

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
(JUDICIAL DEPARTMENT)**

MURDER REFERENCE NO.267 of 2022

CRIMINAL APPEAL No.63866 of 2022

Muhammad Hussain vs The State

JUDGMENT

DATE OF HEARING: 25.11.2025

APPELLANT BY: M/s. Syed Ali Muhammad Zahid Bukhari, Asjad Abbas Kazmi, Sarfraz Ahmad Saroya and Ms. Mehr Batool Rizvi, Advocates.

STATE BY: Mr. Munir Ahmad Sial, Addl. Prosecutor General.

COMPLAINANT: M/s. Ch. Irshad Ullah Chattha and Qamar-uz-Zaman Cheema, Advocates.

SARDAR AKBAR ALI, J:- Muhammad Hussain

(accused/appellant) faced trial in case FIR No.912 dated 05.07.2021 under section 302 PPC registered at police station Sargodha Road, District Faisalabad and on conclusion of trial vide judgment dated 14.07.2022 he was convicted under section 302(b) PPC and sentenced to death as Taz'ir for committing the Qatl-e-Amd of deceased Mst. Najma Asghar. He was also ordered to pay Rs.500,000/- as compensation under section 544-A Cr.P.C. to the legal heirs of deceased and in case of default whereof to further undergo SI for six months. In the event of the recovery of compensation, the same shall be distributed amongst the legal heirs of deceased according to their share. Criminal Appeal No.63866/2022 has been filed by the accused/appellant against his above conviction/sentence, whereas, Murder Reference No.267/2022 has been sent by the learned trial court as required under section 374 Cr.P.C. Both these matter are being decided through the instant judgment.

2. Brief facts of the case as enumerated in paragraph No.2 of the impugned judgment are that:-

"2. Brief facts of the case as disclosed in application Ex.PF moved by complainant Nazeer Ahmad (PW-4) are that on 05.07.2021 at about 08:00 AM, complainant Nazeer Ahmad (PW-4) along with his sister Razia Asghar (PW-5), niece Najma Asghar (deceased) and nephew Moulla Bakhsh (given up PW), while boarding on Rickshaw to take medicine of Razia Asghar went to Aziz Fatima Hospital. They while de-boarding the said Rickshaw, entered in the main gate of Aziz Fatima Hospital, suddenly accused Muhammad Hussain while armed with pistol came there, within their view, accused Muhammad Hussain made three successive fire shots with his pistol which hit two fires on the front side of the chest and one fire hit on the right thigh of Najma Asghar (deceased), due to said injuries Mst. Najma Asghar succumbed to the injuries at the spot.

Motive behind the occurrence was that accused Muhammad Hussain intends to marry with Najma Asghar deceased, who refused to marry with accused Muhammad Hussain. In consequence of said refusal, accused Muhammad Hussain mercilessly murdered Mst. Najma Asghar. They tried to apprehend the accused, who decamped from the venue of occurrence while brandishing his pistol. Thereafter, complainant Nazeer Ahmad produced complaint Exh.PF before Zafar Iqbal Khatia SI/I.O. at Aziz Fatima Hospital, Faisalabad which bears his thumb mark. Ex.PF/1 and signature Ex.PF/2, on the basis of which FIR was registered. Hence this FIR."

3. The investigation of the case was initiated by Zafar Iqbal Sub Inspector (PW-10) who after receiving information of the occurrence reached at the place of occurrence where Nazeer Ahmad, complainant (PW-4) submitted before him a written complaint (Exh.PF) for registration of FIR (Exh.PF/3). After recording police proceedings on Exh.PF, PW-7 transmitted the same to police station for registration of FIR, he pen down the stances of Sharjeel and Muhammad Usman, security guards who after apprehending the appellant at the spot, handed over his custody to PWs, upon which he formally arrested the appellant, prepared injury statement and inquest report of deceased (Ex.PB) and (Ex.PC), respectively, sent the dead body for postmortem. He inspected the spot and prepared rough site plan of place of occurrence (Ex.PM), collected blood stained earth, took into possession three empties P.6/1-3 of pistol 30 bore, secured CCTV footage of occurrence from camera installed outside Al-Shifa Medical Store, took into possession last worn clothes of deceased, took into possession of CDRs, got prepared scaled site plan, recorded statements of witnesses under section 161 of Cr.P.C, transmitted case property to the concerned offices for analysis. Ultimately, report under section 173 Cr.P.C. was submitted.

4. The accused when charge sheeted, denied the prosecution case, whereupon, the prosecution examined Zafar Iqbal, Sub Inspector (PW-10) who had conducted investigation of this case; Nazeer Ahmad, complainant (PW-4) and Razia Asghar (PW-5) appeared in the witness box to depose about the ocular account and Dr. Shazia Iftikhar (PW-1) had conducted postmortem examination on the dead body of the deceased Mst. Najma Asghar, the rest of the witnesses were formal in nature. On closure of prosecution case, the accused when examined under section 342 Cr.P.C. denied the prosecution evidence. However, he neither produced any witness in defence nor opted to appear in the witness box as required by section 340(2) Cr.P.C. and the trial ended in the terms as detailed in opening paragraph of this judgment.

5. We have heard the arguments of learned counsel for the parties at considerable length and perused the record with their assistance.

6. Though the FIR (Exh.PF/3) was promptly lodged i.e. within 45 minutes of the occurrence but we are surprised to note that according to statement of Dr. Shazia Iftikhar (PW-1), she conducted autopsy on the dead body of the deceased on 05.07.2021 at 03:15 p.m. According to her, the dead body of the deceased was brought by Atia Shahzadi, 4731/L.C (PW-8) at 11:05 a.m., but postmortem examination was conducted on the same day at 03:15 p.m. Thus there is delay of seven hours and fifteen minutes in conducting the post mortem examination on the dead body of deceased. The prosecution has not brought any iota of evidence to justify the inordinate delay in postmortem examination of the deceased. In such eventuality the most natural inference would be that the delay so caused was for preliminary investigation and prior consultation to nominate the accused and plant eye-witnesses of the occurrence. In case titled, "Irshad Ahmad v. The State" (**2011 SCMR 1190**) the Hon'ble Supreme Court of Pakistan has observed that noticeable delay in postmortem examination on the dead body of the deceased is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses before preparing police papers necessary for the same. Same view has been

reaffirmed in case titled "Imtiaz Hussain Shah alias Tajay Shah and another vs. The State and others" (**2025 SCMR 1110**).

7. Having scrutinized the ocular evidence with the requisite degree of care, we find the testimony of the star prosecution witnesses, namely Nazeer Ahmad, complainant (PW-4) and Mst. Razia Asghar (PW-5) to be inherently unreliable and unworthy of credence for the purposes of sustaining a capital conviction. The very genesis of their presence at the scene is shrouded in improbability. Razia Asghar (PW-5), the mother of the deceased, claims to have been unwell and for the purpose of her check up she alongwith Nazeer Ahmad, complainant (PW-4), Moula Bakhsh (given up PW) and Mst. Najma Asghar (deceased) proceeded towards the hospital on the fateful day. This arrangement for a routine medical visit strikes the Court as unusual and unexplained because it does not appeal to mind that for taking medicine of Mst. Razia Asghar (PW-5) four persons would accompany together for the said purpose. Even no prescription of her ailment has been brought on record to justify her stance for medical check up or getting medicine. Furthermore, the conduct of the complainant, Nazeer Ahmad (PW-4), who is also the maternal uncle of the deceased, and is resident of 40 kilometers away from the place of occurrence, immediately following the tragic incident, is negating to that of a natural witness. His admission that he did not inform the emergency services (Rescue 15 or 1122) about the occurrence betrays a passivity that undermines the veracity of his claim of being present. Even he did not know who informed the police about the occurrence. Most critically, Nazeer Ahmad, complainant (PW-4) when was confronted with his initial account in the written complaint (Ex.PF) he failed to satisfactorily explain a material improvement in his testimony regarding the locale of firearm injuries, attempting to align his testimony with the post-mortem report. Besides both witnesses are not only closely related to the deceased but are also "interested" witnesses with a clear motive to ensure conviction, their evidence, already weakened by the aforementioned infirmities, cannot be accepted for confirming the death sentence, hence the same is discarded accordingly.

8. According to Zafar Iqbal, Sub Inspector (PW-10), on the day of occurrence i.e. 05.07.2021 when after receiving information of the

occurrence, he reached the place of occurrence, Sharjeel and Muhammad Usman, Security Guards, who had already apprehended the appellant at the spot, produced the appellant before him, therefore, said Sharjeel and Muhammad Usman, Security Guards were the most material and impartial witnesses of the occurrence and they could have at least confirmed the presence of the alleged eye-witnesses at the spot at the time of occurrence. Even Moulla Bakhsh (given up PW) who was also witness of ocular of ocular account has not been produced by the prosecution and he was given up. Thus the prosecution withheld the best evidence. Thus under Article 129(g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can be drawn that if they had testified, their statements would not have supported the prosecution's case. Reliance is placed on the case of "Imtiaz Hussain Shah alias Tajay Shah and another vs. The State and others" (2025 SCMR 1110).

9. Oral and medical evidence also contradicts each other. In the FIR (Exh.PF/3) the role assigned to the appellant is as under:-

مژم اچانک مسلح پیش سامنے آگیا جس نے ہمارے دیکھتے ہی دیکھتے نجہ اصغر پر تین فائر کے جو دو فائر سامنے چھاتی پر لگے اور ایک فائر دائیں

ٹانگ پر گذاسے تھوڑا اوپر لگا۔

Contrary to above, Dr. Shazia Iftikhar (PW-1) while conducting post mortem of Mst. Najma Asghar, deceased noted following injuries:-

"Injury No.1A

A firearm wound of entry 2 x 2 cm on the left front of the chest, 2 cm away from midline, 10 cm above the left nipple of breast.

Injury No.1B

A firearm wound of exit 1 x 1 cm on the right back of the chest, 8 cm away from the midline, 3 cm below from the tip of the scapula.

Injury No.2A

A firearm wound of entry 2 x 2 cm on the medial side of the right knee joint.

Injury No.2B

A firearm wound of exit 3 x 1.5 cm on the right back of the thigh, 3 cm above the right knee joint.

Injury No.3

A graze wound 6 x 3 cm on the right side of back of right lower leg. 3 cm from right knee joint."

The complainant in the FIR as also while appearing as (PW-4) has ascribed two fire arm injuries on the chest of the deceased to the appellant but during post mortem examination only one injury i.e. Injury No.1-A was noted on the chest of the deceased. Moreover, Injury No.3 i.e. grazed wound on back of right lower leg was never ascribed to the appellant in the FIR. This disparity calls into question the validity of the evidence used against the appellant. Reliance in this respect is placed on the judgment reported as "Muhammad Abras vs. The State" (**2025 SCMR 1145**).

10. The manner in which the weapon of offence pistol (P-1) was recovered again merits our appraisal. According to Zafar Iqbal, Sub Inspector (PW-10) on the day of occurrence i.e. 05.07.2021 when after receiving information of the occurrence, he reached at the place of occurrence, where Sharjeel and Muhammad Usman, Security Guards, who had already apprehended the appellant at the spot, produced before him the custody of appellant but as gleaned from the record the weapon of offence, a 30-bore pistol, was retrieved upon the pointation of Muhammad Hussain, appellant on 13.07.2021 from beneath bricks lying near City Pharmacy, Millat Road, Faisalabad. It is not understandable that if the appellant was apprehended by Sharjeel and Muhammad Usman, Security Guards at the spot then how the appellant managed to hide weapon of offence under bricks lying on Millat Road, Faisalabad. Placing reliance on a recovery made from an open and accessible place is unsafe because it cannot be said that the recovery had been effected from the exclusive possession of the appellant, as held by the Hon'ble Supreme Court of Pakistan in the case of "Usman Ahmed and another vs. The State through Advocate General, Islamabad" (**2025 SCMR 1442**). In so far positive report of PFSA qua matching of abovementioned pistol with the crime empties taken into possession from the place of occurrence is concerned, without discussing the merits and demerits of this piece of the prosecution evidence, it is noteworthy that as we have already disbelieved the direct prosecution evidence, therefore, the conviction and sentence of the appellant cannot be maintained merely on the basis of positive report of PFSA (Exh.PQ).

11. So far as the motive part of the prosecution case is concerned, it was alleged by Nazeer Ahmad, complainant (PW-4) that appellant intended to

marry with Mst. Najma Asghar deceased, who refused to marry with the appellant. Nazeer Ahmad, complainant (PW-4) during cross-examination admitted that:-

“The accused had not sent any of his relative or respectable to demand the hands (رشتہ) of deceased for marriage. He had also not sent any message through his relative to us in this regard. Except me and witnesses, we did not produce any person before investigating officer to substantiate the plea of motive.....”

Similarly, Razia Asghar (PW-5) admitted during cross-examination as under:-

“Prior to instant occurrence, the accused had not send his mother or other relative for hands of my daughter. Except myself and PWs of the case non from others joined investigation to corroborate out motive part.....”

Above excerpts clearly show that the motive introduced by the prosecution is nothing except words of mouth and the prosecution failed to bring on record any independent and confidence inspiring evidence to prove the motive in this case.

12. So far as the prosecution's reliance on the CDR (Call Data Record) (Exh.PE/1-11) of mobile phone numbers of the appellant and the deceased are concerned, it is noteworthy that the same is of no avail to the prosecution because the same merely shows contact between the deceased and the appellant from 03.07.2021 to 05.07.2021. It does not show the location of the appellant on the date and time of occurrence at the place of occurrence thus the same is of no avail to the prosecution. Again, the names of the appellant as well as deceased were absent from the CDR (Exh.PE/1-11). Most importantly, the CDR was in the form of a standard computerized document which, admittedly, could be printed and prepared with the help of any computer. Moreover, the CDR without any signature of the concerned officer of the cellular/telecom company issuing the CDR could not be considered for the purpose of trial and relied upon, hence, the same cannot be believed for conviction of appellant. Reliance is placed upon case titled *Khair Muhammad and another Vs. The State (2025 SCMR 1599).*

13. In so far as recovery of CCTV footage taken through USB from the place of occurrence is concerned, it is noteworthy that scaled and unscaled site plans are silent to installation of any CCTV camera at the place of

occurrence. Moreover, according to I.O. computer operator of the police station handed over him the USB containing footage of the occurrence on the day of occurrence but the same was transmitted to the office of PFSA on 27.08.2021 for the reasons best known to the I.O. Moreover, Zafar Iqbal, SI (PW-10) admitted during cross-examination that he did not record statement of any of the relevant person of Al-Shifa Pharmacy under section 161 Cr.P.C. Under such circumstances, more importantly, when ocular account of the prosecution fails, the positive report of PFSA qua CCTV footage is not worthy of reliance.

14. As far as the defence plea taken by the appellant in his statement under Section 342, Code of Criminal Procedure is concerned, since the prosecution evidence is doubtful in nature, therefore, there is no need to discuss the same which is exculpatory in nature.

15. For what has been discussed above, in the instant case the prosecution has totally failed to establish the charge against the accused/appellant beyond any shadow of doubt and it is trite that to extend benefit of doubt to an accused person, it is not necessary that there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused. Reliance is placed on the case "**MUHAMMAD IMRAN versus The STATE**" (2020 SCMR 857). Consequently, Criminal Appeal No.63866 of 2022 is allowed and the accused/appellant is acquitted of the charge. He shall be released forthwith if not required in any other case.

16. Murder Reference No.267 of 2022 is answered in the negative and the sentence of death awarded to Muhammad Hussain, convict is not confirmed.

(Shehram Sarwar Ch.)
Judge.

(Sardar Akbar Ali)
Judge.

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Approved for reporting

Judge

Ishhtiaq