

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

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

34/25

Criminal Petition Nos. 1558 and 1656/2021

(Against the judgment/order dated 04.11.2021
passed by the High Court of Sindh, Circuit Court, Hyderabad
Crl. Appeal No. S-27/2006)

Rizwan and another (in Crl. P. 1558/2021)
Azra (in Crl. P. 1656/2021) Petitioner(s)

Versus

The State, etc. (in Crl. P. 1558/2021)
Manzoor, etc. (in Crl. P. 1656/2021) Respondent(s)

For the Petitioner(s): Mr. Aftab Alam Yashir, ASC

For the Respondent(s): Ms. Rahat Ahsan, APG

Date of Hearing: 05.05.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. The petitioners in Crl. P. No. 1558/2021, Rizwan and Murad, along with four co-accused (since acquitted), were tried by the learned Additional Sessions Judge, Nawabshah in case FIR No. 7/2002 for the offences under sections 302, 504, 458, 337-A(1) and 34 PPC, registered at Police Station Jam Dattar, District Nawabshah and were convicted under section 302(b) PPC and sentenced to imprisonment for life with a further direction to pay Rs.100,000/- each as compensation under section 544-A Cr.P.C to the legal heirs of the deceased, Shoaib Hameedi, and in default whereof to further undergo rigorous imprisonment for six months; for offence under section 458 PPC the petitioners alongwith co-accused Manzoor Ali and Subhan (since acquitted) were sentenced to 10 years RI with fine of Rs.10,000/- each and in case of failure to pay the fine the sentence of six months SI was also awarded to them; for offences under section 337-L(2) and 337-A(i) the petitioners along with co-accused Manzoor Ali and

Subhan (since acquitted) were convicted and sentenced whereas the other co-accused namely Muhammad Nawaz and Ashique Ali were acquitted by extending benefit of doubt. The petitioners along with co-accused Manzoor Ali and Subhan (since acquitted) challenged their conviction and sentences before the High Court through an appeal which was dismissed to the extent of petitioners, however, the High Court acquitted the co-accused Manzoor Ali and Subhan by giving benefit of doubt. Hence, the present Cr. PLA No.1558/2021, whereas, the one of the LRs of deceased Shoaib Hameedi namely Azra has filed Crl. PLA. No.1656/2021 against acquittal of co-accused Manzoor Ali and Subhan by High Court.

2. Succinctly, facts of the case are that on 07.05.2002, at night, six individuals, including petitioners Rizwan (armed with Kalashnikov), Murad, Manzoor, and Subhan (all armed with pistols), and two unknown persons (armed with lathis), arrived at the complainant Farhan Hameedi's residence. Petitioner Rizwan, stating that the deceased Shoaib Hameedi had filed a case against them, fatally shot him. Petitioner Murad also caused firearm injury. The remaining assailants assaulted Farhan Hameedi and PW Jibran with lathis and butt blows. Shoaib Hameedi died from his injuries, leading to the F.I.R.

3. After hearing the learned counsel for the parties and going through the record, we have observed that admittedly the occurrence took place at 01:00 AM at night and the assailants were allegedly identified by the complainant and eye witnesses in torch light which was not presented in evidence. It does not appeal to a prudent mind that the occurrence as narrated by prosecution can be witnessed with such details in the light of torch. Similarly, the ocular account is not corroborated by recovery of weapons as rightly observed by trial court. Additionally, four co-accused who were described with specific role have been acquitted on the same set of prosecution evidence. The law is settled by now that if some eye-witnesses are disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be relied upon to the extent of the other accused persons in the absence of any independent corroboration and a reference in this respect may be made to the cases of

Ghulam Sikandar and another v. Mamaraz Khan and others (PLD 1985 SC 11), Akhtar Ali and others v. State (2008 SCMR 6) and Shahbaz Vs The State (2016 SCMR 1763).

4. So far as the findings of High Court to the extent of respondents in Crl. PLA. No.1656/2021 is concerned, the same are neither arbitrary nor perverse, therefore, it is impossible to interfere with them.

5. For the aforesaid discussion, whilst setting aside the impugned judgment to the extent of petitioners in Cr. PLA No.1558/2021, the petition is converted into an appeal and allowed and the petitioners are acquitted of the charges levelled against them while the Crl. PLA. No.1656/2021 is dismissed.

Judge

Judge

Judge

ISLAMABAD

05.05.2025

(Aqib Aman RO)

8/05