

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**Bench-III**

**PRESENT:**

MR. JUSTICE NAEEM AKHTER AFGHAN  
MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR  
MR. JUSTICE ISHTIAQ IBRAHIM

**CRIMINAL APPEAL NO. 499 of 2020**

*(Against the judgment dated 28.11.2016, passed in Criminal Appeal No.64 of 2013/BWP and Murder Reference No.08 of 2013/BWP, by the Lahore High Court Bahawalpur Bench Bahawalpur)*

***Muhammad alias Ahmad***

*...Appellant(s)*

***Versus***

***The State***

*...Respondent(s)*

For the Appellant:

Syeda B.H.Shah, ASC

For the Complainant:

Mr. Adil Aziz Qazi, ASC

For the State:

Rai Akhtar Hussain Addl. PG Punjab

Date of hearing:

02.06.2025

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** On the morning of 24.04.2011, complainant Muhammad Asghar slapped his wife Mst. Ghulam Fatima against which she make a complaint over a phone call to her brother, namely, Muhammad alias Ahmad, the appellant, consequent whereupon, he while duly armed with a 12-bore Repeater along with his brother, namely, Muhammad Hassan co-accused (acquitted), armed with a hatchet at 10.30 A.M arrived on a motorcycle near the house of one *Haji Elahi Baksh*, where the complainant and his brother Ghulam Mustafa deceased were already present. Co-accused Muhammad Hassan shouted that they would teach a lesson to the complainant and the deceased for slapping their sister and struck the deceased on his back with blunt side of the hatchet. In the meantime, the appellant opened fire with 12-bore repeater at the deceased, resultantly; he got hit on various parts of his body and fell to the ground. On hue and cry of the complainant, Barkat Ali (PW.6) and Ghulam Murtaza (given up PW) as well as other people attracted to the spot. Meanwhile, the accused

managed to flee from the scene. On receipt of information about the incident, Muhammad Ajmal SI (PW.12) rushed to spot and on the written complaint Exh.PE of complainant Muhammad Asghar (PW.3), FIR No. 262 of 2011 dated 24.04.2011, was registered under Sections 302 & 34 of the Pakistan Penal Code, 1860 ("PPC"), at Police Station Yazman against the appellant and acquitted co-accused. The motive behind the occurrence was the complainant's slapping his wife Mst. Ghulam Fatima, the sister of the appellant.

2. After facing regular trial, appellant Muhammad alias Ahmad and co-accused Muhammad Hassan were tried by the learned Additional Sessions Judge Yazman, District Bahawalpur ("**Trial Court**"). Upon conclusion of the trial, both the accused were convicted under Section 302(b) PPC. The appellant was sentenced to death as *Ta'zir*, whereas co-accused Muhammad Hassan was sentenced to imprisonment for life as *Ta'zir*. Additionally, both the convicts were directed to pay compensation of Rs. 500,000/- each to the legal heirs of the deceased under section 544-A Cr.P.C. and in default of payment to further undergo six months' simple imprisonment each vide judgment dated 28.11.2016.

3. The learned Lahore High Court Bahawalpur Bench, while allowing the criminal appeal of convict Muhammad Hassan set aside his conviction and sentence thereby acquitting him. However, the conviction of the appellant under Section 302(b) PPC was upheld. The Murder Reference No.08 of 2013 sent by the trial Court was answered in the negative, consequently, the death sentence awarded to the appellant was modified to life imprisonment vide judgment dated 28.11.2016 ("**impugned judgment**").

4. Aggrieved from his conviction and sentence, the appellant filed Jail Petition No. 45 of 2017 before this Court. Leave to appeal was granted vide order dated 18.08.2020 to consider, *inter alia*, the following points:

- i. The principal motive put forward by the complainant was against the complainant himself in that his wife (the petitioner's sister) was beaten by the complainant but the petitioner spared the complainant and instead killed the complainant's brother.
- ii. On the same testimonies the co-accused Muhammad Hassan was acquitted by the learned Judges of the High Court.
- iii. Whether the medical evidence corroborated the ocular account as apparently there is no firearm injury on the back of the deceased as attributed to him by the eyewitnesses; and
- iv. Ghulam Murtaza was also mentioned as an eyewitness but he was given up.



5. We have heard the arguments of learned counsel for the parties and the learned Additional Prosecutor General Punjab and perused the record and evidence with their able assistance.

6. We have noted that neither the complainant nor the State has preferred to file an appeal against the acquittal of co-accused Muhammad Hassan. To the extent of the case of the appellant, the learned trial court and the High Court have disbelieved the prosecution's assertion regarding the motive and the recovery of the 12 bore crime weapon and empties, deeming the same to be inconsequential in view of the fact that they were dispatched jointly to the Punjab Forensic Science Agency (PFSA) after arrest of the appellant, thereby casting doubt on their evidentiary value. The sole basis for the conviction of the appellant, as recorded by both courts below, rests upon the ocular testimony of complainant Muhammad Asghar (PW.3) and Barkat Ali (PW.6), who claimed to have witnessed the occurrence coupled with the medical evidence furnished by Dr. Atta Muhammad Hafiz (PW.4), who conducted post-mortem examination on the dead body of the deceased.

7. In view of the above backdrop it is imperative for us to examine whether the ocular account of the purported eyewitnesses when evaluated in conjunction with the medical evidence, is sufficient to sustain the conviction of the appellant. The occurrence in this case is stated to have taken place on 24.04.2011 at 10:30 a.m. in Chak No. 71/D-B, situated at a distance of 16 kilometers from Police Station Yazman District Bahawalpur. However, it was reported by the complainant Muhammad Asghar (PW.3) with a delay of 2 hours and 10 minutes at 12:40 p.m. No explanation for this delay, much less a plausible or satisfactory one, has been offered by the complainant either in the FIR or in his deposition. According to statements of complainant and Barkat Ali (PW.6) one Haji Elahi Bakhsh conveyed information consequent whereupon the police reached the place of occurrence to whom the complainant make a report. The statements of the purported eyewitnesses raise serious doubts regarding their presence at the spot at the time of occurrence. Most significantly the conduct of the alleged eyewitnesses in not shifting the deceased to the hospital or the Police Station immediately after the incident is inconsistent with normal human behaviour. In cases of homicidal assault, it is expected that the kith and kin of the injured or deceased would make every effort to shift him to the nearest medical facility, particularly, with the hope that he may still be alive. As per statement of Dr. Atta Muhammad Hafiz (PW.4), he received the dead body of Ghulam Mustafa deceased at THQ Hospital Yazman



at 02:00 p.m., i.e. 1 hour and 30 minutes after the occurrence. The post-mortem was conducted at 04:00 p.m., only after the necessary police documents were provided to him at 03:00 p.m. The inordinate delay in the preparation and transmission of police papers coupled with the failure to shift the dead body of the deceased promptly to the hospital or police station, creates serious doubt about the presence of the alleged eyewitnesses at the scene at the relevant time. Furthermore in the site plan Exh.PH, the appellant is shown at a distance of 20/22 feet from the deceased at the time of firing. It is rather surprising that Dr. Atta Muhammad Hafiz (PW.4) observed blackening around firearm entry wounds No.1 and No.2 on the body of the deceased, which strongly suggests a close-range between the appellant and the deceased. Such blackening is not possible from a distance of over 20 feet, thereby materially contradicting the prosecution's version. Additionally, no exit wounds were observed and three bullets were recovered from the chest cavity of the deceased and handed over to the police by the Medical Officer. The eyewitnesses claim that the appellant fired upon the deceased with a 12-bore repeater, ordinarily discharging pellets, not bullets, which is inherently inconsistent with the recovery of intact bullets from the body of the deceased. This fundamental inconsistency further weakens the veracity of the ocular account. As per the site plan (Exh.PH) and the testimony of the eyewitnesses, co-accused Muhammad Hassan was standing adjacent to the deceased at the time of firing. In such circumstances, it is highly improbable and unnatural that the appellant, allegedly using a 12-bore weapon whose pellets disperse upon discharge, would fire in a manner that did not cause any injury whatsoever to co-accused Muhammad Hassan. This improbability weakens the prosecution's narrative even further.

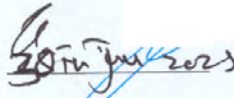
8. According to complainant the appellant was provoked by a slap inflicted by him upon his wife Mst. Ghulam Fatima, who happens to be the appellant's sister. If such was the motive then it is beyond the comprehension of prudent mind that why the deceased, rather than the complainant, became the target of the appellant's anger. The complainant, who allegedly triggered the incident, remained unharmed and was mysteriously spared. No explanation has been provided in this regard by the complainant, thereby rendering his presence at the spot at the time of occurrence highly doubtful. PW Barkat Ali, admittedly hails from District Lodhran, as admitted by him in his statement. Although he claimed to be residing in Chak No. 71/D-B for the past 5 to 6 years on account of leasing some agricultural land, but he has not produced any documentary evidence in support of

his alleged residence in the said village. He being a chance witness has not plausibly explained the purpose of his presence at the spot, hence, his presence at the crime scene is highly doubtful.

9. In light of the material contradictions and inconsistencies in the ocular account, the unexplained delay in reporting the incident and conducting autopsy, the medical evidence contradicting the ocular account coupled with the unnatural conduct of the alleged eyewitnesses, we are persuaded to hold that the alleged eyewitnesses were not present at the spot at the time of occurrence. Rather, it appears that they were procured subsequently by the police and planted as eyewitnesses to support the prosecution case. In such circumstances, it is unsafe to maintain the conviction of the appellant on the basis of such unreliable and untrustworthy evidence. The courts below, while failing to advert to the material contradictions, inconsistencies, and inherent improbabilities highlighted hereinabove, have fallen into manifest error in recording the conviction of the appellant. The prosecution's case is riddled with doubts, and it is by now a well-entrenched and axiomatic principle of criminal jurisprudence that the benefit of doubt, however slight, must always be extended to the accused. Once the prosecution's version is found to be tainted with doubt, the accused becomes entitled to acquittal as a matter of right and not as a matter of grace.

10. In view of the foregoing, this appeal is allowed. The conviction and sentence of the appellant, as recorded by the courts below through the impugned judgment, are hereby set aside. Consequently, the appellant is acquitted of the charge. He shall be released forthwith if not required to be detained in any other case.

Announced in open court at Islamabad on



Approved for reporting.  
M.Siraj Afridi PS