

Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Cr. A No. 178-P/2025 with Murder
Reference No. 03-P/2025

Arshid Jamal

Vs

The State & another

JUDGMENT

Date of hearing: **20.11.2025**

Appellant by: M/s Shabbir Hussain
Gigyani, and Hamid Ali, Advocates.

The State by: Mr. Ayub Zaman, AAG.

Respondent / Complainant by: Mr.
Khizar Hayat Khazana, Advocate.

SAHIBZADA ASADULLAH, J.- Through this single judgment, this court shall decide the instant criminal appeal as well as the connected **Cr.A No. 313-P/2025** titled ***“Sikandar Ghafar vs The State”*** as both the matters are arising out of one and the same judgment dated 29.01.2025 passed by the learned Additional Sessions Judge-V, Charsadda delivered in case FIR No. 511 dated 30.10.2018 under sections 302,

427, 201, 202, 216, 120-(b) and 109 PPC read with section 15 AA at police station Umarzai, District Charsadda, whereby appellants were convicted and sentenced as under:

i. Under section 302(b) PPC, appellant Arshid Jamal to death as Tazir on four counts. He be hanged by neck till death subject to confirmation of his conviction from the Peshawar High Court, Peshawar under section 374 Cr.P.C. The appellant shall also to pay compensation of Rs.2,00,000/- (rupees two lac) to be paid to the legal heirs of the deceased Mst. Gulshan Bibi, Mst. Rani, Haider and Ihsan Ullah within the meaning of section 544-A Cr.P.C. and in default of payment, he shall further suffer simple imprisonment for six month.

ii. Under section 427 PPC, appellant Arshid Jamal for

causing damage to the motorcar of deceased for two years simple imprisonment.

iii. Under section 15 AA, appellant Arshid Jamal for three years simple imprisonment with a fine of Rs. 20,000/- and in default whereof, to simple imprisonment for six months.

iv. Under section 201 PPC, appellant Sikandar Ghafar to imprisonment for 03 years SI.

v. Under section 202 PPC, appellant Sikandar Ghafar to imprisonment for 06 months SI.

vi. Under section 216 PPC, appellant Sikandar Ghafar to simple imprisonment for 03 years.

All the sentences shall run concurrently. Benefit of section 382-B Cr.P.C. was extended in favor of the appellants.

2. Facts forming the background of the instant case are that on 30.10.2018, complainant Aman Ullah reported the matter to the effect that his brother, Ihsan Ullah, was returning home in his motorcar bearing registration No. LOB-930, after dropping his children at school and he was behind him on his motorcycle; that he heard indiscriminate firing near their street and on reaching the spot, the complainant witnessed the accused, Arshid Jamal, armed with Kalashnikov, emerged from his house and started firing at Ihsan Ullah, resulting in his death on the spot; that prior to this incident, the same accused had also murdered his own mother Mst. Gulshan, sister-in-law Mst. Rani, and minor Haider; that the accused thereafter fled towards the nearby sugarcane fields; that motive ascribed is a dispute over distribution of property, wherein the deceased Ihsan Ullah had been mediating between the parties; that the accused was

charged for the commission of offence hence, the present FIR.

3. It is pertinent to mention that soon after the occurrence, the accused went into hiding and upon his arrest, he disclosed the name of co-accused Sikandar Ghaffar. After completion of investigation, the prosecution submitted complete *challan* against the appellants. Provisions of section 265-C Cr.PC were complied with and the appellants were charge sheeted to which they pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 13 witnesses. After closure of prosecution evidence, statements of the appellants were recorded under section 342 CrPC, wherein they posed innocence. Appellant Sikandar Ghaffar neither wished to be examined on oath as required under section 340(2) CrPC, nor wanted to produce evidence in defence while Appellant Arshid Jamal did not want to produce evidence in defence

however, wished to be examined on Oath as required under section 340 (2) Cr.PC, which was recorded accordingly. The learned trial Court, after full-fledged trial, convicted and sentenced the appellants vide the impugned judgment hence, these appeals.

4. Arguments heard and available record scanned through.

5. The incident in question sent shockwaves through the community, as it resulted in the brutal loss of four innocent lives. The occurrence was promptly reported by the complainant to the local police on spot, whereupon the requisite injury sheets and inquest reports were prepared, and the dead bodies were dispatched for post-mortem examination. The Investigating Officer proceeded to the spot and, on the pointation of the complainant, prepared the site plan. The dead body of Ehsan Ullah, was found lying inside the motor car, consequently, the IO collected blood through cotton from within

the vehicle and took the car into possession vide recovery memo. The IO further secured three empties of 7.62 bore from the place attributed to the accused from where he allegedly targeted the motor car, causing the death of Ehsanullah. Similarly, the IO collected blood through cotton from the respective locations of the remaining deceased, inside the room and from the bathroom where the deceased Rani was found. From the room, the IO recovered three empties of 7.62 bore, and from inside the bathroom, three more empties of the same bore were secured, where Mst. Rani tragically lost her life. During interrogation, the accused disclosed that Sikandar Ghaffar had supplied him with the weapon used in the offence. He further stated that after executing the crime, he returned the said weapon to Sikandar Ghaffar. Acting upon this information, the IO accompanied by police officials, raided the residence of Sikandar Ghaffar, from whose bedroom a

Kalashnikov rifle was recovered from a box. In consequence, the accused Sikandar Ghaffar, was booked under Section 15 of the Arms Act (15-AA), read with Sections 201/202/216/120-B/109 PPC. The recovered weapon, along with all collected empties, was forwarded to the Forensic Science Laboratory. The firearms expert, upon examination, opined that the empties had indeed been fired from the recovered Kalashnikov. The physical custody of the appellant Arshid Jamal was thereafter obtained, during which he volunteered a confession. He was produced before the court of competent jurisdiction, where his confessional statement was duly recorded in accordance with law. Upon completion of investigation, the accused were sent to trial. After conclusion of the proceedings, the appellant Arshid Jamal was convicted and sentenced to death, whereas the co-accused Sikandar Ghaffar, stood acquitted under sections 120-B/109 PPC, but was

convicted under Sections 201/202/215 PPC was convicted and sentenced through the impugned judgment. Separate proceedings arising out of the recovery of the weapon culminated in an additional conviction and sentence of the appellant Sikandar Ghaffar.

6. The Learned trial Court, after applying meticulous scrutiny to the evidence on record, concluded that the appellant was the perpetrator of the offence and accordingly convicted and sentenced him. This Court must now determine whether the learned trial Court was justified in arriving at that conclusion and whether the evidence was correctly appreciated. It is beyond dispute that four innocent persons perished in the tragic incident. Equally incontrovertible, however, is the legal proposition that the number of victims, even if large, cannot, of itself, sustain a conviction. The prosecution remains under a continuing obligation to collect and lead independent, reliable

evidence in support of its case and to produce such witnesses as are necessary to establish the guilt of the accused beyond reasonable doubt. Though misidentification or substitution of accused is ordinarily unlikely where immediate relatives of the accused were among the deceased, as was the case here, where the mother, nephew and sister-in-law of the appellant Arshid Jamal, lost their lives, the rarity of such occurrences does not relieve the prosecution of its duty to adduce cogent proof linking the appellant to the commission of the offence, so this Court considers it imperative to re-examine the record, re-appraise the testimony of the witnesses and evaluate the forensic and circumstantial material tendered by the prosecution, so as to guard against any miscarriage of justice. Only upon such re-appreciation can it be safely concluded that whether the conviction of the appellant was justified.

7. In order to properly appreciate the peculiar facts and circumstances of the present case, it is essential to undertake a careful examination of the evidence, particularly the statements of the key prosecution witnesses, the complainant as PW-12, the Investigating Officer as PW-11 and the scribe as PW-03. The complainant narrated the circumstances in which the unfortunate incident occurred. He claimed that he was following the deceased and that the deceased was fired upon in his immediate presence. He further stated that upon reaching the place of occurrence, he heard gunshots emanating from inside the house of the accused, whereafter he saw the accused, armed with a weapon, firing at the deceased, his brother, Ehsan Ullah, and then fleeing from the scene. According to him, when the police arrived, he reported the matter, the dead bodies were thereafter dispatched to the hospital. He asserted that upon the arrival of the Investigating Officer, it was he who pointed

out the respective places where the deceased had fallen, and that in his presence blood was collected through cotton from inside the motor car, the room, and the bathroom. He further claimed that empties of 7.62-bore were secured from the locations from where the accused purportedly fired. The complainant was subjected to searching cross-examination, the defence attempting to create serious doubts in the prosecution case, so this Court is constrained to examine whether the defence effectively succeeded in shaking his credibility and whether the complainant withstood cross-examination on material aspects. It was incumbent upon the complainant to satisfactorily explain his presence at the scene of occurrence and the purpose for which he was allegedly following the deceased. However, he failed to provide a plausible explanation as to why he was trailing the deceased, especially considering his own admitted age of 70 years and the fact that

he claimed to be riding a motorcycle during the early hours. He further admitted that he was at a distance of approximately 70 paces from the motor car of the deceased, yet he offered no convincing explanation as to how, from such a distance, he could clearly observe the accused firing at the deceased, despite having categorically stated both in his examination-in-chief and earlier report that the firing took place in his presence. In view of these contradictions, this Court is compelled to consider how the complainant came to know that the deceased would be visiting the house of appellant, particularly when he admitted that his own residence was situated at some distance and that he had no prior information as to the movements of the deceased on that day. The complainant also failed to elucidate the nature of the relationship between the deceased and the accused or to articulate any cogent motive prompting the accused to commit

the murders. His attempt to attribute the motive to a property dispute was weakened by his inability to clarify when or how the deceased had been engaged to mediate such dispute. On the touchstone of these circumstances, this Court must determine whether the complainant could convincingly establish his presence at the spot and whether he credibly explained the events surrounding the occurrence. Upon a holistic appraisal, his testimony does not appeal to reason. It is particularly striking that he allegedly remained at the scene until the police arrived, despite his assertion that several persons had gathered soon after the occurrence. His own admission that he did not inform the police, but that the police arrived of their own accord, further weakens his claim. Significantly, the scribe stated that he did not receive information from the complainant, rather, upon reaching the scene, he found the dead bodies lying there, and it was only thereafter that the

complainant appeared and posed himself as an eyewitness before reporting the matter. These circumstances strongly suggest that the complainant reached the spot after the incident had already occurred. Moreover, neither the inmates of the house came forward to attribute the offence to the appellant, nor was the husband of Mst. Rani produced during trial. The prosecution withheld the most material witnesses, merely on the plea that they were closely related to the accused. Such omissions cast further doubt upon the veracity of the prosecution narrative. In view of the foregoing evaluation, this Court is persuaded that the complainant failed to convincingly establish that he witnessed the incident or that the deceased was murdered in his immediate presence. The prosecution case, resting essentially upon the solitary testimony of the complainant, who is the real brother of deceased Ehsanullah, must, therefore, be assessed with great caution. His inability to clearly

explain the manner of occurrence renders it highly probable that he reached the scene post-occurrence and, being closely related to the deceased, implicated the accused on the basis of conjectures rather than direct observation. Reliance is placed on “***Abid Hussain and another versus The state and others***” 2024 SCMR 1608.

8. In order to ascertain the true timeline of the unfortunate incident, this Court considers it essential to examine the evidence with particular care. Though the time of occurrence has been mentioned as 8:00 a.m. and the time of reporting as 8:30 a.m., it remains to be determined whether these were indeed the actual timings of the incident and the reporting thereof. To appreciate this aspect, reference must be made to the statement of the scribe, examined as PW-03, who stated that while on duty, he received information about the occurrence and immediately proceeded to the spot, covering a distance of 7–10

kilometers. Upon arrival, he found the dead bodies lying at the scene, and thereafter the complainant reported the matter to him. If the incident truly occurred at 8:00 a.m., and if the scribe received information, travelled such a distance, reached the location, and only then recorded the statement, it would have been virtually impossible for him to be present at the spot by 8:30 a.m. as claimed. This timeline becomes further doubtful when examined in light of the medical evidence. The doctor who examined the male deceased stated that some of the dead bodies were received in the hospital at 8:30 a.m. The lady doctor, who examined the female deceased, stated in unequivocal terms that she received one of the dead bodies at 7:45 a.m. She further clarified that she was required to resume duty at 8:00 a.m., reached the hospital at approximately 7:45 a.m., and at that very time the dead bodies were brought down from the vehicle. The

male doctor corroborated the arrival of other bodies at 8:30 a.m. If some dead bodies reached the hospital by 7:45 a.m., while others arrived by 8:30 a.m., the question naturally arises, that at what time could the scribe have prepared the injury sheets and inquest reports, and that how much time elapsed between the receipt of information, his travel to the scene, preparation of documents, and subsequent dispatch of the dead bodies. These circumstances do not comport with the assertion that the report was made on the spot at 8:30 a.m. The medical timings fundamentally contradict the prosecution version and strongly suggest that the occurrence did not take place at the time stated. These discrepancies strike at the very root of the prosecution case. They also seriously undermine the presence of the complainant at the scene. If some dead bodies had already reached the hospital at 7:45 a.m., it becomes wholly implausible that the complainant witnessed

the occurrence at 8:00 a.m. and reported it at 8:30 a.m., as alleged. The more reasonable inference is that the dead bodies were found at the scene, the police prepared the relevant documents, dispatched the bodies, and only thereafter the matter was formally reported. In this background, this Court is inclined to hold that the complainant did not disclose the complete truth, and the scribe too failed to demonstrate how the report could have been made in the manner asserted. The timings provided by both witnesses stand contradicted by the independent medical evidence. It is also noteworthy that no independent witness came forward to implicate the appellant, nor did any neighbor testify to having heard gunshots at the relevant time. The Investigating Officer himself, though recovering bloodstains from the room and the bathroom, made no meaningful effort to record the statements of the inmates of the house. Even more surprising is the fact

that the prosecution, at a later stage, chose not to examine certain male and female inmates, explaining away their absence merely on account of their close relationship with the accused. Such conduct on the part of both the investigating agency and the witnesses cannot be lightly ignored. In these circumstances, the prosecution cannot be permitted to rest its entire case upon the solitary testimony of the complainant, whose own account is riddled with inconsistencies, whose presence at the scene is doubtful, and whose stated time of reporting stands contradicted by the medical evidence. When the timings of the arrival of the dead bodies at the hospital, 7:45 a.m. and 8:30 a.m., fundamentally belie the prosecution timeline, the only reasonable conclusion is that material facts were concealed and that the incident did not occur in the manner narrated by the complainant. These glaring discrepancies have disrupted the very

fabric of the prosecution case, rendering the testimony of the complainant unreliable. This Court therefore holds that the prosecution has failed to establish its case beyond reasonable doubt.

9. Once the ocular account has been disbelieved, the question that arises is whether the conviction could validly rest on the confessional statement of the appellant alone. This Court has, therefore, examined whether the learned trial Court was justified in relying exclusively on the purported confession after having discarded the complainant evidence. It is indeed a settled proposition of law that a conviction may be founded on a confessional statement alone, provided that the confession is proved to be voluntary, truthful, and inherently reliable. The pivotal issue before this Court is whether the alleged confession satisfies these mandatory legal requirements and whether it finds corroboration from the prosecution evidence. The record

demonstrates that the accused was arrested on 04.12.2018, and his physical custody was subsequently sought. During this period of police remand, the accused purportedly opted to confess and was thereafter produced before the Court of Competent Jurisdiction for the recording of his statement. This Court has examined whether the learned Judicial Magistrate, before whom the accused was produced, ensured that the accused was afforded adequate time for reflection, that he was made fully cognizant of the consequences of his admission, and that all requisite legal formalities were meticulously observed. The learned Judicial Magistrate appeared as PW-13 and explained the procedure adopted by him. He stated that he provided the accused sufficient time for reflection, apprised him of the legal implications of his confession, and recorded the statement through a structured questionnaire. Although it appears that the Magistrate attempted to

comply with the statutory safeguards, this Court cannot ignore the admitted fact that at the time of recording of the confession, the accused continued to remain in police remand, and was returned to the custody of the very investigating officer who had produced him. This circumstance casts a serious shadow on the voluntariness of the confession. Moreover, a careful examination of the confessional statement reveals serious inconsistencies and material contradictions. According to the accused, he travelled from Peshawar to Tangi, collected a weapon from one Sikandar Ghaffar, returned to his village, and first fired at the deceased inside the motorcar, thereafter fired upon his mother and sister-in-law, and subsequently upon the minor Haider. The version of the complainant, however, is entirely at variance, as he asserts that the accused first fired upon his mother and sister-in-law inside the house, and only thereafter came outside and fired upon the deceased. The

confessional statement is also devoid of essential particulars, such as the time when the accused allegedly left for Tangi, the time of his arrival there, the circumstances in which he met Sikandar Ghaffar, and the precise timeline enabling him to reach the crime scene. These omissions, coupled with the discrepancies between the confession and the prosecution narrative, render the statement incompatible with the established circumstances of the case. This Court further notes that when the accused was initially produced before the learned Judicial Magistrate, he did not opt to confess. It was only after he had remained in continued police custody for several days that the purported confession emerged. These circumstances, taken cumulatively, gravely undermine the voluntariness, truthfulness, and reliability of the alleged statement. Indeed, the confessional statement raises additional doubts. The accused claimed that while he

was engaged in an altercation with his mother, he called out for the deceased who, according to him, was present outside in a motor car. This assertion begs the question as to how the mother of the accused could have known of the presence of the deceased outside the house, particularly when no independent evidence supports this inference. In view of the foregoing contradictions, omissions, and the suspicious circumstances surrounding its recording, this Court is constrained to hold that the confessional statement is neither voluntary nor truthful, and stands contradicted by both the prosecution narrative and the physical and circumstantial evidence on record. Consequently, the said statement cannot be made the basis for sustaining the conviction of the appellant. When the alleged confessional statement of the appellant is examined in juxtaposition with the testimony of the complainant, it becomes evident that the two accounts are

mutually irreconcilable. The complainant categorically stated that the accused first opened fire inside the house and thereafter emerged and shot the deceased. In stark contrast, the appellant, in his purported confession, narrated that upon finding his mother and sister-in-law in the courtyard, they resisted upon seeing him armed with a Kalashnikov and, out of fear, called for the deceased Ehsan. According to him, when he came out of the house in response to their cries, he saw Ehsan sitting in the motor car and, allegedly apprehending danger to his life, fired at him in self-defence. This version not only conflicts with the testimony of the complainant, but also fails to appeal to reason. If the deceased had earlier dropped his children at school and was driving his vehicle with the complainant following him, it is inexplicable at what point he could have suddenly reached the residence of the appellant, parked his car, and been visible to the mother of the

appellant outside the house. Equally perplexing is what relationship, if any, existed between the deceased and the female inmates of the house, particularly the mother and sister-in-law of the appellant, that would justify their alleged familiarity with his presence outside the premises. If the narrative of the appellant is assumed, the unavoidable inference would be that the deceased must have visited the house earlier that morning, and that the appellant harbored some suspicion about his association with the household. It is this perceived suspicion, rather than any lawful justification, that appears to have triggered the unfortunate incident. Indeed, if the deceased were merely a mediator, as the appellant suggests, there existed no plausible reason for him to be present in front of the home of appellant, nor any occasion for the female inmates to call him for assistance. In such circumstances, the natural expectation would have been for

them to seek help from within the house rather than from an outsider. These inconsistencies strongly indicate that either the appellant failed to disclose the true circumstances in his confessional statement, or that he deliberately concealed essential facts, or that the statement was procured through coercion or duress. In any such eventuality, the confession cannot be safely relied upon. It neither meets the test of voluntariness nor of truthfulness. Moreover, being in direct conflict with the ocular account and inconsistent with the physical and surrounding circumstances of the case, it cannot form the basis of a conviction. We are benefited from the judgment of the apex court cited as **2023 SCMR 139** titled ***“Javed Iqbal vs the State”***.

10. The Investigating Officer, examined as PW-11, stated that after the appellant was remanded to police custody, he allegedly disclosed that the weapon used in the offence had been obtained

from one Sikandar Ghaffar. On the basis of this disclosure, Sikandar Ghaffar was nominated as a co-accused in the present case, a fact further supported by the statement under Section 164 Cr.P.C. of the real brother of the appellant, Asif Jamal. The Investigating Officer further deposed that he, along with other police officials, visited the residence of the co-accused situated in village Tangi, and that from inside the residential room a Kalashnikov rifle, along with live rounds, was recovered from a box. He also stated that the same weapon was taken into possession for the present incident, and subsequently dispatched to the firearms expert along with the empties recovered from the place of occurrence. The expert report indicated that the empties had been fired from the same weapon. It is, however, significant that the weapon was not recovered at the instance of the appellant, nor from any place associated with him. Rather, it was allegedly handed

over voluntarily by the co-accused Sikandar Ghaffar, from his own residence. This raises a fundamental question as to whether such recovery can be relied upon against the appellant, particularly when no explanation has been offered as to how or when the weapon was returned to Sikandar Ghaffar or why it remained concealed in a box in his room. Moreover, the record shows that no independent witness was associated with the recovery, and even the official witnesses examined could not convincingly narrate the precise manner in which it was effected. The recovery was allegedly made from the residential premises of a co-accused where female family members were presumably present, yet no lady constable was associated, an omission that casts further doubt on the transparency of the proceedings. The non-examination of a lady constable, even though essential in such circumstances, further weakens the prosecution version. It also merits attention

that after the weapon had already been recovered from the house of the co-accused, the Investigating Officer again revisited the same house in the company of the appellant. The ostensible purpose of this subsequent visit remains unexplained, especially when the appellant merely pointed out the very room from which the weapon had already been collected. Even if this subsequent pointing-out is taken at face value, such evidence is at best corroborative in nature and cannot by itself establish guilt in the absence of reliable primary evidence. As already observed, the complainant failed to convincingly explain his presence at the spot and his testimony is far from confidence-inspiring. The alleged confessional statement of the appellant is likewise inconsistent with the attending circumstances and does not find support from the evidence collected by the prosecution. Thus, even if the recovery from the house of the co-accused is taken into consideration, it affords no substantive

basis to hold the appellant responsible for the offence, being merely supportive in nature and insufficient to sustain conviction in the absence of credible, independent, and trustworthy evidence.

11. The prosecution alleged that the motive for the occurrence was a property dispute between the accused and the deceased family, and that the deceased Ehsan was mediating between the parties. However, the Investigating Officer could not bring on record any convincing or independent evidence to substantiate this alleged motive. No witness from the locality came forward to support the prosecution claim, nor was it clarified what exact relationship the deceased Ehsan had with the dispute said to be the genesis of the offence, so the prosecution failed to establish the motive with any degree of certainty. It is settled law that absence or weakness of motive is not by itself a ground for acquittal, however, where motive is alleged to be the

sole driving force behind the crime, its non-proof may, in appropriate cases, seriously undermine the prosecution case, and the present case is no exception. The attending circumstances do not support the theory of the prosecution, and the alleged motive remains wholly unproved. In view of the inconsistencies in the ocular account, the contradictions surrounding the time of occurrence, the doubtful nature of the recovery, and the untrustworthy confessional statement, this Court finds that the prosecution has failed to bring home guilt against the appellant. The Learned trial Court did not correctly appreciate the evidence on record, and the impugned judgment does not reflect proper reasoning that could justify the conviction of the appellant. Reliance is placed on case titled ***“Iftikhar Hussain alias Kharoo versus The state” (2024 SCMR 1449)***,

12. Once this Court has reached the conclusion that the prosecution has

failed to adduce reliable evidence connecting the appellant with the commission of the offence, it follows, as a necessary corollary, that the prosecution has likewise been unable to establish the guilt of the co-accused, Sikandar Ghaffar. His case stands on the same footing as that of the appellant, and no independent or corroboratory evidence has been brought on record to justify his conviction. Accordingly, this Court is confident in holding that the prosecution has not succeeded in bringing home guilt against either the appellant or the co-accused Sikandar Ghaffar. Resultantly, the instant criminal appeal, as well as the connected **Cr.A No. 313-P/2025** titled **“*Sikandar Ghafar vs The State*”** are allowed, the impugned judgment is set aside. Both the appellants are acquitted of the charge by extending them the benefit of doubt. The appellant Arshid Jamal, be released forthwith, if not required to be detained in any other case. As the appellant Sikandar

Ghaffar, was released on bail by this Court vide order dated 11.04.2025, so his sureties are absolved from the liability of bail bonds.

13. The murder reference 03-P/2025, is answered in **Negative.**

Announced

20.11.2025

Naqqash Haider

J U D G E

J U D G E

Division Bench

Hon'ble Mr. Justice Sahibzada Asadullah, J.

Hon'ble Mr. Justice Dr. Khurshid Iqbal, J.