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Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.15580 of 2020
(Muhammad Iqbal alias Bali alias Jhatal etc. Vs. The State etc.)

JUDGMENT

Date of hearing: 03.12.2025.

Appellant by: M/s Ch. Rizwan Khalid and Ch. Zeeshan Khalid, Advocates.

State by: Ms. Sumara Shafi, Deputy District Public Prosecutor

ABHER GUL KHAN, J. Muhammad Iqbal alias Bali alias Jhatal, Altaf alias Allah Ditta, and Naeem Bakhsh (appellants), involved in case FIR No.618/2016 dated 19.12.2016, registered under Sections 302 & 393 PPC at Police Station Shorkot City, District Jhang, were tried by the learned Additional Sessions Judge, Shorkot, who *vide* judgment dated 26.02.2020 convicted and sentenced them as follows:-

Muhammad Iqbal alias Bali alias Jhatal (appellant)

Under Section 302 (b) PPC to suffer rigorous imprisonment for life. He was also directed to pay Rs.3,00,000/- as compensation to the legal heirs of the deceased under Section 544-A Cr.P.C. and in default whereof to undergo simple imprisonment for six months.

Muhammad Iqbal alias Bali alias Jhatal,

Naeem Bakhsh and Altaf alias Allah Ditta (appellants)

Under section 393 PPC to suffer rigorous imprisonment for seven years each and fine of Rs.30,000/- each in default thereof to further undergo simple imprisonment for three months each.

Both the sentences were ordered to run concurrently and benefit of Section 382-B Cr.P.C was also extended to the convicts.

Challenging their convictions and sentences, the appellants filed the present criminal appeal. It is important to mention here that as per record the appellant Altaf alias Allah Ditta, passed away on 25.01.2021. Consequently, the appeal concerning him was abated and disposed of by order dated 19.04.2022. Today, the learned Deputy District Public Prosecutor has submitted a report stating that the appellant Naeem Bakhsh has also died. As a result, the instant appeal stands abated and disposed of to his extent as well.

The present appeal is being decided on its merits solely with respect to the appellant Muhammad Iqbal alias Bali or Jhatal.

2. In brief, the prosecution case, as narrated by the complainant Muhammad Latif (PW.6) in FIR (Exh.PD/1) is that on 19.12.2016 at about 6:00 p.m., he along with his maternal nephew Shehzad and Muhammad Fazil (the deceased), was returning home from Mouza Mangan on a motorcycle bearing registration No.7856-JGK. When they reached near the Bhaini/Dera of Allah Ditta, three accused with different physical features suddenly appeared and attempted to snatch the motorcycle on gunpoint. When Muhammad Fazil resisted, a tall accused fired a shot from his rifle, striking Fazil on his left thigh. Muhammad Siddique (PW.7) and Muhammad Nawaz (given up PW) who were at some distance also witnessed the incident. On noticing the arrival of these witnesses, the assailants fled away from the spot. Muhammad Fazil, who was seriously injured, was taken to THQ Hospital Shorkot, where he later succumbed to his injuries.

3. After the incident, the complainant Muhammad Latif (PW.6) got recorded his oral statement/Fard Bian (Exh.PD) before Tariq Mehmood SI (PW.8) which was subsequently forwarded to the police station for the registration of a formal FIR (Exh.PD/1) through Rabnawaz 1373/C. On 19.12.2016, Tariq Mehmood SI (PW.8) proceeded to THQ Hospital Shorkot, where he prepared the injury statement (Exh.PB) and the inquest report (Exh.PB/1). He then visited the crime scene and took into possession two crime empties (P.7/1-2) through recovery memo (Exh.PH). On 30.01.2017, the appellant Muhammad Iqbal along with Muhammad Altaf alias Allah Ditta (since died) was arrested under Section 54 Cr.P.C. After their arrest, they were sent to judicial custody for the purpose of conducting the identification parade, which was carried out on 04.02.2017, during which the accused were identified by the witnesses. During the investigation, on 20.02.2017, the appellant Muhammad Iqbal alias Bali alias Jhatal made disclosure and pursuant to it led the police to the recovery of a .44-bore rifle (P.10), which was taken into possession through recovery memo

(Exh.PK). Thereafter, Tariq Mehmood SI recorded the statements of the witnesses under Section 161 Cr.P.C. and prepared the report under Section 173 Cr.P.C.

4. During the trial, the prosecution, in support of its case against the appellant, examined nine witnesses. Among them, Dr.Ghulam Rasul (PW.1) conducted the postmortem examination of the deceased Muhammad Fazil and prepared the postmortem report (Exh.PA) along with pictorial diagrams (Exh.PA/1 & Exh.PA/2). Muhammad Latif (PW.6) and Muhammad Siddique (PW.7) narrated the ocular account of the incident. Tariq Mehmood, SI (PW.8) conducted the investigation. The remaining witnesses are largely formal in nature. Upon the conclusion of the prosecution's evidence, the learned trial court examined the appellant under Section 342 Cr.P.C., posing questions based on the prosecution's case, which the appellant largely denied while asserting his innocence and false implication. The appellant neither recorded statement under Section 340(2) Cr.P.C. nor produced any evidence in his defence. After the trial concluded, the appellant was convicted and sentenced as noted above, hence the present criminal appeal.

5. Arguments heard and record perused.

6. A meticulous examination of the record shows that the present case arises out of a homicide incident which took place on 19.12.2016 at about 6:00 p.m. Allegedly, at the relevant time the complainant Muhammad Latif (PW.6), his brother-in-law Muhammad Fazil (the deceased) and his maternal nephew Shahzad were returning home on a motorcycle bearing registration No.7856-JGK. When they reached near the Bhaini/Dera of Allah Ditta, three armed men on another motorcycle suddenly appeared and signaled them to stop. The accused pulled Muhammad Fazil off the motorcycle, and when he resisted, one of them fired a shot from his rifle, hitting Fazil on the right thigh and causing him to fall to the ground. The assailants then fled away from the crime scene. Since the witnesses had no prior acquaintance with the accused, the FIR (Exh.PD/1) was lodged against unknown accused. As per the

prosecution version, the appellant Muhammad Iqbal and his co-accused Muhammad Altaf alias Allah Ditta (since died) were arrested on 30.01.2017 under Section 54 Cr.P.C. and were sent to judicial custody for the purpose of conducting the identification parade.

7. In examining the ocular account provided by the two eyewitnesses the complainant Muhammad Latif (PW.6) and Muhammad Siddique (PW.7), it becomes evident that none of them had any prior familiarity with the appellant Muhammad Iqbal or his co-accused, nor did they name them in their statements to the police. Consequently, after the arrest of the appellant Muhammad Iqbal and his co-accused, the identification parade was conducted under the supervision of Muhammad Irfan, Judicial Magistrate (PW.9) on 04.02.2017. Although during these proceedings the eyewitnesses identified appellant Muhammad Iqbal alias Bali alias Jattal as the person who allegedly fired the fatal shot at Muhammad Fazal with a .44-bore rifle, yet several material discrepancies on record cast serious doubt on the reliability of their testimony. Although the prosecution claims that the incident was reported to the police on 19.12.2016 at about 7:30 p.m. i.e., within an hour and thirty minutes of its occurrence, and relies on this to portray the FIR as promptly lodged, thereby eliminating the possibility of fabrication, however the record suggests otherwise. A careful review of the Fard Bian (Exh.PD) shows that the complainant, Abdul Latif (PW.6), purportedly appeared before Tariq Mehmood SI (PW.8) at 7:30 p.m. on the same day to have his statement recorded. However, the inquest report (Exh.PB/1) indicates that the police received information about the incident at 7:00 p.m., a full thirty minutes before the complainant is stated to have met Tariq Mehmood SI (PW.8). This inconsistency regarding the timing of the initial information given to the police raises significant doubt. Moreover, Tariq Mehmood SI (PW.8) recorded in police proceedings given in complaint (Exh.PD) that after noting down the statement of Muhammad Latif (PW.6) he handed the complaint over to Rab Nawaz 373/C to take it to the police station for

registration of the FIR. It was therefore incumbent upon the prosecution to produce Rab Nawaz 1373/C as a witness to establish that the matter was indeed reported promptly. However, the prosecution neither cited him as a witness nor produced him at trial. This omission further reinforces the conclusion that the FIR was not lodged at the time as asserted by the prosecution.

8. This Court has also observed that the incident occurred in December at about 6:00 p.m., a time when darkness would naturally have set in. As noted earlier, the witnesses had no prior familiarity with the appellant Muhammad Iqbal and only caught fleeing glimpse of the assailants. Therefore, to rule out even the slightest possibility of mistaken identity, it was imperative for the prosecution to establish the presence of a reliable light source at the crime scene. This requirement becomes even more critical given the prosecution's assertion that the deceased, Fazil, was attacked on a metaled road. During cross-examination, Muhammad Latif (PW.6), the complainant, expressed ignorance regarding the exact time of sunset on the day of the incident but conceded that there was some degree of darkness on 19.12.2016. Since this is a matter of significant importance, the relevant portion of the cross-examination of the complainant Muhammad Latif (PW.6) is reproduced below:-

“I do not remember the time of sunset on the day of occurrence i.e. 19.12.2016 however, it was a little dark time.”

It hardly needs reiteration that in a homicide occurrence during hours of darkness, the presence of adequate lighting cannot be presumed yet it must be affirmatively established by the prosecution through cogent evidence. The prosecution's failure to prove the existence of any light source at the place of occurrence gravely undermines its case and is a deficiency that must unavoidably operate in favour of the appellant Muhammad Iqbal. Reliance in this regard may be made to the case reported as Wasi Haider v. The State (2022 PCrLJ 1695) wherein a Division Bench of this Court while discussing the importance of source of light at the crime scene held as under:-

“.....we feel essential to mention here that in a case of homicide having occurred in the dark hours of night, it is obligatory upon the prosecution to prove the source of light so as to exclude all hypothesis of false implication and incorrect attribution of role to an accused. The philosophy of criminal jurisprudence for awarding punishment mainly rests upon the principle that every perpetrator is to be convicted with quantum of sentence proportionate to the overt act performed by him. The case of an accused ascribed the role of inflicting fatal injury to the deceased cannot be equated with the accused attributed simple participation in the crime. The absence of light at the crime scene gives rise to the possibilities of false implication through mistaken identification and incorrect attribution of role to an accused. For this reason, emphasis is laid by the courts that in cases of night occurrences, the prosecution must prove the source of light. We are not oblivious of the fact that this is not a statutory requirement to prove the source of light, rather is a rule of caution with object to administer justice beyond shred of all uncertainties.”

9. I have further noted that, as stated earlier, the appellant Muhammad Iqbal and his co-accused were strangers to the eyewitnesses. In his complaint (Exh.PD), Muhammad Latif (PW.6) described certain distinguishing features of the assailants and significantly attributed the fatal shot to a tall individual, who was later identified as the appellant Muhammad Iqbal. With this in mind, I closely examined the prosecution's version regarding the identification parade conducted on 04.02.2017 under the supervision of Muhammad Irfan, Judicial Magistrate (PW.9). Before proceeding, it is necessary to emphasize that the evidentiary value of the identification parade depends on the credibility of the eyewitness's claim that he could recognize the perpetrator if produced before him. Given the complainant's assertion that the person who fired the fatal shot was tall, the perusal of the identification parade proceedings (Exh.PO) shows that the eyewitnesses described the appellant Muhammad Iqbal as the tallest among the accused. However, contradicting their stance, the Judicial Magistrate (PW.9) recorded the following observation:-

“The accused Muhammad Iqbal is smallest in eight than other co-accused.”

Furthermore, although the complainant Muhammad Latif (PW.6) stated that the shooter appeared to be 24–25 years old, however the record reflects that the appellant Muhammad Iqbal was, in fact 35-years of age at the relevant time. It is also evident that the appellant

Muhammad Iqbal had already been taken into custody on suspicion under Section 54 Cr.P.C., and his formal arrest in this case was recorded on 30.01.2017 by Tariq Mehmood SI (PW.8), while the identification parade was conducted on 04.02.2017. In these circumstances, it was incumbent upon the prosecution to establish that during this period of detention, the witnesses had no opportunity to see or become familiar with the appellant's appearance. Additionally, during the identification proceedings, the appellant Muhammad Iqbal raised the objection that the complainant and other witnesses had seen him while he was confined at the police station. The relevant portion of the cross-examination of Muhammad Irfan, Judicial Magistrate (PW.9), is reproduced below:-

“Accused Muhammad Iqbal also deposed before me that he was already identified by the complainant and witnesses before identification parade. Neither the complainant nor any of the witnesses rebut the objection raised by the accused.”

In the case reported as Javed Khan alias Bacha and another v. The State and another (2017 SCMR 524) the Supreme Court of Pakistan refused to place reliance upon the report of identification test with the following observation:-

“During the identification proceedings both the appellants had informed the Magistrates who were conducting the identification proceedings, and before the identification proceedings commenced, that they had earlier been shown to the witnesses. The Magistrate recorded this objection of the appellants in their reports but surprisingly did not attend to it, which can only be categorized as a serious lapse on their part. Therefore, for all these reasons reliance cannot be placed upon the report of the identification proceedings in which the appellants were identified.”

A careful examination of the testimony of Muhammad Irfan, Judicial Magistrate (PW.9) further reveals that he arranged for twenty dummies, who were seated in two rows. According to the Magistrate, the appellant and his co-accused were identified by the complainant and the purported eyewitnesses. However, the simultaneous identification of two accused in a single attempt effectively amounted to a joint identification, which undermines the fairness and evidentiary value of the parade. Reference is made to

the case reported as Kanwar Anwar Ali, Special Judicial Magistrate: in the matter of (2019 SCMR 488) wherein the Supreme Court of Pakistan while dealing with matter of joint test identification parade held as under:-

“In the case in hand the test of identification parade conducted for identification of the appellant and his co-accused by the relevant prosecution witnesses suffered from a serious legal defect inasmuch as in one and the same parade three accused persons including the appellant had statedly been identified by three separate prosecution witnesses. Such identification of three accused persons in one go amounted to a joint identification and an identification parade which is joint has consistently been disapproved by this Court through many a judgment and reference in this respect may be made to the cases of Kamal Din alias Kamala v. The State (2018 SCMR 577), Gulfam and another v. The State (2017 SCMR 1189), Hakeem and others v. The State (2017 SCMR 1546), Shafqat Mehmood and others v. The State (2011 SCMR 537), Bacha Zeb v. The State (2010 SCMR 1189), Ziaullah alias Jajj v. The State (2008 SCMR 1210), Imran Ashraf and 7 others v. The State (2001 SCMR 424) and Lal Pasand v. The State (PLD 1981 SC 142). It is unfortunate that the Magistrate conducting the test identification parade in this case was completely oblivious of such judgments holding the field.”

10. I have also carefully considered the medical evidence provided by Dr.Ghulam Rasul (PW.1) who conducted the post-mortem examination of Muhammad Fazil on 19.12.2016 at about 11:15 a.m. He noted two injuries: injury Nos. 1 and 1-B as entry wounds, and injury Nos.1-A and 1-C as their corresponding exit wounds. With respect to their location, the doctor recorded injury No. 1 on the outer side of the left thigh and injury No.1-B on the inner side of the right thigh. Notably, Dr.Ghulam Rasul (PW.1) also observed blackening around the margins of Injury No.1. When this medical opinion is examined in light of the scaled site plan (Exh.PN), the presence of the eyewitnesses at the spot becomes doubtful. A review of the site plan (Exh.PN) shows that the point of firing is marked as point “2,” whereas the deceased is shown standing at point “1,” with an intervening distance of 8 feet. If the appellant Muhammad Iqbal indeed fired from that distance, as alleged, blackening marks ordinarily would not appear around the entry wound. In this context, the reliance is placed upon the case reported as Muhammad Zaman v. The State (2014 SCMR 749), wherein the Hon’ble Supreme Court of Pakistan has held that:-

“Firearm entry wound “Blackening” Scope-Blackening was found, if a firearm like a shotgun was discharged from a distance of not more than 3 feet”.

It scarcely requires elaboration that, rather than corroborating the ocular account, the medical evidence produced by the prosecution significantly undermines it. Moreover, this defect was neither addressed during the investigation nor rectified at trial, and thus directly contradicts the prosecution’s version of events. A discrepancy between the testimony of eyewitnesses and the medical evidence invariably operates in favour of the accused. Indeed, this deficiency reasonably leads to the conclusion that the eyewitnesses were not present at the crime scene. In the case reported as *Abdul Jabbar and another v. The State* (2019 SCMR 129) the Supreme Court of Pakistan while dilating upon inconsistency between medical and ocular evidence observed as under:-

“It is the settled principle of law that once a single loophole is observed in a case presented by the prosecution much less glaring conflict in the ocular account and medical evidence or for that matter where presence of eye-witnesses is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused.”

11. It is also pertinent to note that according to the complainant’s version in FIR (Exh.PD/1) and the prosecution’s case, the accused allegedly arrived at the crime scene with the intention of committing robbery. However, during cross-examination, Muhammad Latif (PW.6) unequivocally admitted that the accused did not snatch any mobile phone, wallet, cash, or any other item from Shahzad, the deceased Fazil, or himself. This admission completely undermines the complainant’s attempt to portray the incident as a robbery attempt.

12. This Court has also observed a factor that proved to be a decisive blow to the prosecution’s case. According to the FIR (Exh.PD/1), the place of occurrence was near the Bhaini/Dera, reportedly located in an area known as Mangan, about 10-kilometers from police station Shorkot City Jhang. It was from this location that Tariq Mehmood SI (PW.8) allegedly collected blood-stained earth, as recorded in the recovery memo (Exh.PG).

However, during cross-examination, the complainant Muhammad Latif (PW.6) stated that the incident occurred on a metaled road. The site plan (Exh.PC/2) similarly indicates that the occurrence took place on a metaled road. Under such circumstances, it would have been impossible to collect blood-stained earth from the site and any blood would have been collected while using cotton. Further complicating the matter, during cross-examination, Tariq Mehmood SI (PW.8) gave a differing account, stating that the location of the incident was about 10-kilometers towards north of the police station and that throughout the investigation the place of death of the deceased could not be ascertained. On account of significance of this point, the relevant portion of the cross-examination of Tariq Mehmood SI (PW.8) is reproduced below:-

“The place of occurrence is situated at a distance of about 10 kilometer from the police station towards North. During whole investigation the place of death of deceased was not determined.”

The aforementioned admission by Tariq Mehmood SI (PW.8) raises a reasonable doubt and highlights deficiencies in the investigation, which must be interpreted in favour of the appellant Muhammad Iqbal.

13. Regarding the recovery of the weapon of offence based on the disclosure of the appellant Muhammad Iqbal, it is noted that, according to the prosecution, the appellant was formally arrested in this case on 15.02.2017. After his arrest, the appellant allegedly led the police to the recovery of a .44-bore rifle (P.10) which was taken into possession vide memo Exh.PK. The weapon was subsequently sent to the PFSA for forensic analysis. However, the PFSA report (Exh.PT) revealed that the rifle did not match with the crime empties secured from the spot. As a result, the recovery of the alleged weapon of offence has lost its evidentiary significance.

14. In summary, the foregoing discussion leads to the conclusion that the prosecution has utterly failed to establish its case against the appellant Muhammad Iqbal alias Bali alias Jhatal beyond reasonable doubt. In these circumstances, this Court is not obliged to sustain the conviction based on such scanty evidence.

Consequently, the instant criminal appeal is allowed, the convictions and sentences of the appellant Muhammad Iqbal alias Bali alias Jhatal are set aside and he is acquitted of the charges. Since the appellant Muhammad Iqbal alias Bali alias Jhatal is in custody, he shall be released immediately, unless required to be detained in connection with any other criminal matter.

(ABHER GUL KHAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

The judgment was announced
on 03.12.2025, dictated, prepared,
and signed on 10.12.2025.
Najum*