

IN THE SUPREME COURT OF PAKISTAN  
( Appellate Jurisdiction )

**PRESENT:**

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

**Criminal Appeal Nos. 502 to 504 of 2019**

(Against the judgment dated 11.02.2015 of the Lahore High Court, Multan Bench passed in CrI. A. No. 23-ATA/2019 and CSR No.11/2009, CrI. A. No. 27-ATA/2010, CrI. A. No. 11-ATA/2010 and CSR No.10-ATA/2010)

Hazaray Khan and others (CrI. A. No. 502/2019)  
Muhammad Ayub (CrI. A. No. 503 & 504/2019) ...**Appellants**

**Versus**

The State (CrI. A. No. 502/2019)  
Muhammad Sadiq etc. (CrI. A. No. 503/2019)  
Muhammad Ajmal and another (CrI. A. No. 504/2019) ...**Respondents**

For the appellants: Mr. Zulfiqar Khalid Maluka, ASC  
(CrI. A. No. 502/2019)

(CrI. A. No. 503 & 504/2019): Sardar Ashiq Hussain, ASC  
Syed Rifaqat Hussain Shah, AOR

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

For the respondent: Mr. Zulfiqar Khalid Maluka, ASC  
(CrI. A. No. 503 of 2019)

Date of Hearing: 24.05.2024

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

**NAEEM AKHTAR AFGHAN, J.** While issuing perpetual non-bailable warrants for arrest of the proclaimed offenders Muhammad Ajmal s/o Fida Hussain and Fida Hussain s/o Yar Muhammad, the co-accused Abdul Ghafoor, Muhammad Sadiq, Muhammad Aslam and Hazaray Khan (facing trial) were awarded conviction and sentence as follows by the Anti-Terrorism Court-I, Multan (**the Trial Court**) *vide* judgment dated 29 June 2009 in FIR No.473/2007 registered with Police Station City Lodhra on 4 September 2007 on the basis of statement of Muhammad Ayub s/o Haji Nazar Muhammad (**the complainant**) for the allegation of committing murder of Nazar Muhammad (father of the complainant), Muhammad Yousaf, Manzooran Mai, Salma Mai alias Shammo and causing firearm injuries to Muhammad Shahid (PW.14), Shabbir (PW.16), Wazir Ahmed, Rukhsana Bibi (PW.17) Kanizan Mai and Sughra Mai due to previous enmity:

*"All the accused are convicted u/s 148 PPC and awarded sentence u/s 148 PPC to undergo 2 years R.I. and a fine of Rs.10000/- each of accused, in default of which, convict shall*

*further undergo 3 months S.I. Abdul Ghafoor, Muhammad Sadiq, Muhammad Aslam and Hazaray Khan accused committed murder of Muhammad Yousaf, Nazar, Salma Mai and Manzooran Mai and awarded death sentence u/s 302-B PPC read with section 149 PPC on 4 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 Muhammad Yousaf, Nazar, Salma Mai and Manzooran Mai, in default of which, shall further undergo 6 months S.I. All the accused are convicted to cause injuries to Shabbir, Muhammad Shahid, Wazir Ahmad and Rukhsana Bibi and awarded sentence u/s 324/149 PPC for 10 years R.I. and to pay Rs.20000/- as Daman, 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 sentenced 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. The juvenile accused Muhammad Shehzad s/o Muhammad Makki was separately tried. On conclusion of trial, he was awarded following conviction and sentence by the Trial Court *vide* judgment dated 26 June 2009:

*"Shahzad is convicted u/s 148 PPC and awarded sentence u/s 148 PPC to undergo 2 years R.I and a fine of Rs.10000/-, in default of which, convict shall further undergo 3 months S.I. Shahzad accused alongwith others committed murder of Muhammad Yousaf, Nazar, Salma Mai and Manzooran Mai and awarded life imprisonment u/s 302-B PPC read with section 149 PPC on 4 counts. Convict shall pay compensation u/s 544-A Cr.P.C. of Rs.100,000/- to the legal heirs of each deceased Muhammad Yousaf, Nazar, Salma Mai and Manzooran Mai, in default of which, shall further undergo 6 months S.I. Shahzad alongwith others accused is convicted to cause injuries to Shabbir, Muhammad Shahid, Wazir Ahmad and Rukhsana Bibi and awarded sentence u/s 324/149 PPC for 10 years R.I. and to pay Rs.20000/- as Daman to each of P.W., in default of which, shall further undergo 3 months S.I. He is 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/-, in default of which, shall further undergo 3 months S.I. Act of the accused created panic, insecurity and sense of terrorism, as such, he is convicted and sentenced imprisonment for life u/s 7 of Anti-terrorism Act, 1997 and a fine Rs.100,000/-, in default of which, he shall further undergo 6 months S.I.*

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

3. After their arrest, the proclaimed offenders Fida Hussain and Muhammad Ajmal were also put on trial. On conclusion of trial, while acquitting co-accused Fida Hussain *vide* judgment dated 22 December

2009, the Trial Court awarded the following conviction and sentence to co-accused Muhammad Ajmal:

*"Muhammad Ajmal accused is convicted u/s 148, 302(b), 324, 452 PPC read with section 149 PPC.*

*Muhammad Ajmal accused is also convicted u/s 7 of Anti-Terrorism Act, 1997 and awarded sentence of death with a fine of Rs.100,000/-, in default of payment, he shall further undergo 6 months S.I. Muhammad Ajmal accused is awarded sentence of 2 years R.I. and a fine of Rs.10000/-, in default of payment, he shall further undergo 3 months SI for committing offence u/s 148 PPC. Muhammad Ajmal accused is awarded death sentence u/s 302(b) PPC read with section 149 PPC for causing death of Manzoor Mai, Muhammad Yousaf, Nazar Muhammad and Salma on four counts and to pay Rs.100,000/- as compensation u/s 544-A Cr.P.C. to the legal heirs of each Manzoor Mai, Muhammad Yousaf, Nazar Muhammad and Salma Mai. He shall be hanged by neck till death. In default of payment, he shall further undergo 6 months S.I. Muhammad Ajmal accused is awarded sentence u/s 324 PPC read with section 149 PPC for 10 years R.I. and to pay Rs.20000/- as Daman for causing injuries to each injured Shabbir, Muhammad Shahid, Wazir Ahmad and Rukhsana Bibi. Accused is further sentenced u/s 452 PPC read with section 149 PPC for 3 years R.I. and to pay fine of Rs.10000/- in default of the same, he shall undergo for 3 months S.I.*

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

4. Capital Sentence Reference (**CSR**) Nos.10/2010 and 11/2009 were 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 convict Abdul Ghafoor passed away in jail. The other co-convicts challenged their conviction and sentence by filing Criminal Appeal Nos. 22-ATA/2009, 23-ATA/2009 and 27-ATA/2010. The state also filed Criminal Appeal No.11-ATA/2010 challenging acquittal of accused Fida Hussain for the charge of abetment.

5. While accepting Criminal Appeal No.22-ATA/2009 the convict Muhammad Shehzad was acquitted of the charge by the Appellate Court *vide* judgment dated 11 February 2015. Criminal Petition for Leave Appeal No.353-L/2015 was filed by the complainant challenging acquittal of Muhammad Shehzad by the Appellate Court but *vide* order dated 30 October 2019, while refusing leave to appeal, Criminal Petition for Leave to Appeal No.353-L/2015 has been dismissed by this Court.

6. The Appellate Court, *vide* common judgment dated 11 February 2015, dismissed Criminal Appeal No.11-ATA/2010, answered CSR No.10-ATA/2010 in negative, accepted Criminal Appeal No.27-ATA/2010 and while extending the benefit of doubt, acquitted the convict Muhammad Ajmal.

7. The Appellate Court, *vide* common judgment dated 11 February 2015, answered CSR No.11/2009 in negative, maintained the conviction of the convicts Muhammad Sadiq, Hazaray Khan and Muhammad Aslam u/s 302(b) PPC but commuted their death sentence to imprisonment for life with amount of compensation as directed by the Trial Court. Their conviction and sentence u/s 324 and 452 PPC, as recorded by the Trial Court, were maintained. However, their conviction and sentence u/s 7 of the Anti-Terrorism Act, 1997 and u/s 148 PPC were set aside.

The Appellate Court further ordered that all the sentences shall run concurrently with benefit of section 382-B Cr.P.C.

8. The convicts Muhammad Aslam, Muhammad Sadiq and Hazaray Khan challenged their conviction and sentence by filing Jail Petition No.250/2015 wherein leave to appeal was granted on 30 October 2019 and same was converted to Criminal Appeal No. 502/2019.

The complainant filed Criminal Petition for Leave to Appeal No.355/L/2015 and 354/L/2015 challenging the acquittal of the 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 Nos.503/19 and 504/19 respectively.

9. During pendency of the above appeals, co-convict Muhammad Aslam passed away in jail and to his extent Criminal Appeal No.502/19 stands abated.

10. After hearing learned counsel for the appellants and learned Additional Prosecutor General, we have perused the available record. According to the case of the prosecution, during investigation a 44 bore rifle with five live bullets were recovered from the appellant Muhammad Sadiq and a Kalashnikov with five live bullets was recovered from the appellant Hazaray Khan but said recoveries have been disbelieved by the Appellate Court due to lack of independent corroboration.

11. Thirty nine crime empties of Kalashnikov, three crime empties of 12 bore alongwith the firearms, allegedly recovered from the appellants Muhammad Sadiq and Hazaray Khan, were not sent to the firearm expert for analysis and in this regard no explanation has been offered by the prosecution at the trial.

12. The complainant is son of deceased Nazar Muhammad and is having blood relations with all the deceased and injured. According to his statement recorded at the trial as PW.18, in the night of occurrence, he

alongwith all the deceased and injured were sleeping in the house while his father Nazar Muhammad was sleeping at the tube well.

According to PW.18, in the night of occurrence, they all awoke on hearing sound of motorbikes at 4:30 am. All the eight nominated accused i.e. the appellants and acquitted accused, trespassed into their house and started firing. PW.18 has specifically nominated all the accused with specific firearms in their hands and has attributed specific firearm injuries on specific parts of the bodies of the deceased as well as the injured to all the accused with precision. Surprisingly, PW.18 did not receive a single firearm injury in the whole occurrence despite indiscriminate firing by the eight nominated accused and despite being in close range, allegedly witnessing the occurrence.

13. According to PW.18, his father was fired upon by the convict Abdul Ghafoor while sleeping at the tube well. Admittedly PW.18 was not present at the tube well with deceased Nazar Muhammad.

14. Non-receiving of any firearm injury by PW.18 during the occurrence and his accurate attribution of each injury of the deceased and injured to each accused with specific firearms casts serious doubt about his presence at the place of occurrence and his plantation 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.

15. Mukhtiar Ahmed (stated to be an eye witness of the occurrence) and the injured Wazir Ahmed, Kanizan Mai and Sughra Mai have not been produced at the trial due to which presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984 is drawn to the effect that had these witnesses been produced at the trial, they would have not supported the prosecution version.

16. PW.14 Muhammad Shahid made statement that he had received firearm injuries on his right knee. Despite accurately mentioning about the firearm injuries of the deceased and the injured with specific attribution to all the nominated accused, he has not attributed his firearm injuries to any accused. The statements of PW.14, injured Muhammad Shabbir (PW.16), Rukhsana Mai (PW.17) and the complainant (PW.18) are suffering from dishonest improvements and material contradictions rendering their testimony doubtful.

17. The infirmities in the case of the prosecution and 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 the settled principles of law, benefit of reasonable doubt has to be extended in favour of an accused.

18. On reappraisal of the evidence available on record, it is concluded that the prosecution has failed to prove the charge against the appellants as well as the acquitted accused beyond reasonable doubt.

19. For the above reasons drawn today, *vide* our short order of even date, Criminal Appeal No. 502/2019 (filed by the convicts Hazaray Khan and Muhammad Sadiq) has been accepted and they have been acquitted of the charge while Criminal Appeal Nos. 503/2019 (challenging the acquittal of the accused) and Criminal Appeal 504/2019 (for enhancement of sentence of the convicts) have been dismissed.

**Judge**

**Judge**

**Judge**

**Islamabad, the**

24.05.2024

Atif\*/

**NOT APPROVED FOR REPORTING**