

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI
MR. JUSTICE ISHTIAQ IBRAHIM

CRL. APPEAL NO.201-L OF 2020, CRL.APPEAL NO.202-L OF 2020 AND CRL. PLA NO.596-L/2016

(Against the judgment dated 09.03.2016, passed by the learned Lahore High Court, Lahore in Criminal Appeal No.169/J of 2011 and Murder Reference No.503/2011)

Imtiaz Hussain Shah alias Tajjay Shah in (*Cr.A. No.201-L/2020*)
Muhammad Akram Bhatti in (*Cr.A. No.202-L/2020*)

...Appellant(s)

Versus

The State etc

...Respondents

For the Appellant(s): Mr. Mazhar Iqbal Sidhu, ASC (in Cr.A. No.201-L of 2020)
Mr. Ijaz Ahmad Janju, ASC (in Cr.A. No.202-L of 2020) through video link from Lahore.

Mr. Muhammad Aslam Zar, ASC (*in Cr.P.L.A. No.596-L of 2016*)

For the State :-

Ms. Memoona Ihssan-ul-Haq, DPG (in all cases).

Date of Hearing:

14.03.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.-Imtiaz Hussain Shah alias Tajjay Shah and Muhammad Akram Bhatti, the appellants, along with co-accused Ijaz Hussain were booked in case FIR No.264 dated 19.07.2009, under sections 302, 109 and 34 PPC, registered at Police Station Miani District Sargodha, for committing the *Qatl-e-Amd* of Aqeel Shah deceased with firearms. After facing regular trial, co-accused Ijaz Hussain was acquitted whereas the appellants were convicted under Section 302(b) PPC and sentenced to death as *Ta'azir* as well as to pay Rs.2,00,000/- each to legal heirs of Aqeel Shah deceased in terms of Section 544-A Cr.P.C. and in default thereof to further undergo 06 months simple imprisonment each by learned Additional

Sessions Judge Sargodha ('Trial Court') vide judgment dated 05.05.2011.

2. The learned Lahore High Court, Lahore while answering the Murder Reference No.503 of 2011 sent by the learned Trial Court for confirmation of death sentence of the convicts-appellants in the negative, dismissed the Criminal Appeal No.169-J of 2011 of the appellants, maintained their conviction under section 302(b) PPC, however, modified their sentence from death to imprisonment for life vide judgment dated 09.03.2016 ('Impugned judgment').

3. Feeling aggrieved Imtiaz Hussain Shah alias Tajjay Shah and Muhammad Akram Bhatti, the convicts, filed Crl.P.L.A. Nos.201-L and 202-L of 2020 before this Court while Anwar-ul-Hasnain, the petitioner-complainant filed Cr.P.L.A. No.596-L of 2016 against the impugned judgment of the learned Lahore High Court, Lahore.

4. Leave to appeal was granted by this court in Cr.P.L.A No.513 and 213 of 2016 filed by the appellants-convicts through the following order dated 08.05.2020:-

"Learned counsel for the petitioner (in Crl. Petition No.513-L of 2016) contends that it was a night time occurrence but no source of light is mentioned in the FIR; that in this case the ocular account has been furnished by chance witnesses, who were not able to give any satisfactory explanation for their presence at the spot at the relevant time; that it is the case of prosecution that postmortem on the dead body of Aqeel Shah was conducted on the same night at 11.30 p.m but Rabnawaz 717-C (PW.12), who escorted the dead body to mortuary in his examination in chief, stated that postmortem examination on the dead body of Aqeel Shah was conducted on 20.07.2009 at 09.10 a.m. Learned counsel further contends that the ocular account is not exactly in line with medical evidence and the recovery and motive have been discarded by the learned High Court in para 15 and 16 of the impugned judgment.

The contents raised need consideration. Therefore, leave to appeal is granted in Crl.P. No.513 of 2016 and Jail Petition No.213 of 2016 to reappraise the entire evidence available on record for safe administration of justice.

Crl.Petition No.596-L of 2016

To be heard along with criminal appeals arising out of petitions filed by the convicts."

5. According to report of complainant Anwar-ul-Hasnain (PW.8), on 19.07.2009 he along with his maternal uncles, namely, Sajjad Hussain

and Sher Abbas (PW.6), went to *Islampura Moar Dakhli Midh Parganato* see his maternal uncle Aqeel Shah at the shop of Muhammad Razaq Sandhu (given up); that they were busy in chit chat when at 08.00 p.m. Syed Imtaiz Hussain Shah alias Tajjay Shah and Muhammad Akram (appellants), duly armed with 44 bore rifles arrived there on a motorcycle. The former raised *Lalkara* that they will teach a lesson to Aqeel Shah deceased for opposing his (accused's) brother Riaz Hussain Shah and at the same time both opened fire at Aqeel Shah deceased, as a result, he got hit on his legs, fell down on the ground, whereafter both the appellants again fired at the deceased; that on their hue and cry people attracted to the spot and the appellants flee away from the spot making aerial firing. Motive behind the occurrence was that Aqeel Shah deceased had opposed Riaz Hussain Shah, brother of appellant Imtiaz Hussain Shah, in case FIR No.165/09 for offence under section 302 PPC PS Miani and due to that grudge, the appellants committed the murder of Aqeel Shah at the instigation and abetment of co-accused Ijaz Hussain Shah (acquitted). The deceased succumbed to injuries on the way when he was being shifted to civil hospital Miani. Leaving the dead body of the deceased in the hospital, Anwar-ul-Hasnain complainant went to Police Station Miani where on his report FIR Exh.PA was registered against the appellants and co-accused Ijaz Hussain.

6. On arrest of all the three accused and completion of investigation report under section 173 Cr.P.C. was submitted against them before the learned Trial Court, where they were formally charge sheeted to which they pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as sixteen witnesses. After closure of the prosecution's evidence, statements of the accused/appellants were recorded under section 342 Cr.P.C., wherein they denied the prosecution's allegation and professed their innocence. They, however, declined to be examined on oath under section 340(2) Cr.P.C. or to produce evidence in their defence. On conclusion of trial, the learned trial Court acquitted co-accused Ijaz Hussain, however, convicted the appellants under section 302(b) PPC and sentenced them to death. The Lahore High Court, Lahore, while modifying the death sentence of the convicts into imprisonment for life, dismissed their appeal and answered the murder reference of the Trial Court in the negative.

7. We have given our anxious consideration to the arguments advanced at the bar from both sides and perused the record and evidence.

8. Record divulges alleged eyewitness Sher Abbas (PW.6) is the brother while complainant Anwar-ul-Hasnain (PW.8) is the maternal nephew of Aqeel Abbas deceased and as per their testimony they both are the permanent residents of Sargodha City whereas the occurrence took place at Islampura. Similarly, the deceased was permanently residing at Sammonabad Lahore. One Zahid Iqbal (PW.5) also claims himself to be an eyewitness of the occurrence. As per statement of Zahid Iqbal (PW.4) at the time of occurrence the PWs as well as the deceased were sitting in front of shop of Muhammad Razaq when the appellants arrived and opened fired at the deceased. This PW is also not the permanent resident of Islampura Miani as admitted by him. PW Sher Abbas while contradicting the testimony of PW Zahid Iqbal deposed that he along with his brother Sajjad Abbas shah was standing and were taking cold beverages whereas Anwar-ul-Hasnain complainant was standing in front of shop of Muhammad Razaq (given up) while Aqeel Shah deceased was ahead of them at the time of occurrence. On scrutiny of the testimony of the alleged eyewitnesses we have noticed material contradictions and discrepancies which make their presence at the spot highly doubtful. The portion of the testimony of PW Sher Abbas particularly, wherein he has disclosed as to how he along with other eyewitnesses reached the spot and has furnished account of time, seems to be after thought and tutored one for the sole reason to justify presence of the eyewitnesses at the relevant time. For ready reference the same is reproduced below:-

“We started from Sargodha by train at about
4.35 P.M. for Malikwal and reached there at
about 06.30 p.m. We had not taken meal in
Malikwal. We had only taken cold drinks which
were provided by the deceased from the shop of
Muhammad Razaq.

It seems quite improbable that the appellants were waiting for the arrival of the alleged eyewitnesses to reach the spot and then to initiate the occurrence so that they stood eyewitnesses against them. The inordinate delay in postmortem examination of the deceased coupled with the fact that none of the eyewitnesses is the identifier of the dead body of the deceased as well as their unnatural conduct like silent spectators at the time of occurrence are the strong circumstances which make their presence at the spot highly doubtful. The alleged eyewitnesses have not established their presence through some strong and physical circumstances. Medical evidence is also in conflict with the ocular account. According to the alleged eyewitness the deceased sustained four firearm entrance wounds whereas according to medical Officer he noticed

three firearm entrance wounds on the person of the deceased. The occurrence took place in front of the shop of Muhammad Razaq, therefore, he was the most material and impartial witness of the occurrence and he could have at least confirmed the presence of the alleged eyewitnesses at the spot at the time of occurrence. However he was abandoned by the prosecution for no apparent reason. Under article 129 (g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can be drawn that if he had testified, his statement would not have supported the prosecution's case. Reliance is placed on the case of **"Mst. Saima Noreen Vs the State" (2004 SCMR 1310)**. Further reliance may also be placed on cases reported as **(PLD 2011 SC 554, 2020 SCMR 1493, 2021 SCMR 387)**.

9. According to FIR Exh.PA occurrence in this case took place on 19.07.2009 at 08.00 p.m (night) which no doubt has been reported with promptitude at 08.45 p.m. but the complainant neither in his report nor in his court statement as PW.8 has explicitly mentioned the availability of any source of light at the crime spot at the time of occurrence when identifying the appellants. The time of occurrence is 08.00 p.m. and in the month of July by such time the surroundings would have been completely dark. Notably, the alleged eyewitnesses, Sher Abbas and Zahid Iqbal failed to mention any source of illumination at the spot. In the site plan Exh.PN, Rabnawaz Khan Inspector (PW.15), the Investigating Officer, has neither indicated any source of light at the spot nor recoded the recovery of any such source through a memo. According to his statement, during spot inspection he secured blood from the place of the deceased vide recovery memo Exh.PC and 14 crime empties of 44 bore through recovery memo Exh.PD in presence of witnesses. Had there been any source of light, the Investigating Officer would have taken the same into possession or the alleged eyewitnesses would have pointed out the same to him. Given this context, identification of the accused is doubtful. This Court has repeatedly held that in the absence of the source of light having been mentioned in the FIR and recovery of such source, the identification of the accused becomes questionable. In this regard reference may be made to case titled, '**Usman alias Kaloo v. The State' (2017 SCMR 622)** wherein it was observed

"The occurrence in this case had taken place in the dead of a night, i.e. at 11.30 p.m. on 05.03.2005 and the investigating officer had stated before the trial court in black and white that no electric light was available at the spot.

The occurrence in issue had taken place outside

the house of the deceased and in the absence of any source of light at the spot the question regarding identification of the assailant had assumed pivotal importance but the prosecution had paid no heed to the same."

10. We are surprised to note that according to statement of Dr. Muhammad Imtiaz Ahmad (PW.13), he conducted autopsy on the dead body of the deceased on 19.07.2009 at 11.30 p.m. According to him, the dead body of the deceased was brought by Rabnawaz constable at 09.30 p.m., but he started postmortem examination at 12.30 p.m. and completed the same till 2.00 a.m. He stated that delay in starting the postmortem examination was the receipt of police papers; that he was provided the injuries statement and inquest report of the deceased at 11.30 p.m. and thereafter he started postmortem examination; that he started postmortem without any delay on his part. He admitted it correct that postmortem of the deceased was completed factually on 20.07.2009. According to statement of Rabnawaz 717-C (PW.12), who escorted the dead body of the deceased, postmortem of the deceased was conducted on the next day of occurrence i.e. 20.07.2009. The prosecution has not brought an iota of evidence to justify the inordinate delay in postmortem examination of the deceased. In such eventuality the most natural inference would be that the delay so caused was for preliminary investigation and prior consultation to nominate the accused and plant eyewitnesses of the occurrence. Reliance is placed on case titled,

"Muhammad Rafique alias Feeqa Vs the State" (2019 SCMR 1068).

Similarly, in case titled, **"Irshad Ahmad vs the State" (2011 SCMR 1190)** this court has observed that noticeable delay in postmortem examination on the dead body of the deceased is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eyewitnesses before preparing police papers necessary for the same. Same is the view of this court reaffirmed in cases titled, **Ülfat Hussain vs the State (2018 SCMR 313), Muhammad Yaseen vs Muhammad Afzal and another (2018 SCMR 1549), Muhammad Rafique Vs the State (2014 SCMR 1698), Muhammad Ashraf vs the State (2012 SCMR 419) and Khalid alias Khalidi and 2 others vs the State (2012 SCMR 327).**

11. The evidence of recovery and motive has already been discarded by the learned High Court in Para Nos. 15 and 16 of the impugned judgment and after going through the evidence available on record we are, to such extent, in agreement with the findings of the learned High Court.

12. On reappraisal of the evidence on record we have arrived at an irresistible conclusion that the prosecution has miserably failed to prove guilt of the appellants through cogent and confidence inspiring direct and circumstantial evidence. The prosecution's evidence is riddled with doubts, benefit of which must be extended to the appellants not as a matter of grace or concession but as a matter of right. It is settled principle of law that for giving the benefit of the doubt it is not necessary that there should be multiple circumstances rather a single circumstance creating reasonable doubt in a prudent mind is sufficient for extending its benefit to an accused. Reliance is placed on the cases of **"Muhammad Mansha Vs. The State" (2018 SCMR 772) and Najaf Ali Shah Vs. the State (2021 SCMR 736).**

13. Accordingly, Crl. Appeal No.201-L of 2020 and Cr. Appeal No.202-L of 2020 are allowed. Conviction and sentence of the appellants/convicts recorded by the learned Lahore High Court Lahore through the impugned judgment are hereby set-aside. The appellants/convicts are acquitted from the charges levelled against them in the instant case. They be set at liberty forthwith if not confined in any other case.

Cr.P.L.A. No.596-L of 2016

Upon the acquittal of the convicts, the instant criminal petition for enhancement of their sentence has become infructuous which is hereby dismissed.

The image shows three handwritten signatures of judges, each followed by the word "Judge". The signatures are written in black ink on a white background. The first signature is at the top left, the second is in the middle, and the third is at the bottom right.

Approved for reporting
M.Siraj Afridi PS