

Judgment Sheet
**IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT**

Cr.A No. 344-A/2023

JUDGMENT

Date of hearing.....13.11.2025.....

Appellant (Khalid Mehmood) By M/S Abdul Saboor Khan and
Maqbool Hussain, Advocates.

Respondents (The State & another)
The State By Mr. Shoaib Ali, Assistant Advocate General and
Complainant By Mr. Aziz Ahmad Khan, Advocate.

AURANGZEB, J.- Through this single judgment, this Court shall dispose of instant criminal appeal filed by Khalid Mehmood son of Muhammad Riaz, against his conviction and Criminal Revision No.59-A/2023 filed by complainant Mst. Parveen Jan widow of Muhammad Javed for enhancement of sentence awarded to the appellant, vide impugned judgment dated 11.11.2023 recorded by learned Additional Sessions Judge-II, Haripur, whereby, he was convicted and sentenced to imprisonment for life under section 302 (b) PPC as Tazir and to pay compensation to the tune of Rs.500,000/- under section 544-A Cr.P.C or in default to suffer simple imprisonment for six months and benefit of section 382-B Cr.P.C was also extended to the appellant Khalid Mehmood, in case FIR No.470 dated 04.11.2013 under Section 302 PPC Police Station, Hattar District Haripur.

2. Ephemeral facts of the cases are that on 04.11.2013, at about 09:00 a.m, the complainant namely Mst. Parveen Jan widow of Muhammad Javed (PW-7) along with the dead body of her son Faisal Javed reported the matter to local police at RHC Kot Najibullah to the effect that in the morning, she along with her son Faisal Javed was busy in work in their fields situated near to their Dera in village Kamil Pur, while her son Assad Javed (PW-8) and son in law Aurangzeb s/o Yousaf (PW-9) were also watering in their fields at some distance. At about 07:30 a.m, Khalid s/o Riaz r/o Kamil Pur came there wearing a cloak and when he reached near to them, he started firing at her son Faisal Javed, due to which he received firearm injuries, fell down and expired. On hue & cry and hearing the noise of firing, her son Assad Javed and son in law Aurangzeb came to the spot. After the commission of offence, the said Khalid s/o Muhammad Riaz decamped from the spot. The occurrence was witnessed by complainant besides her son Assad Javed and son in law Aurangzeb s/o Yousaf. Previous motive is that for the murder of brother of accused namely Amanat, her (complainant) son Rashid Javed was charged, for which he was sorrowed. She then charged the accused Khalid s/o Muhammad Riaz for the

commission of offence. Hence, the case FIR No.470 dated 04.11.2013 was registered under section 302 PPC at police station, Hattar District Haripur.

3. After the completion of investigation, challan was submitted against the appellant for trial, who was formally charged to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution has produced fifteen witnesses and thereafter the appellant recorded his statement under Section 342 Cr.P.C. denying his involvement in the commission of the offence for which he was charged. However, he wished not to be examined as his own witness on Oath in rebuttal of charge against him within the contemplation of section 340 (2) Cr.P.C. or to produce any evidence in his defence. The learned trial Court on conclusion of the trial, found the appellant Khalid Mehmood, guilty of '*Qatl-i-Amd*' of Faisal Javed as detailed above vide judgment dated 11.11.2023 impugned herein.

4. Arguments of learned counsel for the parties as well as learned Assistant Advocate General heard and record of the case perused with their able assistance.

5. After hearing the arguments of learned counsel for the parties as learned Assistant Advocate General and carefully examining the entire record of the learned

trial court, this Court is required to determine whether the conviction and sentence awarded to the appellant, Khalid Mehmood, under Section 302 (b) PPC, can be sustained in law. The prosecution case primarily rests upon the ocular testimony of the complainant (PW-7) and the eyewitnesses Assad Haves (PW-8) and Aurangzeb (PW-9), whose presence at the scene of occurrence, consistency of statements, and the surrounding circumstances must be scrutinised to assess the credibility and reliability of their testimony. The medical evidence has been evaluated to determine whether it supports or contradicts the ocular account. In addition, the circumstantial evidence including the recovery of blood-stained earth, empty shells from the place of occurrence, and the alleged recovery of the weapon of offence after the arrest of the appellant is considered to ascertain whether it independently corroborates the prosecution case. The appellant's prolonged abscondence and the prosecution's attempt to establish the motive mentioned in the FIR are also material factors to be weighed. Ultimately, the Court must examine whether the prosecution has proved the guilt of the appellant beyond any shadow of doubt, in accordance with the settled principles of criminal jurisprudence.

Questions for Determination

i. Whether the ocular testimony of PW-7, PW-8, and PW-9 is reliable and whether their presence at the place of occurrence stands established?

ii. Whether the medical, forensic, and circumstantial evidence including recoveries from the scene and the alleged recovery of the weapon of offence corroborates the prosecution case?

iii. Whether the prosecution proved the alleged motive and whether the appellant's abscondence and other circumstances support the conclusion of guilt beyond any shadow of doubt?

iv. Whether the conviction and sentence recorded under Section 302(b) PPC meet the legal standards required for sustaining a conviction in a capital offence?

6. The brief facts, as correctly recorded by the learned trial Court, reveal that the unfortunate incident occurred on 04.11.2013 at about 07:45 a.m., when complainant Mst. Parveen Jan, widow of Muhammad Javed, accompanied by her son Faisal Javed (since deceased), was engaged in agricultural work in their field situated adjacent to their Dera in village Kamil Pur. Her other son Assad Javed and son-in-law Aurangzeb

were watering their crops at a short distance. According to the complainant, at about 07:30 a.m., appellant Khalid Mahmood son of Muhammad Riaz, a co-villager, appeared at the place of occurrence wearing a cloak (chadar) and, upon reaching close to the deceased, opened fire with a pistol, hitting Faisal Javed who fell to the ground and expired on the spot. On hearing the report of firing and her hue and cry, Assad Javed and Aurangzeb rushed to the spot and saw the accused fleeing while holding the pistol. Motive alleged in the FIR was that the accused bore grudge because complainant's other son Rashid Javed was nominated in the murder case of one Amanat, cousin of the accused.

7. The testimony of the complainant, being the real mother of the deceased, constitutes the primary ocular account. She appeared as PW-7 and reiterated the same factual narrative as recorded in the murasila lodged at 09:00 a.m. on the same morning at RHC Kot Najibullah in the presence of the dead body. Her testimony is natural, confidence-inspiring, and consistent with the earliest version of the occurrence. She was subjected to lengthy cross-examination by appellant, but no material contradiction, improvement or embellishment could be extracted to undermine her

presence at the spot or her witnessing the fatal assault.

The natural setting of the occurrence, i.e., working in fields early morning at 07:45 a.m., renders her presence most natural. The record bears no indication that she had any motive to substitute the real culprit with the appellant. Substitution of real culprits, specially in cases where eyewitnesses lost their kith and kins before their own eyes is a rare phenomenon, as held in a catena of judgments by the **Hon'ble Apex Court, including *Muhammad Khan alias Mithu versus The State and others* (PLD 2025 Supreme Court 425)**, wherein it was reiterated that:

“Even otherwise, it does not appeal to a prudent mind that complainant who lost his wife, minor daughter and brother in the incident, would spare and let off the real culprits and will charge his innocent brother in law. No reason and circumstances has been brought on record by the defense so as to remotely suggest substitution and false implication of the appellant.”

8. The ocular account stands further corroborated by the testimony of PWs 8 and 9, namely Assad Javed and Aurangzeb, who were watering the fields at some distance. Both duly stated that upon hearing firing and hue and cry, they rushed towards the place of occurrence and witnessed the accused running away with a pistol in his hand, while the deceased lay injured

on the ground. These two witnesses are natural witnesses whose presence at the spot is inherent to the agricultural setting and morning irrigation routine. Their statements remained unshaken despite lengthy cross-examination, and both narrated the events in a straightforward, unhesitating manner. Their conduct, post-occurrence movement, and the manner in which they first attended to the deceased and then accompanied the complainant to report the crime, are fully in line with natural human conduct. The consistency between the statements of PW-7, PW-8 and PW-9 establishes a solid, mutually corroborative body of ocular account which requires strong, compelling reasons for disbelieving it, reasons that are conspicuously absent here. In this regard reliance is placed on the judgment of Honourable Supreme Court of Pakistan rendered in case titled **Akbar Saeed versus the State and another (2025 SCMR 935)**, wherein it was held that:-

“Both the eye-witnesses are consistent with each other on all material aspects of the incident such as the day, date, time and place of occurrence, kind of weapon used by the appellant, the locale of injuries on the person of the deceased and the motive behind the occurrence. They have been subjected to lengthy and taxing cross-examination by the defence but nothing favourable to defence or

adverse to the prosecution could be extracted from them except minor discrepancies of trivial and ignorable nature. Both have remained consistent with each and every material point inasmuch as they have made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished them is reliable, straightforward and confidence inspiring. The appellant is directly charged by the eye-witnesses with specific role of firing at the deceased.

Further reliance is placed on the judgment of apex court delivered in case titled **Iftikhar Kiyan alias Khara versus The State (2025 SCMR 1360)**, wherein it was held that:-

“Even otherwise, Court was fully convinced qua the presence of the eyewitnesses at the spot at the time of occurrence and their testimony was trustworthy and confidence inspiring, therefore, such minor inconsistencies in the testimony of the eyewitnesses with the medial evidence would not be sufficient for acquittal of the appellant--
-Minor discrepancies or omissions, which did not go to the root of the prosecution's case, were to be treated as inconsequential---Evidence of the prosecution was to be evaluated on the touchstone of quality rather than quantity---Moreover, it was not the identity or status of the person testifying that determined the credibility of the evidence.

9. The promptness with which the complainant lodged the report further lends credence to the

prosecution version. The murasila Ex.PW7/1 was recorded at 09:00 a.m., barely one hour and thirty minutes after the occurrence, at the RHC while the dead body was present. The short time interval between occurrence and reporting negates the possibility of deliberation, consultation or fabrication. The law is well settled that prompt lodging of the FIR is an important guarantee of truth, especially in cases where the complainant brings the dead body directly to the hospital without any intermediary delay. The distance between the place of occurrence and the police station is recorded as 7 km, which reasonably accounts for the time lapse. In this regard reliance is placed on the judgment of august court rendered in case titled **Maskeenullah and another versus The State and another (2023 SCMR 1568)**, wherein it was held that:-

“The occurrence took place at 5:15 p.m. and after the occurrence, it was the priority of Ghulam Muhammad (PW-6) and Sher Muhammad (PW-7) being father and brother of the deceased to shift the injured/deceased to the hospital, but he succumbed to the injuries on the way. Thereafter, they brought back the dead body to their house then complainant proceeded to the Police Station which was at a distance of 21 kilometers away from the place of occurrence and lodged the report at 8:00 p.m.; so there is no conscious delay in lodging the FIR, as prior to that the anxiety of the close relatives was to make effort to

save life of their nearer one. The promptness of the FIR also eliminates the chance of consultation and deliberation. It is also a circumstance that after registration of the FIR, the police party again travelled back to the house of the complainant, where dead body was lying. The inquest report and injury statement was prepared there and thereafter dead body was dispatched to the hospital where on the same night at 5:00 a.m. the postmortem was conducted. So any delay in conducting the postmortem is also explained from the circumstances mentioned above, especially when Police Station was at a distance of 21 kilometers from the place of occurrence.”

10. The medico-legal evidence presented by PW-10 Dr. Ali Khan lends strong support to the ocular account. He conducted the postmortem of the deceased and established that the cause of death was direct firearm injury to the heart and left lung, resulting in haemorrhagic shock and cardio-pulmonary arrest. The nature, direction and seat of injuries are fully consistent with the prosecution case that the deceased was fired upon from close range. The injury was sufficient in the ordinary course of nature to cause death, thereby satisfying the requirements of Section 302 (b) PPC. The postmortem report, injury sheet and inquest report (Ex.PW10/1, Ex.PW10/2, Ex.PW10/3) collectively align with the narrative of immediate death at the spot. No contradiction, inconsistency or gap was pointed out in

the medical evidence, and the defense failed to create any dent therein. In this regard reliance is placed on the judgment of Honourable Court rendered in case titled *Altaf Hussain versus The State* (2025 SCMR 1427), wherein it was held that:-

“The medical evidence adduced by Dr. Muhammad Hanif (PW-6), who conducted the post-mortem examination on the dead body of Muhammad Ashfaq deceased, fully corroborates the ocular account of the prosecution's case. In his testimony, the medical officer stated that he observed ten firearm injuries on various parts of the deceased's body, five of which were exit wounds. These firearm injuries caused extensive damage to the vital organs and structures, including the chest, lungs, brain, blood vessels, chest wall, sternum, cartilages, ribs, pleurae, and upper limb of the deceased. The cumulative effect of these injuries led to the deceased's unnatural death.”

11. The circumstantial evidence provides an additional layer of corroboration. The recovery of bloodstained grass Ex.PB from the place of occurrence, duly sealed and witnessed, confirms that the death occurred at the location narrated by the witnesses. The recovery of bloodstained garments of the deceased, kameez, shalwar and banyan (Ex.P1 and Ex.P2), received from the medical officer and sealed in parcel No.4, further establishes the integrity of the prosecution

case. The Chemical Examiner's and Forensic Science Laboratory reports (Ex.PW13/9 and Ex.PW12/8) confirm that the blood on the garments and grass belongs to a human of the same group, strengthening the linkage between the incident location and the fatal injuries sustained.

12. Crucially, the investigating officer recovered three crime empties of .30-bore pistol from the place of occurrence, sealed as Ex.PC. After the arrest of the accused on 25.08.2019, following long absconsion lasting nearly seven years, a .30-bore pistol was recovered from his house on his pointation, documented through pointation memo Ex.PW12/2 and sketch Ex.PW11/2. The FSL report clearly opined that the recovered empties were fired from the same pistol recovered from the appellant. This ballistic matching constitutes a highly incriminating piece of evidence which directly connects the appellant with the offence, especially when seen in the light of consistent ocular account. It is settled law, as reiterated in **Hazrat Noor & another versus The State and 02 others (2025 YLR 1371 Peshawar Bannu Bench)**, that positive forensic reports linking the crime empties with the recovered weapon provide strong corroborative value.

13. The preparation of site plan Ex.PW13/1 on the pointation of PW-7 and PW-8 confirms the spatial layout of the incident and proves the presence of the witnesses at the scene. The location of the deceased, the direction of fire, the position of eye-witnesses and the escape route of the accused are consistent with the narrative furnished.

14. The conduct of the appellant in remaining absconding for about seven years cannot be overlooked. He was declared a proclaimed offender after the issuance of warrants under Section 204 Cr.P.C. and proclamation under Section 87 Cr.P.C. His unexplained absconsion is a relevant circumstance which, when considered alongside the ocular and circumstantial evidence, supports the inference of guilt. The Hon'ble Supreme Court in **Qaisar Khan and others versus The State and others (2009 SCMR 471)**, the Supreme Court of Pakistan has held:

“No doubt, abscondence by itself is not sufficient to convict an accused person, but is strong piece of corroborative evidence of the other direct and circumstantial evidence in the case. When an accused person remains fugitive from the law for long time without any plausible and reasonable explanation, then his conduct after the occurrence becomes indicative of his guilt when it is considered in conjunction with the ocular and circumstantial evidence, as held by this Court in Mst.

Roheeda v. Khan Bahadur and another
1992 SCMR 1036.”

15. The contention of learned counsel for the appellant that the complainant and eyewitnesses (PW-8 and PW-9) are close relatives of the deceased, and therefore their testimony should not be relied upon, is devoid of merit. It is a well-settled principle of law that the evidence of related or interested witnesses cannot be discarded merely on account of their relationship with the deceased, if otherwise their testimony is found to be confidence-inspiring, coherent, and consistent on all material particulars. In the present case, the depositions of both eyewitnesses have remained unwavering and trustworthy throughout, and no material contradiction or improvement has been pointed out to shake their credibility. Hence, their mere relationship with the deceased is not a valid ground for discarding their evidence. The apex court in case titled **Altaf Hussain versus The State (2025 SCMR 1427)**, held that the testimony of the eye-witnesses being confidence inspiring and having remained consistent throughout could not be discredited merely on the basis of their relationship with the deceased.

16. The appellant heavily relied on minor discrepancies in the prosecution evidence. However,

these are inconsequential. The occurrence took place in 2013, and most depositions were recorded several years later. Minor inconsistencies regarding timings or ancillary details are natural and expected due to lapse of time. As held by the august Supreme Court of Pakistan in **Aqil v. State (2023 SCMR 831)**, parrot like statements are discredited by the Courts, as it is normal for minor discrepancies or inconsistencies to occur while narrating a particular incident. Furthermore, in appreciating the effect of minor discrepancies and contradictions in the prosecution case, the Honourable Supreme Court in **Shamsher Ahmad and another v. The State and others (2022 SCMR 1931)** unequivocally held that undue importance should not be attached to such discrepancies that do not shake the salient features of the prosecution case. Rather, they should be ignored. The accused cannot claim a premium for such minor discrepancies, and attaching too much importance to such insignificant inconsistencies would undermine the purpose of the administration of criminal justice, which is not solely intended for acquittals based on minor discrepancies. Considering the overwhelming and trustworthy nature of the prosecution evidence and the law laid down in the

judgments (supra), we are not hesitant to repel the contention made by the learned counsel at the bar.

17. Regarding motive, although the prosecution alleged revenge as the motive for the murder of accused's relative Amanat, it failed to substantiate this claim with independent proof. However, failure to prove motive is not fatal when the ocular account is trustworthy. The august Supreme Court of Pakistan has repeatedly held that motive becomes irrelevant where the prosecution succeeds in proving the occurrence through reliable direct evidence. Thus, non-proving of motive is treated as a mitigating factor for sentence, not a ground for acquittal.

18. The overall prosecution evidence is woven into a seamless chain, each component supporting the other. The prompt FIR excludes deliberation; the ocular account is natural, reliable and supported by medical evidence; the forensic evidence directly links the accused with the weapon used; the crime scene recoveries establish presence and location; and absconsion reinforces guilt. Throughout trial and cross-examination, the appellant failed to bring forth any material suggesting false implication, enmity, or ulterior motive.

19. The appellant chose not to appear as a witness under Section 340(2) Cr.P.C., thereby foregoing an opportunity to rebut the strong prosecution evidence. His simple denial under Section 342 Cr.P.C. carries no evidentiary weight unless supported by his evidence, which is entirely absent. This omission further weakens the appellant's stance.

20. Upon overall reappraisal of evidence, this Court finds that the learned trial Court committed no misreading or non-reading of evidence. Rather, its findings are fully consistent with settled legal principles governing appreciation of evidence in culpable homicide cases. The conviction under Section 302 (b) PPC is fully justified. However, since motive remained unproved, the learned trial Court rightly extended leniency by awarding life imprisonment instead of death penalty.

21. For all the foregoing reasons, this Court in the light of above discussion is of considered opinion that the charge against the present appellant-convict has been proved beyond reasonable doubt and the findings of the learned trial Court qua conviction of the appellant are based on proper appreciation of evidence and the law applicable thereto, which needs no interference by this Court in its Appellate jurisdiction to that extent. Thus, the conviction and sentence awarded to the

appellant by the learned Appellate Court being based on proper appreciation of evidence and the law applicable thereto are maintained and the instant appeal being without any legal substance is accordingly dismissed.

22. So far as the Criminal Revision (Cr.Rev.No.59-A/2023) for enhancement of sentence is concerned, suffice it to say that in support to substantiate the motive asserted by the prosecution, no evidence whatsoever, was produced to fully establish the same. It would not be proper to resort to death penalty where motive has become suspect. Reliance could be safely placed on **2017 SCMR 1662, NLR 2000 Criminal 188, 2017 SCMR 880, 2011 SCMR 593, 2011 SCMR 1165, 2012 SCMR 267, 2013 SCMR 782, 2013 SCMR 1602, 2014 SCMR 1464, 2014 SCMR 1658, 2016 SCMR 2035 & 2017 SCMR 148**. Moreover, in case of “**Mazhar Abbas alias Baddi Vs the State**” (**2017 SCMR 1884**) the apex Court, in similar circumstances, has also held as under;

“It is well settled by now that once the prosecution alleges a motive and fails to prove the same during the trial, the same can be taken as a mitigating circumstance while deciding the quantum of sentence of a convict. Therefore, this appeal is partly allowed and the sentence of death awarded to the appellant is altered to imprisonment for life”.

23. After appraisal of case evidence, and while deriving wisdom from the case law laid down in the judgments (supra), we are of the firm view that the motive advanced by the prosecution has not been proved beyond reasonable doubt. Therefore, treating the same as a mitigating circumstance the sentence awarded to the appellant is justified and could not be enhanced. Consequently, the criminal revision filed by the complainant also stands dismissed.

Announced:
13.11.2025

J U D G E

J U D G E

*Hon'ble Mr. Justice Syed Mudasser Ameer
Hon'ble Mr. Justice Aurangzeb*

*Aftab PS/**