

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Criminal Appeal No.500 of 2020 & Crl.M.A.No.1725/2022

(On appeal against the judgment dated 11.01.2017 passed by the Lahore High Court, Rawalpindi Bench in Criminal Appeal No.105/2013, Murder Reference No.12/2013, Crl. Revision No.85/2013 & PSLA No.14/2013)

Jabbar Hussain

...Appellant (s)

Versus

The State

...Respondent(s)

For the Appellant (s): Mr. Nazakat Baig, ASC

For the State: Mirza Abid Majeed, DPG.

For the complainant: Mr. Haider Mehmood Mirza, ASC

Date of Hearing: 21.05.2025

...

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Jabbar Hussain

appellant along with Mudassar Yaqoob (co-accused since acquitted), was tried by the learned Additional Sessions Judge, Jhelum, pursuant to a private complaint filed by Arshad Mehmood complainant being dis-satisfied from the police investigation carried out in connected case FIR No.281/2011, dated 06.06.2011, under Sections 302/109/34 PPC, registered at Police Station Saddar, Jhelum. The learned Trial Court vide its judgment dated 26.02.2013, convicted and sentenced the appellant as under:-

Under Section 302(b) PPC

Death sentence. To pay Rs.1,00,000/- as compensation to the legal heirs of the deceased as envisaged under section 544-A Cr.P.C and in default thereof to further undergo four (04) months SI.

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The appeal filed by the appellant was dismissed by the learned High Court while maintaining his conviction, under Section 302(b) PPC, however, his sentence was altered from death to imprisonment for life. The amount of compensation and the sentence in default thereof were maintained. Benefit of Section 382-B Cr.P.C, was also extended in favour of the appellant.

2. Arguments heard. Record perused.
3. As per contents of the private complaint (Ex.PB), the complainant alleged that on 05.06.2011, at about 9.45 p.m (night), Arshad Mehmood (complainant) along with his father namely Mehmood Sultan (deceased) and other relatives (PWs), proceeded from their house towards the mosque to offer *Esha* prayer. The complainant's father namely Mehmood Sultan (deceased), when reached in-front of the house of one Mistri Murtaza at that time, Muhammad Jabbar (appellant), while armed with pistol 30-bore and Mudassar Yaqoob (co-accused since acquitted), while armed with pistol 30-bore, emerged at the spot. Muhammad Jabbar (appellant), made three consecutive fire shots with his pistol, which landed on the abdomen and right thigh of Mehmood Sultan (deceased), who fell on the ground. Mudassar Yaqoob (co-accused since acquitted), then made four fire shots with his pistol, which landed on both the buttocks, on the back side of the chest and right hand of Mehmood Sultan (deceased), who succumbed to the injuries at the spot.

Motive behind the occurrence was that Hafiz Naseer Ahmed (co-accused since acquitted), told the appellant and his brother namely Mudassar Yaqoob (co-accused since acquitted) that Mehmood Sultan (deceased) used to do amulet (تعمیر) upon their

injury Nos.3 & 4 but both the said injuries were exit wounds. The

father due to which, he was sick and on account of said grudge, the appellant and his co-accused committed the occurrence.

4. We have noted that the role attributed to Jabbar Hussain (appellant) of causing three fire arm injuries on the abdomen and right thigh of Mehmood Sultan (deceased), was not supported by the medical evidence. As per postmortem report of Mehmood Sultan (deceased), there were two injuries on his abdomen i.e., injury Nos.3 & 4 but both the said injuries were exit wounds. The role attributed to the appellant of causing injury on the right thigh of the deceased was not noted by the doctor in the postmortem report and as such the medical evidence has clearly contradicted the ocular account of the prosecution to the extent of role attributed to Jabbar Hussain (appellant).

5. Insofar as the recovery of pistol (P-4), at the pointing out of the appellant is concerned, we have noted that as per PFSA report (Ex.PO), the empty recovered from the spot did not match with the abovementioned pistol and as such the above-mentioned report has also contradicted the prosecution case to the extent of case of Jabbar Hussain (appellant).

6. As per prosecution case, the motive behind the occurrence was that Hafiz Naseer (co-accused since acquitted), told the appellant and his brother namely Mudassar Yaqoob (co-accused since acquitted) that Mehmood Sultan (deceased) used to do amulet upon their father due to which, their father was sick and on account of the said grudge, the appellant and his co-accused committed the occurrence but no independent evidence has been produced by the prosecution in this regard. No witness has stated that in his presence Hafiz Naseer Ahmed told the above-referred

fact to the appellant or his brother. Moreover, Hafiz Nazeer Ahmed (co-accused), who statedly told the appellant and his brother namely Mudassar Yaqoob (co-accused since acquitted), regarding the fact that Mehmood Sultan (deceased), used to do amulet upon the father of the appellant and his co-accused has already been acquitted by the learned trial Court while invoking the provisions of section 265-K of Cr.P.C and no appeal/revision against the said order has been filed either by the complainant or the State against his acquittal. We are, therefore, of the view that the prosecution has failed to prove the alleged motive against Jabbar Hussain (appellant) and the motive was rightly disbelieved by the learned High Court in paragraph No.17, of the impugned judgment.

7. It is further noteworthy that according to the prosecution case, the occurrence took place at night time i.e., on 05.06.2011 at 9.45 p.m but no source of light was mentioned in the FIR. Although the source of light i.e. electric bulb was mentioned in the scaled site plan (Ex.PF) but no such source of light was mentioned in the un-scaled site plan of the place of occurrence (Ex.PL), therefore, identification of the appellant in the darkness of night is not free from doubt.

It has also been brought on the record through the statement of Mohsin Haqani (PW-3), that there was another mosque, which was near to the house of the complainant party as compared to the mosque towards which the deceased and the prosecution witnesses were proceeding on the night of occurrence to offer *Esha* prayer. No valid reason has been given by the prosecution eye-witnesses for going to the abovementioned mosque

on the night of occurrence instead of going to the mosque near to their house.

8. Keeping in view all the above-mentioned facts, as well as, conflict between the ocular account and the medical evidence, we are of the view that the prosecution eye-witnesses were not present at the spot at the relevant time and the occurrence was un-witnessed, which took place in the darkness of night.

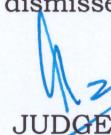
9. We have further noted that Mudassar Yaqoob (co-accused since acquitted), was attributed the role of making four (04) fire shots, which landed on the buttocks, on the back of chest and right hand of Mehmood Sultan (deceased) and the said injuries were available on the body of Mehmood Sultan (deceased) i.e., injury Nos.1, 2 & 6 but the abovementioned Mudassar Yaqoob (co-accused), has been acquitted by the learned trial Court, whereas PSLA filed by the complainant against the acquittal of the abovementioned co-accused has already been dismissed by the High Court vide the impugned judgment. No appeal against his acquittal has been filed by the State or the complainant before this Court and as such the acquittal of Mudassar Yaqoob (co-accused), has attained finality. It is by now well settled that if the same prosecution evidence is disbelieved against one accused or set of accused then the same prosecution evidence cannot be believed against the other accused or set of accused without independent corroboration, which is very much lacking in this case. Reference in this context may be made to the judgments reported as "Akhtar Ali and others v. The State" (2008 SCMR 6), "Muhammad Pervaiz v. The State and other" (PLD 2019 Supreme Court 592), "Liaqat Ali and others v. The State and others" (2021 SCMR 455) and L

"Shaukat Hussain v. The State through PG Punjab and another"
(2024 SCMR 929).

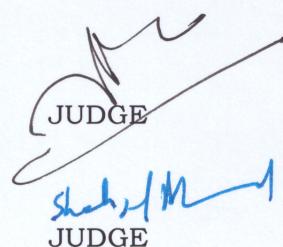
10. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt. It is also by now well settled that if there is a single circumstance, which creates doubt in the prosecution 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. Reference in this context may be made to the judgments reported as **"Tariq Pervez Vs The State" (1995 SCMR 1345)** and **"Muhammad Akram Vs The State" (2009 SCMR 230)**. Consequently, this appeal is allowed. The judgments of the High Court and the trial Court dated 11.01.2017 and 26.02.2013, respectively are 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.

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11. In view of our discussion in the preceding paragraphs, Jabbar Hussain (appellant), stands acquitted from the case, therefore, this miscellaneous application filed by the appellant for suspension of his sentence has become infructuous and the same is dismissed as such.



JUDGE



JUDGE
Shahzad M

JUDGE

Islamabad, the
21st of May, 2025
Not Approved For Reporting
Ahtzaz