

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Naeem Akhter Afghan
Mr. Justice Malik Shahzad Ahmad Khan

Jail Petition No.704 of 2017

Against the judgment dated 07.09.2017 passed by the Lahore High Court, Lahore in Murder Reference No.139/2014 and Cr. Appeal No.320-J of 2014

Amjad Ali

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Kasim Mirjat, ASC

For the Complainant: Mst. Hameedan Bibi, In person

For the State: Rai Akhtar Hussain, Addl. P.G, Pb.

Date of Hearing: 26.11.2025

JUDGMENT

Irfan Saadat Khan, J.- This Jail Petition is directed against the judgment dated 07.09.2017 passed by the Lahore High Court, Lahore in Murder Reference No.139 of 2014 and Criminal Appeal No.320-J of 2014, whereby the sentence of death awarded to the petitioner, Amjad Ali, by the Trial Court under section 302(b) of the Pakistan Penal Code, 1860 (**'PPC'**) was altered to imprisonment for life, while the direction to pay compensation of Rs.100,000/- to the deceased's legal heirs, and, in case of non-payment, the sentence of six months' simple imprisonment (**'S.I.'**), was maintained. The benefit under section 382-B of the Code of Criminal Procedure, 1898 (**'Cr.P.C.'**) was however extended to the petitioner.

2. Briefly stated, the facts of the case as per FIR bearing No. 825, dated 08.10.2011, registered at Police Station Hujra Shah Muqem, District

Okara, are that at about 2:00/3:00 a.m. (night), while the complainant, Mst. Hameedan Bibi, her son Majid Ali and her brother Abdul Jabbar, who came to meet her, were sleeping, they heard noises from the *Varanda* and saw that her son-in-law, namely Amjad Ali (accused-petitioner), was present along with his rifle and was forcibly taking Mst. Tasbia Bibi (daughter of the complainant and wife of the accused) with him, as she had come to the complainant's house due to some dispute with the accused. In the meantime, the husband of the complainant namely, Ashiq Hussain tried to stop the accused. Majid Ali and Abdul Jabbar upon hearing the noises woke up. The accused then caused a fatal rifle-butt blow on the left side of the head of Ashiq Hussain, who fell on the cot. The complainant, her son and her brother then tried to get hold of Ashiq Hussain, while the accused attempted to forcibly take away his wife Mst. Tasbia Bibi. In the meantime, Ashiq Hussain succumbed to the injuries on the spot.

3. Usual trial then took place, *vide* Sessions Case No.06 of 2012 and Sessions Trial No.04 of 2012, and the Additional Sessions Judge, Depalpur, District Okara, *vide* judgment dated 02.04.2014, after finding the accused guilty of the offence under section 302(b) PPC, sentenced him to death, subject to confirmation by the Lahore High Court, Lahore. The Trial Court also directed the accused to pay compensation of Rs.1,00,000/- to the legal heirs of the deceased under section 544-A of the Cr.P.C. and in default thereof to undergo S.I. for six months.

4. Mr. Muhammad Kasim Mirjat, learned ASC has appeared on behalf of the petitioner and stated that the judgments of the Trial Court and the High Court are erroneous and are not based on proper appreciation of the facts. He stated that the motive in the instant case has been disbelieved

by the High Court. Moreover, according to him, the recovery has also not been proved by the prosecution. He next stated that even if it is assumed that the petitioner-Amjad Ali caused a rifle-butt blow to the deceased-Ashiq Hussain, the same was a single blow and hence cannot be considered a brutal or gruesome act. He next stated that there are major contradictions in the depositions of the witnesses, which have not been considered by the Trial Court as well as by the High Court. He next stated that most important witness i.e. Tasbia Bibi (wife of Amjad Ali) was never produced by the prosecution as a witness. He further stated that Abdul Jabbar (brother of the complainant) who was stated to be present at the time of occurrence was also given up by the prosecution. One further witness namely Muhammad Iqbal was also given up by the prosecution. He explained that Mst. Nabia Nadia (the other daughter of the complainant) was also not produced by the prosecution and, lastly, that Murtaza (brother-in-law of Amjad Ali, from whose house it was alleged that the rifle was recovered) was likewise not produced. He stated that in view of these facts the case is shrouded with mysteries and mired in doubts, and therefore, by extending the benefit of the same to the accused-petitioner, he may accordingly be acquitted.

5. The complainant, Mst. Hameedan Bibi, is present in person and stated that she would rely on the arguments of the State Counsel. Rai Akhtar Hussain, learned Additional Prosecutor General, Punjab, has appeared on behalf of the State and stated that the occurrence was witnessed not only by Mst. Hameedan Bibi (the complainant) but also by her son Majid Ali and her brother Abdul Jabbar. He stated that the accused, Amjad Ali, inflicted a fatal rifle-butt blow on the head of the deceased, namely, Ashiq Hussain and he does not deserve any leniency. He further stated that the High Court has already given ample relief to the

accused by converting his death sentence into that of life imprisonment. In conclusion he stated that this case does not merit any interference and the same may therefore be dismissed.

6. We have heard the learned counsel for the petitioner at some length, as well as the complainant who is present in person and the learned State Counsel. We have also perused the record minutely.

7. The ocular account of the prosecution has been brought on the record through Mst. Hameedan Bibi complainant (PW-1), who was widow of Ashiq Ali (deceased) and her son Majid Ali (PW-2). Both the abovementioned witnesses were closely related to the deceased. It is true that mere relationship of a witness with the deceased by itself is not sufficient to outrightly discard his/her evidence provided the same is confidence inspiring and trustworthy. However, we have noted that the occurrence in this case took place on 08.10.2011, at about 2.00/3.00 a.m (night) but no source of light has been mentioned in the contents of the FIR or in the site plan (Ex.PE) or in the evidence of prosecution's eye-witnesses. Under the circumstances, the identification of the petitioner in the darkness of night is not free from doubt.

8. It is further noteworthy that in the site plan (Ex.PE), although two (02) rooms and a bathroom has been shown to be constructed at the place of occurrence but two (02) rooms and a bathroom are shown to be under construction, which means that the house where the occurrence took place, was not completely constructed and the same was still under construction. As per prosecution story, Mst. Hameedan Bibi complainant (PW-1) and her son namely Majid Ali (PW-2), were sleeping inside the room of their house, whereas Ashiq Ali (deceased), was sleeping in the veranda of the said house. It is further noteworthy that in the contents of the FIR,

there was only mentioning of one injury caused by the petitioner with the butt of his rifle at the left side of the head of Ashiq Ali (deceased) but according to the medical evidence brought on the record through Dr. Munir Ahmad (PW-9), there were two (02) lacerated wounds on the left side of the forehead and left temporal area of the deceased and as such there was conflict between the ocular account, as mentioned in the contents of the FIR and in the medical evidence of the prosecution. We have further noted that in order to bring their evidence in line with the medical evidence, the above-referred prosecution eye-witnesses made dishonest improvements in their statements while appearing before the learned trial Court and stated that the petitioner inflicted butt blows of his rifle at the left side of the head of the deceased but their said evidence is in-conflict with the story narrated in the contents of the FIR, where there was no mentioning of infliction of any second blow with the butt of his rifle by the petitioner on the head of the deceased. As the prosecution witnesses had made dishonest improvements in their statements in order to bring their statements in line with the postmortem report, therefore, their evidence is not worthy of reliance as observed in the judgments reported as 'Akhtar Ali and others v. The State' (2008 SCMR 6) and 'Muhammad Rafique and others v. The State and others' (2010 SCMR 385).

9. It is further noteworthy that in the contents of the FIR, it was alleged that on the night of occurrence, the petitioner came to the house of the complainant party in order to forcibly take back with him his wife Mst. Tasbiha Bibi (daughter of the complainant/deceased) and when Ashiq Ali (deceased), tried to stop him from doing so, the petitioner inflicted a butt blow of his rifle on the left side of head of Ashiq Ali (deceased). The motive alleged by the prosecution was that the daughter of the complainant

namely Mst. Tasbiha Bibi, who was wife of the petitioner had come to the house of the complainant being annoyed with the petitioner and the petitioner wanted to take her back forcibly with him to his house. In the light of above, Mst. Tasbiha Bibi who was daughter of the complainant was the best witness to prove the ocular account and the above-mentioned alleged motive but she was not produced in the witness box. As the prosecution has withheld the best evidence, therefore, an adverse inference under Article 129(g) of Qanun-e-Shahadat Order, 1984, can validly be drawn against the prosecution that had the above-mentioned witness been produced in the evidence, then her evidence would not have supported the prosecution case. Reference in this context may be made to the judgments reported as "Lal Khan v. The State" (2006 SCMR 1846), "Riaz Ahmed v. The State" (2010 SMCR 846), "Abdul Qadeer v. The State" (2024 SCMR 1146) and "Riasat Ali v. The State" (2024 SCMR 1224).

10. We have further noted that Mst. Hameedan Bibi complainant (PW-1), conceded during her cross-examination that Amjad Ali (petitioner), had abducted her other daughter namely Mst. Nabiha Nadia and FIR was registered in this respect against the petitioner. She further stated that the abovementioned FIR was lodged after the arrest of the petitioner in this murder case. She also conceded that they (complainant party) had tried to get back his daughter Mst. Nabiha Nadia about 3/4 days prior to the occurrence and for this purpose, they came to Murtaza Butt etc. The above-mentioned admissions of the complainant show that another daughter of the complainant namely Mst. Nabiha Nadia was abducted by the petitioner prior to the occurrence of this case. Under the circumstances, there was no reason with the petitioner to come to the house of the complainant party on the night of occurrence in presence of the abovementioned strained

relationship between the parties, in order to take his wife back and as such the prosecution story does not appeal to a prudent mind.

11. Insofar the recovery of rifle (P-5), from the possession of the petitioner is concerned, we have noted that in the recovery memo (Ex.PD), it was not mentioned that butt of the above-mentioned rifle was stained with blood. In light of above, the recovery of rifle (P-5), from the possession of the petitioner is of no avail to the prosecution and the said recovery has rightly been disbelieved by the learned High Court in paragraph No.11, of the impugned judgment.

12. In our view, if all these facts are considered in juxtaposition, it would reveal that the prosecution has failed to prove its case beyond reasonable doubt against the accused-petitioner. We, therefore, in view of the above factors, are of the candid opinion that the present case is not free from doubts, the benefit of which ought to be given to the accused-petitioner. Reliance in this regard is placed upon the case of Ahmed Ali and another v. The State (2023 SCMR 781), wherein this Court ruled 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 what has been discussed above, we convert this petition into an appeal and allow the same. The appellant is acquitted of the charges levelled against him by extending him benefit of doubt. The judgment of the Trial Court dated 02.04.2014 and that of the High Court dated 07.09.2017 are hereby set aside, and the appellant is directed to be released forthwith, if he is not required to be detained in any other case.

14. These are the reasons of our short order dated 26.11.2025, which is reproduced hereinbelow:

"For reasons to be recorded later, this petition is converted into an appeal and it is allowed. By giving the benefit of doubt, the appellant is acquitted of the charges levelled against him. The judgments of the Trial Court dated 02.04.2014 and the High Court dated 07.09.2017 are set aside. The appellant be released forthwith if not required to be detained in any other case."

Islamabad
26.11.2025
arshed

"Approved for Reporting"