

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

BENCH-VIII.

PRESENT:

Mr. Justice Muhammad Hashim Khan Kakar,
Mr. Justice Muhammad Shafi Siddiqui,
Mr. Justice Ishtiaq Ibrahim.

**Crl. Petitions No.378-L, 422-L and 424-L of 2021 with
Crl.Misc. Application No.1652 of 2024 in Crl.P-424-L/2021.**

(Against the judgment dated 13.01.2021 passed by Lahore High Court, Multan Bench, in Crl. Appeals No.710, 719 of 2018 and Crl. Revision No.343 of 2018).

Laal Khan

(in Crl. Petition No.378-L/2021)

Saifullah

(in Crl. Petition No.422-L/2021)

Din Muhammad.

(in Crl. Petition No.424-L/2021)

...Petitioner (s)

versus

The State and others.

...Respondent(s)

For the Petitioner (s):

Mr. Muhammad Ali Bukhari, AHC,
(in Crl. Petition No.378-L/2021)
Mr. M. Saleem Malik, ASC.
(in Crl. Petition No.422-L/2021)

Sardar Shahbaz Ali Khosa, ASC,
Mr. M. Latif Khan Khosa, Sr. ASC,
(in Crl. Petition No.424-L/2021 &
Crl. M.A-1652/2024).

For the State:

Ms. Memoona Ihsan-ul-Haq,
Deputy Prosecutor-General, Punjab.

Respondents.

Nemo.

Date of hearing:

13.03.2025.

JUDGMENT

ISHTIAQ IBRAHIM, J.- This single judgment shall dispose of the two Crl. Petitions No.422 & 424-L of 2021 filed by petitioners, namely, Saifullah and Din Muhammad against their conviction and

sentences of life imprisonment, and Crl. Petition No.378-L of 2021 filed by Laal Khan against Saifullah and Din Muhammad for enhancement of their sentences, as all the three have arisen from one and the same judgment dated 13.01.2021 passed by the learned Lahore High Court, Multan Bench, Multan, in Cr. Appeals No.710, 719 of 2018 and Cr. Revision No.343 of 2018, whereby the conviction and sentences awarded to petitioners Saifullah and Din Muhammad by the learned Additional Sessions Judge, Dera Ghazi Khan, in a private complaint titled "***Laal Khan..vs..Din Muhammad and another***" for offences under section 302/34 PPC relating to Police Station, Saddar Dera Ghazi Khan, were maintained while the Criminal Revision for enhancement of sentences was dismissed. The conviction and sentences awarded to petitioners Saifullah and Din Muhammad by the learned trial Court vide judgment dated 25.08.2018 are reproduced as under;

Conviction and sentences of petitioner Din Muhammad.

“Resultantly, convict Din Muhammad son of Ladha, is sentenced to life imprisonment as Tazir for the murder of Muhammad Ramzan son of Allah Bakhsh deceased. The convict is also directed to pay compensation of Rs.200,000/- (two lacs) under section 544-A Cr. PC, which shall be paid to the legal heirs of the deceased Muhammad Ramzan son of Allah Bakhsh deceased and in default whereof he will undergo six months S.I. The convict Din Muhammad son of Ladha Khan is also convicted under section 302 (b) of PPC read with section 34 PPC for sharing common intention with the convict

Saifullah son of Hussain Bakhsh causing murder of deceased Muhammad Jamal son of Muhammad Umer and is sentenced to life imprisonment as Tazir. The convict is also directed to pay compensation of Rs.200,000/- (two lacs) under section 544-A Cr. PC, which shall be paid to the legal heirs of the deceased Muhammad Jamal son of Muhammad Umer deceased and in default whereof he will undergo six months S.I.

Conviction and sentences of petitioner Saifullah.

“In the same way, convict Saifullah son of Hussain Bakhsh, is sentenced to life imprisonment as Tazir for the murder of Muhammad Jamal son of Muhammad Umer deceased. The convict is also directed to pay compensation of Rs.200,000/- (two lacs) under section 544-A Cr. PC, which shall be paid to the legal heirs of the deceased Muhammad Jamal son of Muhammad Umer deceased and in default whereof he will undergo six months S.I. The convict Saifullah son of Hussain Bakhsh is also convicted under section 302 (b) of PPC read with section 34 PPC for sharing common intention with the convict Din Muhammad son of Ladha Khan causing murder of deceased Muhammad Ramzan son of Allah Bakhsh and is sentenced to life imprisonment as Tazir. The convict is also directed to pay compensation of Rs.200,000/- (two lacs) under section 544-A Cr. PC, which shall be paid to the legal heirs of the deceased Muhammad Ramzan son of Allah Bakhsh

deceased and in default whereof he will undergo six months S.I. All the sentences were ordered to run concurrently.

2. Feeling aggrieved from the impugned judgment of the learned trial Court, the petitioners Saifullah and Din Muhammad preferred Cr. Appeal No. 710 and 719 of 2018 against their conviction and sentences while petitioner Laal Khan preferred Cr. Revision No.343 of 2018 for enhancement of sentences of petitioners Saifullah and Din Muhammad before the Lahore High Court, Multan Bench, Multan, after hearing arguments of the learned counsel for the parties, vide impugned judgment dated 13.01.2021 both the appeals as well as the Cr. Revision were dismissed.

3. The petitioners being dissatisfied from the impugned judgment of Lahore High Court, Multan Bench, Multan, have filed the ibid Petitions before this Court.

4. The complainant Laal Khan filed a private sessions complaint before the competent Court of jurisdiction against Din Muhammad and two others for commission of offence punishable under section 302/34 PPC while the State has also registered a case vide FIR No.109/16 dated 21.03.2016 under section 302/34 PPC at Police Station Saddar against Saifullah etc.

The brief facts of the prosecution case are that complainant Laal Khan (PW-1) on 21.03.2016 submitted a written report to Ghulam Akbar S.I, wherein it is stated that he is farmer by profession; that on 21.03.2016 his brother Muhammad Jamal after purchasing groceries from D.G Khan was returning to home on

motorcycle Honda 125/CG bearing registration No.3655/DGO-10 and Muhammad Ramzan son of Allah Bakhsh was sitting behind him while he alongwith his son Abdul Sattar (PW-2) and his cousin, namely, Fateh Muhammad son of Hussain Bakhsh were following them on another motorcycle; that when they reached at rough thoroughfare of Peer Bakhsh Gajoji through an under construction road of bridge Gajoji leading towards graveyard of Katori, in the meantime at 03:15 P.M accused Din Muhammad son of Ladha, Rashid son of Ghulam Muhammad and Saifullah son of Hussain Bakhsh duly armed with Kalashnikovs came in front of the motorcycles; that Din Muhammad made repeated fire shots at Muhammad Ramzan, as a result of which he sustained firearm injuries on different parts of his body; that accused Rashid made repeated fire shots with his Kalashnikov at Muhammad Jamal, as a result of which he sustained firearm injuries on different parts of his body while accused Saifullah made burst fire with his Kalashnikov at Muhammad Jamal, which hit him on his chest, legs and arms. The complainant further alleged that accused Din Muhammad extended threats of dire consequences to him and other PWs not to move ahead, therefore, they did not go near to the injured; that after the commission of offence, the accused fled away from the crime spot on their motorcycle and thereafter they attended the injured, but, they succumbed to the injuries. The complainant advanced motive behind the occurrence that Ghulam Muhammad, father of accused Rashid, was murdered in the year 1994, for which Muhammad Jamal, the deceased, and others were charged.

5. Arguments heard. Available record gone through.
6. Record reveals that the complainant Laal Khan (PW-1) in his written statement has mentioned that on the day of occurrence, his brother Muhammad Jamal (the deceased) after purchasing the groceries from D.G Khan was returning home was returning to home on motorcycle bearing registration No. 3655-DGO-10 125 CG while Muhammad Ramzan (deceased) was sitting on the rear seat-portion of the motorcycle, however, the complainant did not mention the registration number of his own motorcycle, upon which he alongwith his son Abdul Sattar and cousin Fateh Muhammad were riding. During the trial, the statement of complainant Laal Khan was recorded as (PW-01) who in his examination-in-chief did not mention the registration number of the motorcycle upon which Muhammad Jamal and Muhammad Ramzan (the deceased) were riding. The complainant during his cross examination stated that "***We nominated three accused in this case Din Muhammad, Saifullah and Rashid (since P.O. In 1994, father of Rashid was murdered. In case of his murder, Jamal (deceased of this case), his brothers Bilal, Razi, Wahid Bakhsh relative of Jamal deceased, Ellahi Bakhsh brother of said Wahid Bakhsh, Ghulam Akbar relative of Jamal deceased, Abdul Majeed relative and Allah Bakhsh cousin of Jamal deceased were accused.***" It is crystal clear that the motive was directly with co-accused Rashid, who is still absconding. The complainant in his cross examination admitted it correct that; "***the police found in the investigation of this case that the accused persons Saifullah and Din Muhammad were not involved of deceased Jamal and Ramzan.***

The Police Officers from SHO to DPO endorsed the opinion of investigation.....We did not make any application for change of investigation to DIG (investigation) Lahore. We did not make any application for change of investigation before the Court of learned Sessions Judge, D.G. Khan. We also did not file any writ petition for change of the investigation in the Hon'ble Lahore High Court."

The complainant in his cross examination further stated that the occurrence took place on 03:15 P.M and the police reached at the place of occurrence at 04:15 P.M; that P.S Saddar is situated at the distance of 10/12 kilometers from the place of occurrence; that we three Pws were not injured in the occurrence; that none of them went on their motorcycle to inform the police about the occurrence; that the dead bodies of the deceased had already been shifted to the Hospital and they remained sitting at the place of occurrence till arrival of police; that both the deceased at once died; that they had their mobile phones with them at the time and place of occurrence; that Rescue 1122 arrived at the place of occurrence before arrival of the police; that Rescue 1122 reached at once after the occurrence and informed them that both the deceased had been died; that none of the PWs called Rescue 1122 through mobile phone or otherwise; that he as well as PWs did not inform the police about the occurrence through mobile phone or otherwise while police reached there on its own. In light of the above referred statement, the conduct of the complainant and witnesses makes their presence doubtful at the spot at the relevant time. The complainant in his cross examination admitted that he did not give the details of articles which he had

purchased from City D.G Khan while returning to their house. It is also worth to mention here that the motorcycle upon which the complainant, his son Abdul Sattar and cousin Fateh Muhammad were riding and the purchased articles were not taken into possession by the Investigating Officer, which also creates doubts of their presence at the spot at the time of occurrence. The complainant during his cross examination stated that he as well as the PWs did not inform the police about the occurrence through mobile phone or otherwise and contrary to this Abdul Sattar (PW-2) during his examination-in-chief stated that he informed the police about the incident and the police reached the spot at about 4:15 P.M. PW-2 in his cross examination stated that PW Fateh Muhammad present in Court and he has refused to depose in this case. The complainant in his cross examination stated that; "*the said cane was containing diesel. Jamal was in need of diesel contained in the cane for peter engine. Diesel 30 litters was purchased from City, D.G Khan.*" PW-2 in his cross examination stated that many petrol pumps are situated on the way from our house to City D.G Khan. Besides the above, Ghulam Akbar SI (CW-3) who conducted investigation of the case, in his cross examination stated that; "*.....I reached the place of occurrence at 03:30 P.M. I wrote down the statement of complainant at 04:15 P.M. After writing down the statement of the complainant, I sent dead bodies of the deceased for postmortem examination 30 minutes later...When I reached at the place of occurrence, only a cane was lying on the ground and nothing else article was available there.*" The investigating officer completely negates the version of complainant

Laal Khan (PW-1) and eyewitness Abdul Sattar (PW-2), as both in their respective statements have stated that the police reached at the place of occurrence at 04:15 P.M; that Rescue 1122 arrived at the place of occurrence before arrival of the police.

Tahir Shabbir S.I/I.O was examined as (CW-1) who conducted investigation of this case, prepared the site plan on pointation of complainant and PWs, recorded statements of the PWs, declared accused Saifullah and Din Muhammad not involved in the occurrence, and prepared discharge report. In his cross examination, this PW stated that on 25.05.2016 Haji Khuda Bakhsh Khalool, Muhammad Ishaq Khalool and Haji Lal Khalool appeared before him and he recorded their statements in the police diary and stated that at the time and date of occurrence they were present along with Saifullah accused in his clinic, where Saifullah as well as they received the information of occurrence.

Haji Lal Khan son of Wassan was produced as defence witness by petitioner-accused Saifullah and his statement was recorded as (DW-1), who in his examination-in-chief stated that on 21.03.2016 at about 03:15 P.M he had gone to the clinic of accused Dr. Saifullah (present in Court) for taking medicine for my granddaughter; that when he reached there, Muhammad Ishaq and Khuda Bakhsh Khalool were already present there; that some ladies were also sitting there for taking medicine from Dr. Saifullah; that after few minutes, he had heard there that two persons have been murdered; that they remained there for taking medicine for his granddaughter for about 15/20 minutes; that the accused Dr.Saifullah

present in Court was at his clinic with him at the time of occurrence and has falsely been involved in the instant case.

Peer Bakhsh son of Kalo Khan was examined as (DW-2) and deposed that on 21.03.2016 at 03:15 P.M he along with his family members was present near his house situated near the place of occurrence; that they heard noise of fire, whereupon he witnessed that only one young person made an attack with Kalashnikov on two persons and made fire with the Kalashnikov which hit said two persons on different parts of their bodies, after that the assailant fled away towards south; that neither Saifullah and Din Muhammad accused persons nor any witness was present at the place of occurrence by the time of occurrence; that Ghulam Shabbir, Sajjad and Muhammad Ali were playing cricket near the place of occurrence and witnessed the occurrence. Ghulam Shabbir son of Karim Bakhsh was examined as (DW-3) who also deposed that on 21.03.2016 at 03:15 P.M he along with Muhammad Ali, and Sajjad Hussain were playing cricket in the ground nearby the Pull Basti Gajugi; that they heard noise of fire shot, whereupon he witnessed that only one young person made a burst shot with his Kalashnikov, which hit two persons on different parts of their bodies; that when he reached at the place of occurrence, Peer Bakhsh DW also reached there; that neither Saifullah and Din Muhammad accused persons nor any witness was present at the place of occurrence by the time of occurrence. The complainant in his cross examination also admitted that Saifullah accused runs his clinic, which is situated adjacent to his house, and that the place of occurrence is near to the house of Peer Bakhsh. The

DWs were cross examined by the learned counsel representing the complainant party but their statements remained unshattered.

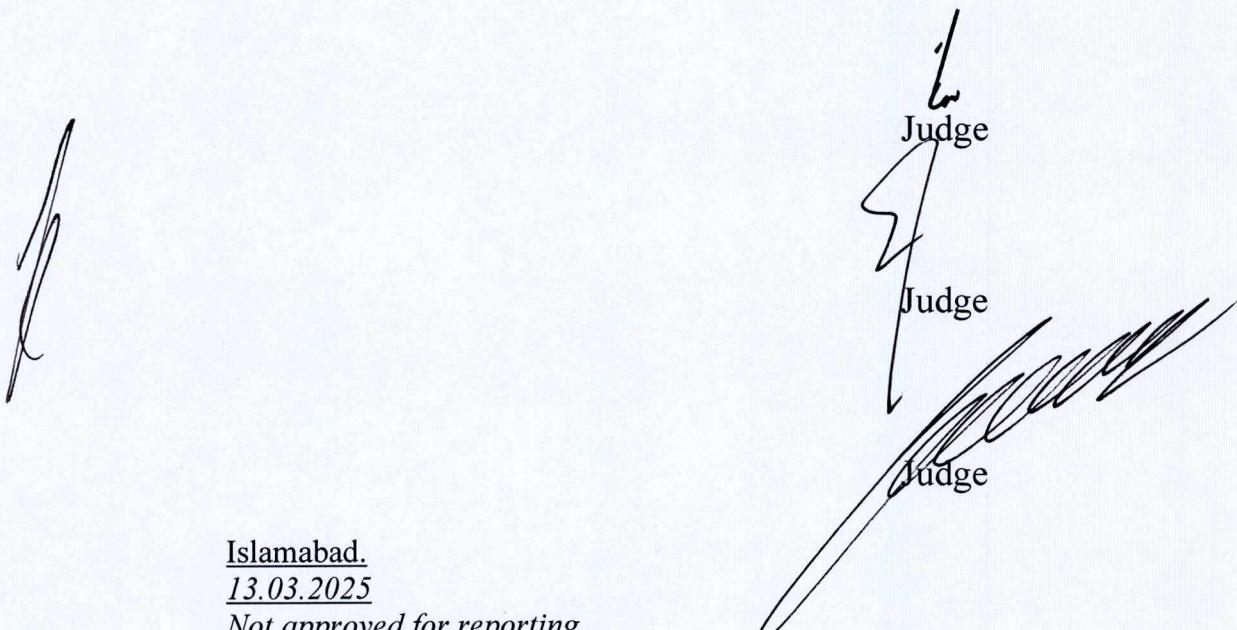
It is also pertinent to mention here that during spot inspection, Ghulam Akbar S.I (CW-3) recovered and took into possession ten crime empties P-12/1-10 of Kalashnikov from the place of occurrence and sealed the same into parcel vide memo (EX PE) but the said empties were not sent to the FSL in order to ascertain as to whether the same empties were fired from one weapon or more than one weapon. This CW-3 in his examination-in-chief stated that; **“...on 27.03.2016 the Moharrir handed over to him two sealed parcels of blood stained earth and one contained empties for onward submission to the office of PFSA, Lahore, which I handed over the same office on 28.03.2016.”** No report of PFSL regarding the crime empties is available on record. The prosecution has not been able to bring home charge beyond reasonable shadow of doubt against the petitioners-accused Saifullah and Din Muhammad and they deserves to get the benefit of doubt in the attending circumstances of the case. By now it is settled principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused person as matter of right and not of grace. In this regard we are fortified by the judgment of this Court rendered in **Tariq Pervez's (1995 SCMR 1345)**, wherein it was observed that for giving the benefit of

doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.

7. Though the opinion of the investigating officer or police is not binding upon the Court but while considering the overall facts and circumstances of the case, the same can also be taken into consideration alongwith the other evidence led by the prosecution and defence. We, therefore, convert Crl. PLA No.422 & 424-L of 2021 into appeals. The conviction and sentences of the appellants Saifullah and Din Muhammad recorded vide impugned judgments dated 13.01.2021 passed by Lahore High Court, Multan Bench, Multan, in Crl. Appeals No.710 and 719 of 2018 respectively are set aside and the appellants be released forthwith if not required in any other case.

So far as Criminal Petition No.378-L of 2021 for enhancement of sentences of the appellants is concerned, the appellants have been acquitted of the charges leveled against them by extending benefit of doubt in their favour, therefore, the instant Crl. Petiton-378-L of 2021 has become infructuous and is dismissed.

Above are the detailed reasons of our short order of even date.



The image shows a handwritten signature of "Kausar Ali, PS" at the bottom right. Above this signature, there are three smaller, slanted signatures followed by the word "Judge" written vertically next to each one. To the left of the main signature, there is a large, stylized, slanted mark or signature.

Judge
Judge
Judge

Islamabad.
13.03.2025
Not approved for reporting

(Kausar Ali, PS)