

IN THE SUPREME COURT OF PAKISTAN  
( Appellate Jurisdiction )

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

**Criminal Appeals Nos. 505 to 507 of 2019**  
(Against the judgment dated 11.02.2015 of the Lahore High Court,  
Multan Bench passed in CrI. A. No. 21-ATA/2009, CrI. A. No.29-  
ATA/2010 and CSR No.12/2009)

Muhammad Akhtar and others (CrI. A. No. 505/2019)  
Muhammad Arshad (CrI. A. No. 506 & 507/2019) ...**Appellants**

**Versus**

The State (CrI. A. No. 505/2019)  
Muhammad Makki and others (CrI. A. No. 506/2019)  
Ghulam Abbas and another (CrI. A. No. 507/2019) ...**Respondents**

For the appellants: Mr. Zulfiqar Khalid Maluka, ASC  
(CrI. A. No. 505 of 2019)  
(CrI. A. Nos. 506 & 507/2019): Sardar Ashiq Hussain Baloch, ASC  
Syed Rifaqat Hussain Shah, AOR

For the state: Mr. Irfan Zia, Addl. P.G., Punjab  
(In all cases)

Date of Hearing: 24.05.2024

**J U D G M E N T**

**NAEEM AKHTAR AFGHAN, J.** While acquitting accused Ghulam Sarwar and Abdul Ghafoor, the co-accused Muhammad Makki, Muhammad Mazhar, Muhammad Akhtar, Ghulam Mustafa and Muhammad Aslam (**the convicts**) were awarded conviction and sentence as follows by Anti-Terrorism Court-I, Multan (**the Trial Court**) vide judgment dated 29 June 2009 in FIR No.296/2007 registered with Police Station Qureshiwala, District Lodhra on 4 September 2007 on the basis of statement of Muhammad Arshad s/o Haji Muhammad (**the complainant**) for the allegation of committing murder of Haji Muhammad (father of the complainant), Muhammad Umer, Sajida Bibi and causing firearm injuries to Muhammad Siddique (PW.15) and Muhammad Umair (not produced at the trial). It was further alleged by the complainant that accused Ghulam Sarwar had abetted the co-accused for committing the offence due to previous enmity:

*“Therefore, I convict Muhammad Makki, Muhammad Mazhar, Muhammad Akhtar, Ghulam Mustafa and Muhammad Aslam accused for committing rioting and award sentence u/s 148 PPC to undergo 2 years R.I. and a fine of Rs.10000/- each to accused, in default of which, they shall further undergo 3 months S.I. Muhammad Makki, Muhammad Mazhar, Muhammad Akhtar, Ghulam Mustafa and Muhammad Aslam accused committed Qatl-i-amd of Haji Muhammad, Muhammad Umar and Sajida Bibi and awarded death sentence u/s 302-B PPC read with section 149 PPC on 3 counts and they be hanged by neck till death subject to confirmation by the Hon’able Lahore High Court. Each convict shall pay compensation u/s 544-A Cr.P.C. of Rs.100,000/- to the legal heirs of each*

*deceased Haji Muhammad, Muhammad Umar and Sajida Bibi, in default of which, shall further undergo 6 months S.I. Muhammad Makki, Muhammad Mazhar, Muhammad Akhtar, Ghulam Mustafa and Muhammad Aslam accused are convicted for causing injuries to Muhammad Siddique and awarded sentence u/s 324/149 PPC for 10 years R.I. and to pay Rs.20000/- as Daman by each of accused, in default of which, shall further undergo 3 months S.I. They are also convicted for committing house trespass of the house of complainant and awarded sentence u/s 452/149 PPC for 3 years R.I. and a fine of Rs.10000/- each of accused, in default of which, shall further undergo 3 months S.I. Act of the accused created panic, insecurity and sense of terrorism, as such, they are convicted and awarded death sentence u/s 7 of Anti-Terrorism Act, 1997 and a fine of Rs.100,000/-, in default of which, they shall further undergo 6 months S.I.*

*All the sentences shall run concurrently. Convicts are given benefit of section 382-B Cr.P.C."*

2. Capital Sentence Reference (CSR) No.12/2009 was forwarded by the Trial Court to the Lahore High Court (**the Appellate Court**) for confirmation or otherwise of the death sentence of the convicts. The convicts challenged their conviction and sentence by filing Criminal Appeal Nos. 21-ATA/2009 and 29-ATA/2010 before the Appellate Court.

3. While acquitting the co-convicts Muhammad Makki, Muhammad Mazhar and Ghulam Mustafa *vide* common judgment dated 12 February 2015 and answering CSR No.12/2009 in negative, the conviction of the convicts Muhammad Aslam and Muhammad Akhtar u/s 302 (b) PPC was maintained but their death sentence were commuted to imprisonment for life with amount of compensation as directed by the Trial Court. Their conviction and sentence u/s 452, 324/34 PC was also maintained. However, their conviction and sentence u/s 7 of the Anti-Terrorism Act, 1997 and under section 148 PPC was set aside. The Appellate Court further ordered that all the sentences shall run concurrently with benefit of section 382-B Cr.P.C.

4. The convicts Muhammad Aslam and Muhammad Akhtar challenged their conviction and sentence by filing Jail Petition No.251/2015 wherein leave to appeal was granted on 30 October 2019 and same was converted to Criminal Appeal No. 505/2019.

The complainant filed Criminal Petitions for Leave to Appeal No.314-L/2015 and 391-L of 2015 challenging the acquittal of accused as well as for enhancement of the sentence of the convicts wherein leave to appeal was granted *vide* order dated 30 October 2019 and same were converted into Criminal Appeal No.506/19 and 507/19 respectively.

5. During pendency of appeals, convict Muhammad Aslam passed away in jail due to which Criminal Appeal No.505/2019, to his extent, stood abated.

6. After hearing learned counsel for the appellants and learned Additional Prosecutor General, we have perused the available record. According to case of the prosecution, during investigation, twenty four empties of Kalashnikov, two empty cartridges of 12 bore, one missed bullet and one missed cartridge of 12 bore were recovered from the place of occurrence but same alongwith .44 bore rifle (allegedly recovered from the appellant Muhammad Akhtar), 222 bore rifle (allegedly recovered from acquitted accused Muhammad Makki), 12 bore repeater (allegedly recovered from acquitted accused Muhammad Mazhar alias Shakar), Kalashnikov (allegedly recovered from acquitted accused Abdul Ghafoor), Kalashnikov (allegedly recovered from acquitted accused Ghulam Mustafa) and Mouzer .30 bore (allegedly recovered from deceased convict Muhammad Aslam) were not sent to the firearm expert for analysis and in this regard no explanation has been offered by the prosecution at the trial.

7. The complainant is son of deceased Haji Muhammad and is having blood relations with all the deceased and the injured. According to his statement recorded at the trial as PW.14, he alongwith his brothers Muhammad Shafique and Muhammad Akhtar were sleeping on the roof of their residential room in the night of the occurrence while his father alongwith other inmates (the deceased and injured) were sleeping in the courtyard. At about 5:30 am they heard the sound of motorbikes and saw the nominated accused present in their courtyard with firearms making firing upon the deceased and injured. PW.14 has specifically nominated all the accused with specific firearms in their hands and he has attributed specific firearm injuries on different parts of the bodies of the deceased as well as the injured to all the accused with precision. Surprisingly, PW.14 did not receive a single firearm injury in the whole occurrence despite indiscriminate firing by six nominated accused and despite allegedly witnessing the entire occurrence from a close range.

8. Non-receiving of any firearm injury by PW.14 during the occurrence and his accurate attribution of each injury of the deceased and injured to each accused specifically with specific firearms casts serious doubt about his presence at the place of occurrence and his planation as an eye witness of the occurrence due to previous enmity with the nominated accused cannot be ruled out of consideration particularly when his testimony is lacking independent corroboration in material aspects.

9. There is no medico legal certificate of alleged injured Muhammad Umair on record. The alleged injured Muhammad Umair and Muhammad Shafique (brother of the complainant allegedly present at the place of occurrence) have not been produced as prosecution witnesses at the trial.

Presumption under Article 129(g) of the Qanun-e-Shahadat, 1984 is drawn to the effect that had these two witnesses been produced at the trial, they would have not supported the prosecution version.

10. The ocular testimony of the injured witnesses is contradictory to the medico legal evidence.

11. The recovery of 44 bore rifle from the appellant Muhammad Akhtar is lacking independent corroboration and as earlier observed, same was not sent to the firearm expert with the crime empties for analysis. Hence the said recovery is held inconsequential.

12. The statements of complainant/PW.14, PW.16 Muhammad Akhtar and the injured witness (PW.15) are suffering from dishonest improvements and material contradictions rendering their testimony doubtful.

13. The infirmities in the case of the prosecution and the contradictory statements of the prosecution witnesses, which are also suffering from dishonest improvements, have created reasonable doubt in the case of the prosecution. According to settled principle of law, benefit of reasonable doubt has to be extended in favour of accused.

14. On reappraisal of the evidence available on record, it is concluded that the prosecution has failed to prove the charge against the appellant Muhammad Akhtar and acquitted accused beyond reasonable doubt. It is further concluded that the acquittal of co-accused by the Appellate Court is not suffering from any illegality or irregularity.

15. For the above reasons drawn today, *vide* our short order of even date, Criminal Appeal No. 505/2019 (filed by the convict Muhammad Akhtar) has been accepted and he has been acquitted of the charge while Criminal Appeal Nos. 506/2019 and 507/2019 (filed by the complainant against acquittal of the co-accused and for enhancement of the sentence of the convicts) have been dismissed.

**Judge**

**Judge**

**Judge**

**Islamabad, the**

24.05.2024

Atif\*/

**NOT APPROVED FOR REPORTING**