

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

JUSTICE MUHAMMAD HASHIM KHAN KAKAR  
JUSTICE ISHTIAQ IBRAHIM  
JUSTICE MUHAMMAD ALI BAQAR NAJAFI

**JAIL PETITION No.554/2023 AND CRIMINAL PETITION  
NO.127/2023**

(Against the judgment(s) dated 07.09.2022 in Cr.A. No.116-B of 2021  
and Cr.A. No.117-B of 2021, passed by the Peshawar High Court,  
Bannu Bench)

Umer Jan (in both cases)

...Petitioner (s)

Versus

The State through AG, Khyber Pakhtunkhwa.  
(in both cases)

...Respondent(s)

For the Petitioner(s): Mr. Rai Azhar Iqbal Kharal, ASC  
Syed Rifaqat Hussain Shah, AOR  
(*in both cases*)

For the State: Mr. Zahid Yousaf Qureshi, AOR

For the Complainant : Mr. Sawar Khan, ASC

Date of hearing: 19.08.2025

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** Umer Jan, the petitioner, and his co-accused Amanullah were tried by the learned Additional Sessions Judge-IV, Lakki Marwat (**"Trial Court"**), in case arising out of FIR No. 210 dated 18.06.2018, registered at Police Station Tajori, under Sections 302, 324, and 34 of the Pakistan Penal Code, 1860 (**"PPC"**), for the charge of committing *Qatl-e-Amd* of one Rehmatullah, the deceased, and attempted murder of complainant Ayaz Khan and case FIR No.211 dated 18.06.2018, under section 15 Khyber Pakhtunkhwa Arms Act, 2013, registered at the same Police Station. Upon conclusion of the trials, both, the petitioner and the co-accused were convicted under Section 302(b) PPC and sentenced to undergo rigorous imprisonment for a term of twenty-five years each, as *Ta'azir*, and to pay

compensation in the sum of Rs.100,000/- each to the legal heirs of the deceased, in terms of Section 544-A of the Code of Criminal Procedure, 1898 (**“Cr.P.C.”**), and in default thereof, to further undergo simple imprisonment for six months each. They were further convicted under Section 324 PPC and sentenced to undergo rigorous imprisonment for five years each, along with a fine of Rs.50,000/- each, and in default of payment of fine, to undergo simple imprisonment for a further period of six months each and under section 15 KP Arms Act to undergo five years RI and to pay Rs.20,000/- each as fine and in default thereof to further undergo two months S.I. vide judgment(s) dated 06.07.2021.

2. Being aggrieved by their conviction and sentences, both the convicts preferred Criminal Appeals Nos.116-B and 117-B of 2021 before the Peshawar High Court, Bannu Bench. Simultaneously, complainant Ayaz Khan filed Criminal Revision No.36-B of 2021 seeking enhancement of the sentence awarded to the convicts from imprisonment for life to the normal penalty of death, as contemplated under Section 302 PPC. The learned High Court, vide judgments dated 07.09.2022 (**“Impugned Judgments”**), dismissed the appeals to the extent of the petitioner Umer Jan, thereby maintaining his conviction and sentences as recorded by the Trial Court. However, the appeals were allowed to the extent of co-accused Amanullah, whose conviction and sentences recorded by the trial Court were set aside and he was acquitted. The criminal revision petition filed by the complainant for enhancement of sentence was also dismissed.

3. Through the instant Criminal petition and Jail petition, petitioner-convict Umer Jan, seeks leave to appeal against the impugned judgments of the High Court. The complainant and the State have not filed any petition for leave to appeal against the acquittal of the co-accused Amanullah.

4. The prosecution's case, as set forth in the First Information Report (**“FIR”**) Exh.PA is that on 18.06.2018 complainant Ayaz Khan (PW-4A), accompanied by his brothers, Mehmood Khan (PW-5) and Rehmatullah, the deceased, was on the way to village *Shagai* to extend *Eid* greetings to his daughter, who was married and residing there. At about 1320 hours, when they reached near *Masjid Abdul Marjan*, situated in the fields of village *Saggy Tattie*, the petitioner Umer Jan along with co-accused Amanullah (since acquitted), both armed with Kalashnikovs, allegedly emerged from an under-construction mosque and opened indiscriminate fire upon them, as a result, Rehmatullah sustained firearm injuries and

died at the spot, whereas the complainant and his brother Mehmood Khan (PW-5) remained unharmed. The motive attributed to the occurrence was an existing blood feud between the parties. On the same day, the petitioner and acquitted co-accused were arrested by Ghulam Saboor Khan ASI, who recovered a Kalashnikov bearing No.1953FNC0272 from possession of accused Amanullah and a Kalashnikov bearing No.A.77469677 from possession of the petitioner convict for which separate FIR No.211 (ibid) was registered against them.

5. Upon the arrest of the petitioner and the co-accused (since acquitted), and completion of the investigation, separate reports under Section 173 Cr.P.C. in both the FIRs were submitted against them before the learned Trial Court. Both the accused were formally charged sheeted, to which they pleaded not guilty and claimed trial. After the prosecution concluded its evidence, the statements of the accused were recorded under Section 342 Cr.P.C., wherein they denied the allegations levelled against them and professed innocence. Both accused opted to record statements on oath under Section 340(2) Cr.P.C., and also expressed their intention to lead evidence in defence in trial of the murder case. The petitioner, Umer Jan, recorded his statement on oath, which is reproduced as under:

"That on the third day of Eil-ul-Fitr I along with my father on one motorcycle which was being driven by me and my cousin Adnan on other motorcycle along with his aunt Mst. Basmina Bibi along with two kids on other motorcycle being driven by Adnan were going to village Shagai from where we were to go for labour to Punjab. When we reached in the fields near the mosque of Abdul Marjan, there in the fields accused Ghani ur Rehman and Mehmood both sons of Sarwar Jan appeared duly armed with Kalashnikovs and started firing upon us. On this we turned towards back and found accused Rehmatullah, Ghani Rehman son of Sarwar Jan and Sohrab Khan son of Mehmood Khan, duly armed with Kalashnikov also started firing upon us. The motorcycle being driven by Adnan was stopped and the riders took shelter in the nearby houses whereas I went inside the mosque whereas my father took shelter in the Talab of the mosque situated adjacent to the mosque. I was armed with Kalashnikov. I also made firing towards the accused in self-defence. The firing between the accused stated above and us remained continued for three hours. The local police came to the spot, but was waiting for diminishing of the firing. Later on my father also entered mosque as he was thirsty, therefore, the women folk of our house came to the mosque and provided water to us. We were taken out of the mosque by the local police and were made sit in official pick up (Datsun) but the accused Ayaz etc stated above were still making firing upon us and the police

party. We were brought to Police Station Ghani Khel by the local police. I had narrated the above stated actual facts to the I.O. but they were not considering the same as our report. I had charged the above stated accused for the commission of offence."

6. The petitioner also produced Mst. Basmina as DW.3 and Adnan as DW.4 who supported the version of the petitioner as set forth by him in his statement on oath.

7. We have heard the arguments of learned counsel for the parties, perused the record, evidence and the impugned judgments.

8. It is trite law that the prosecution must stand on its own legs and prove its case beyond reasonable doubt through independent, reliable and confidence-inspiring evidence. The prosecution cannot take advantage of any perceived weakness or inconsistency in the defence version. The burden on the prosecution does not shift merely because an accused takes a plea in defence or fails to prove it. The rule laid down consistently by this court is that the accused is not required to establish his defence beyond reasonable doubt; even if a defence plea creates a reasonable doubt in the prosecution's case, the accused is entitled to its benefit as of right, not of grace. The complainant Ayaz Khan (PW-4A) and eyewitness Mehmood Khan (PW-5) in their statements have stated that the petitioner and the acquitted co-accused Amanullah jointly emerged from an under-construction mosque and opened indiscriminate fire upon them, resulting in the death of Rehmatullah deceased at the spot. None of them has ever deposed that co-accused Amanullah was empty-handed or that the fatal shot was fired by the petitioner alone. In fact, their testimony treats both accused persons alike and attributes equal culpability to them. We have noted that the learned High Court while disbelieving the prosecution's evidence to the extent of co-accused Amanullah, has nonetheless proceeded to maintain the conviction of the petitioner on the same set of evidence. This exercise is completely against the settled principle of appreciation of evidence, particularly, when no material evidence has been brought on record by the prosecution to distinguish the role of the petitioner from that of the acquitted co-accused. The grounds on the basis of which the learned High Court appears to have distinguished the case of the petitioner from that of the acquitted co-accused Amanullah is the petitioner's admission in his statement under Section 340(2) Cr.P.C. and the testimony of his defence witnesses that he was armed with a Kalashnikov at the time of occurrence, whereas the co-accused Amanullah was allegedly empty handed. However, the record speaks otherwise. A recovery memo

(Exh.PW.4/4) clearly demonstrates that a folding-butt stock Kalashnikov (Exh.R.1), bearing No. 1953FNC.0272, was shown to have been recovered from the possession of the acquitted co-accused Amanullah. Moreover, during spot inspection, fifteen (15) spent crime empties of 7.62 bore were collected from places attributed to both accused. The empties and the Kalashnikov were sent to the FSL for forensic analysis. The Forensic Science Laboratory (**"FSL"**) report (Exh.PK/1) reveals that empties marked C.1 and C.2 were fired from the Kalashnikov recovered from acquitted co-accused Amanullah, while three empties were opined to have been discharged from the Kalashnikov allegedly recovered from the petitioner, bearing No. 1977-469677. Strikingly, the remaining ten empties of 7.62 bore recovered from the crime scene were found to have not been fired from either of the two Kalashnikovs allegedly recovered from the petitioner and acquitted co-accused. The distinction drawn by the learned High Court, therefore, appears to be speculative and inconsistent with the evidence on record. The selective reliance placed on certain portions of the defence evidence while discarding the rest is contrary to the settled principles of appreciation of evidence and undermines the fairness of the proceedings.

9. It further emerges from the record that the defence, from the very inception, has consistently taken the plea that the occurrence did not take place in the manner alleged by the prosecution. Rather, according to the defence, there was an incident of cross-firing between the parties, and the complainant side was in fact the aggressors. This plea was not only put to all material prosecution witnesses during cross-examination by the defence, but also finds support in documentary and testimonial evidence brought on record. Exh.DA is an application filed under Section 22-A Cr.P.C. by the acquitted co-accused Amanullah, before the learned Justice of Peace, which sets forth the same version as narrated by the petitioner in his statement under Section 340(2) Cr.P.C.

10. The Investigating Officer, Munawar Khan SI (PW-7), in his cross-examination, has conceded that a passerby named Islam Jan s/o Qasim Khan also sustained injuries during the occurrence, was shifted to Bannu Hospital, later referred to Peshawar, and ultimately succumbed to his injuries. The I.O. admitted that he neither recorded the statement of injured Islam Jan nor of his relatives or legal heirs. He further deposed that several villagers informed him that cross-firing between the parties had continued for approximately three hours. He deposed that people of the area told him that Amanullah and his son (the petitioner) were

proceeding to village Shagai and from there intended to travel to Lahore for labour, and that the complainant party, having been informed of their departure, intercepted them near the mosque where the alleged encounter took place. These admissions by the I.O. significantly bolster the defence version and cast serious doubt on the prosecution narrative.

11. A glance at the site plan Exh.PW.4/1 reveals that the incident occurred on a thoroughfare in front of an under-construction mosque. It is inconceivable that the complainant and Mehmood Khan PW-5, who claim to have been directly fired upon by two armed assailants having automatic weapons, did not receive even a scratch. The alleged firing was not only indiscriminate but also continuous, as per the prosecution, yet both the witnesses remained unscathed, raising serious questions about the veracity of their presence at the scene and the truthfulness of their account. Both being brothers of the deceased and sharing a common motive arising out of a longstanding blood feud, they stood on equal footing with the deceased, yet conveniently escaped injury. This improbable conduct further discredits their testimony.

12. Viewed in its entirety, the prosecution's case appears riddled with inconsistencies, improbabilities, and material contradictions. The manner in which the learned High Court selectively relied upon certain portions of the defence evidence, is contrary to the settled norms of criminal justice. The occurrence appears not to have taken place in the mode and manner suggested by the prosecution. Rather, the surrounding circumstances as discussed above, the forensic evidence, particularly, the ten empties which have been opined not fired from any of the two Kalashnikovs shown recovered from the accused, the defence version supported by the I.O., coupled with concealment of the death of a passerby and the improbabilities in the prosecution's account cumulatively suggest that the incident has taken place in a different manner, which has been concealed by the complainant party, thereby failing to come to court with clean hands. The prosecution has also not proved the recovery of the alleged Kalashnikov from possession of the petitioner through independent and impartial evidence. The prosecution's evidence in both the cases is pregnant with doubts benefit of which is to be extended to the petitioner not as a matter of grace or concession but as a matter of right.

13. For the reasons stated above, Jail Petition No.554 of 2023 is converted into an appeal and allowed. The conviction and sentences of the petitioner/appellant recorded through the impugned judgment are

hereby set-aside and he is acquitted of charge levelled against him in the instant case. He be set at liberty forthwith if not required in any other case.

**Criminal Petition No.127/2023:**

14. In view of our discussion mentioned above, this petition is also converted into an appeal and is allowed. Consequently, conviction and sentences of the appellant under section 15 KP Arms Act, 2013 are also set-aside and he is acquitted of the charge. He be set at liberty forthwith if not required in any other case.

Islamabad  
19.08.2025  
M.Siraj Afridi PS

*Approved for reporting.*