according to the Doctor P.W.6 the deceased had received as many as 8 injuries. Injuries Nos. 6 and 8 were incised wounds, injuries Nos. 1, 2 and 7 were caused by blunt weapon while injuries Nos. 3, 4 and 5 were caused by firearms. Only one injury on thigh has been attributed to the appellant … In such circumstances, the presence of the eye-witnesses at the spot is doubtful. Had they been present at the spot and had witnessed the occurrence, they could have ascribed the correct role to the accused and explained all the injuries on the person of the deceased."

Reliance can also be placed in this respect on the case of 'Muhammad Shafi alias Kuddoo v. The State' (**2019 SCMR 1045**) wherein it was observed as under:

> "Ocular account is in conflict with medical evidence inasmuch as according to the crime report both the appellant, as well as, Abdul Razzaq, co-accused, are assigned one blow each to the deceased, whereas according to the initial medical examination, Medical Officer noted solitary injury on the head, its impact on the eye has been utilized by the witnesses to array the latter in the crime."

We are, therefore, of the view that the abovementioned conflict between the ocular account and the medical evidence has

created serious doubt about the presence of eye-witnesses at the spot at the relevant time.

8. Another crucial aspect of the instant case is that there is a marked unexplained delay in registration of the FIR. As per contents of the FIR, the occurrence took place on 11.01.2011 at 20:15 hours whereas the FIR was lodged on 12.01.2011 at 15:30 hours i.e. after a gross delay of 19 hours and 15 minutes from the occurrence. The explanation furnished by Prem (PW-1) for the delay is that time was consumed in taking the then-injured Ramesh to the hospital for medical treatment and then, upon his expiry, for conducting the post-mortem examination. However, such explanation is not plausible as according to the deposition of Dr. Nawaz Ali (PW-6), the post-mortem examination of Ramesh (deceased) commenced on 12.01.2011 at 12:05 a.m and was concluded after two (2) hours at 02:00 a.m. Therefore even from the conclusion of the post-mortem examination, there is a marked and unexplained delay of 13 hours and 30 minutes which is fatal to the prosecution case particularly owing to the fact that the distance of the Police Station from the place of occurrence was only 2 Kilometers thereby casting serious doubts about the truthfulness of the contents of the FIR. It has been time and again held by this Court that in the absence of any plausible explanation the delay in registering the FIR casts serious doubts on the story of the prosecution. Reliance in this regard can be placed on the case reported as 'Mst. Asia Bibi v. The State' (**PLD 2019 SC 64**) wherein it was held that:

> "There is no cavil to the proposition, however, it is to be noted that in absence of any plausible explanation, this Court has

> always considered the delay in lodging of FIR to be fatal and casts a suspicion on the prosecution story, extending the benefit of doubt to the accused. It has been held by this Court that a FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime; thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt, which, of course, cannot be extended to anyone else except to the accused. Furthermore, FIR lodged after conducting an inquiry loses its evidentiary value. [see: Iftikhar Hussain and others v. The State (2004 SCMR 1185)]. Reliance in this behalf may also be made to the case titled as Zeeshan @ Shani v. The State (2012 SCMR 428) wherein it was held that delay of more than one hour in lodging the FIR give rise to the inference that occurrence did not take place in the manner projected by prosecution and time was consumed in making effort to give a coherent attire to prosecution case, which hardly proved successful. Such a delay is even more fatal when the police station, besides being connected with the scene of occurrence through a metaled road, was at a distance of 11 kilometers from the latter. In the case titled as Noor Muhammad v. The State (2010 SCMR 97) it was held that when the prosecution could not furnish any plausible explanation for the delay of twelve hours in lodging the FIR, which time appeared to have been spent in consultation and preparation of the case, the same was fatal to the prosecution case."

9. Syed Sajjad Hussain (PW-8), the IO of the case deposed that no crime-empty was secured from the place of occurrence. According to Syed Sajjad Hussain (PW-8), on 23.01.2011 fire-arm was recovered at the pointing out of the appellant which as per the Report of Forensic Examination (Ex. 20/C) was found to be in working condition. However, in the absence of crime empties matching with the firearm (which are admittedly missing in the instant case), the recovery of firearm is inconsequential. Reliance in this regard can be placed on the case reported as 'Sardar Bibi v. Munir Ahmed' (**2017 SCMR 344**) wherein it was observed that:

> "Even no crime empty of .30 bore was recovered from the place of occurrence and there is no positive report of FSL regarding

> matching of any crime empty with the allegedly recovered pistol from Falak Sher. So the said recovery is inconsequential and cannot be considered as the corroborative piece of evidence."

Further reliance can be placed on the case of 'Zahir Yousaf v. The State' reported as (**2017 SCMR 2002**) wherein it was held that:

> "Recovery of a pistol 30 bore allegedly effected at the instance of the appellant is inconsequential as no crime empty/metallic piece was sent to the Forensic Science Laboratory and report of Forensic Science Laboratory (Exh.PN) is simply to the effect that the weapon was in working order."

10. We have also noted that the prosecution has failed to prove the Motive behind the occurrence. As per the contents of the FIR, there was a prior quarrel and exchange of abuses between the appellant Chetan and Ramesh (deceased). However, no specific place, date and time regarding the said quarrel has been brought on the record. Furthermore, it was alleged by the Prosecution that the motive quarrel led to a settlement between the appellant and Ramesh (deceased). However, nothing has been brought on the record to substantiate this assertion. None of the PWs has claimed that he was present at the time of motive incident. Under the circumstances, we are of the view that motive alleged by the prosecution has not been proved in this case. Reliance in this regard can be placed on the case reported as 'Mst. Nazia Anwar v. The State' (**2018 SCMR 911**) wherein it was held that:

> "… no date, time or place of the altercation taking place between the appellant and the deceased over repayment of the borrowed amount had been specified by the complainant and admittedly the complainant was not present when the said altercation had taken place. In these circumstances it is quite obvious to me that the motive asserted by the prosecution had remained utterly unproved."

Further reliance is placed on 'Muhammad Azhar alias Ajja v. The State' (**2016 SCMR 1928**) wherein it was observed:

> "The record also shows that no date or time of the alleged incident forming the motive had been specified by any of the prosecution witnesses nor any such incident had ever been reported to the police or to any other authority. In this backdrop we have been surprised to find that the courts below had concurrently concluded that the motive set up by the prosecution had been proved by it."

11. Keeping in view all the above-mentioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Consequently, this appeal is allowed and the impugned judgment is set aside. The appellant is acquitted of the charge while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

JUDGE

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JUDGE

Islamabad, the
06th of March, 2025
Approved For Reporting
Ghulam Muhammad Adnan L.C.