

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.134/2018

Against the judgment dated
08.02.2018 of the Lahore High
Court, Lahore passed in MR No.
72/15, CrI.A. 222/15

Muhammad Aslam

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s):

Mr. Adil Aziz Qazi, ASC
S. Rifaqat Hussain Shah, AOR

For the State:

Mirza Abid Majeed, DPG

Complainant:

Nemo

Date of Hearing:

26.09.2025

Judgment

Irfan Saadat Khan, J.- The instant jail petition is directed against the Lahore High Court's judgment dated 08.02.2018,¹ which maintained the petitioner Muhammad Aslam's conviction under section 302(b), Pakistan Penal Code, 1860 ("**PPC**"), as recorded by the learned Additional Sessions Judge, Mianwali (*Trial Court*) *vide* judgment dated 31.01.2015,² 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 maintained while the benefit of section 382-B, Cr.P.C., remained intact. The Trial Court's acquittal of the co-accused, Muhammad Ramzan, Muhammad Nawaz and Muhammad Javed, remained undisturbed as the complainant's

¹ In Murder Reference No.72 of 2015 and Criminal Appeal No.222 of 2015.

² In Sessions Case No.18 of 2013.

appeal against their acquittal and revision for enhancement of the compensation amount to be paid by the petitioner, were not pressed.

2. Aggrieved by the High Court's judgment upholding his conviction, Muhammad Aslam ("**petitioner**") has preferred the instant jail petition.

3. This criminal case arose out of FIR No. 294 dated 25.09.2011 registered at about 11:30 a.m. at Police Station Wan Bachran, Mianwali, on the complaint of Bahadur Khan ("**complainant**"). It is, therefore, appropriate to recite the facts stated therein. The complainant reported that he is a resident of Shadia and a cultivator by profession. That on 25.09.2011, in the morning, his father Muhammad Khan ("**deceased**") was travelling alone on a motorcycle, while the complainant and Ahmed Khan were riding on another motorcycle, Muhammad Nawaz s/o Sher Muhammad (PW-9) a resident of the same village, was following them on a third motorcycle. They were all proceeding towards Adda Wan Bhachran from their house for the booking of wagons, as the complainant's father had to go to perform Hajj. When they reached near Purana Musakhel Adda Wan Bhachran, close to Shafiwalla Brick Kiln situated on the southern side of the road at a distance of about one furlong, Muhammad Javed s/o Muhammad Aslam and Muhammad Aslam s/o Khan Muhammad, both residents of Shadia, came from behind on a motorcycle, armed with pistols of .30 bore. Muhammad Javed, who was driving the motorcycle, raised a *lalkara* that Muhammad Khan would not be spared and that they had come to teach him a lesson for divorcing his (Javed's) "*Phophi*" (paternal aunt) and for arranging another marriage. Upon hearing the *lalkara*, the complainant and his companion stopped their motorcycle and turned back only to see that Muhammad Aslam had fired a straight shot from his pistol, which hit Muhammad Khan on the right side of his chest, causing him to fall to the ground. The accused, while raising *lalkaras*, fled away from the spot on their motorcycle. The complainant and the other witnesses attended to his

injured father and shifted him to District Headquarters Hospital, Mianwali, where he succumbed to his injuries.

4. The motive alleged in the FIR was that the deceased Muhammad Khan had divorced his wife, who was the real sister of accused Muhammad Aslam and Muhammad Nawaz, and had subsequently arranged the marriage of his son, the complainant, with the daughter of accused Muhammad Nawaz. Due to this grudge, the accused, with their common intention and on the abetment and incitement of Muhammad Nawaz and Muhammad Ramzan, committed the murder of Muhammad Khan.

5. Subsequently, on 22.10.2011, the IO arrested Muhammad Javed, Muhammad Nawaz (s/o Khan Muhammad) and Muhammad Ramzan near Bus Stop Shadia, and on 25.10.2011 arrested Muhammad Aslam from Qudrat Abad Check Post, whereafter on 27.10.2011 Aslam, on disclosure, led to the recovery from his *baithak* a .30-bore pistol with three live bullets and a motorcycle No. MNM-7796, secured *vide* Ex.PE (attested by PW-6 Rehtas Khan and Ata Muhammad 473-C) with an unscaled site plan Ex.PN; earlier, from the scene, the IO had seized blood-stained earth (Ex.PH) and the deceased's motorcycle No. 9130-BKA (Yamaha) (Ex.PJ). The challan (s.173 Cr.P.C.) was submitted on 21.11.2011, sending up Muhammad Aslam, Muhammad Javed and Muhammad Nawaz, for trial while placing Muhammad Ramzan in Column No.2 (found innocent), and on 12.12.2011 charge under section 302/109/34 PPC was framed against all four, to which they pleaded not guilty. In the resulting trial, the petitioner Muhammad Aslam was found guilty whereas the remaining co-accused were acquitted. On appeal, the High Court's judgment maintained the petitioner's conviction but commuted his sentence of death into imprisonment for life. Aggrieved thereof, the petitioner has filed the instant Jail Petition.

6. Mr. Adil Aziz Qazi, ASC has appeared on behalf of the petitioner and stated that the prosecution case is rife with doubts: the FIR was lodged with an unexplained delay, despite the police station being close by; the presence of the cited eye-witnesses is doubtful and their testimonies are inconsistent with the site-plan and surrounding circumstances; the alleged motive is vague, stale, and unproved; and the investigative lapses (non-recovery of any crime-empty, failure to send the recovered .30-bore pistol for PFSA/FSL examination, and reliance on planted, inconsequential recoveries) fatally undermine the case. He has argued that material witnesses were either given up or not produced (including the abetment witnesses and one cited eye-witness), the "Hajj booking" narrative is inherently improbable, and longstanding *watta-satta* enmity furnishes a real possibility of false implication, thus entitling the petitioner to the presumption of innocence reinforced by the plentiful doubts. In conclusion, he has prayed for acquittal of the petitioner.

7. Mirza Abid Majeed, DPG has appeared on behalf of the State and stated that the prosecution has proved its case through consistent, confidence-inspiring ocular account furnished by the complainant and PW-9, whose presence at the spot was natural and duly explained; the brief delay in FIR was fully accounted for; and the motive, though not determinative, cohered with the long-standing family discord. He argued that the medical evidence squarely corroborates the ocular version (single firearm injury to the chest with corresponding exit wound), the spot recoveries and subsequent recovery from the petitioner lend further assurance. In conclusion, he prayed for dismissal of the petition and affirmation of the conviction and sentence as modified by the High Court.

8. We have heard both the learned counsel at considerable length and have also perused the record.

9. The complainant party which witnessed the occurrence consisted of the complainant (PW-8) himself, Muhammad Nawaz (PW-9) and Ahmed Khan, who was subsequently given up. After gleaning the record it becomes clear that Muhammad Nawaz (PW-9) and Ahmed Khan (given up) did not live in the same home as the complainant and deceased, rather they resided at a distance of five kilometers and three kilometers respectively from the home of the complainant. Both Muhammad Nawaz (PW-9) and Ahmed Khan (given up) came to the complainant's house in the late afternoon/evening of 24.09.2011, stayed the night, and left with the complainant party the next morning, when they were waylaid on 25.09.2011. Furthermore, it is stated that the complainant party set out from the home together but on three separate motorcycles. Again, the place of occurrence is at a distance of seven to eight kilometers from the home and, statedly, Muhammad Nawaz (PW-9) and Ahmed Khan (given up) dutifully accompanied their cousin the complainant and their uncle the deceased till there. Importantly however, Muhammad Nawaz's (PW-9) and Ahmed Khan's (given up) presence first at the home and later at the place of occurrence has not been explained. A vague reason has been set up that the complainant party was heading to the *Adda* (station) to book wagons for the deceased's planned pilgrimage, but no evidence has been adduced to support this story – especially as the pilgrimage was set to take place a month later. As such, the alleged eyewitnesses Muhammad Nawaz (PW-9) and Ahmed Khan (given up) are chance witnesses. Here, the case of Mst. Sughra Begum and another v. Qaiser Pervez and others (2015 SCMR 1142) is quite apposite, and its relevant portion is set out below:

"14. A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his

presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt."

10. Coming now to the ocular account, the complainant (PW-8) narrates a similar occurrence as what he stated in the FIR, however, he makes several new revelations. He described during cross examination that after the acquitted co-accused Javed raised the initial *lalkara* that the deceased would not be spared, both the accused ordered the deceased to "*Be stopped [sic]*". The complainant was then confronted with his complaint to the police wherein he had not mentioned so. The essential fact of how the deceased and complainant party were accosted and first made to stop has been omitted during the entire course of investigation and the complainant's statement during cross-examination can only then be termed as a belated improvement. This is noteworthy also because Muhammad Nawaz (PW-9) stated that he was informed of the co-accused's abetment and the plan they had hatched at 7:00 or 8:00 a.m. on 25.09.2011 i.e. before the occurrence even took place. Alarming, the complainant party still did not take precautions to avoid such an unfortunate incident and they still obeyed the accused's order to "stop". The complainant's testimony is similarly marred by improvements in how he informed the police about the fact of abetment, how exactly he witnessed the occurrence, seated on the motorcycle or whether he had disembarked. Likewise, there are contradictions with other PWs as to whether the motorcycle which the deceased was riding had bloodstains or whether the deceased was conscious when he was attended to or unconscious? Foremost amongst the flaws in the complainant's testimony is that he stated "*One crime empty was recovered from the place of occurrence and same was secured by the IO*" when the entire record does not mention any such recovery.

11. After his arrest on 25.10.2011, the petitioner, during custodial interrogation on 27.10.2011, allegedly led the police to his *baithak*, from where a .30-bore pistol, three live bullets and a magazine, along with motorcycle No. MNM-7796, were recovered and secured vide Ex.PE (attested by police witnesses), with an unscaled site plan of the recovery prepared. Crucially, however, no crime-empty/spent casing was recovered from the scene, and the seized pistol was never sent to the Punjab Forensic Science Agency for examination; there is no FSL/PFSA report on record and therefore no ballistic comparison linking the recovered weapon to the fatal shot is available from the record. In these circumstances, the recovery is not helpful to the prosecution case, since it does not connect the weapon to the offence.

12. Again, the recovery of the murder weapon itself is doubtful. Although it was allegedly effected from the "*Baithak*" inside the petitioners "*Dera*", it is an admitted position that the *Baithak* was open at the time of recovery, that there is no boundary wall towards the side of the *Baithak*. Furthermore, according to one recovery witness, the accused's portion of the residential home where the *Baithak* was situated would constitute only three out of the four rooms therein. Moreover, no independent witnesses were associated in the recovery proceedings. The recovery of the motorcycle is also rendered inconsequential since the complainant party did not mention the number plate/license or matching description of the motorcycle upon which the petitioner was sitting pillion at the time of occurrence.

12. Interestingly, in the injury statement (Ex.PB) that Muhammad Naveed Akram, Investigating Officer ("*IO*"/PW-10), prepared in regards the deceased he recorded that the deceased succumbed to injuries he sustained during the course of fighting or ("*دوران لڑائی جھگڑا*") – adding another doubt in the plethora already noted in this matter.

13. In conclusion, the prosecution case is riddled with doubts. In keeping with the well settled principle of law that the benefit of such doubt must be given to an accused, we extend the same in the petitioner's favour. The petitioner's case is thus one meriting acquittal. Reliance is placed on the Muhammad Hassan v. The State (2024 SCMR 1427); Tariq Parvez v. The State (1995 SCMR 1345); Muhammad Akram v. The State (2009 SCMR 230); and Muhammad Imran v. The State (2020 SCMR 857).

14. The result is that the judgments of Trial Court and the High Court are hereby set aside and the petitioner Muhammad Aslam is acquitted by extending benefit of doubt in his favour. The charges levelled against him have not been proved and he is to be released from jail forthwith; if he is not required to be incarcerated in any other matter. This Jail Petition is accordingly allowed.

15. These are the reasons for our short order dated 26.09.2025, which is set out below for ease of reference:

"For reasons to be recorded later, this petition is converted into appeal and it is allowed. The petitioner, Muhammad Aslam son of Khan Muhammad is acquitted from the charge framed against him by extending benefit of doubt. The judgments of the trial court and the High Court dated 31.01.2015 and 08.02.2018 respectively are set aside. In case the appellant is not required to be incarcerated in any other matter then he shall be released forthwith."