

24/25

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Criminal Appeal Nos.161 & 162 of 2021

(On appeal against the judgment dated 16.03.2021, passed by the Islamabad High Court in Criminal Appeal No.138/2018)

1. Shakeel Ahmed Abbasi
2. Shabbir Ahmed Abbasi

... Appellants in Crl.A.161/2021

Ubaid-ul-Haq

... Appellant in Crl.A.162/2021 &

Versus

The State and another

... Respondents in Crl.A.161/2021

Shakeel Ahmed Abbasi &
others

... Respondents in Crl.A.162/2021

For the Appellants:

Mr. Basharat Ullah Khan, ASC
a/w Munir Abbasi (In Crl.A.161/2021)

Sardar Muhammad Latif Khan Khosa,
Sr. ASC (In Crl.A.162/2021); also on
behalf of the deceased (In
Crl.A.161/2021)
Shazaib-ul-Haq son of the deceased

For the State:

Mr. Ghulam Sarwar Nihung, P.G,
Islamabad.

Date of Hearing:

27.03.2025

...

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.-

Criminal Appeal Nos.161 & 162 of 2021

Shakeel Ahmed Abbasi, Shabbir Ahmed Abbasi (appellants),
along with Munir Ahmed Abbasi and Wajid Abbasi (co-accused
since acquitted), were tried by the learned trial Court (Addl.
Sessions Judge, Islamabad West), in case FIR No.388, dated
09.12.2016, under sections 302/34 PPC, registered at police
station Aabpara, Islamabad. After conclusion of the trial, the

learned trial Court acquitted the appellants and their co-accused vide judgment dated 30.07.2018. Ubaid-ul-Haq (complainant), being aggrieved of the judgment of acquittal of the appellants and their co-accused, filed an appeal before the learned Islamabad High Court, which was partly allowed vide impugned judgment dated 16.03.2021 and the appellants namely Shakeel Ahmed Abbasi and Shabbir Ahmed Abbasi were convicted under section 302(b) PPC and sentenced to imprisonment for life to each along with fine of Rs.5,00,000/- each to be paid as compensation to the legal heirs of the deceased in terms of section 544 Cr.P.C and in default thereof to further undergo six (06) months simple imprisonment. Benefit of section 382-B Cr.P.C, was also extended to the appellants. The appeal filed by the complainant to the extent of Munir Ahmed Abbasi and Wajid Abbasi (co-accused), was dismissed and their acquittal was upheld and maintained by the learned High Court vide the abovementioned impugned judgment.

2. Arguments heard. Record perused.

3. As per contents of the FIR (Ex.PA), Abdul Haq (Ubaid-ul-Haq) complainant (PW-9), alleged that on 19.12.2016, at about 4.45 p.m, he along with Muhammad Imran (PW since given up) and Azhar Waseef (PW-10), was present in-front of star hotel situated in Sitara Market (G-7) Islamabad. The abovementioned hotel was owned by his paternal uncle namely Nisar-ul-Haq (deceased) and the same was given on rent to Shakeel Ahmed Abbasi (appellant). On the above-mentioned day, the accused had to vacate the said hotel. The appellants Shakeel Ahmed Abbasi and Shabbir Ahmed Abbasi along with Wajid Abbasi (co-accused since acquitted), were already present inside the hotel. In the meanwhile, Nisar-ul-Haq (deceased) reached at the hotel. Hot words were exchanged

between the accused and Nisar-ul-Haq (deceased), whereupon Munir Abbasi (co-accused since acquitted), raised a lalkara to kill Nisar-ul-Haq (deceased). Shakeel Ahmed Abbasi (appellant), thereafter made a fire shot with pistol 30-bore, which landed at the chest of Nisar-ul-Haq (deceased). Thereafter Shabbir Ahmed Abbasi (appellant), made a fire shot with pistol 30-bore, which also landed on the chest of Nisar-ul-Haq (deceased). Shakeel Ahmed Abbasi and Shabbir Ahmed Abbasi (appellants), thereafter made fire shots with their pistols, which landed on the abdomen, hip and thigh of the deceased. The accused then fled away from the spot. Nisar-ul-Haq (the then injured), was shifted to the hospital but he succumbed to the injuries on the way.

Motive behind the occurrence was a dispute regarding the return of security and possession of the hotel, hence the FIR of this case.

4. First of all we take up the case of Shakeel Ahmed Abbasi (appellant). We have noted that the occurrence in this case took place on 09.12.2016, at 4.45 p.m and the FIR was promptly lodged on the same day at 5.40 p.m. We have also noted that the name of Ubaid-ul-Haq (complainant), has also been mentioned in the postmortem report of Nisar-ul-Haq (deceased), wherein it has been mentioned that the dead-body of the deceased was brought to the hospital by his nephew namely Ch. Ubaid (Ubaid-ul-Haq complainant) and the dead body reached in the hospital on 09.12.2016, at 4.55 p.m, which means that the complainant along with the dead-body reached at the hospital within a period of ten (10) minutes from the occurrence. The abovementioned fact also shows that Ubaid-ul-Haq complainant was present at the spot at the relevant time and that is why he reached the hospital along

with the dead-body of his paternal uncle namely Nisar-ul-Haq (deceased), within a period of ten (10) minutes from the occurrence.

5. The ocular account of the prosecution was furnished through Ubaid-ul-Haq complainant (PW-9) and Azhar Waseef (PW-10). Both the abovementioned eye-witnesses are residents of Sector F-7/1 and Sector F-7/2, Islamabad respectively, whereas the occurrence took place in Section G-7, Islamabad, which was adjacent to the above-mentioned sectors. Azhar Waseef (PW-10), stated that he was a property agent and his office was situated in Sitara Market, Islamabad and he was cousin/brother-in-law of Nisar-ul-Haq (deceased). The occurrence in this case also took place in Sitara Market, G-7, Islamabad. Ubaid-ul-Haq complainant (PW-9), was nephew of Nisar-ul-Haq (deceased), who was admittedly owner of the Star Hotel, situated in Sitara Market, Islamabad, therefore, presence of the above-mentioned eye-witnesses at the spot at the relevant time in-front of a hotel owned by their close relative cannot be declared to be un-natural or improbable. The occurrence in this case took place in the broad-day light. Both the abovementioned eye-witnesses were cross-examined at length but their evidence to the extent of role attributed to Shakeel Ahmed Abbasi (appellant), could not be shaken. They remained consistence on all material aspects of the case qua the role of Shakeel Ahmed Abbasi appellant during the occurrence. Their evidence to the extent of role attributed to Shakeel Ahmed Abbasi (appellant), is confidence inspiring and trustworthy.

6. Medical evidence of the prosecution was brought on the record through the evidence of Dr. Dardana (PW-5). Medical

evidence has fully supported the ocular account of the prosecution case. According to the prosecution case, Shakeel Ahmed Abbasi (appellant), made fire shots with his pistol 30-bore, which landed on different parts of the body of Nisar-ul-Haq (deceased) and the medical evidence also shows that the deceased received fire arm injuries on the different parts of his body. The probable time that elapsed between the injury and the death was 20-30 minutes, whereas the time that elapsed between the death and the postmortem examination of the deceased was about two hours, which time coincides with the time of occurrence stated by the abovementioned eye-witnesses. We are, therefore, of the view that the ocular account of the prosecution is fully supported by the medical evidence of the prosecution case against Shakeel Ahmed Abbasi (appellant).

7. The prosecution case against Shakeel Ahmed Abbasi (appellant), is further corroborated by the recovery of pistol 30-bore and positive report of NFCA (Ex.PV), which shows that three empties recovered from the spot were found to be fired from the above-mentioned pistol.

8. We are, therefore, of the view that the prosecution has proved its case against Shakeel Ahmed Abbasi (appellant) beyond shadow of any doubt. However, it is not a case, which attracts the provisions of section 302(b) PPC. In our humble view, the provisions of section 302(c) PPC, are attracted in this case because the learned trial Court, as well as, the learned High Court have disbelieved the prosecution case to the extent of the motive alleged by the complainant party. It was alleged by the complainant in the FIR that the motive behind the occurrence was dispute regarding return of security and possession of the hotel but the prosecution



has not produced any document like legal notice, copy of rent petition etc filed by the deceased for eviction of the appellants from the hotel in order to support the abovementioned claim. Although rent agreement (Ex.DF), was produced during the evidence that too from the defence side but perusal of the same shows that the same expired on 31.12.2014, which fact depicts that the disputed hotel was in possession of Shakeel Ahmed Abbasi (appellant), with the consent of the deceased.

Admittedly the place of occurrence "star hotel" was given on lease to the accused party by the complainant party and admittedly the accused party was in possession of the said hotel at the date and time of occurrence. Although it is claimed by the complainant party that the complainant party had to take possession of the abovementioned hotel on the day of occurrence but as mentioned earlier, no Court order or any other evidence has been brought on the record to support the said claim of the complainant party. It is further noteworthy that as per contents of the FIR, the complainant party went to the reception of the above-mentioned hotel, which was under possession of the accused party and the occurrence did not take place straightaway rather first hot words were exchanged between the accused and the deceased, which attracted the abovementioned eye-witnesses to the spot, who were present outside the above-mentioned hotel. Admittedly the accused party did not go to the house or office of the deceased rather it was the deceased, who himself came to the hotel, which was in possession of the accused party. It is, therefore, evident that the occurrence took place at the spur of moment due to sudden flare up as admittedly hot words were exchanged between the deceased and the complainant party immediately prior to the

occurrence, therefore, ingredients of offence under section 302(c) PPC, are attracted in this case instead of section 302(b) PPC.

9. Consequently, this appeal is partly dismissed to the extent of Shakeel Ahmed Abbasi (appellant). Resultantly the impugned judgment is modified, the conviction and sentence awarded to Shakeel Ahmed Abbasi (appellant), is converted from the charge under section 302(b) PPC to section 302(c) PPC and he is awarded sentence of eighteen (18) years R.I. The sentence of compensation and imprisonment in default whereof awarded to the appellant by the learned High Court are upheld and maintained. Benefit of section 382-B Cr.P.C, is also extended to the appellant.

10. Insofar as the case of Shabbir Ahmed Abbasi (appellant), is concerned, we have noted that no weapon was recovered from his possession during the investigation of this case to corroborate the prosecution evidence that he also fired at the deceased. Shabbir Ahmed Abbasi (appellant), is real brother of Shakeel Ahmed Abbasi (appellant), therefore, possibility of his malafide involvement in this case by the complainant party while using the wider net cannot be ruled out. It is further noteworthy that as per medical evidence produced by Dr. Dardana (PW-5), she has not mentioned the sizes of entry wounds on the body of the deceased. Under the circumstances, there are two possibilities in this case that injuries sustained by the deceased were of the same size or the said injuries were of different sizes. If the injuries on the body of the deceased were of the same size then it further contradicts the prosecution case to the extent of Shabbir Ahmed Abbasi (appellant) that two different weapons were used by the accused in this case i.e., one by Shakeel Ahmed Abbasi (appellant) and other by Shabbir Ahmed Abbasi (appellant). It is by now well settled that

when from the evidence, a fact is capable of two interpretations then one favourable to the accused is to be accepted. Reference in this context may be made to the judgments reported as "*Qurban Hussain alias Ashiq v. The State*" (**2010 SCMR 1592**) and "*Muhammad Shah v. The State*" (**2010 SCMR 1009**). This Court, therefore, would presume that the injuries on the body of Nisar-ul-Haq (deceased), were of the same sizes and this fact also contradicts the prosecution case to the extent of Shabbir Ahmed Abbasi (appellant).

Although we have disbelieved the motive part of the prosecution but it is noteworthy that even according to the prosecution case, the hotel was given on lease to Shakeel Ahmed Abbasi (appellant) and as such Shabbir Ahmed Abbasi (appellant), has nothing to do with the dispute of abovementioned hotel between the deceased and Shakeel Ahmed Abbasi (appellant).

11. We, are, therefore, of the view that the prosecution case to the extent of Shabbir Ahmed Abbasi (appellant), is not free from doubt, therefore, this appeal is partly allowed and the impugned judgment to the extent of Shabbir Ahmed Abbasi (appellant), is set aside. Shabbir Ahmed Abbasi (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.

Criminal Appeal No.162 of 2021

12. Insofar criminal appeal filed by Ubaid-ul-Haq complainant for enhancement of sentences awarded to Shakeel Ahmed Abbasi, Shabbir Ahmed Abbasi (appellants), are concerned, we have noted that Shabbir Ahmed Abbasi (appellant), has already been acquitted by this Court while giving him the benefit of doubt in view of the findings recorded in preceding paragraphs of this judgment,

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whereas it is not a case of capital punishment to the extent of Shakeel Ahmed Abbasi (appellant) because due to reasons mentioned in paragraph No.7, of this judgment, we have come to the conclusion that the occurrence took place at the spur of moment due to sudden flare up as admittedly hot words were exchanged between the deceased and the complainant party immediately prior to the occurrence, therefore, ingredients of offence under section 302(c) PPC, are attracted in this case instead of section 302(b) PPC. Keeping in view all the aforementioned facts, there is no substance in the abovementioned criminal appeal, hence the same is hereby **dismissed.**

A
JUDGE
JUDGE

Shahid M. S
JUDGE

Islamabad, the
27th of March, 2025
Not Approved For Reporting
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