

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**P.S.L.A. No.4/2018**

Allah Yar

*versus*

Captain (R) Zeshan & another

**P.S.L.A. No.9/2019**

Allah Yar

*versus*

Malik Muhammad Umar & another

*and*

**P.S.L.A. No.10/2019**

Allah Yar

*versus*

Malik Muhammad Sameen Khan & 04 others

Petitioner by: Mehr Jabir Abbas, Advocate for petitioner in  
PSLA No.4/2018

Ch. Zafar Ali Warraich, Advocate for  
petitioner in PSLAs No.9 & 10/2019

Respondents By: Mr. Ansar Nawaz Mirza and Mr.  
Muhammad Bilal, Advocate for respondents  
in respective petitions.

Mr. Sadaqat Ali Jahangir, State Counsel.

Date of Decision: 16.03.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** By way of this common judgment, I intend to decide the captioned petitions for special leave to appeal having same questions of law and facts.

2. Through captioned PSLA No.04/2018, the petitioner has assailed order dated 06.10.2018, passed by learned Additional Sessions Judge-X (West), Islamabad, whereby Captain (R) Zeeshan / respondent No.1 has

been acquitted of the charges under Sections 420, 406, 409, 109, 148, 149, 302/34 PPC in a private complaint.

3. Likewise, through captioned PSLA No.09/2019, the petitioner has called in question order of the learned Sessions Judge (West), Islamabad, dated 18.05.2019, whereby Malik Muhammad Umar / respondent No.1 has been acquitted of the charges under Sections 420, 406, 409, 109, 148, 149, 302, 34 PPC.

4. Similarly, through captioned PSLA No.10/2019, the petitioner has questioned the order dated 10.04.2019, whereby the learned Sessions Judge (West), Islamabad has acquitted Malik Muhammad Sameen Khan, Rasheed Ahmed, Ghulam Muhammad Baqar and Naeem Ullah Shahani (respondents No.1 to 4) of the charges in a private complaint under Sections 420, 406, 409, 109, 148, 149, 302, 34 PPC.

5. Brief and consolidated facts are that Allah Yar (*petitioner / complainant*) filed a private complaint under Sections 420, 406, 409, 109, 148, 149, 302, 34 PPC against Captain (R) Zeeshan, Malik Muhammad Umar, Malik Muhammad Sameen Khan, Rasheed Ahmed, Ghulam Muhammad Baqar and Naeem Ullah Shahani (*respondents*) alleging that petitioner's brother, Karim Kaleem Nawaz (*deceased*), being a property dealer finalized a deal between Naeem Ullah Shahni (seller/respondent) and Zohaib Ahmad Zubairi (purchaser) vide agreement dated 26.09.2016, with respect to House No.556, Street F-10/2, Islamabad (*subject property*), however the deceased learnt at later stage that possession of the subject property lies with Malik Muhammad Umar / respondent. In order to resolve the controversy, Naeem Ullah Shahni / respondent asked the deceased to approach Capt. (R) Zeeshan, S.P. Saddar Zone, Islamabad /

respondent, as such, the latter along with respondents Ghulam Muhammad Baqar / DSP and Rasheed Ahmad /S.I. had allegedly received bribe from the deceased with respect to taking back the possession from Malik Muhammad Umar / respondent but, to no avail. Later on, Ghulam Muhammad Baqar / DSP asked the deceased and Zohaib Ahmad Zubairi to meet Malik Muhammad Umar / respondent at his residence for final settlement, as such, during meeting between the parties hot words were exchanged, as a result whereof the deceased was done to death allegedly by Malik Muhammad Umar / respondent using Kalashnikov, per se, the police in connivance with the accused persons have lodged the FIR against the deceased and his companions. The private complaint of the petitioner was entertained, whereby the respondents were summoned to appear before the Court, as such, due to deficiency of prosecution evidence, the respondents have been acquitted of the charges vide impugned orders dated 06.10.2018, 18.05.2019 and 10.04.2019. Hence, the captioned petitions for special leave to appeal.

6. Learned counsel for petitioner contended that under Section 265-K Cr.P.C. the Court was bound to record cogent reasons before concluding that no probability existed of the accused being convicted of any offence and could only be done after evaluating the entire evidence of the prosecution but, the learned trial Court passed the impugned order on presumptions; that the learned trial Court has failed to appreciate that co-accused persons are police officials and retired army officer, hence, by any stretch of imagination it could not be considered that police official of a lower cadre would investigate the matter fairly to convict his superiors; that the complaint plainly reveals that Malik Muhammad Umar /

respondent had committed murder of an innocent person in presence of independent witnesses, per se, the prosecution has brought on record sufficient evidence to connect the said accused person with the commission of offence, as such, the learned trial Court has ignored the material evidence available on record and passed the impugned orders of acquittal in a slipshod manner.

7. Learned State Counsel as well as learned counsel for respondents in respective PSLAs contended that there is no cogent evidence available on record to connect the respondents with the alleged commission of offence; that the case as established by the prosecution suffers from grave irregularities, on the basis of which innocent persons could not be held guilty of the offences they had not committed; that the complainant is dragging the respondents into unnecessary litigation, even no cogent evidence is available with the complainant or prosecution to prove any of the charge beyond reasonable shadow of doubt, as such, Section 265-K Cr.P.C. enables the trial Court to acquit an accused person at any stage of the proceedings, per se, the learned trial Court has rightly appreciated the facts and circumstances of the case and acquitted the respondents of the charges.

8. Arguments heard, record perused.

9. Perusal of record reveals that there are two sets of accused persons nominated by the petitioner in the same complaint, whereby first incident has been referred to the extent of Rashid Ahmad/S.I., Ghulam Muhammad Baqar / DSP and Capt. (R) Zeeshan, S.P. Saddar Zone, Islamabad, who have allegedly received a huge sum of amount as illegal gratification from the petitioner's brother in order to get the possession of House No.556,

Street F-10/2, Islamabad. The subject property was purchased from Naeem Ullah Shahani / Respondent No.6 in complaint by the petitioner's deceased brother through an agreement. As per stance of petitioner, Ghulam Muhammad Baqar / DSP and Rasheed Ahmed/S.I. had received a sum of Rs.900,000/- from deceased and Zohaib Ahmad Zubairi in presence of witnesses. On 03.10.2016, Ghulam Muhammad Baqar / DSP and Rasheed Ahmed/S.I. managed the agreement with Malik Muhammad Sameen and Malik Muhammad Umar in presence of witnesses against consideration of Rs.5,000,000/- out of which a sum of Rs.2,500,000/- was paid in October, 2016, however the remaining amount was agreed to be paid at the time of delivery of possession by Malik Muhammad Sameen, as such, when the latter refused to hand over possession of the subject property the petitioner's brother had approached Capt. (R) Zeeshan, S.P. and Ghulam Muhammad Baqar / DSP for return of his amount allegedly paid to the police officials, whereupon the latter requested for some time in order to manage the possession from Malik Muhammad Sameen, per se, in this context, the deceased and Zohaib Ahmad Zubairi managed to get register FIR No.302/2016, dated 15.11.2016, under Sections 420, 468, 471 PPC, P.S. Shalimar, Islamabad and this entire scenario has been managed by Capt. (R) Zeeshan, S.P. and Ghulam Muhammad Baqar / DSP, on whose instructions petitioner's deceased brother had arranged some workers for transportation of household items from the subject property.

10. The above background reveals that the allegations referred in this part is only to the extent of payment of illegal gratification to the police officials in order to get the possession of the subject property from Malik

Muhammad Sameen and Malik Muhammad Umar i.e. father and son, respectively.

11. The second part is relating to the fateful day i.e. 15.11.2016, when petitioner's deceased brother, Zohaib Ahmad Zubairi and other workers went to the subject property in order to get possession from Malik Muhammad Sameen and Malik Muhammad Umar, as such, the parties got involved in altercation and started extending threats to each other, whereby Malik Muhammad Umar had allegedly grabbed a Kalashnikov from his gunman and started firing, as a result whereof, the petitioner's deceased brother received a head injury in presence of Dilawar Hussain, Akhtar Ali, Bashir, Sadia, Sadia Bibi and Imran. At the same time, Capt. (R) Zeeshan, S.P., Rasheed Ahmed/S.I. and Alamgir/S.I. reached at spot and arrested Malik Muhammad Umar while in possession of Kalashnikov along with other individuals present at the place of occurrence but, surprisingly, case FIR No.303/2016, under Sections 302, 148, 149, 452, 511, 109 PPC, P.S. Shalimar has been lodged by Malik Muhammad Umar / respondent accused, while Zohaib Ahmad Zubairi from the petitioner side got registered FIR No.305, dated 16.11.2016, under Section 302/34 PPC, P.S. Shalimar, Islamabad against the accused persons / respondents. As such, the police after investigation has initially cancelled FIR No.305/2016 and it has been alleged in complaint by the petitioner that police has helped out the respondents accused in this case, which compelled the petitioner to file instant complaint on two different accounts.

12. The petitioner while appearing as witness in the complaint has reiterated his stance of entire case and has also produced PW-2 Dilawar Hussain, PW-3 Akhtar Ali, PW-4 Sadia Bibi and PW-5 Allah Yar Cheema in

complaint, whereby the learned Judicial Magistrate after recording of the evidence, referred the matter to the learned Additional Sessions Judge for further proceedings, whereby respondents accused persons had been summoned, against whom charge under Section 302 was framed against Malik Muhammad Umar on 13.05.2016. In support of complaint the petitioner appeared as PW-3 along with his two eyewitnesses PW-1 Dilawar Hussain and PW-2 Akhtar Ali. The Court has also summoned eight court witnesses, including draftsman, doctor who conducted postmortem of deceased and police witnesses. After recording of complete evidence, the accused persons as well as police officials having been involved on account of receiving illegal gratification have been acquitted of the charges in terms of Section 265-k Cr.P.C.

13. During the course of arguments, learned counsel for petitioner when confronted qua the evidence or illegality to the extent of impugned orders of acquittal passed in favour of the police officials and other accused persons, learned counsel for petitioner contended that he will not press his claim against Capt. (R) Zeeshan, S.P., Ghulam Muhammad Baqar / DSP and Rasheed Ahmed/S.I., rather the petitioner maintained his claim against Malik Muhammad Umar for allegedly committing the murder of deceased Karim Kaleem Nawaz.

14. In view of stance taken by the petitioner, this Court has gone through the pro and contra evidence available on record and observed that the presence of Malik Muhammad Malik Muhammad Umar at the time and place of occurrence is, *prima facie*, undeniable, even otherwise, it is not the case of Malik Muhammad Umar that he was in possession of the subject property where the deceased as well as other witnesses arrived,

though it is the case of petitioner side that they have reached at the subject house in order to take possession of the subject house in pursuance of agreement to sell but, the primary question remains the same that as to whether the deceased was murdered by Malik Muhammad Umar with his Kalashnikov as alleged by the petitioner in this case or otherwise? However, the learned Trial Court has relied upon the defence version recorded by Malik Muhammad Umar and Malik Muhammad Sameen and discarded the evidence of prosecution, therefore, at this stage, only on the basis of *prima facie* evidence available to the extent of Malik Muhammad Umar, hence the matter could be settled by granting leave.

15. In view of above, the captioned PSLA No.9/2019 to the extent of Malik Muhammad Umar/accused is ADMITTED and same has been converted into an appeal. Whereas, the captioned PSLA No.4/2018 and PSLA No.10/2019 are hereby DISMISSED having not been pressed by the petitioner as the petitioner himself confined his case to the extent of Malik Muhammad Umar / respondent only.

16. Since PSLA No.9/2019 pertains to offence under Section 302 PPC, therefore, in terms of the Lahore High Court Rules and Order (Vol.5), instant PSLA No.9/2019, after conversion to appeal, is ought to be placed before the Hon'ble Division Bench of this Court, therefore, office is directed to place the matter before the Hon'ble Chief Justice for entrustment to any Hon'ble Division Bench. The office is also directed to convert PSLA No.9/2019 into a criminal appeal and shall also requisition the record of the learned Trial Court.



17. Malik Muhammad Umar / respondent shall appear in-person and submit surety bond to the tune of Rs.30,000/- with one surety in the like amount to the satisfaction of the Deputy Registrar (Judl) of this Court.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.

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