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IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE JAMAL KHAN MANDOKHAIL  
MR. JUSTICE ATHAR MINALLAH  
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

**CRIMINAL APPEAL NO.313-L OF 2020 AND**  
**CRIMINAL PETITION NO. 1336-L OF 2015**

*(On appeal against the judgment dated 11.11.2015 passed by the Lahore High Court, Lahore in Cr. Appeal No. 361-J of 2010 and Murder Reference No. 104/2013)*

Sajjad  
Muhammad Riaz

(In Cr.A. 313-L/2020)

(In Cr.P. 1336-L/2015)

...Appellant/Appellant

**Versus**

The State etc

(In both cases)

...Respondent(s)

For the Appellant (s): Rai Tariq Saleem, ASC  
Syed Rifaqat Hussain Shah, AOR  
(In Cr.A. 313-L/2020)

For the Appellant / Mian Liaquat Ali, ASC  
Complainant: (In Cr.P. 1336-L/2015)

For the State: Mr. Irfan Zia, Addl. P.G.

Date of Hearing: 27.03.2025

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**JUDGMENT**

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

**Criminal Appeal No. 313-L/2020**

Sajjad, appellant, along with Muhammad Hayat, Abdul Razzaq and Mukhtar Ahmed (co-accused since acquitted), was tried by the learned Additional Sessions Judge, Sargodha, pursuant to a case registered vide FIR No. 629 dated 25.10.2009 under Sections 302, 109, 34 PPC at Police Station Jhal Chakian, Sargodha. The learned Trial Court vide its judgment dated 08.09.2010, while acquitting Muhammad Hayat and Mukhtar, co-accused, convicted Sajjad appellant under Section 302(b) PPC and sentenced him to

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death. He was also directed to pay compensation amounting to Rs.200,000/- to the legal heirs of the deceased or in default thereof to further undergo six months SI. Abdul Razzaq, co-accused, was convicted under Section 302(b) PPC and was sentenced to imprisonment for life along with payment of compensation of Rs.100,000/- to the legal heirs of the deceased or in default thereof to further undergo six months SI.

2. In appeal, the learned High Court while maintaining the conviction of the appellant under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The amount of compensation and the sentence in default thereof was maintained. Benefit of Section 382-B Cr.P.C. was extended in favour of the appellant. However, the learned High Court acquitted Abdul Razzaq, co-accused of the appellant.

3. Arguments heard. Record perused.

4. As per contents of the FIR, on 25.10.2009 at 07:30 AM, the brother of Muhammad Riaz, complainant (PW-4) namely Muhammad Mumtaz (deceased) along with his wife Mst. Shameem Bibi (PW since not produced) was coming back towards his village on his motorcycle after taking medicine from Luk Mor and when he reached near railway track situated within the area of village Sakisar, Sajjad appellant, Abdul Razzaq (co-accused since acquitted) both armed with rifles along with one unknown accused, who was armed with a pistol, emerged at the spot. The accused dragged down Mst. Shameem Bibi (PW since not produced) from the motorcycle and thereafter Sajjad appellant made a fire shot with his rifle which landed at the right side of the chest of Muhammad Mumtaz, deceased, who fell on the ground. Abdul Razzaq (co-

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accused since acquitted) then made a fire shot with his rifle, which landed on the back side of the chest of Muhammad Mumtaz, deceased. The accused thereafter took 12 bore gun, motorcycle and mobile of Muhammad Mumtaz deceased and fled away from the spot, hence, the FIR of this case.

5. The ocular account of the prosecution has been brought on the record through Muhammad Riaz, complainant (PW-4) and Muhammad Yar (PW-5). The occurrence in this took place near a railway track situated within the area of village Sakisar. Both the above-mentioned eye-witnesses were residents of Chak No. 62 Shumali, District Sargodha and they were not residents of the village where the occurrence took place. Under the circumstances, the above-mentioned eye-witnesses of the prosecution were chance witnesses and they were bound to establish the reason of their presence at the spot at the time of occurrence. Muhammad Riaz, complainant (PW-4) has not given any valid reason for his presence at the early hours of the day i.e. 07:30 AM in a different village at the time of occurrence. Although, Muhammad Yar (PW-5) stated that he had a cloth shop in village Sakisar and he slept on his shop during the night but no such fact was mentioned in his statement (Ex.DC) recorded by the Police. He was confronted with his previous statement Ex.DC and the dishonest improvement made by him to justify his presence at the spot at the relevant time was duly brought on the record. The relevant part of his statement made during cross-examination reads as under:-

“I had got recorded in my statement before the police that on 25.10.2009 at about 07:30 am I was present on my cloth shop and that I had slept in my shop during the night. Confronted with Ex.DC copy of the statement of the witnesses where it is not so recorded.”

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He further stated during his cross-examination that Muhammad Riaz, complainant (PW-4) had no shop at village Sakisar and he was resident of Chak No. 62 NB. The relevant part of his statement in this respect is reproduced hereunder for ready reference:-

“Muhammad Riaz complainant had no shop at Sakaisar. He resides at Chak No. 62 NB.”

We have further noted that in the site plan (Ex.PL), the place of occurrence has been shown near a railway track and a canal (*rajba*), which was surrounded by agricultural fields of different persons of the area and no shop or commercial or residential area has been shown in the site plan near the place of occurrence. It is, therefore, evident that the prosecution eye-witnesses were chance witnesses and they could not establish the reason of their presence at the spot at the relevant time, therefore, it is not safe to rely upon their evidence. Reference in this context may be made to the cases of Mst. Sughra Begum Vs. Qaiser Pervez (2015 SCMR 1142), Mst. Mir Zalai v. Ghazi Khan and others (2020 SCMR 319), G.M. Niaz v. The State (2018 SCMR 506), Muhammad Ali Vs. The State (2015 SCMR 137), Muhammad Irshad vs. Allah Ditta and others (2017 SCMR 142), Sufyan Nawaz and another vs. The State and others (2020 SCMR 192).

6. We have also noted that both the above-mentioned eye-witnesses have also assigned the role of making a fire shot to Abdul Razzaq (co-accused since acquitted), which landed on the back side of the chest of Muhammad Mumtaz, deceased, but according to post-mortem examination, the injury on the back side of the chest of the deceased i.e. injury No. 2 was an exit wound and there was

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no entry wound on the back side of the chest of Muhammad Mumtaz, deceased. In the light of above-mentioned conflict between the ocular account and the medical evidence of the prosecution, Abdul Razzaq (co-accused) has already been acquitted in this case. It is further noteworthy that according to the evidence of prosecution eye-witnesses, one firearm injury was caused by Sajjad, appellant, and one by Abdul Razzaq (co-accused since acquitted) on the body of Muhammad Mumtaz (deceased) and as such, two firearm injuries were caused on the body of the deceased but according to the medical evidence, there was only one firearm entry wound on the body of the deceased. It is, therefore, evident that there is glaring conflict between ocular account and the medical evidence of the prosecution, which is suggestive of the fact that the above-mentioned eye-witnesses were not present at the spot at the relevant time because had they been present at the place of the occurrence then they would have mentioned the correct number of injuries sustained by Muhammad Mumtaz, deceased. The above-mentioned conflict between the ocular account and the medical evidence of the prosecution has created further doubt in the prosecution story.

7. We have also noted that Muhammad Yar (PW-5) had nominated one Muhammad Ijaz accused in this case in place of unknown accused through his supplementary statement dated 26.10.2009 but when he appeared before the Court, he flatly denied the above-mentioned fact. He was duly confronted with his previous statement and the relevant fact was also brought on the record. His statement in this respect reads as under:-

“I had not nominated Muhammad Ijaz accused as that unknown person in my supplementary statement dated 26.10.2009. Confronted with Ex.D.D. copy of the said

supplementary statement in which the witness had nominated Muhammad Ijaz as an accused in this case.”

The above-mentioned part of the statement of Muhammad Yar (PW-5) shows that he was not a truthful witness and he was making misstatement before the Court in this case.

8. In the contents of the FIR, it was also alleged that the accused took away with them the rifle, motorcycle and mobile of the deceased but motorcycle of the deceased was not recovered from the possession of the appellant or his co-accused. Although according to the prosecution case, the mobile and rifle of the deceased were recovered from the possession of the appellant, but it is noteworthy that no model, make, colour or any other detail of the mobile of the deceased was mentioned in the FIR. No documentary proof showing ownership of the allegedly recovered mobile in the name of the deceased has been produced by the prosecution. Likewise, the license in the name of the deceased of the rifle recovered from the possession of the appellant has not been produced in the prosecution evidence. We are, therefore, of the view that it is difficult to connect the appellant with the crime through the above-mentioned recoveries.

Insofar as recovery of .7 mm rifle from the possession of the appellant is concerned, we have noted that there is no report of Forensic Science Laboratory regarding matching of any empty with the above-mentioned rifle, therefore, the said recovery is inconsequential for the prosecution and the same has rightly been disbelieved in paragraph No. 24 of the judgment of the learned Trial Court.

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9. The prosecution alleged the motive that FIR No. 588/2009 was lodged against the accused party and due to the said grudge the occurrence of this case was committed. The above-mentioned FIR was not produced in the prosecution evidence and, as such the motive was not proved by the prosecution in this case and the same has rightly been disbelieved by the learned Trial Court in paragraph No. 12 of its judgment.

10. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as Tariq Pervez Vs The State (1995 SCMR 1345) and Muhammad Akram Vs The State (2009 SCMR 230). Consequently, this appeal is allowed. The impugned judgment is set aside. Sajjad, appellant, is acquitted of the charge while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

**Criminal Petition No.1336-L of 2015**

11. Insofar as this criminal petition filed by Muhammad Riaz, complainant (PW-4) for enhancement of sentence awarded to Sajjad, appellant, is concerned, we have noted that Sajjad, appellant, has already been acquitted by this Court while giving him the benefit of doubt in view of the findings recorded in preceding paragraphs of this judgment, therefore, there is no substance in this

criminal petition, hence the same is hereby dismissed and leave is refused.

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JUDGE  
JUDGE

Shahid Muneer  
JUDGE

Islamabad, the  
27<sup>th</sup> of March, 2025  
Not Approved For Reporting  
Khurram