

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

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

**JAIL PETITION NO.463 OF 2022**

*(On appeal against the judgment dated 18.01.2022 passed by the Peshawar High Court, Peshawar in Cr. Appeal No. 597-P to 599-P of 2021, Murder Reference No. 05/2021 and Cr. Revision No. 124 & 141 of 2021)*

1. Muhammad Akbar
2. Khan Akbar

...Petitioner(s)

**Versus**

The State

...Respondent(s)

For the Petitioner(s): Syed Muhammad Tayyab Shah, ASC

For the State: Syed Kosar Ali Shah, Addl. A.G. KPK

For the Complainant: Nemo

Date of Hearing: 29.05.2025

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**JUDGMENT**

**MALIK SHAHZAD AHMAD KHAN, J.**-Muhammad

Akbar and Khan Akbar, petitioners, along with Noor Akbar, Israfeel, Saud and Mst. Sawal Juma, co-accused, were tried by the learned Additional Sessions Judge-II, Hangu, pursuant to a case registered vide FIR No. 260 dated 05.03.2018 under Sections 302/109/114/34 PPC read with Section 15 of the Arms Ordinance at Police Station City Hangu. The learned Trial Court vide its two separate judgments dated 29.06.2021, convicted and sentenced the petitioners and their co-accused as under:-

**Accused Muhammad Akbar, Khan Akbar, Noor Akbar and Israfeel**

**Under Sections 302 (b)/109/34PPC**to death as ta'zir on three counts.

**Under Section 120-B PPC** to suffer ten (10)years RI with fine of Rs. 500,000/- each, which shall be paid to the legal heirs of the deceased excluding Muhammad Akbar (father) and Mst. Swal Juma (grandmother of the deceased) as

compensation under section 544-A Cr.P.C or in default thereof, each convict shall further undergo SI for six months. Benefit of section 382-B Cr.P.C was extended in favour of the accused. The sentences were directed to run concurrently.

**Mst. Sawal Juma**

**Under Section 302 (b)/109 PPC** to undergo ten (10) years RI.

**Under Section 120-B/109 PPC** five (05) years RI with a fine of Rs. 500,000/- which shall be paid to the legal heirs of the deceased excluding Muhammad Akbar (father) as compensation under section 544-A Cr.P.C or in default thereof to further undergo SI for six months.

**Under Section 201 PPC** to suffer five years RI with fine of Rs.100,000/- or in default thereof shall further undergo SI for three months.

**Under Section 15 AA** to suffer three years RI.

All the sentences were directed to run concurrently. Benefit of section 382-B Cr.P.C was extended to her.

**Accused Saud, the juvenile offender**

**Under Section 120-B /109 PPC** to undergo ten (10) years RI with fine of Rs. 500,000/- which shall be paid to the legal heirs of the deceased excluding Muhammad Akbar (father) and Mst. Sawal Juma (grandmother of the deceased) as compensation under section 544-A Cr.P.C or in default thereof shall further undergo SI for six months.

**Under Section 201 PPC** to undergo RI for five years with fine of Rs. 200,000/- or in default thereof shall further undergo SI for six months. Both the sentences were directed to run concurrently with benefit of section 382-B Cr.P.C.

2. In appeal, the learned High Court maintained the convictions and sentences awarded to Muhammad Akbar and Khan Akbar, petitioners. However, the learned High Court acquitted Noor Akbar, Israfeel and Saud, co-accused. Through the same impugned judgment, the convictions of Mst. Sawal Juma, co-accused, were maintained but the sentences of imprisonment were reduced to the period which she had already undergone. The amount of fine imposed on Mst. Sawal Juma, co-accused, by the Trial Court was set aside.

3. Arguments heard. Record perused.

4. As per contents of the FIR, Arifullah, complainant (PW-14) stated that on 05.03.2018 at about 04:50 PM, he received a

telephone call of his friend who informed him that his (complainant's) two nieces namely Mst. Najma Bibi (deceased) and Mst. Zeenat Bibi (deceased) daughters of Muhammad Akbar, petitioner, were murdered whereas his third niece Mst. Sultana Bibi had been seriously injured. On receiving the above-mentioned telephone call, Arifullah, complainant (PW-14) proceeded from his house situated in Village Dar-Band, District Hangu towards DHQ Hospital Hangu and after reaching the above-mentioned hospital he found the dead bodies of his nieces Mst. Najma Bibi (deceased) and Mst. Zeenat Bibi (deceased) in the mortuary of the hospital whereas his third niece Mst. Sultana Bibi was referred to the Civil Hospital, Kohat for medical treatment. It is pertinent to mention here that Mst. Sultana Bibi (the then injured) subsequently succumbed to the injuries in the later part of the day. The complainant further stated that on inquiry, he got the information that his nieces were murdered by Khan Akbar, petitioner and Noor Akbar (co-accused since acquitted) with the conspiracy and abetment of Mst. Sawal Juma (co-accused since acquitted), Israfeel (co-accused since acquitted), Saood (co-accused since acquitted) and Muhammad Akbar, petitioner. He further stated that Muhammad Akbar, petitioner, was real father of the deceased, who was confined in Kohat Jail in a case of rape under Section 376 PPC. He further stated that the motive behind the occurrence was that his niece Mst. Najma Bibi (deceased) levelled the allegation of rape against her father namely Muhammad Akbar, petitioner, whereupon a criminal case of rape was registered against him and due to the said grudge, the other accused who are brothers, nephews and mother of Muhammad Akbar, petitioner, committed L5

the occurrence with their common object, hence, the FIR of this case.

5. First of all, we take up the case of Muhammad Akbar, petitioner. It is noteworthy that Noor Akbar co-accused, Israfeel co-accused and Saood co-accused, were also named in the FIR who were also charged with the allegations of abetment and conspiracy of the offence but the above-mentioned co-accused have been acquitted by the learned High Court vide the impugned judgment dated 18.01.2022, whereas Muhammad Akbar petitioner, who was admittedly confined in jail at the time of occurrence and against him only the allegation of abetment and conspiracy was levelled but the appeal filed by him against his conviction and sentence has been dismissed vide the same impugned judgment. The allegation against Muhammad Akbar, petitioner, was that his daughter Mst. Najma (deceased) leveled the allegation of rape against him due to which a criminal case under Section 376 PPC was registered against the said petitioner and he was confined in District Jail Kohat, therefore, he along with his above-mentioned co-accused mentioned in the FIR made a plan to commit the murders of the deceased persons of this case. It has been brought on the record during the trial of this case that prior to the present occurrence, the relationship between Muhammad Akbar petitioner and his wife Mst. Shakila Bibi (PW-13) became strained and Mst. Shakila Bibi (PW-13) was living separately on account of the divorce between the spouses. The children of Muhammad Akbar petitioner and Mst. Shakila Bibi (PW-13) were living with Mst. Shakila Bibi (PW-13), however, a *jirga* proceeding was held and it was decided that the children will remain in the custody of Muhammad Akbar, petitioner. Thereafter, the children of

Muhammad Akbar, petitioner, were brought to his house but his daughter Mst. Najma (deceased) levelled the allegation of rape against the said petitioner, who was her real father. Learned counsel for the petitioners has argued that in-fact Mst. Najma Bibi (deceased) levelled a false allegation of rape against her father Muhammad Akbar, petitioner, under the instructions of her mother namely Mst. Shakila Bibi (PW-13) so that the custody of the children may be taken back from the said petitioner. It is, however, an admitted fact that Muhammad Akbar, petitioner, was subsequently acquitted from the above-mentioned case registered against him under Section 376 PPC after recording of evidence of seven prosecution witnesses in the said case. It is also an admitted fact that Muhammad Akbar, petitioner, was not present at the spot at the time of occurrence of the present case and he was confined in District Jail Kohat at the relevant time. There is no allegation against Muhammad Akbar, petitioner, that he caused any injury at the body of any deceased person of this case or he was even present at the spot at the relevant time. The allegation of hatching a criminal conspiracy of the murders of the deceased persons of this case with the other accused was levelled against Muhammad Akbar petitioner and in order to prove this allegation, the prosecution alleged that Muhammad Akbar, petitioner, through the mobile phone of Noorul Amin, constable, made contact with his co-accused from jail and hatched the above-mentioned conspiracy. No employee/staff member of the jail was produced in the witness box to prove the above-mentioned allegation. Although, Call Data Record (CDR) of the mobile phone of the above-mentioned Noorul Amin, constable, was produced in the prosecution evidence but no transcript of the conversation of Muhammad Akbar, petitioner,  
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with any accused of this case has been produced in the prosecution evidence. No proof of the ownership of the mobile SIM numbers mentioned in the said CDR has been brought on the record. In the cases of Azeem Khan Vs. Mujahid Khan (2016 SCMR 274) and Mian Khalid Perviz Vs. The State (2021 SCMR 522), this Court disbelief the evidence of CDR in absence of any proof of ownership of the SIM numbers mentioned therein and in absence of transcript of the conversation of the accused. No witness has stated that he heard the telephonic conversation of the other accused with Muhammad Akbar, petitioner, in order to establish that any conspiracy was hatched by the said petitioner and his co-accused. We are, therefore, of the view that the prosecution could not prove its case against Muhammad Akbar, petitioner, beyond the shadow of doubt. Consequently, this petition is converted into an appeal and partly allowed. Impugned judgments dated 18.01.2022 and 27.11.2019, of the learned High Court and the trial Court, respectively are set-aside to the extent of the case of Muhammad Akbar petitioner. Muhammad Akbar, petitioner, is acquitted from the charges while extending him the benefit of doubt. He is directed to be released from the jail forthwith, if not required to be detained in any other case.

6. Insofar as the case of Khan Akbar, petitioner, is concerned, we have noted that he was the resident of the house where his three nieces Mst. Najma Bibi, Mst. Zeenat Bibi and Mst. Sultana Bibi were murdered. The prosecution case against the petitioner was established through the evidence of Musa (PW-12). The said witness is real son of Muhammad Akbar, petitioner, and he was about 11 years of age at the time of occurrence. He is real brother of the three female deceased of this case. He was resident

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of the house where the occurrence took place. Although his name was not mentioned as an eye-witness in the contents of the FIR but he categorically stated in his examination-in-chief that during the days of occurrence, he along with his deceased sisters was residing in the house of his father and his uncles. Khan Akbar, petitioner, is paternal uncle of Musa (PW-12). He also stated that his father Muhammad Akbar was sent to prison and after his detention his uncles including Khan Akbar, petitioner, started teasing and beating him and his sisters due to which they left the house of their father and went to the house of their maternal uncle. However, after two or three days, they came back to the house of their father/uncles. He further stated that his sisters namely Mst. Sultana Bibi (deceased), Mst. Najma Bibi (deceased) and Mst. Zeenat Bibi (deceased) entered the house while he was deboarding the daily commodities for taking the same to the house but in the meanwhile he heard hue and cries, upon which, he entered the house and saw that Khan Akbar, petitioner and his co-accused caught hold of her deceased sisters and were beating them. He also stated that at that time, Khan Akbar, petitioner, was armed with a pistol and due to fear he left the house and ran away from the place of occurrence towards the house of his maternal uncle. It is true that he had not seen Khan Akbar petitioner or his co-accused while making fire shots at the bodies of the deceased but he had lastly seen the deceased persons alive in the company of Khan Akbar, petitioner and his co-accused. He has categorically stated that at the relevant time, Khan Akbar petitioner was armed with a pistol and he and his co-accused were beating his sisters. Thereafter, the deceased were never seen alive and the above-mentioned evidence of last seen was a very strong piece of evidence

against Khan Akbar, petitioner. Musa (PW-12), has not stated that any other accused was also armed with any firearm. According to the medical evidence, the deceased received firearm injuries on their bodies. Musa (PW-12) was admittedly resident of the house where the occurrence took place, therefore, his presence at the spot at the relevant time cannot be termed as unnatural or improbable and, as such, he was a natural witness of this case. The occurrence took place in a house where Khan Akbar, petitioner, was also residing. His three nieces were murdered inside the said house but he did not report the matter to the Police. He was unable to explain that as to how his three nieces died unnatural deaths.

7. The prosecution case against Khan Akbar, petitioner, is further corroborated by the recovery of pistol, which was produced before the Police by his real mother Mst. Sawal Juma (co-accused since convicted) with the claim that the above-mentioned pistol was the weapon of offence of this case and the same was handed over to her by Khan Akbar, petitioner. As per Forensic Science Laboratory report, ten empties recovered from the spot were found to be fired from the above-mentioned pistol. A piece of rope, which was cut from the other part of the rope, used to tying the hands of the deceased persons of this case was also recovered on the pointing out of Khan Akbar, petitioner and, as such, the above-mentioned recoveries and positive report of the Forensic Science Laboratory has corroborated the circumstantial evidence of last seen against Khan Akbar, petitioner.

8. According to the prosecution case, the motive behind the occurrence was that Mst. Najma Bibi (deceased), who was real daughter of Muhammad Akbar, accused/petitioner (who was real

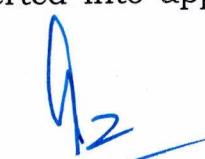
brother of Khan Akbar, petitioner) levelled the allegation of rape against her real father Muhammad Akbar, co-accused, due to which a criminal case under Section 376 PPC was lodged and Muhammad Akbar, co-accused, was sent to jail and on account of the said grudge, Muhammad Akbar, co-accused, hatched a conspiracy with Khan Akbar, petitioner and his co-accused and committed the murders of his daughters (the deceased persons of this case). As mentioned earlier, Muhammad Akbar, petitioner, had admittedly been acquitted from the case lodged against him under Section 376 PPC on account of above-mentioned allegation levelled by Mst. Najma Bibi (deceased). He has also been acquitted in the instant case due to the reasons mentioned in paragraph No. 5 of this judgment, as there was no convincing evidence to prove the alleged conspiracy against him and his co-accused. It is also noteworthy that the prosecution alleged the above-mentioned motive against Noor Akbar, Israfeel and Saood, co-accused, but the prosecution evidence of alleged motive against the above-mentioned co-accused has already been disbelieved and they have been acquitted from this case by the High Court. No appeal against the acquittal of Noor Akbar co-accused, Israfeel co-accused and Saood co-accused, has been filed by the State or by the complainant before this Court and, as such, their acquittal has attained finality. No convincing evidence has been brought on the record to prove the alleged motive against Khan Akbar, petitioner. Moreover, it was Mst. Najma Bibi (deceased) who levelled the above-mentioned allegation of rape against Muhammad Akbar, co-accused but there was no such allegation levelled by the remaining deceased namely Mst. Zeenat Bibi or Mst. Sultana Bibi and as such, there was no reason with Khan Muhammad, petitioner to

commit the murders of Mst. Zeenat Bibi (deceased) and Mst. Sultana Bibi (deceased). We are, therefore, of the view that the motive alleged by the prosecution has not been proved in this case. It is, therefore, not determinable that as to what had actually happened immediately prior to the occurrence and what was the real cause which resulted in the present unfortunate incident.

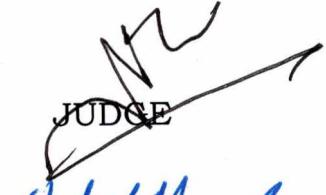
9. Although, we have disbelieved the prosecution evidence qua the motive but if the said evidence is taken out of consideration even then there remains sufficient incriminating evidence on the record to prove the prosecution case against Khan Akbar, petitioner. As mentioned earlier, the prosecution case against Khan Akbar, petitioner is fully proved through the confidence inspiring evidence of last seen produced through Musa (PW-12), which evidence is fully supported by the medical evidence and further corroborated by the recovery of pistol and rope and positive report of Forensic Science Laboratory. We are, therefore, of the view that the prosecution has proved its case against Khan Muhammad, petitioner, beyond the shadow of any doubt.

10. Now coming to the quantum of sentence, we have noted certain mitigating circumstances in favour of Khan Akbar, petitioner. **Firstly**, there is no eye-witness in this case and the prosecution case hinges upon circumstantial evidence. **Secondly**, the prosecution also implicated Noor Akbar, Israfeel and Saood, co-accused, in this case but they have already been acquitted by the learned High Court vide the impugned judgment, whereas Muhammad Akbar, co-accused, has also been acquitted by this Court due to the reasons mentioned in paragraph No.5, of this judgment. **Thirdly**, the motive alleged by the prosecution has not been proved in this case on account of the reasons mentioned in

paragraph No. 8 of this judgment. It is, therefore, not determinable that as to what had actually happened immediately prior to the occurrence and what was the real cause, which resulted into the present unfortunate incident. Keeping in view the above-mentioned mitigating circumstances, the instant petition is converted into appeal and partly allowed. The sentences of death awarded to Khan Akbar, petitioner under Section 302(b) PPC on three counts are altered to imprisonment for life on three counts. However, the compensation awarded by the learned trial court and the sentence in default thereof which were upheld by the learned High Court are maintained. All the sentences awarded to Khan Akbar, petitioner, shall run concurrently except the sentence to be undergone by him on account of non-payment of compensation amount. Benefit of Section 382-B Cr.P.C. is also extended in favour of Khan Akbar, petitioner. As the four co-accused of Khan Akbar, petitioner, have been acquitted from the charges while extending them the benefit of doubt because the allegation of hatching the criminal conspiracy, abetment and common intention was not proved against them, therefore, the convictions and sentences awarded to Khan Akbar, petitioner, for the charges under Sections 120-B, 109 and 34 PPC are set aside. This petition is converted into appeal and partly allowed in the above-mentioned terms.



JUDGE



JUDGE

*Shahid Khan*

JUDGE