

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.464 of 2022**

*(On appeal against the judgment dated 10.10.2022 passed by the High Court of Balochistan Quetta in Criminal Appeal Nos.130 & 123 of 2020 & Murder Reference No.04 of 2020)*

Niaz Muhammad

...Petitioner(s)

**Versus**

The State

...Respondent(s)

For the Petitioner(s): Mr. Anis Muhammad Shahzad, ASC

For the State: Mr. Baqir Shah, State Counsel

For the Complainant: Mr. Zaheer-ud-Din Babar Awan, Sr. ASC

Date of Hearing: 07.05.2025

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**JUDGMENT**

**MALIK SHAHZAD AHMAD KHAN, J.-** Niaz Muhammad

petitioner along with Muhammad Ewaz (co-accused) was tried by the learned Special Judge, Anti-Terrorism Court-I, Quetta, pursuant to a case registered vide FIR No.106/2017 dated 26.05.2017, under Sections 365-A/34 PPC and under section 302 PPC (later on added in this case), at Police Station Airport, District Quetta. The learned Trial Court vide its judgment dated 07.07.2020, convicted the petitioner under Section 7(e) ATA, 1997 and sentenced him to imprisonment for life. The petitioner was also convicted under section 302(a) PPC and sentenced to death. The learned trial Court vide the same judgment acquitted Muhammad Ewaz (co-accused). In appeal, the learned High Court altered the convictions of the petitioner from section 7(e) ATA, 1997

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to section 365-A and from section 302(a) PPC to section 302(b) PPC, however, the sentences of the petitioner on two counts were maintained. The learned High Court vide the same impugned judgment convicted Muhammad Ewaz (co-accused), under section 201 PPC and sentenced him to seven (07) years rigorous imprisonment along with fine of Rs.2,00,000/- and in default whereof to further undergo six months simple imprisonment. Benefit of section 382-B Cr.P.C, was also extended to Muhammad Ewaz (co-accused).

2. Arguments heard. Record perused.
3. As per contents of the FIR, on 26.05.2017, at morning time, the brother of Abdul Wahid complainant namely Abdul Razzaq went from his house to his shop situated in the cut-piece street (Quetta), on his vehicle bearing registration No.AUZ-758. On the said day at about 6.15 p.m, the vehicle of Abdul Razzaq (deceased), was found parked unattended at the Airport road in-front of Wailderance School, situated within the area of police station Airport, District Quetta. The mobile phone number of Abdul Razzaq (deceased), was also switched off, therefore, the complainant expressed his suspicion that his brother was abducted by some unknown accused, hence the FIR of this case.
4. No accused was named in the FIR. Later on, the petitioner was arrested in this case after about eight (08) months from the occurrence i.e., on 26.01.2018 and then he led to the recovery of pieces of the dead-body of Abdul Razzaq (deceased) from a Farm-house, whereupon section 302 PPC, was added in this case. Ewaz (co-accused), was also implicated in this case with the allegation that he along with Niaz Muhammad (petitioner), tried to destroy

the evidence in this case by burying the pieces of the dead-body of Abdul Razzaq (deceased). The said co-accused was acquitted by the learned trial Court, however, he has been convicted by the learned High Court for the offence under section 201 PPC and sentenced to seven (07) years rigorous imprisonment along with fine of Rs.2,00,000/- and in default whereof to further undergo six months simple imprisonment. Ewaz (co-accused), has not filed any appeal before this Court against the judgment of the learned High Court.

The prosecution also produced the evidence regarding the payment of ransom amount by the complainant party for the release of Abdul Razzaq (deceased), recovery of pistol, as well as, Toka, at the pointing out of Niaz Muhammad (petitioner) and positive report of FSL (Ex.P/22-L). The prosecution also produced the evidence of Din Muhammad (PW-14) and Qasim Khan (PW-15), in order to establish that from the ransom amount paid to the petitioner by the complainant party, dry fruit and clothes were purchased by the petitioner from the said witnesses.

5. First of all, we will discuss the evidence of the prosecution to consider that as to whether or not the charges under sections 302 and 365-A PPC, have been proved against the petitioner beyond the shadow of doubt.

6. As mentioned earlier, the petitioner was not named in the FIR, which was lodged against the unknown accused. No witness had stated that he had seen Niaz Muhammad (petitioner) while abducting Abdul Razzaq (deceased). As per contents of the FIR, the vehicle of the deceased was found to be parked unattended at the L

Airport road in-front of Wailderance School, situated within the area of police station Airport, District Quetta.

The finger prints taken from the body of the car of the deceased could not be matched with the finger prints of the petitioner because according to learned State Counsel, the petitioner was resident of Afghanistan, hence his Data was not available in NADRA department. There is no force in the above-mentioned excuse of learned State counsel because the prosecution could have obtained the finger prints of the petitioner after his arrest through the concerned Magistrate and a report could have easily be obtained from the Finger Print Expert of the Forensic Science Laboratory to establish that the finger prints of the petitioner matched with the finger prints obtained from the body of the car of the deceased but the needful was not done for the reasons best known to the prosecution.

7. Recordings of CCTV cameras installed at the spot were also collected by the Investigating Officer but admittedly the said recordings were not clear to identify the accused.

8. Insofar as the payment of ransom amounts paid by the complainant to the petitioner for the release of Abdul Razzaq (deceased), is concerned, we have noted that the prosecution has produce Abdul Wakeel (PW-5), to prove the said fact. The said witness has not named the petitioner in his statement recorded by the learned trial Court and he simply stated that on the demand of the accused he put ransom amounts i.e., Rs.74,00,000/- and Rs.15,00,000/-, near railway track in-front of Abdul Khaliq hospital at Airport road and the abductor later on informed the said witness that he had received the abovementioned amounts.

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The said witness had not stated that he had seen Niaz Muhammad (petitioner) or any other accused while collecting ransom amounts from the above-referred place and he only stated that he was in contact with the accused through mobile phone of his deceased brother namely Abdul Razzaq, which was in possession of the accused. No mobile phone or SIM of Abdul Razzaq (deceased), has been recovered from the possession of the petitioner during the investigation of this case to corroborate the prosecution story that mobile phone and SIM of Abdul Razzaq (deceased), were in possession of the petitioner and the SIM and mobile phone were used to demand ransom amounts from the complainant party.

As regards the recovery of Rs.7,00,000/-, from the possession of the petitioner is concerned, we have noted that the complainant party has not mentioned any specific denomination or numbers of the currency notes or any specific marks on the said currency notes, which were paid for ransom to the accused of this case. We have further noted that Abdul Wakeel (PW-5), has also stated in his examination-in-chief that on 06.06.2017, he informed the police and prior to the said date, the amounts of ransom was demanded by the accused through mobile phone of Abdul Razzaq (deceased). He further stated that ransom amounts were paid by him to the accused on 17.06.2017, as well as, on the intervening night of 07/08.01.2018. It is, therefore, evident that the police was already informed before the payment of ransom amounts but neither the police was associated at the time of payment of the abovementioned ransom amounts to the accused nor the numbers of the currency notes were noted or any specific identification marks were put on the said currency notes, which were paid for

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ransom, therefore, the recovery of some currency notes of the above-mentioned amount from the possession of the petitioner is not sufficient to connect him with the alleged offence. Reference in this context may be made to the cases of "Mehboob Hassan v. Akhtar Islam and others" (2024 SCMR 757), "Imtiaz Latif and others v. The State through Prosecutor General, Punjab, Lahore and another" (2024 SCMR 1169) and "Mst. Mehboob Bibi and others v. The State" (2017 SCMR 1835). In the case of '**Mehboob Hassan**' (supra), this Court at page No.762, held as under:-

*"3. Besides, the prosecution has relied upon the amount recovered after more than two years of the occurrence from the respective houses of Kamran and Muhammad Boota. It is unbelievable that someone would retain the crime amount for such a long time. Even otherwise, the recovered currency notes admittedly did not contain any identification mark nor had the prosecution given any description or denomination thereof allegedly delivered by the complainant to the respondents. It is a common practice that most of the people retain cash amount in their house, therefore, it is not safe to consider the recovered amount to be a part of the ransom amount. The prosecution has failed to prove that the recovered amount was actually a portion of the ransom amount, allegedly paid by the complainant to the alleged abductors, hence, such recovery cannot be believed or relied upon for the purpose of convicting the respondents."*

Similar view was taken in the above cited cases of **Imtiaz Latif and others** and **Mst. Mehboob Bibi** supra.

As mentioned earlier, the prosecution also produced the evidence of Din Muhammad (PW-14) and Qasim Khan (PW-15), in order to establish that the petitioner paid part of ransom amount to the abovementioned witnesses for the purchase of different

articles. Din Muhammad (PW-14), stated that Niaz Muhammad (petitioner), had purchased dry-fruits from his shop of the value of Rs.8,00,000/- and on 26.06.2017, he paid an amount of Rs.5,00,000/- to him, which was outstanding against him. It does not appeal to a prudent mind that a person would purchase dry-fruits of Rs.8,00,000/- for his personal consumption. Learned State counsel assisted by learned counsel for the complainant has argued that Niaz Muhammad petitioner was dealing in the sale/purchase of dry-fruits, therefore, he purchased the dry-fruits from Din Muhammad (PW-14), for the said purpose but there is no substance in the abovementioned argument because Din Muhammad (PW-14), categorically stated during his cross-examination that Niaz Muhammad (petitioner) was dealing in the business of cloth and he has not stated that the petitioner was dealing in the business of sale/purchase of dry-fruits. Din Muhammad (PW-14), has further stated that a stamp paper was written regarding the abovementioned sale of dry-fruits but he conceded that he had not produced the original or copy of the said stamp paper in the Court while making the excuse that he had already returned the abovementioned stamp paper to the petitioner when his amount was paid by the petitioner. He further conceded that no receipt was executed regarding the sale/purchase of abovementioned dry-fruits of the value of Rs.8.00.000/-. Qasim Khan (PW-15), stated that cloth of the value of Rs.5,00,000/-, was purchased on credit by the petitioner and the sale consideration of the said cloth was paid to him by the petitioner on 28.06.2017. He conceded during his cross-examination that he did not remember the shop number or street number of the shop of the petitioner. He

further stated that he was manager in Haroon Shopping Center and all the business in the abovementioned Center was in written form but he conceded that he has not produced any documentary evidence regarding the sale of cloth on credit to the petitioner. It is not probable that the abovementioned witness would give different articles of the value of lacs of rupees to the petitioner without obtaining a single receipt from him. We are, therefore, of the view that the evidence of Din Muhammad (PW-14) and Qasim Khan (PW-15), is not worthy of reliance.

So far as the recovery of pistol, as well as, blood stained Toka and positive report of FSL (Ex.P/22-L), qua the Toka, are concerned, it is noteworthy that no empty was recovered from the spot and as such there is no FSL report about the abovementioned pistol to show that any empty recovered from the spot was found to be fired from the said pistol and as such the alleged recovery of pistol at the pointing out of the petitioner is in consequential for the prosecution. Now coming to the recovery of Toka at the pointing out of the petitioner is concerned, we have noted that the occurrence in this case took place on 26.05.2017, whereas the Toka was recovered at the pointing out of the petitioner on 30.01.2018 i.e., after eight (08) months from the occurrence, therefore, there was no chance of detection of human blood after eight (08) months of the occurrence because it is by now well settled that the blood disintegrate within a period of one month after the occurrence as observed in the judgments reported as "Muhammad Jamil Vs. Muhammad Akram and others" (2009 SCMR 120). Under the circumstances, it is not safe to rely upon the abovementioned piece of the prosecution evidence.

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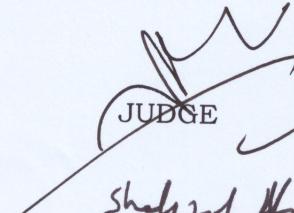
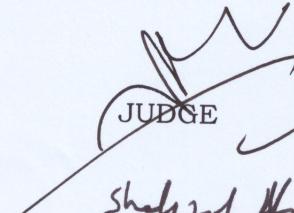
9. Keeping in view all the abovementioned facts, we have come to this irresistible conclusion that the prosecution has miserably failed to prove its case against Niaz Muhammad (petitioner) for the charges under sections 302 and 365-A PPC, therefore, he (Niaz Muhammad petitioner), is acquitted of the said charges.

10. We have, however, noted that the pieces of dead-body of Abdul Razzaq (deceased), were recovered at the pointing out of Niaz Muhammad (petitioner) and this fact has been proved by the prosecution through the evidence of Saddam Hussain, Judicial Magistrate (PW-17) and Dr. Aisha Faiz (PW-20). The abovementioned witnesses are independent witnesses. They were cross-examined at length but their evidence to the extent of recovery of pieces of the dead-body of Abdul Razzaq (deceased), at the pointing out of Niaz Muhammad (petitioner), could not be shattered. Their evidence to the abovementioned extent is confidence inspiring and trustworthy. However, except the recovery of pieces of the dead-body of Abdul Razzaq (deceased), at the pointing out of Niaz Muhammad (petitioner), there is no other reliable evidence worth of consideration against the petitioner to prove the charges under sections 302 and 365-A PPC, therefore, we have already acquitted Niaz Muhammad (petitioner), from the said charges. However, on account of recovery of pieces of the dead-body of Abdul Razzaq (deceased), at the pointing out of Niaz Muhammad (petitioner), charge under section 201 PPC of causing disappearance of evidence i.e., dead-body of Abdul Razzaq (deceased) has been proved in this case against the petitioner beyond the shadow of any doubt but surprisingly the petitioner has not been convicted and sentenced for the said charge. We have

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noted that the learned trial Court has not framed charge under section 201 PPC, against the petitioner but under section 238 Cr.P.C, it is provided that if a person is charged with an offence and the facts are proved, which reduce it to a minor offence, then he may be convicted of the minor offence, although he is not charged with it. As mentioned earlier, the prosecution evidence against Niaz Muhammad (petitioner) for causing disappearance of evidence i.e., the dead-body of Abdul Razzaq (deceased), has been proved through the evidence of abovementioned witnesses namely Saddam Hussain, Judicial Magistrate (PW-17) and Dr. Aisha Faiz (PW-20), therefore, Niaz Muhammad (petitioner), is convicted under section 201 PPC and sentenced to seven (07) years rigorous imprisonment along with fine of Rs.2,00,000/- and in default whereof to further undergo six months simple imprisonment. Benefit of section 382-B Cr.P.C, is also extended to the petitioner.

11. This jail petition is converted into an appeal and partly allowed in the aforementioned terms.

  
JUDGE  
JUDGE  
JUDGE

Islamabad,  
Announced on 09-05-2025 by Shahzad Khan  
Not Approved For Reporting  
Ahtzaz