

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

CRIMINAL PETITION NO. 406 OF 2020 AND
CRIMINAL MISC. APPLICATION NO. 125 OF 2022
*(On appeal against the judgment dated 16.03.2020 of the Lahore
High Court, Rawalpindi Bench in Cr. Appeal No. 472-J of 2019)*

Muhammad Waseem and Muhammad Akram (In both cases)
... Petitioners/Applicants

Versus

The State through PG Punjab and another (In both cases)
... Respondents

For the Petitioners / Mr. Zulfiqar Ahmed Bhutta, ASC
Applicants: Syed Rifaqat Hussain Shah, AOR
(In both cases)

For the Complainant: Mr. Hamid Rashid, ASC

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

Date of Hearing: 31.10.2025

JUDGMENT

IRFAN SAADAT KHAN, J.- This petition for leave to appeal is directed against the judgment of the Lahore High Court, Rawalpindi Bench in Criminal Appeal No.472-J of 2019 dated 16.03.2020, wherein the joint appeals filed by the accused namely Muhammad Waseem (hereinafter referred to as 'M.W') and Muhammad Akram (hereinafter referred to as 'M.A') were dismissed and the convictions awarded to both the accused by the trial Court (Sessions Case No.08/2018; Sessions Trial No.01/2019, dated 15.05.2019) under section 302(b) of the Pakistan Penal Code, 1860 ('PPC') as well as the corresponding sentence of life imprisonment were maintained. The compensation in the sum of Rs.5,00,000/- each under section 544-A of the Code of Criminal Procedure, 1898 ('Cr.P.C.'), with six months' S.I. in default, was also upheld. The benefit under section 382-B Cr.P.C. was however extended to them.

2: The facts of the case as contained in FIR No.217/2018 lodged on 18.07.2018 at 11:20 pm in respect of an incident which took place on 18.07.2018 at 8:30 pm, registered by the complainant namely Aaqib Shehzad against the present accused persons as well as against one Noman and another, Mehran. The nominated accused were all allegedly involved in the murder of the complainant's father namely, Raja Maqsood Ahmad (the '**deceased**'). As per the FIR, around 8:30 pm, when his father reached near the house of one Sagheer Ahmed, the accused MW and MA duly armed with hatchets, as well as Noman armed with a hatchet and Mehran armed with a *danda* were present there and upon seeing the complainant's father they gave a *lalkara* and said that they would be teaching the deceased a lesson in respect of an altercation which took place two days earlier. Thereafter MA inflicted hatchet blows on the deceased which struck the middle of his head and delivered a second blow on the right side of the head. Then MW caused a hatchet blow to the deceased which hit on the left side of his head. Then MW made another blow which hit on the upper side of the face near the left eye of the deceased. Noman also inflicted hatchet blows on the deceased striking his nose. After all this, the deceased fell down in an injured condition and then Mehran caused *danda* blows to him. Upon seeing this the complainant along with some other persons requested the accused to spare the deceased, Maqsood. On raising their cries, the neighbours were attracted and thereafter MA along with the other accused persons, after abusing, went away. The motive and the reason behind this incident being that two days earlier an altercation took place between MA and deceased and hot words were exchanged between them; due to this the accused persons, after discussing the matter with each other, attacked the complainant's father and caused fatal injuries and blows to him. The deceased was then taken to RHC, Dina for treatment but after one day

he succumbed to his injuries. The matter proceeded before the trial Court which after finding the accused namely MW and MA guilty has awarded the convictions and sentences as set out above. Noman was stated to be an absconder; whereas Mehran was acquitted after finding him juvenile.

3. Mr. Zulfiqar Ahmed Bhutta, learned ASC has appeared in the instant matter and stated that the motive for the crime has already been disbelieved by the trial Court as well as the High Court. He stated that a cursory glance at the depositions of the various PWs would reveal that there are contradictions and material irregularities. He referred to the depositions of certain PWs to highlight his assertion. He stated that all the PWs are either *inter se* relatives of the complainant or chance witnesses since they did not reside at the designated place of the incident. The learned counsel laid great emphasis on the ground that the incident took place in the nighttime i.e 8:30 pm and that the source of light has not satisfactorily been explained and proved by the prosecution as, according to him, the only source of light, a bulb, was not taken into possession by the I.O. He next highlighted an omission on the part of the complainant side - that they did not try to intervene or made an attempt to overpower the accused persons, even though the accused were only carrying hatchets and a *Danda*. He stated that alarmingly the complainant party only raised hue and cry without making any attempt to get hold of the accused persons. He next stated that according to the witnesses it is mentioned that the hatchets were dropped at the spot by the accused whereas it is mentioned in the deposition of the I.O that after apprehending MW and MA from the Mangla bypass, the said hatchets were recovered on their pointation, which in his view has put a major dent in the case of the prosecution by rendering the recovery of the hatchets doubtful.

4. In view of these factors and the contradictions in the depositions of the various PWs the learned counsel has stated that the instant case is full of doubts, the benefit of which ought to be extended to the accused. He, therefore, prayed that both the accused may be acquitted of the charges framed against them by extending the benefit of doubt and the judgments of the Trial Court as well as the High Court may be set-aside.

5. Mr. Irfan Zia, Additional Prosecutor General, Punjab appearing for the State and Mr. Hamid Rashid, ASC appearing on behalf of the complainant have supported the judgments of the Trial Court as well as the High Court and have stated that the accused were identified in the light of the bulb as they were previously in acquaintance with the complainant. According to them, it cannot be said that the complainant party neither knew the accused nor saw them properly in the light of the bulb while they were inflicting fatal blows on the deceased. According to them, if the bulb was not taken into possession that will not put a dent in the case of the prosecution, as claimed by the counsel for the accused since this can neither be a case of mistaken identity nor that the accused were not previously known to the complainant. They stated that substantial relief has already been given by the Trial Court as well as the High Court in not awarding the death sentence to the accused by restricting their sentence to life imprisonment only firstly, on the ground that the aspect of motive was disbelieved and secondly, due to delay in depositing the hatchets to Punjab Forensic Science Agency, Lahore ("**PFSA**"). This latter aspect too, in their view, is not material since the report of the PFSA was positive and directly connects the accused with the commissioning of the crime. They however finally stated that in view of these uncontroverted facts, the convictions, the sentences and the compensation awarded by the Trial Court and upheld by the High

Court may, therefore, be approved and this petition being bereft of any merit may accordingly be dismissed.

6. We have heard the learned counsel for the petitioners, the complainant and the learned State counsel. We have also perused the record minutely with their able assistance.

7. Before proceeding any further some observations have been noted in the depositions of various PWs which are reproduced herein-below:

PW.2 Hamid Ali Shah, Moharar

On 15.08.2018 I handed over the parcel containing the hatchets to Muhammad Ashraf, S.I. for onward transmission to PFSA. It is correct that I have not given any explanation about the delay in the deposit of the parcel in my statement u/s 161 Cr.P.C. It is correct that the day on which I was handed over the parcel my statement u/s 161 Cr.P.C., was not recorded.

PW.5 Irfan Gul, Police Official:

On 02.08.2018 I arrested Muhammad Waseem and Muhammad Akram from Mangla bypass. The said information was provided to us by Muhammad Ashraf, S.I. It is correct that I did not mention in my statement under section 161 Cr.P.C. about who provided the information about the accused being present at which place. I did not mention the exact place of the Mangla bypass which is a thickly populated area and where the accused were present. There are a number of houses and shops near the place of recovery. I.O did not associate any independent and impartial witness during the recovery. It is correct that top of the record hatchet does not match with sketch of the recovery memo. [also endorsed by Zohaib Anjum (PW.6)]

PW.6 Zohaib Anjum, Police Official:

I have not mentioned in my statement under section 161 Cr.P.C. that Muhammad Ashraf, S.I. got information that the accused are present at Rohtas Fort, from where they were apprehended.

PW.8 Asif Akhter, Draftsman:

I have mentioned that there was only one bulb in my sitemap. It is correct that the said bulb was neither taken into possession by the I.O. nor inspected by me. I wrongly mentioned bulb at point No. 8.

PW.10 Aaqib Shehzad, Complainant:

Occurrence took place at night. I did not mention the source of light. In my statement I did not mention the reason of the altercation which took place between accused and deceased two days earlier, being the motive. During investigation, we did not produce any evidence concerning motive part of the occurrence. We did not go near the accused due to fear and only raised hue and cry.

PW.11 Muhammad Shafiq, Witness & Retired Police Official:

He was duly confronted that his examination-in-chief statement is different from the statement he has given to the police about the blows of hatchet and danda caused by the accused. He was also confronted about the motive he attributed to the accused in causing the death of Maqsood. I did not mention the source of light despite the fact that it was a nighttime occurrence. It is not in my knowledge that any altercation took place between accused and deceased two days prior to the incident. I was not informed about any of such altercation either by the complainant or by any other person. We did not try to rescue the deceased as the accused threatened us, we only raised hue and cry. We did not make any effort to overpower the accused.

PW.12 Shakeel Aftab, ASI:

It is correct that in his statement complainant did not mention any source of light. I did not secure the source of light though a bulb is present at the alleged crime spot. Complainant did not adduce any evidence regarding motive. It is correct that report No.21 does not tally with the statement of the complainant. I did not secure any blood stains from the spot.

PW.13 Muhammad Ashraf, SI:

I did not send hatchets and blood of the deceased coupled with his blood stained cloths for DNA analysis. In Register No.19 date of deposit of hatchet is not mentioned. I did not associate any person from the village while recovering hatchets on the pointation of the accused, though a number of persons were present there. I did not even record the name of the persons present during the course of recovery of the hatchets. I had deposited hatchets at PFSA on 15.08.2018, same were deposited after 27 days of the occurrence. I received a message from DPO Jhelum on 19.07.2018 to arrest real culprits of the incident.”

8. From the above depositions, it is clear that the main source of light i.e. bulb was never taken into possession by the I.O. It is also a matter of record that the said bulb was not even inspected by I.O to verify whether it was in working condition or not. It also an admitted position that the I.O has wrongly mentioned in the sitemap about the proper place where the bulb was installed. Failure to take the bulb into possession, in our view, creates a doubt in the instant matter. Reference in this regard may be made to the decision given by this Court in **Muhammad Anwar vs. The State** (2002 SCMR 1289). The operative part of the said judgment is reproduced hereinbelow:

“It was contended by the learned counsel for the petitioner that the occurrence had taken place at night and

identification of the petitioner as the accused in moonlight and torch light was questionable particularly when the torch mentioned in the F.I.R. had not been taken into possession by the police. It was also contended that the ocular evidence had not only been furnished by interested and inimical witnesses, who were closely related to the deceased, but corroborative evidence was also lacking. It was further contended that the role attributed to the petitioner was at par with that of his acquitted co-accused Muhammad Hayat and Muhammad Yara. It was lastly contended that the evidence in the case was not appreciated in consonance with the principles laid down by this Court for appraisal of evidence in criminal cases. Leave is granted to consider the above contentions."

In another case titled **Khair Muhammad vs. State** (2025 SCMR 1599) benefit of doubt was accorded to the accused for not taking into possession the source of light.

9. It is also a matter of record that the manner in which the parcels were handed over to Muhammad Ashraf, SI for onward transmission to PFSA is also shrouded with mystery and creates doubt regarding the delivery of the same in a proper and legal manner.

10. It is also a matter of record that while recovering the hatchet, at the accused's instance neither the persons from the village were associated as witnesses nor even their names mentioned in the I.O's deposition. It is also quite strange to note that the recovered hatchets do not match with the sketch of the recovery memo, which aspect has also remained unexplained. It is also perplexing on the part of the Muhammad Ashraf, SI as to why he did not send the hatchets and blood stained clothes for DNA analysis.

11. If all these factors are considered in juxtaposition, it would reveal that the instant matter is tainted with doubts and contradictions, as is evident from the witnesses' testimonies. In our view, the prosecution has not been able to prove its case against the petitioners beyond a reasonable doubt. Where such doubts exist, the benefit of the same, must be given to the petitioners.

12. In this regard, reliance may be placed upon the case of Ahmed Ali and another v. The State (2023 SCMR 781), wherein this Court held as under:

“12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).”

13. In view of the foregoing, the instant petition is converted into an appeal and it is allowed. The appellants are acquitted of the charges levelled against them. In case they are not required to be detained in any other case, then they shall be released forthwith.

14. These are the reasons of our short order dated 31.10.2025 which is reproduced hereunder:

“For reasons to be recorded later, this petition is converted into an appeal and it is allowed. Consequently, the

appellants Muhammad Waseem and Muhammad Akram are acquitted of the charges framed against them by extending the benefit of doubt. The judgments of the Trial Court dated 15.05.2019 and the High Court dated 16.03.2020 are set aside. In case the appellants are not required to be incarcerated in any other case then they shall forthwith be released.

CRIMINAL MISC. APPLICATION NO. 125 OF 2022

2. *Learned counsel for the applicants/petitioners does not want to press this application. It is, therefore, dismissed as not pressed."*

Islamabad, the
31st of October, 2025
Arshed

Not Approved for Reporting