

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.363 of 2023

(On appeal against the judgment dated 03.04.2023 passed by the High Court of Sindh, Karachi in Criminal Jail Appeal No.21/2022 & Confirmation Case No.18/2020)

Khalid Zafar

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Abdul Wahid Qureshi, ASC

For the State: Ms. Rahat Ehsan, Addl. P.G. Sindh

Date of Hearing: 09.05.2025

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JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Khalid Zafar

(petitioner) was tried by the learned Model Criminal Trial Court Extension/VTH Addl. Sessions Judge, Karachi (E), pursuant to a case registered vide FIR No.86/2014 dated 24.02.2014, under Sections 302/397 PPC, at Police Station Aziz Bhatti, District East Karachi. The learned Trial Court vide its judgment dated 16.09.2020, convicted the petitioner under Section 302(b) PPC and sentenced him to death as Tazir. He was also directed to pay compensation amounting to Rs.500,000/- to the legal heirs of the deceased namely Shams Zaman and Muhammad Sajid (each) as envisaged under section 544-A Cr.P.C. The petitioner was also convicted under section 397 PPC and sentenced to seven (07) years rigorous imprisonment. The appeal filed by the petitioner was dismissed by the learned High Court and the convictions and

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sentences awarded to the petitioner by the learned trial Court were upheld and maintained.

2. Arguments heard. Record perused.

3. As per contents of the FIR, on the intervening night of 23/24.02.2014, at 0245 hours, the brother of Muhammad Rashid complainant (PW-1), namely Muhammad Sajid (deceased) along with his workers namely Shamas Zaman (deceased) and Khalid Zia (PW-11), was available at his medical store i.e., Al-Badar Medical Store, situated in Gulshan-i-Iqbal, Karachi. In the meanwhile, one unknown young man aged about 30/35 years, who was wearing pent shirt came in a blue colour *Liana* car outside the above-mentioned medical store and he made two aerial fire shots. Thereafter the said unknown accused entered inside the medical store and looted cash amount from the said store and also caused firearm injures to Muhammad Sajid (deceased) and Shamas Zaman (deceased) and thereafter he fled away from the spot, hence the FIR of this case.

4. Muhammad Rashid complainant (PW-1), is admittedly not an eye-witness of this case and he has categorically mentioned in the FIR that he was present at home when Khalid Zia (PW-11), and others came there and told him about the above-mentioned occurrence.

5. The petitioner was not named in the FIR, which was lodged against the unknown accused. The ocular account of the prosecution has been famished by Muhammad Bilal (PW-2) and Khalid Zia (PW-3). Insofar as the evidence of Muhammad Bilal (PW-2), is concerned, his name was not mentioned in the FIR. He has also not participated in the process of identification parade of

the petitioner and he identified the petitioner in the Court. Keeping in view the abovementioned facts, it is not safe to rely upon the evidence of Muhammad Bilal (PW-2). Reference in this context may be made to the judgments reported as "Khial Muhammad v. The State" (2024 SCMR 1490) "Ghulam Shabbir Ahmed and another v. The State" (2011 SCMR 683) and "Haider Ali and others v. The State" (2016 SCMR 1554).

As regards the evidence of Khalid Zia (PW-11), is concerned, although his name is mentioned in the FIR and he also statedly identified the petitioner in the identification parade held in this case by the concerned Magistrate but we have noted that the evidence of the said witness is highly un-natural and doubtful. He stated that during the occurrence, Muhammad Sajid (deceased) and Shams Zaman (deceased), received firearm injuries on their bodies but on the asking of Muhammad Sajid (deceased/the then injured), he left both the abovementioned injured at the shop/store and went to the house of the complainant to inform him about the incident. The above-referred conduct of Khalid Zia (PW-11), is highly un-natural because when the relatives or friends of a person sustain serious injuries during an occurrence then it is first and foremost priority of the said person to save the life of the injured by providing him medical treatment and shifting him to the hospital. Even Muhammad Bilal (PW-2), stated that he along with Khalid Zia (PW-11), went to the house of the complainant instead of shifting the injured persons to the hospital for their medical treatments. It has also been brought on the record that the abovementioned witnesses did not shift the injured to the hospital and when they came back to the place of occurrence after informing the

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complainant, the injured were already shifted to the hospital by other persons present at the spot. The said conduct of the abovementioned witnesses show that in-fact they were not present at the spot at the relevant time and they have subsequently been introduced as eye-witnesses of this case.

It is also noteworthy that out of three persons, who were statedly present in the medical store, two persons were murdered by the unknown accused but Khalid Zia (PW-11), who claimed to be present inside the same medical store did not receive a single scratch on his body during the occurrence.

6. It is further noteworthy that there is a delay of about fourteen (14) hours in reporting the matter to the police. The distance between the place of occurrence and the police station was only 1½ kilometers. No convincing or plausible reason has been given by the prosecution for the abovementioned gross-delay in lodging the FIR. The said delay also suggests that the abovementioned eye-witnesses were not present at the spot at the relevant time and the said delay was consumed in concocting a false prosecution story and procuring the attendance of fake eye-witnesses. Reference in this context may be made to the cases reported as "Shaukat Hussain v. The State through PG Punjab and another" (**2024 SCMR 929**) and "Khial Muhammad v. The State" (**2024 SCMR 1490**).

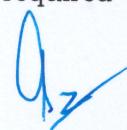
7. It is also noteworthy that no detail, description and features of the unknown accused has been given in the abovementioned delayed FIR and it was only mentioned therein that a young man of the age of 30/35 years, who was wearing pent shirt came to the medical store of the complainant party and committed the 15

occurrence. Under the circumstances, when neither colour of the skin, eyes, hairs nor height etc of the unknown accused has been given in the FIR, the abovementioned description of the unknown accused mentioned in the FIR is not sufficient to hold that the petitioner was rightly identified during the identification parade as observed in the cases reported as "State/Government of Sindh through Advocate-General Sindh, Karachi Vs. Sobharo" (1993 SCMR 585) and "Sabir Ali alias Fauji vs. The State" (2011 SCMR 563).

8. Insofar as the recovery of pistol, at the pointing out of the petitioner and positive report of Fire Arms Examination Unit, Forensic Division, Sindh Police (Ex.13/H), are concerned, we have noted that the occurrence in this case took place on 24.02.2014 and the empties were recovered from the spot on the same day i.e., 24.02.2014, whereas pistol was recovered at the pointing out of the petitioner on 15.03.2014 but as per report of Fire Arms Examination Unit, Forensic Division, Sindh Police, the empties and pistol were sent together to the above-mentioned office on 17.03.2014. Under the circumstances, no reliance can be placed on the abovementioned prosecution evidence qua the recovery of pistol and the positive report of Fire Arms Examination Unit, Forensic Division, Sindh Police as observed in the cases reported "Abdul Wahid v. The State" (2023 SCMR 1278) and "Sarfraz v. The State" (2023 SCMR 670).

9. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the petitioner beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which

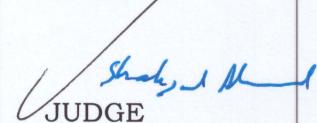
creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as "Tariq Pervez Vs The State" (1995 SCMR 1345) and "Muhammad Akram Vs The State" (2009 SCMR 230). Consequently, this petition is converted into an appeal and allowed. The impugned judgment is set aside. The petitioner is acquitted of the charges while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.



JUDGE



JUDGE



JUDGE

Islamabad, the
09th of May, 2025
Not Approved For Reporting
Ahtzaz