

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD HASHIM KHAN KAKAR
JUSTICE ISHTIAQ IBRAHIM
JUSTICE ALI BAQAR NAJAFI

**CRIMINAL APPEAL NO.220-L/2020 AND CRIMINAL PETITION
NO.1774-L/2017**

(Against the judgment dated 06.12.2017, in Crl. Appeal No.21-J of 2015 and Murder Reference No.30 of 2015).

Muhammad Amjad (in Crl.Appeal No.220-L/2020)
Muhammad Akram (in Crl.P.L.A. No.1774-L/2017)

...Appellant(s)

Versus

The State etc (in Crl.Appeal No.220-L/2020)
Muhammad Amjad etc (In Crl.P.L.A.No.1774-L/2017)

...Respondent(s)

For the Appellant (s) : Mr. Muhammad Irfan Malik
(in Crl.Appeal No.220-L/2020)

Mr. Shahid Tabbasum, ASC (In Crl.P.L.A
No.1774-L/2017)

For the State : Mr. Humayun (), DPG
(in both cases).

Date of Hearing : 25.08.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.-Muhammad Amjad, the appellant, along with co-accused Allah Ditta, Munir and Muhammad Arshad, was tried by the learned Additional Sessions Judge, Gujrat ("**Trial Court**") for committing murder of Muhammad Akhtar ("**deceased**"), in case FIR No.453/2008, under Section 302, 148 and 149 of the Pakistan Penal Code, 1860 ("**PPC**"), registered at Police Station Sadar Jalalpur Jattan, Gujrat. Upon conclusion of trial, the learned Trial Court while acquitting accused Allah Ditta, Munir and Muhammad Arshad, convicted the appellant under section 302(b) PPC and sentenced him to death as *Ta'azir* and to pay rupees two lac as compensation under Section 544-A Cr.P.C. to legal heirs of the deceased and in default thereof to further undergo six months simple imprisonment vide judgment dated 15.01.2015.

2. The appellant-convict Muhammad Amjad questioned his conviction and sentence before the learned Lahore High Court, Lahore, through Criminal Appeal No.21-J of 2015. The Trial Court sent Murder Reference No.30 of 2015 for confirmation or otherwise of the death sentence of the appellant-convict. The Lahore High Court, partly allowing the appeal of the appellant-convict, maintained his conviction under Section 302(b) PPC, however, modified his sentence from death to imprisonment for life and answered the murder reference in the Negative vide judgment dated 6.12.2015 (**"impugned judgment"**). The criminal appeal filed against acquittal of acquitted co-accused was withdrawn by the complainant.

3. Feeling aggrieved, the appellant-convict filed Jail Petition No.949 of 2017 before this Court seeking leave against the impugned judgment. Vide order dated 21.05.2020, leave was granted to reappraise the evidence on record in light of the contentions raised by the learned counsel for the appellant-convict. Muhammad Akram petitioner-complainant has filed CrI.P.L.A. No.1774-L of 2017, seeking enhancement of sentence of the convict from life imprisonment to normal penalty of death as provided for the offence under section 302 PPC.

4. The prosecution's case, as set forth in the First Information Report (**"FIR"**), registered on the statement of complainant Muhammad Akram (PW.7) is that on 07.09.2008 he along with his brothers Muhammad Akhtar deceased and Muhammad Aslam left their village Majra for Gujrat. At about 6:30 A.M. On their reaching at Renewal Chowk, they met Muhammad Iqbal (PW.8) already present there waiting for transport. The complainant along with his brother also began waiting for public transport at the same Chowk. In meantime, appellant Muhammad Amjad, armed with a 30 bore pistol, co-accused Allah Ditta (since acquitted), also armed with a 30 bore pistol along with three unknown assailants armed with 30 bore pistols, arrived at the aforesaid Chowk. Accused Allah Ditta raised a *lalkara* declaring that Muhammad Akhtar deceased should not be spared and fired at him. To save his life, the deceased started running toward the village, but he was chased by the accused and when he reached near the house of one Azhar Shah, the accused encircled him. Appellant Muhammad Amjad then fired at the deceased hitting him on the chest. A second shot was fired by accused Allah Ditta hitting the deceased in the left armpit. The deceased fell to the ground, whereafter all the five

accused opened fire at him, as a result, the deceased sustained injuries on various parts of his body. The motive behind the incident was stated to be a brawl between the parties that had taken place some two and a half months prior to the occurrence which although had been settled through a compromise by the village elders, however, the accused harbored a deep-seated grudge against the complainant party, which ultimately led to the occurrence of murder of Muhammad Akhtar deceased. The incident was reported to the police by the complainant on the basis of which aforementioned FIR was registered. Subsequently, accused Munir and Muhammad Arshad (both later acquitted) were charged by name by the complainant.

5. After arrest of the appellant and the acquitted co-accused and completion of the investigation, a report under Section 173 Cr.P.C. was submitted against them before the Trial Court where they were formally charge-sheeted, to which they pleaded not guilty and claimed trial. The prosecution produced evidence in support of its case. Upon the closure of the prosecution's evidence, statements of the accused were recorded under Section 342 Cr.P.C., wherein they denied the prosecution's allegations and professed their innocence. The appellant declined to be examined on oath under Section 340(2) Cr.P.C., but opted to lead evidence in his defence. Muhammad Khan and Syed Azhar Hussain Shah were examined as DW.3 and DW.4, respectively. Documentary evidence, including Exh.DA, Mark-DW.4-A to DW.4/4, and Exh.DW.4/5, was also produced in his defence. Upon conclusion of the trial, the Trial Court acquitted co-accused Allah Ditta, Munir, and Muhammad Arshad, however, convicted the appellant under Section 302(b) PPC, sentencing him to death. The High Court through the impugned judgment commuted his death sentence to imprisonment for life.

6. We have heard the arguments of learned counsel for the parties and learned DPG appearing on behalf of the State, perused the record, evidence and the impugned judgment.

7. Upon careful scrutiny of the record and the evidence led by the prosecution, we find certain glaring inconsistencies and legal infirmities in the findings of the courts below. We have noted that the prosecution's case primarily rests on the ocular testimony of the complainant Muhammad Akram (PW.7) and Muhammad Iqbal (PW.8), who both claim to have witnessed the occurrence. In their statements both have assigned the role of firing at the deceased to total five

persons including the appellant. In the FIR, the complainant had charged the appellant and co-accused Allah Ditta only by name along with three unknown assailants. According to version of the complainant the sequence of events began with co-accused Allah Ditta's who at first instance raised *Lalkara* and then fired the first fire shot at the deceased, followed by the fire shot of appellant Muhammad Amjad. Thereafter, all five accused, including the three unknown assailants, are said to have fired causing multiple injuries on various parts of body of the deceased. Subsequently, the complainant nominated two of the previously unknown three accused as Munir and Muhammad Arshad. The third unknown assailant is still not nominated. The learned Trial Court acquitted co-accused Allah Ditta, Munir and Muhammad Arshad by disbelieving the ocular account of the complainant and Muhammad Iqbal (PW.8), terming their testimony unreliable and untrustworthy to the extent of the acquitted accused despite the fact that the acquitted co-accused were also assigned the similar role of firing at the deceased. Surprisingly, the same set of evidence forming the foundation of the case against all the accused, only the appellant was convicted and sentenced by the Trial Court. The High Court, while modifying the sentence of the appellant from death to life imprisonment, nonetheless upheld his conviction on the same evidence that had already been disbelieved in respect of the acquitted co-accused. We have observed that neither the Trial Court nor the High Court has pointed to any cogent or compelling evidence to distinguish the role of the appellant from the role assigned to the acquitted co-accused. Admittedly, the alleged eyewitnesses in their statements have not specifically assigned the role of firing at the deceased to the appellant rather to total five accused persons. Both the courts below unanimously held that the prosecution failed to prove the motive. Similarly, the recovery of the 30 bore pistol at the instance of the appellant was also rendered inconsequential due to the negative forensic report from the Punjab Forensic Science Agency, according to which the empties recovered from the spot were not fired from the pistol shown recovered at the instance of the appellant. We are firm in our view to hold that the evidence led by the prosecution is not divisible to distinguish the role of the appellant from the acquitted co-accused. It is a well-settled principle of criminal jurisprudence that if the prosecution evidence is found unreliable or insufficient to sustain the conviction of one accused, and if the same evidence is

indivisible and not capable of separate appreciation for the remaining accused, then a conviction cannot be recorded on the same discredited evidence. This principle has been reiterated in numerous judgments by this court. The courts are under a legal obligation to assess whether there exists any distinguishing feature in the evidence that may justify a different conclusion for one accused *vis-à-vis* the others. Where no such distinction is found, selective reliance upon a portion of the testimony, already disbelieved in relation to co-accused, amounts to a miscarriage of justice. In case of "Imtiaz alias Taj vs the State" **(2018 SCMR 344)**, this court has held that if the eyewitnesses have been disbelieved against some accused persons attributed effective roles then the same eyewitnesses cannot be believed against another accused person attributed a similar role unless such eyewitnesses receive independent corroboration qua the other accused person.

8. We are mindful of the fact that the principle of "sifting the grain from the chaff" has long remained a part of the criminal justice system in Pakistan. This court in the judgment dated 25.02.2025, rendered in **Criminal Appeal Nos.229 & 230 of 2021 titled, "Sher Afzal vs the State"** held that the application of "*falsus in uno, falsus in omnibus*" does not render the principle "*to sift the grain out of the chaff*" redundant, since the judge now still has to sift the grain out of chaff whilst he differentiates between the materiality of the fact in appraisal of evidence. Relevant part of the judgment (ibid) is reproduced below for ready reference:-

"The doctrinal principles applied in west cannot *strict sensu* be applied in Pakistan for multiple reasons which I shall discuss hereafter, a prime example is that "*falsus in uno, falsus in omnibus*" principle which is that witness who lies about any fact must be disbelieved as to all other facts, considering the social circumstances of the subcontinent, the rule's application has been modified by this court in the Khizar Hayat case (PLJ SC (Cr C) 265) to the extent that the contradiction must be regarding "material facts" only. However, the application of "*falsus in uno, falsus in omnibus*" does not render the principle of "to sift the grain out of the chaff" redundant, since the judge now still has to sift the grain out of chaff whilst he differentiates between the materiality of the fact in appraisal of evidence. This court has held numerous times, that the primary duty of the judge is to sift the grain out of the chaff e.g. in the Khadim Hussain case (2010 SCMR 1090), Muhammad Afzal case (2017 SCMR 1645) and Munir Ahmad case (2019 SCMR 79) and one shall not lose sight that the criminal case is to be decided in its totality of its circumstances as held in the case of Muhammad Kakki (2021 SCMR 1672) and recently in Sadaruddin case (Criminal Jail appeal No.S-26 of 2019)."

The principle of "*sifting the grain from the chaff*" signifies the responsibility of the court to separate the truthful parts of a witness's testimony from the false, rather than discarding the entire testimony due to exaggeration, false implication, or embellishments. However, this principle, is not to be applied at the whims of the prosecution or to compensate for investigative and prosecution's shortcomings. Rather, it is a judicial tool meant to be exercised with utmost care, caution, and only in exceptional circumstances where the truthful part of the evidence is clearly distinguishable and independently corroborated. If the prosecution evidence is disbelieved to the extent of one accused due to lack of credibility of the witnesses, the same standard must be applied qua other co-accused having similar role as that of the acquitted accused unless independent corroboration is available for another accused. It is also critical to emphasize that courts must not allow the prosecution to gain premium or undue advantage by implicating multiple accused persons and dragging them in a criminal case with the hope that the court might '*sift the grain from the chaff*' and retain conviction against a few. Such a practice not only burdens the justice system but also amounts to misuse of the process of law. The application of the aforesaid principle is neither automatic nor at the disposal of the prosecution. It is for the courts to meticulously assess whether the evidence offered is divisible, independently corroborated, and sufficiently credible to uphold a conviction. Every case must be judged on its own peculiar facts, and no rigid or fixed rule can be applied in the appreciation of evidence. What is required is a contextual, careful, and cautious appraisal of the evidence, ensuring that the fundamental rights of the accused and the integrity of the judicial process are both preserved.

9. We are also not in agreement with the findings of the Courts below regarding presence of the alleged eyewitnesses at the spot at the time of occurrence. The conduct of the alleged eyewitnesses is highly unnatural and inconsistent with ordinary human behaviour. Despite being brother and cousin of the deceased, they neither intervened to rescue the deceased nor raised hue and cry to attract people to the spot. More notably, the alleged eyewitnesses have not charged the appellant for firing at them despite the fact that they were also on equal footing for the accused having common motive like the deceased. The passive and inactive conduct of the alleged eyewitnesses coupled with their escape when they too were at the mercy of five accused

persons or their let off by the accused to stand eyewitnesses against them, casts serious doubt on their presence at the spot at the time of occurrence. The sequence of the deceased running after the initial shot, being chased, encircled, and then collectively fired upon by five armed assailants, without any injury being caused to any of the co-accused or a stray bullet hitting another, is also implausible and does not appeal to reason or the ordinary course of human conduct. The possibility of such a coordinated assault, in which all five assailants simultaneously and accurately fire at a single individual running for his life, without any unintended consequences, is highly improbable.

10. In light of the foregoing reasons, we are of the considered view that the prosecution has failed to establish the appellant's guilt beyond reasonable doubt. The conviction of the appellant recorded by the courts below on the basis of shaky, disbelieved, and uncorroborated evidence is not sustainable in the eyes of law. It is a cardinal principle of criminal justice that benefit of doubt, however slight, must always go to the accused.

11. Accordingly, this appeal is allowed. The conviction and sentence awarded to the appellant Muhammad Amjad under section 302(b) PPC are set aside. He is acquitted of the charge levelled against him. He shall be released forthwith if not required to be detained in other case.

Criminal Petition No.1774-L/2017

12. On acquittal of the convict-respondent, the instant criminal petition for enhancement of sentence of the convict has become infructuous. Accordingly, the same is dismissed as such.

13. These are the reasons of our short order of even date.

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Lahore, the
25.08.2025

'APPROVED FOR REPORTING'

M.Siraj Afridi PS

11-9-25