

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

**PRESENT:**

Justice Jamal Khan Mandokhail  
Justice Syed Hasan Azhar Rizvi  
Justice Naeem Akhtar Afghan

**Cr. A. No.36 of 2023 and Cr.P. No.5-Q of 2021**

(Against the judgment dated 28.12.2020 passed by the High Court of Balochistan, Quetta in Cr.A. No.299 of 2017 and Murder Reference No.8 of 2017 and Criminal Jail Appeal No.300 of 2017))

**Khial Muhammad**

*. . . Appellant/Petitioner(s)*

**Versus**

**The State**

*...Respondent(s)*

For the : Mr. Kamran Murtaza, ASC  
Appellant/Petitioner

For the State : Syed Pervez Bukhari, ASC  
(in both cases) (appeared as a State Counsel)

Date of hearing : 23.05.2024.

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-**

**Criminal Appeal No.36 of 2023:** Tried by the learned Additional Sessions Judge, Pishin (*trial Court*) in case FIR No.52 of 2016 dated 27.03.2016 registered under Section 302 PPC at Police Station Pishin, the appellant was convicted and sentenced *vide* judgment dated 25.09.2017 as under:-

*“Therefore, accused is awarded the sentence of death as tazir. He be hanged by the neck till he is dead, subject to death confirmation by the Hon’ble High Court of Balochistan, Quetta. He is also directed to pay Rs.200,00/- to the legal heirs of deceased as compensation under*

*Section 544-A Cr.P.C. In default of payment to suffer R.I. of six months. ”*

2. Being aggrieved of his conviction and sentence, the appellant approached the High Court of Balochistan, Quetta (*High Court*) by filing a criminal appeal, whereas the trial Court transmitted the murder reference. Both these matters were taken up together by the High Court and through the impugned judgment dated 28.12.2020, the appeal filed by the appellant was dismissed while maintaining his death sentence and murder reference was answered in the affirmative. Thereafter, the appellant approached this Court by filing a criminal petition for leave to appeal which was granted on 17.01.2023 in the following terms:-

*“Leave to appeal is sought against a judgment of the High Court of Balochistan dated 28<sup>th</sup> December, 2020. Through the impugned judgment the sentence of death awarded by the trial Court was confirmed. Learned counsel for the petitioner submits that the entire case of the prosecution was based upon the evidence of PWs.2 and 7 who were statedly the eyewitnesses. He maintains that the statements of the alleged eyewitnesses were recorded on 28<sup>th</sup> March, 2016 while the accused was arrested on 27<sup>th</sup> March, 2016. He maintains that there was mala fide and connivance of the police in introducing the eyewitnesses who were not even named in the FIR.*

2. *He further submits that the FIR was lodged by a person who was not present at the spot and was admittedly at home when the occurrence took place. The source of his knowledge was not disclosed either. He adds that the arrest of the petitioner is also doubtful in the manner and on the date which has been shown in the record. Likewise, he*

*maintains that the recovery of the crime weapon is also doubtful and the FSL report was not worthy of reliance in view of the fact that the lead which were found to have been matching with the crime weapon was handed over to the FSL on 11<sup>th</sup> April, 2016. He further maintains that there is a discrepancy which is apparent on the face of the record in the date when the post-mortem took place and the lead recovered from the dead body of the victim. He points out that while the recovery memo is dated 11<sup>th</sup> March, 2016, the date of occurrence was 27<sup>th</sup> March, 2016 and this discrepancy has not been taken due notice of either the trial Court or the High Court.*

*3. Leave to appeal is granted, inter alia, to examine the afore-noted points and for reappraisal of the entire evidence in the interest of safe administration of criminal justice.”*

3. As per prosecution case, on 27.03.2016, the complainant, Abdul Qadeer, was present in his house when he received a call that Nisar Ahmed, his paternal cousin had been murdered with firing by the appellant whose dead body is lying in Civil Hospital Pishin. Pursuant thereto, he reached to the hospital where he saw the dead body of Nisar Ahmed lying in pool of blood and bullet were present on the dead body. It was informed that the deceased was standing in the main bazar near Karbala Adda when at 06:20 p.m. on 27.03.2016 the appellant fired with his pistol which resulted into death of Nisar Ahmad. The motive behind the occurrence was that due to bad conduct of the appellant the deceased had taken his sister to his house which annoyed the

appellant and he committed murder, hence the case was registered against the appellant.

4. After completion of investigation, the challan was submitted against the appellant and the charge under Section 302 PPC was framed against him to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced as many as 11 witnesses. In his statement under Section 342 Cr.P.C., the appellant raised his plea of innocence. He neither opted to appear his own witness under Section 340(2) Cr.P.C. nor produced any defence evidence.

5. Learned counsel for the appellant contends that the appellant has falsely been implicated in the case; that the impugned judgment passed by the High Court is contrary to the law and facts; the prosecution has failed to prove its case against the appellant; that all the witnesses produced by the prosecution are interested one and no independent witness has been produced which aspect of the matter escaped the notice of the Court and that the impugned judgment is suffering from irregularity and illegality, thus liable to be set aside.

6. Conversely, learned counsel appearing on behalf of the State has defended the impugned judgment and submits that the same is based on proper appreciation of evidence available on the record.

7. We have heard the learned counsel for the parties and scanned the material available on the record with their able assistance.

8. A bare perusal of the record reflects that in the instant case the incident wherein the paternal cousin of the complainant was done to death, took place on 27.03.2016 at 6:20 p.m. However, the matter was reported to the police by the complainant on 28.03.2016 at 9:00 a.m. approximately more than fifteen hours after the incident, despite the police station being only one furlong away from the place of occurrence. In the entire evidence, the prosecution has not explained the reason for such a delay in reporting the matter to the police. Such delayed F.I.R. on the part of the complainant shows dishonesty and that it was lodged with deliberation and consultation. Reference in this regard may be made to the case reported as Amir Muhammad Khan versus The State (**2023 SCMR 566**) wherein a delay of only five hours and ten minutes in reporting the matter to and lodging the FIR by the police was considered indicative of dishonesty on the part of the complainant. Even otherwise, the post-mortem was conducted on 28.03.2016 at 11:00 a.m. and the time in between death and post-mortem was within eighteen hours which also cast serious doubt on the part of the prosecution.

9. Perusal of record also reveals that eye-witnesses of the occurrence namely Zahoor Ahmad (PW-2) and

Shahenshah (PW-7) stated in their statements before the trial court that on 27.03.2016 they were present at the main bazaar near Karbala Adda Pishin. At about 06:20 PM, the accused made firing upon the deceased Nisar Ahmed with a pistol who succumbed to injuries at the spot. Both the prosecution eyewitnesses Zahoor Ahmad and Shahenshah deposed before the trial Court that immediately after the incident they stopped a car and took the deceased/injured to the civil hospital Pishin and when examined by the doctor he was found dead. After 15/20 minutes of death of deceased Nisar Ahmad, the complainant Abdul Qadeer reached to the civil hospital Pishin.

10. It is interesting to note that both the eye witnesses Zahoor Ahmd( PW-2) and Shahenshah(PW-7) were present at the time of incident but their names were not mentioned in the FIR. Moreover, despite their presence at the place of incident their statements under section 161 Cr.P.C were recorded by the police with a delay of 16 hours. The occurrence as per FIR took place on 27.03.2016 at 06:20 PM however statements of both aforementioned eye-witnesses under section 161 Cr.P.C were recorded on 28.03.2016 at 10:30 AM. This court has time and again ruled that recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts serious doubts on the version of prosecution. Reference may be made to the case of Muhammad

Khan versus Maula Baksh and another [1998 SCMR 570] wherein it has been held that:-

“It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C. is recorded with delay without offering any plausible explanation.”

In the case at hand, no plausible explanation was rendered by the prosecution as to why statements of star witnesses were recorded after such a delay and why their names were not mentioned in the FIR. This delay, by itself, casts substantial doubt on the reliability of the prosecution's case.

11. The accused as per the record was arrested red handed and on 27.03.2016 from his possession one TT Pistol of 30 bore alongwith 28 live cartridges of .30 bore were recovered meanwhile six crime empty shells of .30 bore pistol were also recovered by the police from the place of occurrence. The sealed parcels of such weapon/ammunition were sent for the forensic report on 15.04.2016 after an unexplained delay of more than 19 days.

12. Mere heinousness of the offence if not proved to the hilt is not a ground to punish an accused. It is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the appellant to the right of benefit of the doubt.

It is a well settled principle of law that for the accused to be afforded this right of benefit of doubt, it is necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. In the case reported as Mst. Asia Bibi versus The State (PLD 2019 SC 64) this Court has held that *if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right.* Reference in this regard may be made to the cases reported as Tariq Pervez versus The State (1995 SCMR 1345) and Ayub Masih versus The State (PLD 2002 SC 1048). The same view was reiterated in the case reported as Abdul Jabbar versus State (2019 SCMR 129) wherein it was held that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, the prosecution has failed to prove its case beyond any reasonable doubt.

13. For what has been discussed above, instant appeal is allowed; the judgments dated 25.09.2017 and



28.12.2020 passed by the trial Court as well as the High Court, respectively, are set aside and the appellant is acquitted of the charge levelled against him. He be set at liberty forthwith, if not required to be detained in any other case.

14. At the conclusion of the hearing of this appeal, short order allowing the appeal for reasons to be recorded later was passed. The above are the reasons for said short order pronounced on even date.

**Criminal Petition No.5-Q of 2021:**

15. Learned counsel for the petitioner does not press this petition. Dismissed accordingly.

**Judge**

**Judge**

**Judge**

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