

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE ATHAR MINALLAH  
MR. JUSTICE NAEEM AKHTER AFGHAN  
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

**JAIL PETITION NO. 442 OF 2022**

*(On appeal against the judgment dated 11.10.2022 passed by the High Court of Sindh, Circuit Court at Hyderabad in Cr. Appeal No. D-32/2018 and Confirmation Case No. 07/2018)*

Anwar Ali

...Petitioner(s)

**Versus**

The State

...Respondent(s)

For the Petitioner(s): Mr. Aftab Alam Yasir, ASC

For the State: Ms. Rahat Ehsan, Addl. P.G. Sindh

For the Complainant: Nemo

Date of Hearing: 05.06.2025

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**JUDGMENT**

**MALIK SHAHZAD AHMAD KHAN, J.**-Anwar Ali, petitioner was tried by the learned First Additional Sessions Judge, Mirpurkhas pursuant to a case registered vide FIR No.24/2007 dated 06.09.2007 registered under Sections 302/34 PPC at Police Station Dilber Khan Mehar. The learned Trial Court vide its judgment dated 05.03.2018 convicted the petitioner under Section 302(b) PPC and sentenced him to 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 simple imprisonment for five months. In appeal, the learned High Court upheld the judgment of the learned Trial Court.

2. Arguments heard. Record perused.

3. As per contents of the FIR, the younger brother of Abdul Sattar complainant namely Farhan aged about 23/24 years went out of his house on 04.09.2007, at about 8.45 p.m but he did not

15

return to his house till 06.09.2007. On 06.09.2007, the complainant got information that the police of police station Dilbar has found a dead-body of a young man near village Ghot Khuda Dino Wassan. On the said information, the complainant party came to the abovementioned village and identified the dead-body to be that of the son of the complainant namely Farhan. The neck of the dead-body was cut and there were marks of violence on the body, hence the FIR of this case.

4. FIR was lodged against the unknown accused. Anwar Ali (petitioner), was not named therein. Later on, Ali Sher co-accused was made an approver in this case, who got recorded his judicial confession before the Court. According to the prosecution case, the star witness of the prosecution was Ali Sher approver, who voluntarily appeared at the police station and narrated the story of this case to Khuda Bakhsh Panwar SIP. He was arrested by the police and produced before the learned Magistrate, where he got recorded his confessional statement. Ali Sher Approver stated that he was driver of Anwar Ali (petitioner) and used to drive his Suzuki Mehran car. On 04.09.2007, Anwar Ali (petitioner), made a phone call to him and asked him to reach Gulshan-e-Haider Colony, Mirpur Khas at 8.45, whereupon he reached at the said place. The petitioner, his cousin Zulfiqar Umrani (co-accused since P.O) and Shafi Umrani (co-accused since P.O), were present at the abovementioned place. In the meanwhile, Farhan Memon (deceased), came out of his house and the accused covered his face with a towel and then forcibly put him in the car driven by Ali Sher approver. Farhan (deceased), was taken to the house of Anwar Ali (petitioner), situated in Mehran Colony, where Zulfiqar Umrani (co-accused since P.O) and Shafi Umrani (co-accused since P.O), took

him towards the upstairs of the house of the petitioner. He (Ali Sher approver) further stated that at the house of the petitioner, Zulfiqar Umrani (co-accused since P.O), forcibly took off the trouser of Farhan (deceased) and put a burning cigarette on the naked parts of his body. Thereafter Zulfiqar Umrani (co-accused since P.O) and Shafi Umrani (co-accused since P.O), put a rope around the neck of the deceased and strangled him, where-after Anwar Ali (petitioner), cut the neck of the deceased with a dagger due to which Farhan died at the spot. He further stated that the accused put the dead-body of Farhan (deceased), in the car and the dead-body was brought to the village Jam Daud through khipro road, where the rope was thrown, whereas the dead-body was thrown at Lashkar Shah road, where-after the accused returned to Mirpur Khas. Ali Sher approver further stated that he was threatened by the accused not to disclose the incident to anybody, otherwise, he would have to face the dire consequences. He further stated that after few days, he developed the fear of Allah in his heart, therefore, he voluntarily appeared in the police station and narrated the entire story to Khuda Bakhsh Panwar SIP, where-after he was produced before the Magistrate and got recorded his confessional statement.

5. We have noted that the above-mentioned confessional statement of Ali Sher approver (accused), was exculpatory in nature. He had attributed the entire role of committing the murder of Farhan (deceased) to Anwar Ali and his companions namely Zulfiqar Umrani (co-accused since P.O) and Shafi Umrani (co-accused since P.O). He had not stated that he had himself played any role in the murder of Farhan (deceased) or caused any injury to him rather he claimed that he himself was threatened by the



petitioner and his co-accused and was restrained by them from telling the truth to anybody. It is by now well settled that exculpatory judicial confession of an accused is inadmissible in evidence.

6. Learned Law Officer has stated that the prosecution case against Anwar Ali petitioner was corroborated by the recovery of blood stained dagger, blood stained clothes of the deceased and blood stained seat cover of the vehicle through which the dead-body of Farhan (deceased), was disposed off. It is noteworthy that the occurrence in this case took place on 04.09.2007, whereas dagger was recovered at the pointing of the petitioner on 30.09.2007 i.e., after twenty six (26) days from the occurrence. During the abovementioned period the appellant had ample opportunity to wash away the blood from the dagger. Reference in this context may be made to the judgments reported as "Basharat and another Vs. The State" (1995 SCMR 1735). Furthermore, there is no report of Chemical Examiner regarding the said dagger because admittedly the same was not sent to the above-mentioned office as evident from the statement of Khuda Bux (PW-8). Though the blood stained clothes of the deceased and the seat cover of the car in question were sent to the office of Chemical Examiner but the same was deposited in the office of Chemical Examiner on 28.09.2007. It is, therefore, evident that the abovementioned articles were deposited in the office of FSL after a period of more than three weeks from the occurrence, hence the blood must have disintegrated during the abovementioned period as observed in the judgment reported as "Faisal Mehmood v. The State" (2016 SCMR 2138).

We are, therefore, of the view that the above-mentioned recoveries are inconsequential for the prosecution case.

7. Insofar as the recovery of car bearing registration No.AEG/102 (white Mehran), we have noted no proof regarding the ownership of the abovementioned car in the name of the petitioner has been brought on the record, therefore, it cannot be held that the recovery of said car has connected the petitioner with the alleged offence.

8. We have further noted that no motive whatsoever was alleged in the FIR. Likewise, no motive was alleged by the approver in his judicial confession recorded by the concerned Magistrate. Abdul Sattar complainant (PW-1), during his statement recorded before the learned trial Court stated regarding the motive in the following terms:-

*".....For the next one week we kept on wondering who and for what reason my son had been murdered then we realized that before the death of my son, accused Anwar Mari had suspected my son of placing covering slab on the main hole in front of our house to be his stolen one and he also used hot words and foul language. Anwar Mari also happens to be our neighbour. After that one day my son came running inside the house and he looked very afraid and he informed me that accused Anwar Mari every now and then threatened him that would deal and kill him and right then he was coming towards him in a car with other persons but he went inside the house and suspected that would kill him....."*

No specific date and time of the subsequently introduced motive occurrence was mentioned by any prosecution witness. A vague motive was introduced by the prosecution with considerable delay but no cogent evidence was produced to prove the same. Furthermore, as mentioned above, the complainant did not

mention the fact of alleged motive against the petitioner while lodging the FIR. We are, therefore, of the view that the prosecution could not prove any motive against the petitioner in this case.

9. 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 petitioner 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 v The State' (1995 SCMR 1345) and 'Muhammad Akram v. The State' (2009 SCMR 230). Consequently, this petition is converted into an appeal and is allowed. The judgments of the trial Court and the High Court dated 05.03.2018 and 11.10.2022, respectively are hereby set aside. Anwar Ali, petitioner, 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.

  
JUDGE  
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Islamabad, the  
5<sup>th</sup> of June, 2025  
Not Approved For Reporting  
Ahtaza