

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.217/2021

And

Criminal Petition No.372/2022

Against the judgment dated 05.04.2021 of
the High Court of Sindh, Karachi passed
in CrI. A. 763/2019 and confirmation case
No.40/2019

Fazal Mehmood
(in J.P. 217/2021)

Abu Bakar
(in CrI.P.372/2022)

...Petitioner(s)

VERSUS

The State thr. P.G.Sindh and another

...Respondent(s)

For the Petitioner(s):

Ms. Ambreen Anwar Raja, ASC
(in J.P. 217/2021)

For the Complainant:

Mr. Israr Ahmed Abbasi, ASC
(in J.P. 217/2021 & Petitioner in CrI.P.372/2022)

For Respondent No.2:

Mr. Sher Aman, ASC
in CrI.P.372/2022

For the State:

Mr. Khadim Hussain, Addl. PG, Sindh

Date of Hearing:

27.10.2025

JUDGMENT

Irfan Saadat Khan, J.- J.P. No. 217 of 2021: The instant jail petition is directed against the High Court of Sindh, Karachi's judgment dated 05.04.2021,¹ which maintained the petitioner Fazal Mehmood's conviction under section 302(b), Pakistan Penal Code, 1860 ("PPC"), as recorded by the learned Additional District & Sessions Judge-I, Karachi

¹ In Criminal Appeal No. 763 of 2019 and Confirmation Case No. 40 of 2019.

East (Trial Court) *vide* judgment dated 08.11.2019,² but altered the sentence of death to imprisonment for life. The compensation of Rs. 200,000/- under section 544-A, Code of Criminal Procedure, 1898 ("Cr.P.C.") and the sentence of six months' simple imprisonment to be undergone in default thereof were, however, maintained.

2. Before embarking upon the appraisal of evidence, it is necessary to sum up the prosecution version as set forth in FIR No. 314/2015 registered at Police Station Bahadurabad, Karachi, under section 302 of the PPC pursuant to the complainant Abu Bakar's statement dated 05.11.2015. As per the FIR, while the complainant was asleep in the mosque/*madrassah* that night, Zahid awakened him and informed that in Room No. 4 someone had murdered his cousin Raziullah by striking a cemented block (a cinderblock) on his head. The complainant went to Room No. 4 and saw Raziullah lying on a mattress, bleeding from the head, with a cement block near his head. Other students awoke; teachers Amir Yousuf and Shafiqullah arrived. Zahid and Mohibuddin stated they had been sleeping at about 2:15 a.m. when a sound roused them; upon switching on the light they saw Raziullah lying in a pool of blood, bleeding from the nose and head and observed a cement block which had not been there earlier. It was further noted that Fazal Mehmood, whose bed was near the deceased and who was seen coming to sleep in the room earlier at about 12:50 a.m. by Mohibuddin, was absent and had teased the deceased during the preceding two days. Thus, Fazal Mehmood was nominated as the accused whereafter police arrived, inspected the body, and removed it to JPMC for post-mortem; culminating in the FIR.

3. After the initial investigation, non-bailable warrants were issued and, when the petitioner could not be apprehended, the Trial Court, *vide*

² In Sessions Case No. 391 of 2016.

order dated 29.03.2016, formally declared the petitioner a proclaimed offender. He remained at large until 21.12.2016, when he surrendered before the Court and was taken into custody; subsequent investigative steps (including pointation) followed in due course. After the framing of charge and conclusion of the trial, the petitioner was convicted and sentenced by the Trial Court in the terms above, followed by a modification of sentence in the form commutation by the High Court. Aggrieved, the petitioner has preferred the instant petition.

4. Ms. Ambreen Anwar Raja, ASC, has appeared on behalf of the petitioner and has contended that the case is wholly circumstantial: no eyewitness; "last-seen" is vague; the alleged weapon/recovery has no forensic linkage; and the electronic evidence (CCTV/USB) is unreliable for want of sealing, chain-of-custody and independent authentication, motive is also unproved. The alibi set up under section 342 Cr.P.C. statement was not effectively rebutted. She argued that since the chain is incomplete, the benefit of doubt must go to the petitioner and she thus prays that he may be acquitted.

5. Mr. Israr Ahmed Abbasi, ASC and Mr. Khadim Hussain, Addl. PG, Sindh ("APG") have appeared on behalf of the complainant and the State respectively and have stated that the FIR was prompt and free of malice; the petitioner shared the room with the deceased, furnishing a strong "last-seen" link, reinforced by his post-occurrence disappearance. Medical evidence (head injuries) aligns with the recovered block. Even without placing decisive weight on the CCTV/USB, the remaining circumstances i.e. prompt reporting, last-seen in a confined setting, medical consistency, recovery and absence of a plausible alternative, form a complete chain pointing to guilt beyond reasonable doubt. The alibi plea was a bald assertion without defence evidence. Hence, they prayed that the petitioner's jail petition may be dismissed with the

complainant's counsel pressing for enhancement of the petitioner's sentence to death.

6. At the very outset, it may be observed that the prosecution case is bereft of any ocular account and rests wholly on circumstantial material. When only circumstantial evidence is pressed into service by the prosecution, this Court has ruled authoritatively in the case of Ch. Barkat Ali³ that:

"Law relating to circumstantial evidence that proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused. See 'Siraj vs. The Crown' (PLD 1956 FC 123). In a case of circumstantial evidence, the rule is that no link in the chain should be broken and that the circumstances should be such as cannot be explained away on any hypothesis other than the guilt of the accused."

Likewise, in Altaf Hussain's case⁴ it was held that:

"Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of complete chain, one corner of which should touch the neck of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain."

As such, utmost caution must be taken while thrashing out the evidence placed on record by the prosecution.

7. Adverting now to the CCTV material, it does not inspire confidence for a number of reasons. Crucially, no site plan aligns the camera's field of view with the *locus in quo*; there is no proof of continuous recording, time-sync or system clocks nor any demonstration that the footage is free from edits or overlays. There is no forensic report with respect to the veracity of the footage. Even on its face, the footage is equivocal: resolution, angles and lighting do not permit positive identification beyond reasonable doubt; it neither captures the *actus reus* nor the

³ *Ch Barkat Ali v. Major Karam Elahi Zia and another* (1992 SCMR 1047).

⁴ *Altaf Hussain vs. Fakhar Hussain and another* (2008 SCMR 1103).

weapon and at best suggests presence in a shared space - already a neutral circumstance.

8. The "last-seen together" circumstance is equally frail. For it to acquire probative value, the prosecution must have established with clarity (i) the specific point in time when the deceased was last alive in the company of the accused, and (ii) a narrow temporal gap between that point and the discovery of the body so as to exclude intervention by others. Neither requisite is satisfied. The setting itself i.e. common accommodation with multiple persons having ready access to each other, undermines the value of the "last seen" evidence. The testimony deposed by PW-8 (Mohibuddin) set up as proof of the petitioner's guilt again does not aid the assertion of "last seen" since he only states that around 12:30 a.m. he saw the petitioner alone in the washroom and, upon returning, saw him asleep in his bed. In such circumstances, an inference that the petitioner alone could have committed the act would be speculative at best and this fact remains a neutral circumstance that may arouse suspicion but cannot shoulder the evidentiary burden needed for a conviction especially when it has come on record that Room No. 4 was shared by some 25 students.

9. The deposition of the various witnesses alleging that the accused was seen on camera carrying the cinderblock with which he murdered Raziullah, the deceased, is also shrouded with doubts and mysteries as, according to Fazal Mehmood (PW-1), the CCTV footage only captured the accused carrying "*a heavy thing*" - the description of which could not be given due to the darkness - whereas according to the other PWs, especially Aamir Yousaf (PW-4), he was allegedly carrying a "*cement block*". These wavering depositions, in our view, put a major dent in the case of the prosecution. Moreover, it has also come on record that

whenever the USB was attempted to be played, the court computer flagged it as virus-infected.

10. The recoveries made from the scene of occurrence also raise significant questions. Importantly, the record reveals that a blood stained knife was recovered from petitioner's bed underneath his pillow. This very knife was sent for chemical examination and returned with a positive result for traces of human blood. Interestingly, however, the medical evidence mentions no injuries attributable to the blade, instead only highlighting injuries sustained as a result of a heavy object falling on the deceased's skull; in our case the cinderblock. This adds another doubt in the plethora contained in the prosecution case.

11. Similarly, the factum of motive has not been proved. There is no record or proof of the petitioner allegedly teasing or having quarreled with the deceased, in fact, one of the witnesses, Jameel ur Rehman (PW-5), states that *"the deceased and the accused were close friends and this fact is disclosed to me by other students"*. Moreover, none of the students have deposed that the accused and the deceased had any quarrel with each other in the past.

12. The prosecution case is thus mired in doubt and it is axiomatic that the benefit of these doubts must accrue in favour of the accused. The prosecution has not been able to prove its case beyond a reasonable doubt and the judgments of the Trial Court and the High Court are accordingly set aside by converting this petition into an appeal and allowing the same. The appellant is resultantly acquitted of the charges levelled against him by extending the benefit of doubt. He shall be released from custody forthwith, if not required in any other case.

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13. Since the petitioner stands acquitted of the charge, the criminal petition is rendered infructuous and is hereby dismissed.

14. These are the detailed reasons for our short order dated 27.10.2025 which is reproduced below for the facility of reference:

"For reasons to be recorded later, this jail petition is converted into an appeal and it is allowed. The judgments of the Trial Court and the High Court dated 08.11.2019 and 05.04.2021 respectively are set aside. Consequently, the appellant is acquitted from the charge framed against him by extending the benefit of doubt. In case the appellant is not required to be incarcerated in any other matter, then he shall forthwith be released.

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2. *As the appellant has been acquitted from the charge framed against him, therefore, this criminal petition has become infructuous and is accordingly dismissed."*

ISLAMABAD
27.10.2025
Naseer/Mustafa Kundi L.C.

"Not Approved for Reporting"