

IN THE SUPREME COURT OF PAKISTAN
(Appellate jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Salahuddin Panhwar
Justice Ishtiaq Ibrahim

Criminal Appeal No. 512/2023,
Criminal Petition No. 1397/2023 and
Criminal Miscellaneous Application No. 591/2024
(On appeal against the judgment/order dated 3.2.2022 and 24.10.2023
passed by the Lahore High Court, Lahore in Crl. A. No. 246/2017 &
M. R. No. 268/2017, and Crl. Misc. No. 62424-M/2023)

Muhammad Atif (in all) Appellant/Petitioner(s)

Versus

The State and another (in all) Respondent(s)

For the Appellant/Petitioner: Ch. Majid Hussain, ASC
Syed Rafaqat Hussain Shah, AOR

For the Complainant: Mr. Aftab Alam Yasir, ASC

For the State: Mr. Sajjad Hussain, DPG Punjab

Date of Hearing: 24.04.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J.

Crl. A. No. 512/2023: Through this appeal, with the leave of the Court, the appellant, Muhammad Atif, has challenged the judgement dated 3.2.2022 passed by the Lahore High Court, Lahore whereby his conviction in case FIR No.113 dated 10.06.2014, registered under sections 302, 109 and 34 of the PPC was upheld with a modification to his sentence from death to life imprisonment.

2. Briefly, the facts, as per the prosecution as narrated by Muhammad Tahir Iqbal (PW-12), father of the deceased, are that on 10.06.2014 at about 3:00 p.m., his son Muhammad Bilal Tahir was present at the residence of a relative, Mst. Kaniz Fatima, alongwith

Muhammad Attique and Zaheer Ahmad (PW-13). The complainant stated that he observed the accused, namely, Atif, Muzammil and Aqeel approaching the said house while openly brandishing firearms and shouting lalkaras and provocations. The complainant followed them and reached the doorstep of the house where he saw the accused enter. He stated that Muzammil fired a shot which did not strike anyone. As panic ensued, the deceased and others attempted to flee. However, Muzammil and Aqeel apprehended Muhammad Bilal Tahir and restrained him. Muzammil then allegedly called upon Atif to kill him. In response, Atif advanced and fired a single shot at close range, striking the deceased on the left side of his neck. The assailants then fled the scene. The injured was being transported to Civil Hospital, Sialkot, but succumbed to the gunshot wound enroute. On 15.06.2014, Atif was arrested and later led to the recovery of a 30-bore pistol and four live bullets, which were taken into custody.

3. Upon reviewing the record and hearing the learned counsel for the parties, we have observed that the eyewitnesses also implicated Muzammil and Aqeel in the current case alleging that they were armed with pistols. Muzammil, the individual co-accused, has been assigned the responsibility of initiating the initial fire, which did not result in any injuries. Muhammad Atif, the appellant, is purportedly the one who discharged the single fire shot that was recovered from the scene of the incident during the investigation. The prosecution also contends that the deceased was apprehended by both the co-accused, Muzammil and Aqeel, at the time of the incident and that the appellant fired at him. The Trial Court in its decision while acquitting the said co-accused disregarded the ocular account and made the following observations:

“Another role attributed to the accused Muzamil is that he raised commanding ‘lalkara’ and asked the accused Muhammad Atif to kill Muhammad Bilal Tahir deceased, but this version of the prosecution is not believable. Had accused Muzammil armed with pistol then he could make fire shot himself and not to ask accused Muhammad Atif. Another role allegedly attributed to the accused Muzammil and Aqeel is that they caught hold the deceased at the time of occurrence and the accused Muhammad Atif made a fire shot which hit the deceased. The version is also not believable as no one would take the risk of receiving a fire arm injury when the deceased was being fired at by the principal accused. The injury has been caused on the neck of the deceased, by firing from a close range. Had the deceased was caught by both the accused

persons Muzammil and Aqeel, then it was not possible to make fire shot on the specific part of the body of the deceased without causing injury to the persons who might have caught hold the deceased.”

4. It is acknowledged that the incident occurred within the residence of Mst. Kaneez Fatima, who resided there with her son Ali and daughter Billa. However, the prosecution has neglected to investigate or present the aforementioned witnesses in support of the prosecution’s case, despite their significance as natural witnesses. We harbored reservations regarding the “genesis and manner of the occurrence.” The peculiar circumstances of the case as well as the observations of the Trial Court would indicate and imply that the occurrence did not occur in the manner and mode prescribed by the prosecution witnesses. Rather, it would indicate that the deceased sustained an injury while scuffling and grappling with the perpetrator in order to save his life.

5. The fact that acquitted co-accused had not participated in the occurrence is now undisputed and the nature of the single fire shot and non-production of material witnesses, in our opinion, reasonably apprehend the unfairness of both the parties in suppressing material facts and putting forward what appears in all probabilities to be an untruthful account regarding the genesis as well as the manner of occurrence.

6. The appellant’s counsel argued that the provisions of 302(b) PPC are not applicable and that the circumstances of the case suggest that the appellant acted without premeditation, even if the prosecution’s case is accepted as divine truth in toto. Despite being in a position to do so, the appellant did not repeat the fire, which implies a lack of calculated intent to murder. The learned counsel also contended that the solitary firearm injury sustained by the deceased should be classified as falling under section 302(c) of the PPC rather than 302(b). Although the injury was fatal, the appellant’s intent is called into doubt by the absence of multiple shots. It is imperative to distinguish between 302(b) and section 302(c). In situations where the act does not indicate a distinct intent to kill and the circumstances surrounding the act indicate a lower level of culpability, section 302(c) is applicable. Given the circumstances of the

case, it is reasonable to infer that the actions in question are within the scope of section 302(c) PPC.

7. In the light of above analysis, whilst partly allowing this appeal, the conviction of the appellant under section 302(b) PPC is converted to section 302(c) PPC, and he is sentenced to 14 years rigorous imprisonment, however, the order to pay compensation shall remain intact.

Crl. P. No. 1397/2023 and Crl. M. A. No. 591/2024: In view of the disposal of Crl. A. No. 512/2023, this petition and application for suspension of sentence have become infructuous, therefore, they are dismissed as such.

ISLAMABAD
24.04.2025
(Farrukh)