

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

53/25

PRESENT:

Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim
Justice Ali Baqar Najafi

Crl. A. No. 228-L of 2020 and Crl. PLA No.377-L of 2016

[Against the impugned judgment dated
18.02.2016 passed by Lahore High Court,
Lahore in Crl.A.No.1685/2011 & M.R.No.462
of 2011]

Muhammad Iqbal
Nasrullah

In Crl.A No.228-L of 2020
In Crl.PLA No.377-L of 2016

Versus

The State etc.
Muhammad Iqbal etc.

In Crl.A.No.228-L of 2020
In Crl.PLA No.377-L of 2016

For the Appellant(s) : Ms. Bushra Qamar, ASC (In
Crl.A.No.228-L of 2020)

For the Respondent(s) : Rai Azhar Iqbal Kharal, ASC with
permission (In Crl.PLA No.377-L of 2016)
Mr. Memoona Ehsan-ul-Haq Deputy PG
Punjab.

Date of Hearing : 22.05.2025

JUDGMENT

ALI BAQAR NAJAFI, J.- Through this Criminal Appeal under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, a leave to appeal is sought against the impugned judgment whereby the High Court had dismissed the criminal appeal of appellant/Muhammad Iqbal while maintaining the conviction and converted the death into one of life imprisonment and answered the murder reference in negative under section 302(b) PPC.

2. **Briefly** the prosecution case as set up by Nasrullah/
complainant (PW-3) through a crime report (Exh.PE) are that on

04.12.2009 at 3.45 p.m., he along with his brother Muhammad Ashraf (deceased), Muhammad Nawaz (given up) and Muhammad Ameer (PW-4) were standing at Adda Bridge Canal Khan Muhammad Wala, waiting for wagon to go to the police station Bhera to join an investigation in some criminal case. Meanwhile, the appellant/Muhammad Iqbal armed with .12 bore gun, Shoaib armed with .30 bore pistol (since acquitted) and Munir armed with sota (since acquitted) suddenly appeared from village Khan Muhammad Wala, raised lalkara and attacked. Muhammad Iqbal/appellant made a fire shot with his .12 bore gun which had hit the face at right eye of Muhammad Ashraf who fell down and succumbed to the injuries at the spot, whereas the assailants managed to escape while raising lalkara. The motive behind the occurrence was that on 17.11.2009 an incident of cross firing took place between the parties upon which FIR No.636/2009, dated 17.11.2009, under section 324, 148, 149 PPC was registered at police station Bhera which provided the recipe for the murder of Muhammad Ashraf at the instigation of Shabbir, Javed Iqbal, Sana Ullah and Basharat (all acquitted). The appellant was arrested on 21.03.2010 and after initial investigation the report under section 173 Cr.P.C. was submitted. The complainant (PW-3) was dissatisfied with the investigation, therefore, he filed a private complaint (Exh.PJ) in which the trial had commenced. Learned trial court framed the charge to which the appellant pleaded not guilty and claimed trial. The complainant evidence is comprising of 05 CWs. After recording the statement under section 342 Cr.P.C. of the appellant, and refusal by the appellant to give defence evidence

under section 340(2) Cr.P.C., the judgment was pronounced on 20.09.2011 by the trial court whereby death sentence was awarded to the appellant for the murder of Muhammad Ashraf whereas Shoaib, Munir, Javed Iqbal, Basharat, Sana Ullah and Shabbir were acquitted of the charges. The appellant challenged the conviction before the High Court through (Crl.A.No.1685 of 2011) which was dismissed, but M.R. No.462 of 2011 was answered in negative and the death sentence was converted into life imprisonment vide impugned judgment dated 18.02.2016, hence this appeal. The complainant (PW-3) had filed Crl.PLA No.377-L of 2016 for enhancement of sentence to death penalty.

3. **The main thrust** in the arguments advanced by the learned counsel for the appellant was that on the same set of evidence six accused persons were acquitted but the appellant was convicted and that the eyewitnesses were not present at the spot as they failed to narrate the incident as it actually occurred, therefore, they are not trust-worthy. **However**, the learned Prosecutor submits that the case against the appellant was proved beyond reasonable doubt and that the appellate court had already extended the benefit to the appellant, hence prays for dismissal of the appeal. The counsel for the complainant argued for the capital sentence.

4. **Arguments heard.** Record perused.

5. **To appreciate** the respective contentions, we have gone through the evidence with the able assistance of the learned counsels for the parties and noticed that Nasrullah (PW-3)/the complainant had narrated the story of FIR by stating that the fire made by the appellant had hit Muhammad Ashraf (deceased) on

his face, right eye and head. According to him Shoaib was armed with .30 bore pistol whereas Munir was armed with sota while Iqbal alias Bali/appellant was armed with .12 bore gun. However, he was confronted with his previous statement (Exh.PE) about the fire hit by the appellant to the deceased on his head and not on face, right eye and head. On the other hand, the place of occurrence was the lorry adda; a busy place, therefore, people must have attracted to the occurrence but none had become the witness. According to the complainant (PW-3) he straightaway went to the police station on motorcycle accompanied by his cousin whereafter the police reached at the place of occurrence by the time the body continued to lie in the rushy place. This appears to be a very unnatural conduct of the complainant (PW-3) who being real brother should have immediately shifted the deceased to the hospital had he actually witnessed the occurrence. Muhammad Ameer (PW-2) the other eyewitness stated that 3/4 days before the occurrence he had come to the house of the complainant (PW-3) for some Punchiyat/reconciliation and on the fateful day he had witnessed the occurrence. However, he had not been able to point out clearly as to why and in what circumstances he had visited the deceased for the said purpose. He was also confronted with his previous statement on this aspect (Exh.DA). In cross-examination he had admitted that his place of residence is Jassowal District Mandi Baha-ud-Din which was about 60/70 kilometres away from the place of occurrence. He stated that the accused were also related to him which fact was not recorded in the previous statement (Ex.DA). He was also confronted with his previous

statement (Ex.DA) that the deceased had sustained fire shot on his head. Likewise, the raising of lalkara was also confronted with the previous statement (Exh.DA) of PW-2. He was also confronted with the statement that it was Nasrullah/complainant (PW-3) who went to the police station leaving him and Nawaz at the spot. He stated that he first went to the house of Khalazad of Muhammad Iqbal/appellant and then approached the complainant (PW-3) for reconciliation proceedings where he stayed for 03 days before the occurrence. He, however, denied the suggestion that the deceased was alone at the time of occurrence. Next eyewitness, Muhammad Aslam (PW-5) also made certain improvements on the question of reconciliation before the occurrence. Sajjad Ahmad SI (CW-5) conducted the investigation who stated that the appellant was arrested on 21.03.2010. He admitted in cross-examination that the distance between village Hathi Wand and village Khan Muhammad Wala was about 1 ½ /2 km. In answer to the question under section 342 Cr.P.C. "as to why this case against him", the appellant replied that the case was registered against him with mala fide intention and ulterior motive.

6. **Scanning** the prosecution evidence, we have straightaway noticed that although the single fire was ascribed to the appellant which hit the deceased on his head but the eyewitnesses, the close relative of the deceased, strangely did not take the deceased to the hospital but directly went to the police station. They were also confronted with their previous statements under section 161 Cr.P.C. (Ex.DA) about the receipt of injury on head, right eye or face. Doctor (PW-1) has stated that the time between postmortem

and death was within 06 hours though between death and injuries was immediate. According to the doctor (PW-1) the dead body was brought in hospital immediately at 4.05 p.m., and was identified by Saeed and Ijaz who were not the eyewitnesses. However, the death could not have occurred at 3.45 p.m. same day i.e. just 15 minutes before keeping in view the distance to the hospital. The dead body itself had 07 firearm wound of entrance having inverted margin and collar of abrasion was also present. Blackening and burning was also seen around the wound of entrance in an area of 6 x 6 cm around right eye going into the skull cavity. According to his opinion the death was caused due to shock and haemorrhage caused by injury to brain under collective affect of injury No.1. The witness was cross-examined to the extent of blackening of injuries, who admitted the suggestion of a close-range fire but as per site plan (Exh.CW-4/A & Exh.CW-4/B) the location of the assailant and the deceased was not of a close distance (3 feet) but 5 ½ feet. It appears that an unattended dead body was brought to the hospital since on external examination the eyes and mouth were not closed. The rigor mortis had partly developed which shows that the time of death was not 03:45 p.m. However, seven injuries sustained by the deceased at the hand of the appellant have not been explained since the recovery of weapon of offence of .12 bore gun was not proved against the appellant as also observed by the High Court.

7. **Besides**, as per report submitted by the Superintendent, District Jail Shahpur date of release of the appellant is 13.07.2026, if compensation is paid. He, therefore, has already

served out almost one year short of his sentence of life imprisonment.

8. **Keeping in view** the fact that the presence of PW-5 was unnatural who had come from 60/70 km away for unproved reconciliation, the complainant went to police station after the occurrence, instead of attending the injured, and the medical evidence does not corroborate with the time of occurrence, therefore, this court is of the view that he was a chance witness and had not seen the occurrence.¹ It is true that the close relative normally come forward to become a witness in such like incident but the statement of eyewitness should be natural and confidence inspiring which mandatory legal requirement are relevant, therefore, cannot be ignored.²

9. **For the above stated reasons**, Crl. A.No.228-L of 2020 is **allowed**, the sentence and conviction of the appellant is set-aside and he be released forthwith if not required in any other criminal case. However, Crl. PLA No.377-L of 2016 is dismissed and leave therein to appeal is refused.

ISLAMABAD

22.05.2025

NOT APPROVED FOR REPORTING

A.Qadoos

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¹ Pathan Vs. The State (2015 SCMR 315)

² Muhammad Hassan and another Vs. The State and others (2024 SCMR 1428)