

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

CRIMINAL APPEAL NO.465 OF 2023

(On appeal against the judgment dated 25.01.2021 passed by the
Lahore High Court, Multan Bench, Multan in Crl. Appeal No.867/2018)

Shahid Abbas ... Petitioner

VERSUS

The State and another ... Respondents

For the Petitioner : Mr. Khalid Ibn-i-Aziz, ASC
Syed Rifaqat Hussain Shah, AOR

For the State : Mr. Muhammad Jaffar, Addl. PG
(through video link from Lahore)

Date of Hearing : 21.04.2025

JUDGMENT

SARDAR TARIQ MASOOD, J.- Shahid Abbas (**the appellant**) was tried in in case FIR No.396/2014, dated 23.08.2014, registered at Police Station Khan Garh, District Muzafargarh, under section 302/34 of the Pakistan Penal Code (**PPC**). After a regular trial he was convicted under section 302(b) PPC for committing murder of Allah Wasaya (**the deceased**) and sentenced to undergo rigorous imprisonment for life. He was further directed to pay Rs.500,000/- as compensation under section 544-A of the Code of Criminal Procedure (**Cr.P.C.**). The appeal filed by him was dismissed by the High Court; hence, instant appeal by leave of the Court granted on 0906.2023.

2. After hearing learned counsel for the appellant and learned Addl. PG we observed that the occurrence took place on 23.08.2014 at 8:30 pm and thereafter the injured was shifted to the hospital where on reaching, he succumbed to the injures. The police arrived in the hospital, recorded the statement of the complainant, prepared the injury statement and inquest report of the deceased and thereafter sent the complaint to the police station for registration of formal FIR at 10:30 pm, so there is no conscious delay in lodging the FIR and prior to that the relative of the deceased tried to save his life by shifting him to the hospital in injured condition. Although, in this regard, no record of the said hospital was produced but the FIR is clear to the extent of this aspect that the deceased

when brought to the hospital, he succumbed to his injuries; so, there is no question of medical examination in the said hospital.

It is also a circumstance that Tahir Hussain Saleemi, ASI who chalked out the FIR at 10:40 pm. was not cross-examined by the defence side which amounts to admission that the FIR was chalked out at the given time. The postmortem of the deceased was conducted within 5½ hours of registration of the FIR which further confirms the promptness of the FIR in which the appellant is specifically nominated for causing a blow with the hatchet on the head of the deceased. Both the eyewitnesses namely Allah Bachaya (PW-8) and Abdul Rehman (PW-9) appeared during the trial. They are closely related to the appellant, as the appellant is real nephew of complainant Allah Bachaya. They remained consistent on each and every material point during cross-examination.

3. Learned counsel for the petitioner although argued that the FIR is silent about the source of light but we observed that on the same day, site plan was prepared in which it is specifically mentioned that the witnesses saw the occurrence in the light of torch. The said torch during investigation was taken into possession vide recovery memo (Ex.PL). Even otherwise, such close relatives when came near to each other, even in dark hours of the night, they can recognize each other. There is no question of mistaken identity by a real uncle of his nephew. The record further reveals that it was not a sudden encounter rather prior to that the appellant and his co-accused were roaming around the house of the deceased and kept on challenging the deceased party due to which the complainant and the deceased while hiding themselves tried to take shelter in the house of their cousin Ashiq Hussain but they were apprehended by the appellant and his co-accused and during that processes it was the appellant who gave blow with hatchet on the head of the deceased.

Although two co-accused namely Muhammad Javed and Allah Diwaya had been acquitted by the Trial Court but we observe that no effective role was attributed to them whereas the appellant has effectively caused hatchet blow on the head of the deceased. Both the Courts below have rightly appraised and re-appraised the evidence of the eye witnesses, rightly believed their testimonies and rightly came to the conclusion regarding guilt of the appellant and we on our own independent evaluation of evidence are not able to differ with such conclusion.

4. Although order of acquittal of two co-accused has attained finality but we observe that there is a strong corroboration to the extent of the appellant as he opted to abscond after the occurrence and was arrested subsequently on 22.4.2015 i.e. after about 8/9 months of the occurrence. Abdul Rashid, Constable (PW-6) appeared before the Court and proved regarding the proclamation, issued against the appellant. Even the Investigating Officer also brought on record the application for issuance of

proclamation as well as other documents i.e. proclamation of appellant, confirming the absconcence of the appellant. Surprisingly Abdul Rashid, Constable who completed the proceedings of absconcence and proclamation, was not cross-examined. His testimony was also admitted by the appellant. The postmortem report also gives support to the ocular account as the doctor observed incised wound on the head of the deceased and also found the said injury fatal and cause of death of the deceased. So, the corroborative piece of evidence and supporting evidence is available against the appellant. The order of the High Court is well reasoned and needs no interference by this Court. Consequently, this appeal is dismissed.



Islamabad
21.04.2025
*M. Saeed/***