

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Criminal Appeal No.199 of 2023

(On appeal against the judgment dated 19.10.2020 passed by the High Court of Balochistan, Sibi Bench, in Criminal Jail Appeal No(s).14, 15 of /2019, Criminal Acquittal Appeal No(s).160/2019 & Murder Reference No.(s) 03/2019)

Ghulam Mustafa alias Raja Buledi

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Appellant (s): Syeda B. H. Shah, ASC

For the State: Syed Pervez Bukhari, State Counsel

For the Complainant: Hafiz Ahsan Ahmad Khokhar, ASC

Amicus Curie: Mr. Muhammad Akram Sheikh, SR.ASC
assisted by Syed Faraz Raza, AHC
Ms. Sehar Mahsud, Advocate

Date of Hearing: 12.05.2025

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JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Ghulam Mustafa alias Raja Buledi (petitioner), along with Muhammad Akbar (co-convict) and Muhammad Usman (co-accused since acquitted), was tried by the learned Model Criminal Trial Court, Sibi, pursuant to a case registered vide FIR No.04/2019 dated 02.01.2019, under Sections 302/34 PPC, at Police Station City, Sibi. The learned Trial Court vide its judgment dated 25.10.2019, convicted the appellant under Section 302(b) PPC as Ta'zir and sentenced him to death. He was also directed to pay compensation amounting to Rs.200,000/- to the legal heirs of the deceased namely Sikandar Ali as envisaged under section 544-A Cr.P.C and in default whereof to further undergo six (06) months simple imprisonment. The appeal filed by

the appellant was dismissed by the learned High Court and the conviction and sentence awarded to the appellant by the learned trial Court was upheld and maintained.

2. Arguments heard. Record perused.

3. As per contents of the FIR, on 02.01.2019, at about 6.20 p.m, Amanat Ali complainant (PW-1), along with his brother namely Sikandar Ali (deceased) and workers was present in his shop i.e., Madina Jewelers, situated at Jinnah Road, Sibbi. In the meanwhile, four persons while riding on two (02) motorcycles came in-front of the shop of the complainant party. Two accused namely Ghulam Mustafa alias Raja Buledi (appellant) and Muhammad Akbar (co-convict), out of the said four accused, while carrying T.T pistols, trespassed into the above-mentioned shop of the complainant party and after raising slogans i.e., "*Long live Buledi*", started firing at Siknadar Ali (deceased), who sustained injuries and fell on the ground. Atta Hussain Buledi (co-accused since P.O) along with an unknown accused remained present outside the shop of the complainant party and they raised a *lalkara* that the complainant party be not spared alive. After the occurrence, all the persons fled away from the spot. Sikandar Ali was taken to the hospital but he succumbed to the injuries at the hospital. It was further alleged in the FIR that earlier Ghulam Mustafa alias Raja Buledi (appellant), extended threats of murder and he also earlier committed an occurrence in the shop of the complainant, hence the FIR of this case.

4. The occurrence in this case took place on 02.01.2019, at about 6.20 p.m but the FIR was lodged on the same day at 9.30 p.m i.e., with the delay of about three hours and ten (10) minutes

from the occurrence. The distance between the police station and the place of occurrence was only two (02) furlongs.

We have further noted that the postmortem examination on the dead-body of the deceased was conducted on 02.01.2019, at about 7.20 p.m i.e., earlier to the registration of FIR, which was lodged at 9.30 p.m. Dr. Shahzad Qadir Maingal (PW-4), stated in his examination-in-chief that the dead-body of Sikandar Ali (deceased), was brought to the District Headquarter Hospital, Sibbi for postmortem examination by the police authorities of police station Sibbi. Even Hameed Ullah (PW-2), stated in his examination-in-chief that after the occurrence, as soon as, the accused persons decamped from the spot, the patrolling police employees came to the shop of the complainant (the place of occurrence). All the above-mentioned facts show that the police got information regarding the incident soon after the occurrence but even then the FIR was not lodged till 9.30 p.m and the same was lodged after conducting postmortem examination on the dead-body of the deceased. Under the circumstances, it is evident that the FIR was lodged after due deliberations and consultations. It also shows that actually the prosecution eye-witnesses were not present at the spot at the relevant time and they had not witnessed the occurrence, therefore, the abovementioned delay in lodging the FIR was consumed in procuring the attendance of fake eye-witnesses and concocting a fabricated story of the prosecution. The abovementioned gross delay in lodging the FIR has created doubt regarding the truthfulness of the prosecution story as observed in the cases reported as "Mehmood Ahmed & others v. The State and another" (1995 SCMR 127), "Shaukat Hussain v. The State through PG Punjab and another" (2024 SCMR 929) and "Khial Muhammad

v. The State" (2024 SCMR 1490). In the case of **Mehmood Ahmed** supra, it has been held as under:-

"Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons who ultimately the prosecution might wish to implicate"

5. We have also noted that there are glaring contradictions in the statements of the prosecution eye-witnesses. Amanat Ali complainant (PW-1), attributed a joint role of firing at Sikandar Ali (deceased) to Ghulam Mustafa alias Raja Buledi (appellant) and Muhammad Akbar (co-convict), whereas Hameed Ullah (PW-2), has not attributed any role to Muhammad Akbar (co-convict) of firing at Sikandar Ali (deceased) or causing injuries to him. Even this fact was noticed by the trial Court, as well as, by the learned High Court in paragraph No.8, 9 & 16, of the impugned judgment, however, instead of giving benefit of doubt of the above-mentioned contradictions in the statements of the prosecution eye-witnesses, the learned trial Court and the High Court only considered the said fact as a mitigating factor for awarding lesser punishment to Muhammad Akbar (co-convict). The abovementioned glaring contradictions in the statements of eye-witnesses show that in fact they were not present at the spot, at the time of occurrence. The said material contradictions about the salient features of the case have made their evidence highly doubtful and un-reliable.

6. Insofar as the motive of the prosecution case is concerned, no motive whatsoever was alleged in the contents of the FIR or in the statements of the prosecution eye-witnesses recorded before the learned trial Court and it was only mentioned therein that earlier, Ghulam Mustafa alias Raja Buledi (appellant), extended

threats of life to the complainant party and also earlier committed an occurrence in the shop of the complainant party. It was not explained by the prosecution that as to why the appellant earlier extended threats of life to the complainant party. No specific date, time or place of earlier threats allegedly given by the appellant to the complainant party was mentioned therein. Likewise, no date or time of the earlier incident, which was allegedly committed by the appellant in the shop of the complainant party was stated in the contents of the FIR or in the statements of PWs. No FIR or report or any application lodged by the complainant party against the appellant regarding the alleged earlier occurrence was produced in the prosecution evidence. We are, therefore, of the view that a vague and ambiguous motive was alleged by the prosecution which could not be proved against the appellant or his co-accused.

7. So far as the recovery of pistol, at the pointing out of the appellant and positive report of Forensic Science Laboratory (FSL) (Ex.P/6-I), are concerned, we have noted that the empties and pistol were deposited together to the office of FSL on 01.02.2019. Under the circumstances, no reliance can be placed on the abovementioned prosecution evidence qua the recovery of pistol and the positive report of Forensic Science Laboratory (Ex.P/6-I) as observed in the cases reported as *"Sarfraz v. The State (2023 SCMR 670)"* and *"Abdul Wahid v. The State" (2023 SCMR 1278)*. In the case of *Sarfraz* *ibid*, at page No.677, it has been held as under:-

".....Admittedly, the Investigating Officer had collected one crime empty from the place of occurrence on 13.06.2011. The weapon of offence i.e., 30 bore pistol was allegedly recovered on the pointation of the appellant Sarfraz on 28.06.2011. Thereafter, both the crime empty and the weapon of offence were sent to Punjab Forensic Science Agency together.

This Court in a number of cases has held that if the crime empty is sent to the Forensic Science Laboratory after the arrest of the accused or together with the crime weapon, the positive report of the said Laboratory loses its evidentiary value. Sending the crime empties together with the weapon of offence is not a safe way to sustain conviction of the accused and it smacks of foul play on the part of the Investigating Officer
.....”

(Bold and underlining is supplied for emphasis)

Under the circumstances, it is not safe to rely upon the prosecution evidence qua the recovery of pistol and positive report of FSL.

8. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as “Tariq Pervez Vs The State” (1995 SCMR 1345) and “Muhammad Akram Vs The State” (2009 SCMR 230). Consequently, this appeal is allowed. The impugned judgment is set aside. The appellant is acquitted of the charge while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

9. Before parting with the appeal of Ghulam Mustafa alias Raja Buledi (appellant), it is pertinent to mention here a very important and crucial circumstance involved in the instant case, as well as, in many other criminal cases. On the last date of hearing, a

question arose before this Court that when a Court while hearing the case of an accused comes to the conclusion that the prosecution evidence is doubtful then as to whether the benefit of doubt can be extended to a co-accused/convict, who has not filed any appeal against his conviction and sentence or who is absconding. This Court vide order dated 08.05.2025, appointed Mr. Muhammad Akram Sheikh, Sr. ASC as amicus curiae to assist the Court on the abovementioned point.

Today he (Mr. Muhammad Akram Sheikh, Sr. ASC) along with his associates has very ably assisted the Court on the subject for which this Court is thankful to him and his associates. He has argued that if a Court while hearing the case of any accused comes to the conclusion that the prosecution evidence is doubtful and untrustworthy then the benefit of doubt can also be extended to an accused/convict, who has not filed any appeal before the appellate Court and even to an absconding accused. To embellish his argument, he has relied upon the judgments reported as "Pawan Kumar, Appellant v. State of Haryana, Respondent" (AIR 2003 Supreme Court 2987), "Lal Khan v. The State" (2006 SCMR 1846), "Rahib Ali v. The State" (2018 SCMR 418), "Rafaqat Ali v. Chief Secretary, Government of Punjab" (2024 SCMR 34), "Muhammad Aslam and 5 others v. The State" (1972 SCMR 194) and "Ghulam Nabi Shah v. Crwon" (1969 SCMR 629).

10. We have noted that the learned trial Court convicted Muhammad Akbar (co-convict), under section 302(b) PPC as Taz'ir and awarded him the sentence of imprisonment for life (rigorous imprisonment) and to pay Rs.1,00,000/- as compensation to the legal heirs of the deceased as envisaged under section 544-A Cr.P.C or in default whereof to further undergo three (03) months

simple imprisonment, whereas the appeal filed by Muhammad Akbar (co-convict), was dismissed by the learned High Court while maintaining his conviction and sentence. Muhammad Akbar (co-convict) did not challenge his conviction and sentence before this Court. Although learned State Counsel assisted by learned counsel for the complainant has argued that as Muhammad Akbar (co-convict), has not filed any appeal before this Court against his conviction and sentence, therefore, judgment of the learned High Court has attained finality to his extent but as mentioned earlier, we have already concluded that the facts and circumstances of this case show that the prosecution eye-witnesses were not present at the spot at the relevant time and there are glaring contradictions in the statements of the prosecution eye-witnesses, hence their evidence is highly doubtful and unreliable. We have also held that the prosecution has failed to prove the alleged motive. After coming to this conclusion, the conviction and sentence awarded to Muhammad Akbar (co-convict), cannot be allowed to remain in the field, merely on the basis of a technical ground that he has not filed any appeal before this Court against the judgment of the High Court. Though he has not filed any appeal against the impugned judgment of the learned High Court but it will not be just and fair for this Court to deny the benefit of doubt to Muhammad Akbar (co-convict), which benefit has been extended to Ghulam Mustafa alias Raja Baledi (appellant), when the case of the appellant and the abovementioned Muhammad Akbar (co-convict), is not distinguishable rather the case of the above-mentioned co-convict is at better footings, as compared to the case of Ghulam Mustafa alias Raja Buledi (appellant). Muhammad Akbar (co-convict), was not attributed any motive. No weapon was recovered from his

possession and the prosecution eye-witnesses namely Hameed Ullah (PW-2), did not assign him any role of firing at Sikandar Ali (deceased) or causing injuries to him. Under the circumstances, the conviction and sentence of Muhammad Akbar (co-convict), cannot be allowed to remain in the field, merely on the basis of this technicality that he has not filed any appeal before this Court against his conviction and sentence. In the cases of "Amin Ali and another v. The State" (2011 SCMR 323) "Shabbir Ahmed v. The State" (2011 SCMR 1142) and "Imtiaz alias Taj v. The State and others" (2018 SCMR 344), this Court extended the benefit of doubt to a convict though he had not challenged his conviction and sentence by way of filing an appeal before this Court. In the case of **Imtiaz alias Taj** supra, at page Nos.348 & 349, this Court while reiterating the abovementioned earlier judgments of this Court has held as under:-

"5. Before parting with this judgment it may be observed that we have been informed that Imtiaz son of Muhammad Ramzan co-convict had been convicted by the trial Court for an offence under section 302(b) P.P.C read with section 34, P.P.C for the same murder and he was sentenced to imprisonment for life and the High Court had upheld the conviction and sentence. We have further been informed that despite his insistence the Superintendent of the concerned jail has not forwarded any Jail Petition challenging the said co-convict's conviction and sentence before this Court. We have found that the case against Imtiaz son, of Muhammad Ramzan co-convict was a better case of acquittal than that against the appellant namely Imtiaz alias Taj inasmuch as the report received from the Forensic Science Laboratory was in the negative to the extent of Imtiaz son of Muhammad Ramzan and he too had no direct connection with the motive asserted by the prosecution. As if this were not enough, the trial Court had expressly observed in the impugned judgment passed by it that the said

co-convict was merely present at the scene of the crime at the relevant time and, according to the conclusion reached by the trial Court, the said co-convict had not fired at the deceased at all and had not caused any injury to the deceased. **It had been held by this Court in the case of Shabbir Ahmed v. The State (2011 SCMR 1142) that the benefit of acquittal of an appellant can be extended to a non-appealing co-convict if the circumstances of the case so warrant.** We have found that the prosecution had utterly failed to prove its case against Imtiaz son of Muhammad Ramzan co-convict as well as, thus, he too is entitled to be acquitted of the charge. **As a consequence of this conclusion reached by us it is ordered that Imtiaz son of Muhammad Ramzan co-convict's conviction and sentence recorded and upheld by the Courts below are also set aside and he too is acquitted of the charge by extending the benefit of doubt to him. He shall also be released from the jail forthwith if not required to be detained in connection with any other case.**"

(Bold and underlining is supplied for emphasis)

11. We have further noted that Atta Hussain Buledi (co-accused) is a proclaimed offender in this case. According to the prosecution evidence brought on the record, on the day of occurrence, the said Atta Hussain Buledi (co-accused since P.O) along with Muhammad Usman (co-accused since acquitted), came outside the shop of the complainant along with Ghulam Mustafa alias Buledi (appellant) and Muhammad Akbar (co-convict) and they both remained present outside the said shop and raised a proverbial lalkara that the complainant party should not be spared alive. The above-mentioned Muhammad Usman (co-accused since acquitted), who was attributed a similar role along with Atta Hussain Buledi (co-accused since P.O), has already been acquitted by the learned trial Court, therefore, no useful purpose shall be served by the arrest of Atta Hussain Buledi (co-accused since P.O) and putting him to trial

by the learned trial Court because ultimately he has to be acquitted by the learned trial Court in the light of observations made by the learned trial Court in respect of the case of Muhammad Usman (co-accused since acquitted), as well as, in the light of findings recorded by this Court in the instant judgment. Further Court proceedings in the case of Atta Hussain Buledi (co-accused since P.O), shall be a futile exercise and the same shall amount to sheer abuse of process of the Court and the law. We may refer here the case of "Muhammad Aslam and 5 others v. The State" (1972 SCMR 194), wherein, this Court also extended the benefit of doubt to an absconding co-accused and consequently acquitted him from the case. At page No.201, it has been held as under:-

*"Having regard to these broad features of the case the appellants were entitled to the benefit of doubt which should have been given to them. **We accordingly allow the appeal, set aside the conviction and sentences of all the appellants including the absconding appellant Mohammad Aslam, and acquitted them of all the charges, and direct that they shall be set at liberty forthwith if not wanted in connection with any other matter.***

We may observe here that although appellant Mohammad Aslam has absconded during the pendency of the present appeal and has remained absconding uptill now, the benefit of our judgment should be given to him also in order to do complete justice in the case. We therefore, do not find it necessary to postpone the hearing of the case of Mohammad Aslam until his presence before the Court.

(Bold and underlining is supplied for emphasis)

12. Keeping in view all the aforementioned facts, benefit of doubt is extended in favour of Muhammad Akbar (co-convict) and Atta Hussain Buledi (co-accused since P.O) and they are acquitted from

the instant case. Muhammad Akbar (co-convict), shall be released from the jail forthwith unless required to be detained in any other case.

Islamabad, the
12th of May, 2025
Approved For Reporting
Ahtaz