

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

45/25

PRESENT:

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

JAIL PETITION NO.615 OF 2021 &
CRIMINAL PETITION NO.1816-L OF 2021

(On appeal against the judgments dated 11.11.2021 passed by the Lahore High Court, Lahore in Crl. Appeal No.76975/2017, Crl. Rev.No.424/2017, PSLA No.113/2007, Crl. Appeal No.58501-J/2017 & Crl. Rev.No.43273/2017)

Muhammad Riaz	...Petitioner in JP-615/2021
Mukhtar Ahmad	...Petitioner in Crl.P.1816-L/2021

Versus

The State	...Respondent in JP-615/2021
Sheraz Ahmad etc	...Respondent in Crl.P.1816-L/2021

For the Petitioners: Ms. Bushra Qamar, ASC
in JP-615/2021

Mukhtar Ahmad in person
in Crl.P.1816-L/2021

For the State: Mr. Sajjad Hussain Bhatti, Deputy. P.G,
Punjab

For the Complainant: Mukhtar Ahmad in person

Date of Hearing: 08.07.2025

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JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.-

Jail Petition No.615 of 2021

Muhammad Riaz petitioner along with Imtiaz Ahmad alias Baphoo, Muhammad Nawaz, Ghulam Sarwar alias Saru and Naeem Umar (co-accused since acquitted), was tried by the learned Additional Sessions Judge, Malakwal pursuant to a private complaint filed by Mukhtar Ahmad complainant under sections 302, 148, 149 & 109 PPC, in connection with case FIR No.258/2014, dated 21.09.2014, under sections 302/34 PPC, registered at police station Miana Gondal, District Mandi

Bahauddin. The learned Trial Court vide its judgment dated 23.02.2017, convicted the petitioner under Section 302(b) PPC and sentenced him to rigorous imprisonment for life. He was also directed to pay compensation amounting to Rs.500,000/- to the legal heirs of the deceased as envisaged under section 544-A Cr.P.C, recoverable as arrears of land revenue and in default thereof to further undergo simple imprisonment for six months. Sheraz Ahmad (co-accused), was also convicted and sentenced by the learned trial Court as that of Muhammad Riaz (petitioner). In appeal, the learned High Court upheld the judgment of the learned Trial Court vide impugned judgment dated 11.11.2021, to the extent of the petitioner, however, Sheraz Ahmad (co-accused), was acquitted of the charge.

2. Mukhtar Ahmad (complainant), is present before the Court. He submits that though he hired the services of a learned counsel in this case but due to financial constraint, he is unable to pay his fee, therefore, he will himself argue the case.

3. Arguments heard. Record perused.

4. Mukhtar Ahmad complainant (PW-3), filed a private complaint with the allegations that on 21.09.2014, at 9.00 a.m, Muhammad Riaz (appellant), while armed with 12-bore repeater along with other acquitted co-accused launched an attack upon the complainant party. Muhammad Riaz (appellant), made two fire shots from his 12-bore repeater gun, which landed on the right thigh of Safdar Iqbal (deceased), whereas Sheraz Ahmad (co-accused since acquitted), made two fire shots, which landed on the left thigh of Safdar Iqbal (deceased).

5. We have noted that in the instant case, the evidence of eye-witnesses of the prosecution has been disbelieved by the learned

High Court vide its impugned judgment. The prosecution eye-witnesses namely Mukhtar Ahmad complainant (PW-3) and Qamar Abbas (PW-4), are not resident of the place, where the occurrence took place and as such they were chance witnesses. They could not establish any valid reason for their presence at the spot at the relevant time. The learned High Court rightly highlighted the above-mentioned aspect of the case in its impugned judgment. It is also noteworthy that according to the statement of Mukhtar Ahmad complainant (PW-3), after the occurrence which took place on 21.09.2014, at 9.00 a.m, he shifted the deceased to RHC Miana Gondal but Dr. Manzoor Rasul Awan (PW-1), categorically stated in his statement that he conducted postmortem examination on the dead-body of the deceased at 6.40 p.m after receiving police papers, which fact clearly creates doubt regarding presence of the eye-witnesses at the spot at the time of occurrence because had the complainant and the eye-witnesses been present at the time of occurrence then such delay in conducting postmortem examination on the dead-body of the deceased would have never been occurred. Insofar as the recovery of 12-bore repeater gun at the pointing out of the petitioner is concerned, no empty was recovered from the spot and the report of PFSA (Ex.PB), is only regarding working condition of the gun recovered at the instance of the petitioner, therefore, the learned High Court rightly concluded that the recovery of 12-bore gun at the pointing of of the petitioner in absence of any matching report of any empty with the said gun, is consequential. As per prosecution case, the motive behind the occurrence was exchange of hot words by Muhammad Riaz (petitioner) with Safdar Iqbal (deceased) and Zulfiqar (PW since given up). Both the eye-witnesses namely Mukhtar Ahmad

complainant (PW-3) and Qamar Abbas (PW-4), alleged that they reached at the spot after coming to know about the incident of exchange of hot words between the deceased and the petitioner. The most important and natural witness to prove the motive part of the prosecution case was Zulfiqar but the said Zulfiqar was not produced in the witness box rather he was given up by the prosecution. As the best evidence has been withheld in this case by the prosecution, therefore, an adverse inference under Article 129(g) of Qanun-e-Shahadat Order, 1984, can validly be drawn against the prosecution that had the above-mentioned witness been produced in the evidence, he would not have supported the prosecution case. The learned Courts below have, therefore, rightly concluded that the prosecution has failed to prove the motive part of the occurrence.

6. However, the petitioner has been convicted and sentenced on the basis of his own statement recorded under section 342 Cr.P.C, which reads as under:-

"It is incorrect. In fact combine harvester was cutting paddy crop from the field owned by one Ahmad Malang resident of the village which was cultivated by me (Riaz accused). I alongwith my son Sheraz co-accused were collecting "Palra" of said paddy crop. Zulfiqar PW alongwith Zafar Iqbal, Safdar Iqbal (since deceased) also came there to collect Palra" of paddy crop from the said field. I forbade them that this Palra" is belongs to us. Said Zafar Iqbal, Zulfigar Ahmad PW and Safdar Iqbal (since deceased) went from there. I came back to my home. Zulfiqar Ahmad PW and Zafar Iqbal Safdar Iqbal (since deceased) also came back from there. I released my cattles for watering them from canal. When my cattles were returning from the corner, Riasat S/O Ahmad came there. All of a sudden, Safdar (deceased) and Zulafiqar PW came out from gate alongwith their weapons i.e Sota and hatchet and they stopped my cattles in front of gate of my house. Safdar Iqbal (since deceased) raised Lalkara that I be taught a lesson for not permitting lifting of

"Palra" crop and kill me. My cattles went into the fields of Ghulam Rasul S/O Nawab and I went into the field of my Bajra crop with the height of 1½/2 feet. Riasat caught hold of me from my right side and when Zulfiqar PW and Safdar (deceased) attacked on me by their weapons, to save my life I made fire which landed on the right thigh of Safdar (deceased). During the efforts to save myself two further fire-shots were discharged from the gun suddenly which also landed on the left thigh of the deceased. After hearing the voice of fire, my son Sheraz (co-accused) attracted there. He made no fire on the deceased. I made only one fire to save my life. If I wanted to kill the deceased, then there was no hurdle in my way to kill Safdar Iqbal (deceased). No PW except Zulfiqar Ahmad was there. They belatedly tried to transfer Safdar Iqbal the then injured (since deceased) due to that his death occurred. I alongwith other co-accused had made no abetment. No other accused was present at that time with me. All the other co-accused have been implicated falsely being my close relatives. The above said fact was found correct by the two I.Os CW.5 and CW.6 and their investigation was also verified by the concerned DSPs and DPO of the District.

Learned counsel for the petitioner has emphasized that after disbelieving the prosecution evidence, the statement of an accused is to be accepted or rejected in toto and if the statement of the accused recorded under section 342 Cr.P.C, is accepted in toto then the petitioner is liable to be acquitted because he had stated that while apprehending danger to his life, he fired at the deceased in his self-defence. The petitioner has taken a specific plea of self defence in his above-referred statement, therefore, in this respect we are of the view that the learned trial Court rightly observed in the impugned judgment that the injuries on the left and right thighs of the deceased were of the sizes measuring 6 x 5 cm having black margins, which fact shows that the fires were made from a very close range but making of several fire shots by the petitioner from a close distance negates his stance that he acted in self

defence. The petitioner was armed with 12-bore repeater gun, when he came to the place of occurrence and he made three fire shots on the deceased to ensure his death, hence his intention to take the life of the deceased was quite clear. Even otherwise, the petitioner transcended while using the alleged right of self defence and used excessive force during the occurrence. Furthermore, the petitioner has not explained that as to why he was carrying 12-bore repeater gun at the time of occurrence. It is also worth mentioning that as per stance of the petitioner, Zulfiqar (PW since given up), was also accompanying the deceased when the occurrence took place but astonishingly the petitioner did not make a single fire shot at the said Zulfiqar especially considering the fact that at the time of exchange of hot words between the deceased and the petitioner, the said Zulfiqar was also present at that time and he attempted to attack the petitioner. Not a single scratch was received by the petitioner on his body during the occurrence. According to the defence version of the petitioner Safdar Iqbal (deceased) and Zulfiqar (PW since given up), were carrying hatchet and danda respectively, when they attacked the petitioner but no hatchet or danda was recovered from the spot after the occurrence by the I.O. Under the abovementioned circumstances, the learned High Court while relying upon the judgment of this Court reported as "Ali Ahmad v. The State" (**PLD 2020 Supreme Court 201**) rightly based its findings while discarding the plea of self-defence taken by the petitioner in his statement recorded under section 342 Cr.P.C. The relevant parts of the judgment in the case of "Ali Ahmad" supra are reproduced hereunder for ready reference:-
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17. The words "taken into consideration" appearing in section 342(3), Cr.P.C are very wide. The statement of an accused recorded under section 342, Cr.P.C, has no less probative value than any other "matter" which may be taken into consideration against him within the contemplation of the definition of "proved" given in Article 2(4) of the QSO (previously section 3 of the Evidence Act, 1872), which states that a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Muhammad Munir, J., in Rahim Bakhsh, regarding statement under section 342. Cr.P.C. wrote: "I know of no law which says that an admission made by an accused person in or out of court unless it is vitiated by any such circumstances as are mentioned in the Indian Evidence Act, cannot be considered to be a matter which the court may take into consideration in coming to its conclusion." The circumstances which can vitiate an admission or confession, referred to by the learned Judge, may be of inducement, threat or promise under which a particular statement is made. A statement under section 342, Cr. P.C. having been made by an accused before court in presence of his counsel has little chance of suffering from such circumstances. However, an admission or confession which is improbable or unbelievable, or is not consistent with the overall facts and circumstances of a case may not have any probative value and thus cannot be relied upon by the court for reaching to a conclusion.

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C. Where prosecution has failed and the statement of the accused under section 342, Cr.P.C. is accepted in entirety, the court is then to give due effect to the statement of the accused, under the law, whether in favour of or against the accused.

22. Next comes the question, how such a statement of the accused when "accepted as a fact" and taken in its entirety is to be given effect and acted upon, once the prosecution has failed to make out a case? Once the prosecution evidence is disbelieved, rejected or excluded from consideration, and the facts explained by the accused in his statement under section 342, Cr.P.C. are accepted entirely, the court is then to examine

the said facts to give due effect to the statement of the accused, under the law, whether in favour of or against the accused. The object of such examination is to determine whether or not the facts narrated by the accused constitute an offence under the law or fit into any exception of the offence provided under the law. In this respect, the observation of Sir Mukerji J., made in the case of Bhola Nath is quoted to explain the purpose of this examination of the statement of the accused. The learned Judge observed, at page 5:

"If on the whole of the statement of the accused, taken together, his guilt is established, and his plea, say, of acting in self-defence or of the case falling within any of the general or special exceptions (sic) is not made out on the facts admitted, there cannot be any bar to a conviction, simply because the prosecution evidence, by itself would not have secured a conviction" (emphasis supplied)

This legal examination was also aptly explained and applied by Lobo C.J. in Gul Mahomed. The learned Judge found that accepting the statement of the appellant as true, the act of the appellant in killing his wife and another was under grave provocation but it was not under sudden provocation. The facts narrated by the appellant though were accepted but those were found not to fit in the legal parameters of Exception-I to section 300, P.P.C. for making the case of the appellant as one of grave and sudden provocation. Likewise, this Court, in Muhammad Azam, though admitted the statement under section Cr.P.C. as a whole, but found, even in those admitted facts, the accused to have exceeded in his right of self-defence and convicted him accordingly. In Sattar referred above, the accused while explaining the circumstances in which he inflicted injuries to him, claimed to have acted in the exercise of right of self-defence. But the High Court though accepted his statement of facts in its entirety, but convicted him under section 304-I, P.P.C. by treating his version not to fit in the legal requirement of the valid exercise of right of self-defence as the accused as per his own version of facts had chased the deceased in street who was attempting to escape from the place of occurrence.

7. Keeping in view all the aforementioned facts, the learned High Court has rightly passed the impugned judgment. Learned counsel for the petitioner is unable to point out any misreading or

non-reading of evidence or any illegality or material irregularity in the impugned judgment warranting our interference. There is no substance in the present petition, hence the same is hereby dismissed and leave is refused.

CRIMINAL PETITION NO.1816-L OF 2021

8. Instant criminal petition has been filed by Mukhtar Ahmad complainant against the acquittal of Sheraz Ahmad (respondent No.1). We have noted that the abovementioned Sheraz Ahmad (respondent No.1), was assigned the role of making two (02) fire shots at the left thigh of Safdar Iqbal (deceased) but according to medical evidence, there was only one (01) injury on the left thigh of the deceased and as such there was conflict between the ocular account and the medical evidence to the extent of role assigned to respondent No.1. Furthermore, Sheraz Ahmad (respondent No.1), was found innocent during the police investigation. Moreover, the evidence of the prosecution eye-witnesses have already been disbelieved by us in view of our findings recorded in paragraph No.5, of this judgment. Even the prosecution remained unsuccessful in proving the motive part of the prosecution case. It is also noteworthy that Muhammad Riaz (co-accused), has been convicted and sentenced on the basis of his statement recorded under section 342 Cr.P.C, wherein he admitted of causing firearm injuries on the body of the deceased on the alleged plea of self defence, whereas Sheraz Ahmad (respondent No.1), has not taken any such stance in his statement recorded under section 342 Cr.P.C. Keeping in view all the abovementioned facts, the learned High Court has rightly acquitted the abovementioned respondent from the charge under section 302(b) Cr.P.C. The complainant present in person could not point out any misreading or non-

reading of evidence or any illegality or material irregularity in the impugned judgment warranting our interference. No question of law has arisen for our consideration. This petition is, therefore, being meritless is hereby dismissed and leave is refused.

Islamabad, the
08th of July, 2025
Not Approved For Reporting
Ahtaza