

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

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

59/25

AFR

JAIL PETITION NO.611 OF 2022

(Against the judgment dated 29.09.2022 in Criminal Appeals No.98 and 121 of 2019 as well as Murder Reference No.5 of 2018, passed by the Islamabad High Court, Islamabad).

Tahseen Ullah; and
Salman Khan

...Petitioner (s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Saeed Khurshid Ahmad, ASC

For the State : Mr. Ch. Abdul Khaliq Thind, ASC

Complainant : In person

Date of hearing : 18.08.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Shaukat Ali, the complainant, was the driver of a Mazda Truck bearing Registration No. JY-3456-Sindh and his brother-in-law, namely, Dost Muhammad Khan was a Conductor in the said vehicle. On the night of 31st March 2016 at about 10:45 p.m., they both after loading spare parts at the I-9 Dry Port Islamabad, started for Swat and when reached at IJP Road near *Dhoke Hassu* they parked the vehicle to secure the loaded goods with a tarpaulin (Tarpal). They were engaged in this task when in the meantime two unknown assailants duly armed came there. One of the assailants entered the vehicle and another positioned in front of the vehicle. The complainant along with Dost Muhammad Khan when asked about identity of the assailant inside the vehicle, he drew his pistol and forcibly snatched Rs. 100,000 from the complainant. Upon witnessing the robbery, Dost Muhammad Khan attempted to intervene, but the assailants overpowered him. In response

to his shouting "Chor Chor" ("thief thief"), one of the assailants opened fire at him, as a result, Dost Muhammad Khan got hit and fell to the ground. The said assailant also fired at the complainant, but he narrowly escaped, however the bullet struck the fuel tank of the Truck. The complainant described both attackers as aged about 28/29 years, one having 5/6 feet height and another about 5 feet and 8 inches, and by physique both were slim and wearing shalwar Qameez of Khaki colour. After the incident, the complainant took the injured Dost Muhammad Khan to PIMS hospital where he succumbed to injury. On the report of the complainant FIR No.85/2016 dated 01.04.2016, under sections 302, 324, 392 and 34 PPC was registered against unknown culprits at Police Station Sabzi Mandi, Islamabad.

2. On 06.04.2016 Muhammad Bashir Inspector (PW.14) arrested petitioner Salman Khan and on his disclosure also arrested Tahseen Ullah as his accomplice in the commission of the offence. On 11.04.2016 both the petitioners were identified by the complainant during identification parade conducted under the supervision of Syed Ali Asghar Executive Magistrate (PW.13).

3. After completion of investigation, challan was submitted against the petitioners before the learned Sessions Judge Islamabad (West) (**"Trial Court"**), where both were tried. Upon conclusion of trial, the learned trial Court vide judgment dated 08.04.2019, convicted and sentenced them as under:-

Under Section 302/34 PPC:- Petitioner Tahseen Ullah was sentenced to death and to pay Rs.5,00,000/- (Five lacs) to the legal heirs of deceased in terms of Section 544-A Cr.P.C and in default thereof to further undergo six months SI.

Under Section 302/34 PPC: Petitioner Salman Khan, was sentenced to imprisonment for life and to pay Rs.5,00,000/- (five lac) to the legal heirs of the deceased in terms of Section 544-A Cr.P.C and in default of payment of compensation, to further undergo six months S.I.

Under Section 324/34 PPC: Both the petitioners were sentenced to undergo 10 years R.I each with a fine of Rs.1,00,000/- (one lac) each. In default of payment of fine they shall further undergo one year SI each.

Under Section 392/34 PPC. Both the petitioners are sentenced to undergo seven years RI each with a fine of

Rs.1,00,000/- (one lac) each. In default of payment of fine they shall further undergo one year S.I each.

4. Aggrieved by their convictions and sentences, the petitioners, Tahseen Ullah and Salman Khan, preferred Criminal Appeals No. 98 and 121 of 2019, respectively, before the Islamabad High Court, Islamabad. Simultaneously, Murder Reference No. 05 of 2019 was forwarded by the learned Trial Court for confirmation or otherwise of the death sentence awarded to petitioner Tahseen Ullah.

5. The learned High Court, vide judgment dated 29.09.2022 (**"impugned judgment"**), dismissed the appeals of petitioners and answered the Murder Reference in the affirmative.

6. Through the instant Jail Petition, both petitioner-convicts have sought leave to appeal against the impugned judgment rendered by the learned High Court.

7. We have heard the learned counsel for the petitioners as well as the learned counsel appearing on behalf of the State. The record, evidence, and the impugned judgment have been duly examined and considered.

8. According to the First Information Report (FIR), the occurrence in the instant case took place on 31.03.2016 at about 11:30 p.m. at IJP Road near the *Dhok Hassu* turn, where complainant Shaukat Ali (PW-8), had stopped his Mazda truck bearing registration number JY-3456-Sindh in order to secure the loaded goods with a tarpaulin sheet. While appearing in the witness box as PW-8, the complainant furnished a detailed ocular account of the incident. Though it is a matter of record that the petitioners were not named by him in the FIR, but this omission, rather than casting doubt on the complainant's veracity, shows his bona fides and reflects a lack of malice or intent to falsely implicate anyone in random. Had the complainant harboured any animosity or ulterior motive against the petitioners, he could have easily named them in the FIR. Instead, the complainant confined himself to narrating the incident in a truthful and straightforward manner. In the FIR, he described the general features, physical appearance, and clothing of the two unknown assailants involved in the commission of the offence. Petitioner Salman Khan was apprehended by Inspector Muhammad Bashir (PW-14) on 06.04.2016 while he was on patrol duty with other police officials. The petitioner Salman Khan upon noticing the police attempted to flee but was overpowered. Upon his personal search, an iron fist was recovered. During interrogation he not only admitted his

involvement in the offence but also disclosed the name of Tahseen Ullah, petitioner, as his co-accomplice in the commission of the crime.

9. An identification parade of the petitioners was conducted on 12.04.2016 through the complainant within the premises of Central Jail Adiala, Rawalpindi under the supervision of the Executive Magistrate, Syed Ali Asghar (PW-13). It is settled law that the primary object of a test identification parade is to enable a witness, who claims to have seen the offender(s) at the time of the commission of the offence, to identify the accused person(s) from amongst a number of other persons with similar physical characteristics. In the said identification parade, both petitioners were duly identified by the complainant as the perpetrators of the offence also pinpointing their roles. The complainant, in his testimony, has furnished a minute and consistent account of the mode, manner, and circumstances in which he identified the petitioners during identification parade. His evidence in this regard is corroborated by the testimony of PW-13, the Executive Magistrate who supervised the parade. Moreover, the complainant was able to specify the distinct role played by each petitioner. According to him, petitioner Tahseen Ullah fired at the deceased Dost Muhammad Khan, while petitioner Salman Khan obstructed the Mazda Truck by positioning himself in front of the vehicle on the road. The same version was reiterated by him in his court statement. The complainant's identification was so certain and confident that he categorically deposed in his statement that he could recognise the assailants even if they were placed among hundreds of persons. It is also noteworthy that despite being subjected to lengthy and extensive cross-examination, no material contradiction or inconsistency could be extracted from his testimony that might cast doubt on his credibility or reliability.

10. The complainant's Truck was taken into possession by the Investigating Officer (PW.13), which remained at the crime spot until 06.04.2016 due to damage to its fuel tank ~~from~~ with fire shot. The said fact is supported by the Investigating Officer (PW-13), whose deposition is in line with that of the complainant. On 25.04.2016, on the disclosure and pointation of petitioner Tahseen Ullah, a .30 bore pistol used in the commission of the offence was recovered and taken into possession by the I.O. through recovery memo Exh-PA. On 01.04.2016, three empties of .30 bore had been taken into possession by the I.O. from the crime scene and secured through recovery memo Exh-PK and then deposited with the Moharrir of the Police Station for safe custody in the *Malkhana*.

On 04.04.2016, these empties were sent to the National Forensic Science Agency (NFSA) for analysis. After recovery of .30 bore pistol on 25.04.2016, it was also sent to the relevant forensic laboratory and as per report Exh-PHH of the National Forensic Science Agency (NFSA), the recovered empties were fired through the pistol recovered on the pointation of petitioner Tahseen Ullah. The chain of custody, from the recovery of the empties and the pistol to their forensic examination, appears to have been maintained in accordance with the principles of safe and secure evidence handling. The collective assessment of the ocular evidence, recovery of the weapon, positive identification in the test parade, and the forensic confirmation of ballistic evidence leave little room for doubt regarding the culpability of the petitioners. The sequence of events and consistency of testimonies establish a coherent and credible chain of circumstantial and direct evidence, sufficient to uphold the findings of guilt recorded by the learned courts below.

11. The contention advanced by the learned counsel for the petitioners, that the prosecution has failed to establish the active participation/common intention of petitioner Salman Khan in the commission of the offence on the premise that the complainant attributed the role of firing solely to petitioner Tahseen Ullah and that the post-mortem report confirms a single firearm entry wound on the body of the deceased, is devoid of merit and not legally sustainable. It is well-settled that in cases involving private enmity or individual disputes, the possibility of exaggerated charges or false implication of more family members of accused cannot be ruled out and, in such circumstances, the principle of caution applies with full force. However, the present case does not fall within said category. It is a case of robbery, wherein both the petitioners operated in preconcert with a premeditated plan, each playing a distinct and purposeful role in furtherance of the common design and intention. In offences of this nature, where a gang operates collectively, the law does not require that each participant must personally inflict a fatal injury to be held accountable. It is sufficient that the act was committed in furtherance of a common intention and that the accused participated with knowledge and shared purpose. The doctrine of constructive or vicarious liability, as encapsulated under Section 34 PPC, clearly stipulates that when a criminal act is done by several persons in furtherance of the common intention of all, each of them is liable for that act in the same manner as if it were done by him alone. In the present case, the prosecution has successfully established

that both the petitioners arrived at the scene of the occurrence duly armed. One of them, Tahseen Ullah, forcibly snatched rupees one lac from the complainant and then committed the act of firing, resulting in the death of Dost Muhammad Khan deceased, while petitioner Salman Khan positioned himself in front of the complainant's truck, evidently to prevent escape or resistance. Such coordinated conduct clearly indicates a prior meeting of minds and preplanning. The actions of petitioner Salman Khan facilitated the offence by enabling his co-petitioner to execute the fatal act without obstruction. It is also settled law that in offences involving common intention or joint enterprise, the precise role played by each individual may vary, yet liability attaches equally to all participants if the act is done in furtherance of common intention. It is not necessary that each member of the group must perform the same act; rather, the existence of common design and participatory conduct is sufficient to invoke joint liability. In this view of the matter, the non-attribution of the firing role to petitioner Salman Khan is of no legal consequence in the presence of cogent evidence establishing his participation in furtherance of the common intention with his co-accused. His conduct before, during, and after the commission of the offence, viewed in totality, brings his case squarely within the ambit of Section 34 PPC, rendering him equally liable for the consequences of the offence.

12. In view of the foregoing discussion, we find that both the learned courts below, upon proper appreciation of the evidence available on record, have rightly concluded that the petitioners are guilty of the offences charged, and no exception can be taken to their findings. However, insofar as the death sentence awarded to petitioner Tahseen Ullah is concerned, we have noted that there are certain inconsistencies appearing in the prosecution's case creating doubts which though are not sufficient for acquittal, however, may be considered as extenuating/mitigating circumstance in the matter of sentence. In case titled, "*Mst. Bevi Vs Gulam Shabbir and another*" (**1980 SCMR 859**), it has been held by this Court that "*the principle underlying the concept of benefit of doubt can in addition to the consideration of question of guilt or otherwise, be pressed also in matter of sentence*". The same view was reaffirmed by this Court in case titled, "*Mir Muhammad alias Miro Vs the State*" (**2009 SCMR 1188**) in the words that "*In criminal cases the question of quantum of sentence requires utmost care and caution on the part of the Courts, as such decisions restrict the life and liberties of the people. Indeed the*

accused persons are also entitled to extenuating benefit of doubt to the extent of quantum of sentence”.

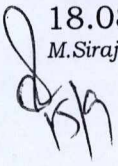
13. Accordingly, the instant petition to the extent of petitioner Tahseen Ullah, is converted into an appeal and is partly allowed in the terms that his conviction under section 302(b) PPC is maintained, however, the sentence of death awarded to him is commuted to rigorous imprisonment for life. He shall also pay compensation of Rs. 500,000/- (Rupees five hundred thousand only) to the legal heirs of the deceased in terms of section 544-A Cr.P.C., and in default thereof, he shall undergo six months' simple imprisonment. His convictions and sentences under sections 324 and 392 PPC are upheld.

14. As regards conviction and sentence of petitioner Salman Khan, we find no ground for interference in the impugned judgment. The petition to his extent is, therefore, dismissed and leave to appeal is refused. All sentences awarded to both convicts shall run concurrently. The benefit of section 382-B Cr.P.C. is extended to them.

Islamabad

18.08.2025

M.Siraj Afridi PS



Approved for Reporting