

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

**PRESENT:**

Mr. Justice Umar Ata Bandial

Mr. Justice Faisal Arab

Mr. Justice Qazi Muhammad Amin Ahmed

**Jail Petition No.105 of 2020**

*(Against judgment dated 17.03.2020 passed by the  
Islamabad High Court Islamabad in Criminal  
Revision No.20 of 2019)*

***Mufti Kafayat Ullah***

*...Petitioner(s)*

**Versus**

***The State & another***

*...Respondent(s)*

For the Petitioner(s):

Mr. Mir Afzal Malik, ASC  
Ch. Akhtar Ali, AOR

For the State:

Niazullah Niazi,  
Advocate General, Islamabad  
with M. Anwar I.O. Margallah.

Date of hearing:

04.06.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.**-Mufti Kafayat Ullah, petitioner, was tried by a Magistrate at Islamabad for murderous assault on his estranged wife Mst. Sabiha (PW-1) as well as brother-in-law Abdul Majeed (PW-2) in District Court premises on 8.2.2013 where they confronted him after proceedings before a Family Judge. It is alleged that soon after the adjournment of proceedings in a suit filed by the complainant seeking dissolution of her marriage, the petitioner confronted them in the parking lot and attempted repeated fire shots, both luckily stuck in the chamber; the witnesses with the assistance of a police official on duty snatched the gun while he took to the heels, shadowed by his brother Shafiullah. Vide judgment dated 17.12.2018, the learned Magistrate returned a guilty verdict; convicted under

section 324 of the Pakistan Penal Code, 1860, he was sentenced to six months RI with a fine of Rs.5000/- or to undergo one month SI in default thereof, pre-trial period inclusive. Learned Sessions Judge (West) Islamabad vide judgment dated 27.2.2019 dismissed the appeal; recourse to the High Court met with no better fate vide judgment dated 17.3.2020, *vires* whereof, are being assailed on a variety of grounds ranging from a cooked up accusation by inimical witnesses to an inherently self-destructive charge, clamouring for interference by this Court. The motion is contested by the learned Law Officer on the ground of unanimity of finding of guilt by the three tribunals.

2. Heard. Record perused.

3. Going by complainant's narrative, the petitioner twice attempted fire shots and a miracle shielded the family and it was during this process that the petitioner was subdued and disarmed with the assistance of an unnamed police officer. Story of unusual failure of an assault, allegedly preconcerted, is resting upon word of mouth alone with inherent missing links; the Investigating Officer who recorded crime report at the spot did not secure missed bullets therefrom nor he associated the police official, who according to the witnesses while being in the line of duty, intervened to snatch the gun; he is conspicuous by his absence both at the spot as well as witness-box. Inclusion of petitioner's brother Shafiullah in the array for being in the community of intention evinces desires oblique and suspect with inevitable reflections in the retrospect. According to note of police proceedings, the complainant with her brother Abdul Majeed, upon arrival of Fakhar Abbas ASI (PW-3) presented a .30 caliber pistol with five live bullets in the magazine; seizure does not qualify the riders of Article 40 of the Qanun-e-Shahadat Order, 1984 so as to be received as corroboration of a story that otherwise runs counter to the case set up in the crime report.

Given the persisting animosity, it would be unsafe to maintain the conviction on the basis of a script, inherently flawed. Petition is converted into appeal and allowed; impugned judgments are set aside and the appellant is acquitted of the charge. These are the reasons of our short order of even date, reproduced below:

*"For reasons to follow, this petition is converted into appeal and allowed; conviction and sentence recorded by the learned trial Court, affirmed by the Appellate Court and the High Court are set aside."*

*The appellant shall be released forthwith if not required to be detained in any other case."*

**Judge**

**Judge**

**Judge**

Islamabad, the  
4<sup>th</sup> June, 2020  
Not approved for reporting  
Azmat/-