

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

70/25

PRESENT:

JUSTICE MUHAMMAD HASHIM KHAN KAKAR
JUSTICE ISHTIAQ IBRAHIM
JUSTICE ALI BAQAR NAJAFI

JAIL PETITIONS NO.432 AND 498 OF 2021

(Against the judgment dated 25.05.2021, passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeal No.582-J of 2016 and Capital Sentence Reference No.3-T of 2016)

Fiaz alias Mansha; and
Rashed alias Chand.
Aamer Bhatti.

*(Both in JP NO.432 of 2021)
(In JP No.498 of 2021)*

...Petitioner (s)

Versus

The State

(In both cases)

...Respondent(s)

For the Petitioner(s):

Malik Noman Khalid, ASC, assisted by *Itwat*
Kaiynat, AHC.
Syed Rifaqat Hussain Shah, AOR
(In JP No.432 of 2021)

Syeda BH Shah, ASC
(in JP No.498 of 2021)

For the State:

Rai Akhtar Hussain, Addl. PG, Punjab
(in both cases)

For the Respondent :

Syed Intekhab Hussain Shah, ASC

Date of hearing:

22.09.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Fiaz alias Mansha, Rashed alias Chand and Aamer Bhatti ("**the petitioners**"), charged in case FIR No.730/2015 dated 05.08.2015, under sections 302 and 34 of the Pakistan Penal Code, 1860 ("**PPC**") and section 7 of the Anti-Terrorism Act, 1997 ("**ATA**"), registered at Police Station Sadiqabad, Rawalpindi, for committing murder of Tahir Khan Niazi ("**the deceased**"), a serving Additional District & Sessions Judge inside his house situated in Satellite Town Rawalpindi, were tried by the Anti-Terrorism Court-II, Rawalpindi ("**Trial Court**"). Upon conclusion of their trial, the Trial

Court vide judgment dated 08.06.2016 convicted and sentenced the petitioners as under:-

Under Section 449 r/w 34 PPC: Each to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.50,000/- and in default thereof to further undergo imprisonment for three months, each.

Under Section 302 r/w section 34 PPC: Each of the petitioners was sentenced to death as Ta'azir.

Under Section 7(1)(a) r/w section 21-I ATA: Each of the petitioners was sentenced to death.

Under Section 7(1)(b) r/w 21-I ATA: Each to undergo imprisonment for life and to pay Rs.50,000/- as fine.

Under Section 13 of the West Pakistan Arms Ordinance, 1965 r/w section 21-M ATA: To undergo 07 years imprisonment and to pay Rs.30,000/- as fine and in default thereof to further undergo imprisonment for 03 months each.

Under Section 354 PPC: Petitioner Aamir Bhatti was also convicted under the aforesaid offence to undergo rigorous imprisonment for two years and to pay Rs.20,000/- as fine and in default thereof to further undergo imprisonment for 02 months.

All the sentences of imprisonment of each petitioner were directed to run concurrently.

Benefit of Section 382-B Cr.P.C. was extended to the petitioners-convicts in the sentences awarded to them under PPC.

2. The Lahore High Court, Rawalpindi Bench, Rawalpindi ("**High Court**"), while deciding Criminal Appeal No. 582-J of 2016, filed by the petitioners, upheld their convictions and sentences awarded to them by the Trial Court. The death sentences of petitioners-convicts Rashed alias Chand and Aamer Bhatti were modified to imprisonment for life. Consequently, the Murder Reference sent by the Trial Court to their extent was answered in the negative. The death sentence of petitioner-convict Fiaz alias Mansha was maintained and consequently, the Murder Reference sent by the Trial Court for confirmation of his death sentence was answered in the affirmative vide judgment dated 25.05.2021 ("**impugned judgment**").

3. Through the instant Jail Petitions, the petitioners-convicts seek leave to appeal against the impugned judgment of the High Court.

4. According to the First Information Report ("**FIR**") Exh.PA/1, registered on the report of complainant Muhammad Sajjad Khan Niazi (PW.15) on 05.08.2015 at about 1:00 p.m. when he came out of his house situated in Satellite Town, Rawalpindi, to visit his brother Tahir Khan Niazi deceased, who was residing in the adjacent house, saw a man of medium height, *Gandami* complexion, about 28 years old, dressed in a *shalwar qameez*, sitting on a motorcycle without having a number plate, who then entered in the house of the deceased. The complainant following him also entered the house of his deceased brother and when reached the TV lounge, he saw another armed man about 25-30 years old, weak-faced of medium height and *Gandami* complexion, holding Mst. Sadia Anjum wife of the deceased. He also saw third armed man who was overpowered and dashed to the ground by the deceased. The man who had entered moments earlier the entrance of the complainant, fired at the deceased, as a result, the deceased got hit and fell to the ground. On the complainant's hue and cry, all three assailants fled on the motorcycle parked outside the deceased's house. The complainant rushed his injured brother to Benazir Bhutto Hospital ("**BBH**"), Rawalpindi for medical aid, where he succumbed to injuries. The incident was reported by complainant to Allah Yar Inspector (PW.17) in BBH, Rawalpindi, who prepared inquest report Exh.PL/3 of the deceased and shifted his dead body for postmortem examination under the escort of Sikandar Hayat ASI and Constable Muhammad Younis (PW.3).

5. Allah Yar Inspector (PW.17), proceeded to the spot and prepared site plan Exh.PT. During spot inspection, he secured bloodstained earth through cotton from the place of the deceased and one crime empty of .30 bore pistol vide recovery memos Exh.PU and Exh.PV, respectively. He also took into possession a live bullet of .30 bore pistol vide recovery memo Exh.PX from the car porch and a piece of smoked cigarette and cigarette-case containing eight cigarettes of Gold Leaf Brand vide recovery memo Exh.PY. On 14.08.2015, he arrested the petitioners/convicts when they were riding on a motorcycle and on personal search, from each one of them, recovered .30 bore pistol and live rounds Exh.P.1 to Exh.P.25 vide recovery memos Exh.PAA to Exh.PEE. Their motorcycle was also taken into possession through recovery memo Exh.PFF. He conducted the identification parade of the petitioners-convicts through the eyewitnesses in accordance with law and rules. The petitioners also confessed their guilt and their

confessional statements were recorded by Muhammad Ismail Jasra (PW.11), the learned Judicial Magistrate, Rawalpindi.

6. After completion of investigation report under section 173 of the Code of Criminal Procedure, 1898 ("**Code**") was submitted against the petitioners-convicts before the trial Court, where they were formally charge sheeted to which they pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as eighteen witnesses. After closure of the prosecution's evidence, statements of the petitioners-convicts were recorded under Section 342 Cr.P.C., wherein they denied the prosecution allegation and professed their innocence. The petitioners-convicts, however, declined to be examined on oath under section 340(2) Cr.P.C. or to produce evidence in defence. On conclusion of trial, the petitioners-convicts were convicted and sentenced by the Trial Court, as mentioned in detail in the earlier part of the judgment. Their conviction in all the offences was maintained by the High Court, however, the death sentence of the two petitioners-convicts Rashed alias Chand and Aamer Bhatti, was modified from death to imprisonment for life through the impugned judgment.

7. We have heard the arguments of learned counsel for the parties and the learned Additional Prosecutor General, Punjab, appearing on behalf of the State and perused the record, evidence as well as the impugned judgment with their valuable assistance.

8. We have observed that the Trial Court while recording and the High Court while maintaining the conviction of the petitioners-convicts, have believed the ocular account furnished by complainant Muhammad Sajjad Khan Niazi (PW-15) and Mst. Sadia Anjum (PW-16), the brother and widow of the deceased, respectively, and Muhammad Razaq (PW-14), the domestic servant of the deceased, who witnessed the petitioners-convicts fleeing from the spot after commission of the crime. In addition to the ocular account, the Courts below have also taken into consideration the confessional statements of the petitioners-convicts, recorded by Muhammad Ismail Jasra, the Judicial Magistrate (PW-11), and the identification parade of the petitioners-convicts conducted under the supervision of Sardar Hamid Hussain, Judicial Magistrate, during which the petitioners-convicts were positively identified with specific role by the eyewitnesses and PW Muhammad Razaq, in aid and corroboration of the ocular account. Furthermore, the medical evidence furnished by Dr. Gulab Shah (PW-7) has also been taken in support of the ocular

account by the Courts below. The investigation proceedings conducted by Allah Yar Inspector (PW-17), were also scrutinized and found to be consistent with the prosecution's version. On a reappraisal of the prosecution's evidence, both oral and documentary, the learned High Court found the prosecution case to be credible and cogent, and accordingly maintained the conviction of the petitioners-convicts Rashed alias Chand and Aamer Bhatti, however, commuted their sentence from death to imprisonment for life on the ground that no role of firing had been assigned to the above-named petitioners-convicts. The conviction and death sentence of petitioner-convict Fiaz alias Mansha were maintained by the High Court on the ground that the role of firing was specifically assigned to him.

9. The unfortunate incident involving the murder of Muhammad Tahir Khan Niazi deceased, a serving Additional District & Sessions Judge, Rawalpindi, occurred on 05.08.2015 at about 01:00 p.m. inside his house, situated in Satellite Town, Rawalpindi, located at a distance of about three Kilometers from Police Station Sadiqabad, District Rawalpindi. Complainant Muhammad Sajjad Khan Niazi (PW-15), brother and Mst. Sadia Anjum (PW.16), widow of the deceased has furnished ocular account of the occurrence while Muhammad Razzaq (PW-14), the domestic servant of the deceased's house, has furnished the ocular account of the events pertaining to the escape of the assailants from the crime scene. The complainant at the very first instance i.e. initial report/FIR has given detail features and description of each of the three assailants. No doubt, neither the complainant in the FIR nor Mst. Sadia Anjum in her statement recorded under Section 161 Cr.P.C., named the petitioners-convicts but this omission, rather than casting doubt on the prosecution case, show their *bona fides* that they were not interested and inclined to falsely implicate anyone without proper identification and verification. Had there existed any motive, ill-will or animosity against the petitioners-convicts, they could have nominated them at the first instance. The complainant and Mst. Sadia Anjum in their statements provided a truthful and forthright account of the occurrence, narrating the specific roles of each culprit and giving their physical descriptions in detail. Mst. Sadia Anjum being widow of the deceased, her presence inside the house with the deceased was quite natural. Similarly, visit of the complainant to the house of his deceased brother having adjacent house, is also appealable to mind because as it

is a practice of routine that siblings having adjacent houses or at a little distance do visit the house of each other. If the complainant was not present, he would not be able to furnish the detail features, descriptions and characteristics of the three assailants in his very initial report.

10. The petitioners-convicts were arrested on 14.08.2015 by Allah Yar Inspector (PW-17), who, from personal search of each one of them, recovered .30 bore pistol. Similarly, the motorcycle without having number plate, allegedly used in the commission of the offence which the petitioners-convicts at the time of arrest was riding, was also taken into possession. A separate case under the Punjab Arms Ordinance, 2015 was registered against the petitioners-convicts. On the disclosure of the petitioners-convicts about their involvement in the murder of the deceased, immediately, their faces were covered and they were shifted to the Police Station by Allah Yar Inspector (PW.17). On 15.08.2015, the petitioners-convicts were produced before the Judicial Magistrate with the request of their shifting to judicial lockup for the purpose of identification parade. Upon request of the Investigating Officer, the petitioners-convicts were sent to judicial lockup. On 17.08.2015, the Investigating Officer moved an application (Exh.PHH) before the Sessions Judge, Rawalpindi, seeking appointment of a Magistrate to conduct their identification parade. In pursuance thereof, Sardar Hamid Hussain (PW.12), Judicial Magistrate, was appointed to conduct the identification parade vide order Exh. PHH/1.

11. The identification parade was duly conducted on 20.08.2015 at Central Jail, Adiala, Rawalpindi, in the presence of Sardar Hamid Hussain Judicial Magistrate. During the identification parade, the complainant, Mst. Sadia Anjum and Muhammad Razzaq (PWs), duly identified the petitioners-convicts to be the same assailants who had entered the house of the deceased and committed his murder assigning to each one of them his respective role in the commission of the offence. A careful examination of the testimony of the learned Judicial Magistrate (PW.12), as well as the eye-witnesses, coupled with the identification memo and the report prepared by PW.12, reveals that the proceedings of the identification parade were conducted strictly in accordance with the mandate of Chapter-II, Part-C, Volume-III of the Rules and Orders of the Lahore High Court, Lahore. The prosecution's witnesses, the learned Magistrate (PW.12), and the Investigating Officer (PW.17), were subjected to thorough and searching cross-examination, but the defence failed to

extract anything suggestive of prior exposure of the petitioners-convicts to the eyewitnesses before holding of the identification parade. We have observed that the identification parade was conducted in a manner that ensured utmost fairness. As is evident from the memo of identification (Exh. PR), all possible safeguards were meticulously observed to preclude any opportunity for the eyewitnesses to have even a fleeting glance at the petitioners-convicts prior to the formal identification. Moreover, the identification parade of each petitioner-convict was held separately, thereby enhancing the reliability of the process. Both eye-witnesses, in unequivocal terms, assigned the role of firing at the deceased to petitioner-convict Fiaz alias Mansha.

12. The confessional statements of the petitioners-convicts were recorded by Muhammad Ismail Jasra, Magistrate Section-30 (PW-11). On scrutiny of the record as well as testimony of PW.11, we observed that the same were recorded strictly in accordance with the mandatory requirements of Sections 164 and 364 Cr.P.C. Confessional statement of each of the petitioner-convict was recorded separately, ensuring that all legal safeguards were observed. Sufficient time for pondering over their statements were given to the petitioners-convicts. In their respective confessional statements, the petitioners-convicts furnished a detailed account of the occurrence as well as the conspiracy hatched by them to commit the murder of the deceased. The confessional statements of the petitioners-convicts are mutually corroborative and consistent with each other on material particulars. According to the confessional statement of petitioner-convict Fiaz alias Mansha, he bore a grudge against the deceased stemming from an incident in which he was allegedly insulted by the deceased during court proceedings when the deceased was posted as a Judge in Lahore and petitioner-convict Fiaz alias Mansha was produced before him in custody. This insult, as per confessional statements of all the three petitioners-convicts, became the motive behind the murder of the deceased. The confessional statements of co-petitioners Rashed and Aamer Bhatti similarly reveal that the plan to eliminate the deceased was formulated owing to the same grievance i.e., the alleged insult to petitioner-convict Fiaz alias Mansha by the deceased during judicial proceedings when petitioner-convict Fiaz alias Mansha was produced before him in custody in a criminal case. In his confessional statement petitioner-convict Fiaz alias Mansha admitted his role of firing at the deceased. The co-convicts/petitioners also assigned

the role of firing at the deceased to Fiaz alias Mansha in their confessional statements. The eyewitnesses in the identification parade also assigned the role of effective fire shot upon the deceased to petitioner-convict Fiaz alias Mansha. We have carefully examined the testimony of Muhammad Ismail Jasra, Judicial Magistrate (PW-11), who recorded the confessional statements of the petitioners-convicts, and are satisfied that all procedural formalities and legal requirements were meticulously observed by him before recording their confessional statements. Adequate time for reflection was afforded to each petitioner-convict before recording the confessional statement, in order to ensure that their confessional statements were voluntary and not the result of coercion, inducement, or duress. PW-11 was subjected to extensive cross-examination by the defence, yet no material could be elicited to cast doubt on the voluntariness or veracity of the confessional statements of the petitioners-convicts. There is nothing on the record to suggest that the confessional statements of the petitioners-convicts were obtained through torture, threat, inducement, or any undue influence. The confessional statements of the petitioners-convicts, therefore, stand as a strong piece of corroborative evidence to the ocular account of the prosecution's case.

13. The medical evidence furnished by Dr. Gulab Shah (PW-7), who conducted the post-mortem examination on the dead body of the deceased, fully supports the ocular account of the prosecution's case. According to his testimony, he observed a firearm entry wound with inverted margins, measuring 1 x 1 cm, located on the left lumbar region, 17 cm above and medial to the left anterior superior iliac spine and 24 cm lateral to the left side of the umbilicus of the deceased. In his opinion, the cause of death of the deceased was the firearm injury causing damage to the left kidney and its associated blood vessels resulting into the unnatural death of the deceased. He further opined that the injury was ante-mortem in nature and sufficient, in the ordinary course of nature, to cause death. The probable time between the injury and death, as per findings of the medical Officer (PW.7), was immediate. This single firearm entry wound was specifically attributed to petitioner-convict Fiaz alias Mansha by the eyewitnesses during the identification parade and their testimony. The factum of effective fire shot on the person of the deceased was also candidly admitted by petitioner Fiaz alias Mansha in his confessional statement as well as the same role was assigned to him

by the co-convicts in their confessional statements. In this view of the matter, the medical evidence not only supports but also reinforces the prosecution's ocular account as well as the voluntary judicial confession of the petitioner-convict Fiaz alias Mansha.

14. The learned High Court has also meticulously and exhaustively addressed the contention raised by the learned counsel for the petitioners-convicts, who argued that the conviction and sentence awarded to the petitioners-convicts under the provisions of ATA are contrary to the mandate of the judgment rendered in *Ghulam Hussain & Others v. The State & Others* (**PLD 2020 SC 61**) as the alleged offence, according to the learned counsel, does not fall within the statutory definition of terrorism. Particular emphasis was laid on the assertion that the prosecution failed to produce any independent or corroborative evidence to establish the alleged incident of insult or grievance harboured by petitioner-convict Fiaz alias Mansha against the deceased during judicial proceedings when the deceased was serving as a Judge in Lahore.

15. The argument of the learned counsel for the petitioners-convicts, however, is misconceived and devoid of legal merit. It is not merely the existence of a personal grievance that determines whether an offence qualifies as an act of terrorism under Section 6 of the ATA; rather, the nature, context, and impact of the act must be assessed. In the present case, all three petitioners-convicts, in their voluntary confessional statements, unequivocally admitted to having conspired and executed the murder of the deceased, a sitting Judicial Officer at his residence, solely on account of the personal grudge borne by petitioner Fiaz alias Mansha, arising from judicial proceedings in which he was produced in custody before the deceased. Admittedly, the deceased had no personal motive or enmity against any of the petitioners-convicts. No doubt, at the time of occurrence the deceased was not on his duty and was inside his house but the act of assassination of the deceased was deliberately planned and executed in consequence for action taken by the deceased in his official capacity as a judicial officer. It is well settled by now that where a public servant is targeted and murdered due to the performance of his official duties, the act exceeds the boundaries of private vengeance and strikes at the very core of the system and rule of law. Such a targeted killing creates a chilling effect on other public servants, deters them from discharging their duties freely and impartially, and spreads

fear and insecurity in the minds of the public at large. The object of the offence in this case was not only to settle a perceived personal score but also to send a message of intimidation to those serving in the judicial system or performing their official duties. The cumulative effect of such an act, therefore, squarely falls within the ambit of terrorism as defined under Section 6 of the ATA, particularly subsections (1)(b) and (2)(f), which include acts committed to intimidate public servants, create a sense of fear or insecurity in society, and to influence the performance of public duties. In this view of the matter, the learned High Court rightly concluded that the murder of the deceased Judicial Officer, being in direct nexus with the performance of his official duties as a Judge, constitutes an act of terrorism, and the conviction and sentence awarded to the petitioners-convicts under the relevant provisions of ATA are fully justified in law and on facts. Reliance in this regard may be placed on the authoritative judgment rendered in CrI.A No.22-K/2022 in CrI.P.L.A. No.184-K/2020, titled, "Riaz Hussain Vs the State" decided on 23.10.2025 wherein while dealing with the pivotal legal question *"Whether the launching of a murderous assault, ostensibly arising from a private party personal vendetta but resulting in injuries to law enforcement personnel/police officials lawfully performing their duties, falls within the definition of "terrorism" under Section 6 of the Anti-Terrorism Act, 1997 ("ATA")?* after exhaustive discussion this Court reached to the following conclusion:-

"For what has been discussed above, we are firm in our view to hold that in cases where the officers/officials of the Law Enforcement Agencies are harmed or killed not because of personal enmity, but solely because of their deployment for discharging of lawful duty, and where such attacks are deliberately planned as part of an assault/attack on a person(s) in custody, the intent and effect of the act transcend private vendetta attract provisions of ATA. **The targeting of police personnel in the performance of their duties, particularly, through premeditated armed assaults even on a private party or while committing any illegal act, constitutes a direct challenge to State authority and the justice system. Such act shall fall within the definition of terrorism. This refined analysis does not unsettle the jurisprudence established in Ghulam Hussain's case, but rather supplements it by recognizing that serious violence against law enforcement agencies, even in the context of private feuds of third parties, may acquire the character of terrorism when it systematically targets those upholding the rule of law. It is also to be noted**

that if any harm is caused to an official outside their official duty hours on account of an act performed by them in discharge of their official duties, i.e. as consequence of their official duty, such harm shall equally be treated as arising from their official role and would thus amount to terrorism. (Bold and underline supplied for emphasis)

16. Coming to the question of sentence of the petitioners-convicts, it may be noted that the learned High Court has already commuted the death sentence awarded to petitioners-convicts Rashed alias Chand and Aamer Bhatti on the ground that no role of firing was attributed to them. In contrast, the petitioner-convict Fiaz alias Mansha was specifically assigned the role of effective fire shot on the person of the deceased, which resulted into his unnatural death. The prosecution has successfully proved the aforesaid fact through cogent, confidence-inspiring and reliable direct evidence corroborated by circumstantial evidence and supported by medical evidence. Nonetheless, it is an undisputed fact that the petitioner-convict Fiaz alias Mansha fired a single shot at the deceased and did not repeat the act of firing despite the fact that the deceased was at his mercy. This aspect, along with certain other discrepancies and inconsistencies in the prosecution's case, particularly, certain minor procedural flaws in the confessional statements of the petitioners-convicts, which although are not of such a magnitude as to warrant an acquittal of petitioner-convict Fiaz alias Mansha, however, may reasonably be treated as mitigating circumstance for the purpose of determining the appropriate quantum of sentence of petitioner-convict Fiaz alias Mansha. It is by now well settled by this Court that inconsistencies of a minor dimension in prosecution evidence throw up doubts about prosecution version but do not qualify for acquittal. Such inconsistencies present merely a mitigating circumstance capable of affecting no more than quantum of sentence. Such inconsistencies may create dilution of prosecution version but not its complete negation.

17. For the reasons stated above, the conviction of the petitioner-convict Fiaz alias Mansha recorded through the impugned judgment is maintained, however, his death sentence on each count is hereby commuted to imprisonment for life. The conviction and sentence of the petitioners-convicts Rashed alias Chand and Aamer Bhatti does not warrant any interference by this Court.

18. Accordingly, Jail Petition No.498 of 2021, filed by petitioner Aamer Bhatti, is dismissed and consequently, his conviction and sentences as recorded through the impugned judgment are maintained. Leave refused.

19. Jail Petition No.432 of 2021, to the extent of petitioner Rashed alias Chand, is also dismissed, consequently, his conviction and sentences are upheld. Leave is refused.

20. Jail Petition No.432 of 2021, to the extent of petitioner-convict Fiaz alias Mansha, is partly allowed, consequently, his conviction recorded through the impugned judgment is upheld; however, the sentence of death awarded to him under each count is commuted to imprisonment for life. His conviction and sentences in the remaining offences are maintained. This petition is converted into an appeal and partly allowed in the above manner.

Announced in open Court at Islamabad on 14th Nov 2021

M.Siraj Afridi PS

APPROVED FOR REPORTING.