

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**  
Justice Jamal Khan Mandokhail  
Justice Syed Hasan Azhar Rizvi  
Justice Naeem Akhtar Afghan

**CRIMINAL APPEAL NO.169 OF 2023 AND**  
**CRL.M.A. NO.228 OF 2024 A/W CRL.APPEAL NO.170 OF 2023**

(On appeal against the judgment dated 19.09.2017 passed by the Lahore High Court, Multan Bench, Multan in CrI. Appeal No.272/2012, MR. 31/2012, CrI. A.266/2012 and CrI. Revision No.72/2012)

Muhammad Ijaz @ Billa (CrI.A.169/23)  
Mst. Naseem Akhtar (CrI.A.170/23) ... Appellant(s)

**Versus**

The State and others (in both cases) ... Respondents

For the appellant  
(CrI.A.169/2023) : Mr. Sagheer Ahmed Qadri, ASC  
(CrI.A.170/2023) : Mr. RehanIftikhar, ASC  
Syed Rifaqat Hussain Shah, AOR  
For the State : Mr. Irfan Zia, APG. Pb.  
For the complainant: Mr. Masood-ul-Hasan Chishti, ASC  
(via video link from Lahore)  
Date of hearing : 22.05.2024.

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.** Muhammad Ijaz @ Billa and Mst. Naseem Akhtar ("the appellants") faced trial before an Additional Sessions Judge, Dunyapur ('**Trial Court**') in case F.I.R. No. 266/2010 dated 11.12.2010 for the offences under sections 302/34 of the Pakistan Penal Code, 1860 ('**P.P.C.**'), registered at Police Station ('**P.S.**') JallahArain, District Dunyapur. After a regular trial, both appellants were convicted under section 302(b) P.P.C. for causing the *Qatl-e-amd* of Abdul Majeed (deceased). The appellant Muhammad Ijaz was sentenced to death as *tazir*, while the appellant Mst. Naseem was sentenced to imprisonment for life. The appellants were also directed to pay an amount of Rs. 200,000/- (two hundred thousand only) each as compensation under section 544-A of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**'), to the legal heirs of the deceased, and in default thereof, they had to undergo simple imprisonment of six months. Feeling aggrieved by the conviction and

sentence, the appellants filed before the learned Lahore High Court ("**Appellate Court**") separate Criminal Appeals Nos.272 of 2012 and 266 of 2012 and the complainant filed a Criminal Revision No.72 of 2012 for enhancement of sentence awarded to the appellant Mst. Naseem Akhtar, while the Trial Court transmitted the Murder Reference No.31 of 2012 to the Lahore High Court for confirmation or otherwise of the sentence of death awarded to the appellant Muhammad Ijaz. A Division Bench of the learned Appellate Court took up the above matters together and, through the judgment dated 19.09.2017 ('**impugned judgment**'), dismissed both the appeals as well as the criminal revision, upholding the conviction and sentence of the appellants. The Murder Reference was answered in the affirmative, and the death sentence awarded to the appellant Muhammad Ijaz was confirmed. Now, being dissatisfied with the impugned judgment, the appellants filed separate Jail Petitions for leave to appeal (J.P. No. 710 of 2017 and J.P. No. 293 of 2020), wherein leave was granted by this Court vide order dated 14.02.2023, which is reproduced hereunder for ease of reference:

**"Jail Petition No.710 of 2017**

*As death sentence of the petitioner was confirmed through the impugned [judgment] hence, for the sake of safe administration of criminal justice leave to appeal is granted to re-appraise the entire evidence.*

**Jail Petition No.293 of 2020**

*For the reason mentioned in crI.M.A.2370 of 2020, the same is allowed and delay of 1007 days is condoned. As co-convict Muhammad Ejaz alias Billa has filed Jail Petition No.710 of 2017 in which leave has been granted hence, for the safe administration of criminal justice leave is also granted in this petition to re-appraise the entire evidence. Appeal stage paper books be prepared from the available record with liberty to parties to file additional documents, if any, which were part of the record but have not been filed earlier."*

This judgment will dispose of the above criminal appeals challenging the same impugned judgments *supra*, jointly.

2. The version of the complainant, as per the contents of the F.I.R., is that about 15 years ago, Abdul Majeed (deceased) married Mst. Naseem Akhtar (appellant), and they had one son and three daughters. Appellant Muhammad Ijaz often visited the house of Rustam Khan, his brother and neighbor of Abdul Majeed

(deceased). In the meantime, Muhammad Ijaz established an illicit relationship with Mst. Naseem Akhtar. Upon learning of this, Abdul Majeed forbade Muhammad Ijaz from visiting his house. On 11.12.2010, at 3:00 p.m., the complainant, along with Maqbool Ahmed (PW-3) and Muhammad Idrees, was passing by the house of Abdul Majeed when they heard some noise from inside. They entered the house and saw that Rustam Khan was holding the legs of Abdul Majeed, while Muhammad Ijaz and Mst. Naseem Akhtar were strangling Abdul Majeed with an electric wire. When they attempted to rescue Abdul Majeed, Muhammad Ijaz, armed with a pistol, threatened them and fled over the walls, and Mst. Naseem Akhtar also escaped. They attended to Abdul Majeed, but he had already succumbed to his injuries.

3. Learned counsel for the appellants emphatically contended that the evidence brought on record is full of contradictions and inconsistencies and is not sufficient to connect the appellants with the commission of the offence. Further, it was a case of suicide but has been portrayed as homicide by the complainant due to mala fide and ulterior motives. There is no proof of any illicit relationship between the appellants, and even Maqbool Ahmed (PW-3) did not mention any motive for the incident. The evidence has been disbelieved in the case of Rustam Khan, the co-accused, who was found by the police not to be involved in the commission of the offence, whereas the same set of evidence has been used as the basis for the conviction of the appellants, resulting in a gross miscarriage of justice. The witnesses of the ocular account did not see the alleged occurrence with their own eyes, being chance witnesses. Moreover, there was no reason for appellant Mst. Naseem Akhtar to murder her husband without just cause.

4. As against that, the learned Additional Prosecutor General, Punjab appearing on behalf of the State controverted the arguments of the learned counsel for the appellants and supported the impugned judgment while submitting that it was an unfortunate and brutal murder committed by the appellants in broad daylight in the house of the deceased. Both prosecution witnesses of the ocular account are natural and straightforward in their deposition, having explained their reasons for being present at the venue of the

occurrence at the relevant time. Muhammad Siddique (PW-2), being the real brother of the deceased, resided just 100 feet away from the house of the deceased and often went to the cattle shed; when he and Maqbool Ahmad (PW-3) heard some noise from inside the house of the deceased, they entered and witnessed the occurrence. Both eyewitnesses were consistent in all material particulars in their deposition before the learned trial court, and their accounts were fully supported by medical evidence. The motive for the occurrence was to eliminate the deceased permanently, a fact well-known to the complainant and verified by the investigating officer during the investigation. The recovery of the weapon of offence, i.e., the wire and the pistol, was effected at the instance of appellant Muhammad Ijaz. Therefore, the learned Trial Court as well as the learned appellate Court on the appraisal of evidence and material placed before them concluded that appellants were responsible for the alleged offence. Their decision on the question of facts is not open to challenge in this Court, in the absence of any illegality, misreading, or non-reading of evidence.

5. We have heard the arguments of learned counsel for the appellants as well as learned Additional Prosecutor General for the State assisted by learned counsel for the complainant and have also gone through the available record.

6. To bring home the guilt of the appellants, the prosecution squarely relied upon the evidence of the complainant Muhammad Sadiq (PW-2) and Maqbool Ahmed (PW-3) who claimed to be the eye-witnesses of the occurrence. We have carefully examined the evidence of both these witnesses and found material inconsistencies and contradictions in their statements. For instance, the complainant Muhammad Sadiq, in his statement (Exh. PA) for the registration of the F.I.R., stated that when he and the other eye-witnesses entered the house of Abdul Majeed (deceased), they saw Rustam Khan holding the legs of Abdul Majeed while Muhammad Ijaz and Mst. Naseem Akhtar were strangling Abdul Majeed with an electric wire. However, while appearing as PW-2, he deposed that Abdul Majeed had fallen to the ground, Naseem Akhtar was holding him by his arms, and Muhammad Ijaz was strangling him with an iron wire. He (PW-2) did not mention the presence of

Rustam Khan, whom he had specifically named in the F.I.R., assigning him the specific role of holding the legs of the deceased Abdul Majeed at the relevant time of the alleged occurrence. He (PW-2), during cross-examination, frankly acknowledged this contradiction in his both statements. Moreover, the complainant leveled a serious allegation of an illicit relationship between the appellants which becomes the reason for the alleged occurrence. While answering a question posed by the learned counsel for the appellants, the complainant (PW-2) stated that his deceased brother informed him about such a relationship two to four days before the occurrence. In the same breath, he (PW-2) stated that two months before the occurrence, we went to the house of the parents of the appellant Muhammad Ijaz and informed them about his character. Despite this, he did not mend his ways and even filed an application against us with the concerned police station. The above-referred piece of evidence of PW-2 suggests that he had no personal knowledge of the illicit relationship between the appellants. Instead, he claimed that the deceased had informed him about it just two to four days before the occurrence. This raises questions about the credibility of his statement. If he only learned of the said relationship a few days prior, his claim that we went to the house of the parents of the appellant Muhammad Ijaz to complain against him two months earlier does not make any sense and casts doubt on his stance. Maqbool Ahmed (PW-3) did not support the allegation of an illicit relationship between the appellants, nor did he utter a single word regarding this during his examination as a witness.

7. More importantly, during his lifetime, the deceased did not file any complaint with the police against the appellant Muhammad Ijaz or take any action against his wife, Mst. Naseem Akhtar, for having an illicit relationship with Muhammad Ijaz. Nor did the appellant Naseem Akhtar file any suit for dissolution against the deceased, which would be a natural outcome in such a situation. Thus, the allegation of an illicit relationship between the appellants, as levelled by the prosecution, is without merit. We are surprised that the learned appellate court, without any reliable and confidence-inspiring evidence, concluded that the appellants had developed an illicit relationship, which was the motive for the murder of the deceased and erroneously held that the prosecution

successfully established the motive for the occurrence. The above observation of the learned appellate court is overly harsh and is set aside accordingly.

8. The defence set up by the appellants, as reflected in the cross-examinations, is that the complainant was not giving the deceased his share of the inheritance, and as such, he committed suicide. The appellant Naseem Akhtar used to pressure her husband to demand his share of the inheritance, and due to a dispute with appellant Muhammad Ijaz, the complainant had nominated them in this case. This stance of the appellants is supported by the fact that the witness (PW-3), during cross-examination, acknowledged that the complainant had not given the deceased his share of the inheritance from the property left by their father. This point, coupled with the fact that there were no visiting terms between the deceased and the complainant for three to four months before the occurrence, as admitted by Maqbool Ahmad (PW-3) during his cross-examination in response to a question put by the learned counsel for the appellant Mst. Naseem Akhtar makes the case of the prosecution doubtful. Moreover, both eye-witnesses are related to each other, as Maqbool Ahmad is admittedly a cousin of both the complainant and the deceased. Besides, the prosecution had an independent eye-witness, namely Muhammad Idrees, however, it did not produce him. We believe that the prosecution withheld the best evidence, which undermines the credibility of its account. It is well established that whenever a party withholds the best evidence available, it is presumed under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that if such evidence had been produced, it would not have supported the stance of that party. Furthermore, the alleged occurrence took place in daylight in a populated area; however, no one from the locality came forward to support the story of the prosecution.

9. As far as the motive is concerned, the prosecution alleged that the appellants murdered the deceased because he forbade appellant Muhammad Ijaz from coming to his house due to an illicit relationship with his wife, Mst. Naseem Akhtar. Primarily, the prosecution has failed to establish the fact of the alleged illicit relationship between the appellants. Therefore, the alleged motive

lacks the force necessary to connect the appellants with the commission of the offence. Without concrete evidence proving the illicit relationship, the motive claimed by the prosecution remains unsubstantiated and cannot be relied upon to support the conviction. This fundamental gap in the case of the prosecution casts significant doubt on its narrative and the alleged motive behind the crime. Moreover, the star witness of the prosecution, Maqbool Ahmad (PW-3), acknowledged that the complainant had not given the deceased his share of the inheritance from the property left by their father. Additionally, it was revealed that the appellant, Mst. Naseem Akhtar, used to pressure her deceased husband to demand his rightful share of the inheritance from the complainant. In this view of the matter, the possibility of false implication cannot be ruled out. The fact that the deceased was being urged by his wife to assert his inheritance rights suggests a potential motive for the complainant to falsely implicate the appellants. The inherent family dispute over inheritance adds a layer of complexity, indicating that the accusations may have been influenced by underlying family tensions and disputes. The learned appellate court overlooked the above factual position and erroneously held in the impugned judgment the prosecution successfully proved the motive part of the occurrence through reliable and confidence-inspiring evidence. It is by now well-settled that the motive is a double-edged weapon, which can be used either way and by either side i.e. for real or false involvement. Reference in this regard may be made to the cases of Noor Elah v. ZafarulHaque (PLD 1976 SC 557); Allah Bakhsh Vs. The state (PLD 1978 SC 171); Khadim Hussain Vs. The State (2010 SCMR 1090); Tahir Khan Vs. the State (2011 SCMR 646); Tariq versus the State (2017 SCMR 1672); and Muhammad Ashraf alias Acchu versus the state (2019 SCMR 652). In the present case, the complainant party had also the motive to falsely implicate the appellants due to a demand for a share in inheritance. As such merely because of motive the appellant cannot be held responsible for the alleged offence.

10. It is also noted with great importance that the appellant, Naseem Akhtar, and the deceased have four children. The elder daughter was 10 to 12 years old at the time of the occurrence. She was alleged by the appellant, Mst. Naseem Akhtar, to be present

at the time of the occurrence. In our understanding, she would have been able to give rational answers to questions posed to her; however, she was not interrogated by the investigating officer in respect of the occurrence. Even otherwise, the primary instinct of a mother is to protect and nurture her children. She shoulders the responsibility of providing them with a stable and loving environment. The mere thought of her destroying that safe haven by taking their father's life contradicts everything that motherhood represents. It is hard to reconcile the image of a caring mother with that of a cold-blooded murderer. Her maternal instincts should naturally dissuade her from actions that would irreparably harm the emotional and psychological well-being of her children. We are mindful of the fact that the loss of their father is already a devastating blow to the children. To further subject them to the trauma of losing their mother through a judicial process would be an unthinkable tragedy. They would be left orphaned, navigating a world that has abruptly turned hostile and unforgiving. It is imperative for the court to adopt a sympathetic view, taking into account the profound impact on these innocent lives.

11. Furthermore, the evidence produced in this case is fraught with dents and discrepancies. Eye-witness testimonies, often the bedrock of criminal cases, are inconsistent and riddled with contradictions in this case. So far as the recoveries are concerned, we have noted that the prosecution has shown recoveries of electric wire and pistol, the alleged weapon of offence, but it does not support the case of the prosecution. For the reason that these recoveries are corroborative pieces of evidence and are relevant only when the primary evidence, i.e., the ocular account, inspires confidence. However, the ocular account in this case is full of contradictions and does not inspire confidence. Reference in this regard may be made to the case of Nasir Javaid and another versus the State (2016 SCMR 1144); Muhammad Nawaz and others versus the State and others (2016 SCMR 267); and Hayatullah versus the State (2018 SCMR 2092).

12. In this case, it is imperative to examine the post-mortem report and the evidence of the medical officer (PW-9) to reach a definitive conclusion on the cause of death. The prosecution



alleges that the deceased was a victim of strangulation or throttling, while the defense asserts that the death resulted from suicidal hanging. A thorough analysis of the post-mortem report, including the nature and location of ligature marks, along with the medical officer's expert testimony, will provide perilous insights. By carefully evaluating these pieces of evidence, we can determine whether the death was caused by external compression of the neck through strangulation or throttling, or whether it was the result of self-suspension through hanging. This detailed scrutiny is essential to ensure that the correct cause of death is established, thereby upholding the principles of justice and accuracy in this case. It is a matter of record that the post-mortem of the body of the deceased was conducted by Dr. Muhammad Iqbal (PW-9) at 8:00 am. on 12.12.2010 seventeen hours after the alleged occurrence. When the Additional Prosecutor General and learned counsel for the complainant were confronted to explain the marked delay in carrying out the post-mortem of Abdul Majeed deceased, they were unable to point out any justifiable reason for the same in the entire record. Such unexplained delay in the post-mortem of a deceased would surely put a prudent mind on guard to very cautiously assess and scrutinize the prosecution's evidence. In such circumstances, 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 crime. Reference in this regard may be made to the case of Muhammad Rafique alias Feeqa versus the State (2019 SCMR 1068). In similar circumstances, this Court, in the case of Irshad Ahmad v. The State (2011 SCMR 1190), observed that the noticeable delay in post-mortem examination of the dead body 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. This view has been followed by this court in Ulfat Husain v. The State (2018 SCMR 313), Muhammad Yaseen v. Muhammad Afzal and another (2018 SCMR 1549), Muhammad Rafique v. the State (2014 SCMR 1698), Muhammad Ashraf v. the State (2012 SCMR 419) and Khalid alias Khalidi and 2 others v. the State (2012 SCMR 327).

13. The differences between hanging and strangulation have been highlighted by Modi in Medical Jurisprudence and Toxicology, 26<sup>th</sup> Edition, as follows:

Hanging		Strangulation	
1.	Most suicidal.	1.	Mostly homicidal.
2.	Face-Usual pale and petechiae rare.	2.	Face-Congested, livid and marked with petechiae.
3.	Saliva-Dribbling out of mouth down on the chin and chest.	3.	Saliva-No such dribbling
4.	Neck-stretched and elongated in fresh bodies.	4.	Neck-Not so.
5.	External signs of asphyxia usually not well marked.	5.	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect.
6.	Ligature mark-Oblique, Non-continuous placed high Up in the neck between the Chin and the larynx, the Base of the groove or furrow Being hard, yellow and Parchment-like.	6.	Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
7.	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7.	Abrasions and ecchymoses round about the edges of the ligature Mark, common.
8.	Subcutaneous tissues Under the mark-- White, Hard and glistening.	8.	Subcutaneous tissues under the mark-Ecchymosed.
9.	Injury to the muscles of the Neck-Rare.	9.	Injury to the muscles of the neck-Common.
10.	Carotid arteries, Internal coats ruptured in violent cases of a long drop.	10.	Carotid arteries, internal coats ordinarily ruptured.
11.	Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.	11.	Fracture of the larynx, trachea and hyoid bone.
12.	Fracture-dislocation of the cervical vertebrae-Common in judicial hanging.	12.	Fracture-dislocation of the cervical vertebrae--Rare.
13.	Scratches, abrasions and bruises on the face, neck and other parts of the body-- Usually not present.	13.	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-- Usually present.
14.	No evidence of sexual Assault.	14.	Sometimes evidence of sexual assault.
15.	Emphysematous bullae on the Surface of the lungs-May be present.	15.	Emphysematous bullae on the surface of the lungs- Not Present.

14. In light of the differences between hanging and strangulation, it has been noted with great importance that the medical officer (PW-9), in the post-mortem examination report (Ex. PJ) while examining the external appearance of the body, observed that there were two separate ligature marks, mild to moderate in depth, on the neck. These marks were more prominent on the front and slightly on the sides. However, as per Modi's Medical Jurisprudence and Toxicology, the ligature mark in cases of throttling is horizontal or transverse, continuous, and encircles the neck, typically located low on the neck below the thyroid, with the base of the groove or furrow being soft and reddish. The ligature marks noted by the medical officer (PW-9) are neither continuous nor encircle the neck; rather, there were only two separate ligature marks found on the front and slightly on the sides of the neck. Even otherwise, in case of hanging and in case of throttling pressure on the neck is a common factor. In the case of throttling by hand or wire, as alleged in this case, a person can resist the throttling. In case of resistance, there will be nail marks on the neck. The person being throttled, if one person is holding his arms and another is holding his legs, will resist by banging their hands on the ground, which would result in injuries to the hands. It is also likely that if the legs are held by hand, injuries may occur on the posterior side of the legs. However, in the post-mortem report (Exh. PJ), no injury marks on the hands or the posterior side of the legs are noted by the medical officer. Additionally, the medical officer (PW-9), during cross-examination, stated that there were no scratches or any marks of injury on any other part of the body of the deceased. Having considered the conclusion in the post-mortem report (Exh. PJ) and the evidence of the medical officer, and analyzed them in light of the principles laid down in Modi's Medical Jurisprudence and Toxicology, we find the prosecution's claim that the death of the deceased was caused by throttling to be doubtful. It may be said that a finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards the guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from the evidence. Mere conjectures and probabilities cannot take the place

of proof. If a case were to be decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of this Court, would be reduced to naught.

15. From the above-stated facts and circumstances, it is abundantly clear that in this particular case, the prosecution version is burdened/loaded with major discrepancies, which create serious doubts about its authenticity. The prosecution version with regard to manner of killing, the medical evidence being at variance and the recoveries, contradict each other on material points creating serious cracks in the prosecution version. The prosecution has failed to bring on record any convincing material to establish that it was the appellants who had committed the occurrence. It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons as held by this Court in Daniel Boyd (Muslim Name Saifullah) and another versus the State (1992 SCMR 196); Gul Dast Khan versus the State (2009 SCMR 431); Muhammad Ashraf alias Acchu versus the State (2019 SCMR 652); Abdul Jabbar and another versus the State (2019 SCMR 129); Mst. Asia Bibi versus the State and others (PLD 2019 SC 64); and Muhammad Imran versus the State (2020 SCMR 857).

16. Froeging in view, both the Criminal Appeals No.169 of 2023 and No.170 of 2023 are allowed. The impugned judgment dated 19.09.2017 passed by the Lahore High Court and that of the Trial Court dated 10.01.2012, are set aside. Consequently, the appellants, Muhammad Ijaz @ Billa and Mst. Naseem Akhtar are acquitted of the charge and be released from jail forthwith, if not required to be detained in any other case.

17. Above are the reasons for our short order dated

22.05.2024 which is reproduced hereunder for ease of reference:

*“For the reason to be recorded later, these appeals are allowed. The convictions and sentences awarded to the appellants through judgment dated 19.09.2017 are set aside. Both the appellants are acquitted of the charge in this case. They shall be released from jail forthwith if not required in any other case.”*

JUDGE

JUDGE

JUDGE

**Islamabad, the**  
22<sup>nd</sup> May, 2024  
**APPROVED FOR REPORTING**  
*Ghulam Raza/\**