

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

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**JAIL PETITION NO. 943 OF 2017**

(On appeal against the judgment dated 18.10.2017  
passed by the Lahore High Court, Lahore in  
Criminal Appeal No. 442-J/2013 & Criminal PSLA  
No. 18/2014 & Murder Reference No. 15/2014)

Muhammad Ashraf @ Nikka

... Petitioner

**VERSUS**

The State

... Respondent

For the Petitioner: Mr. Aftab Hussain Bhatti, ASC

For the State: Mr. Muhammad Jaffer, DPG

Date of Hearing: 12.05.2022

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Petitioner along with seven other co-accused was tried by the learned Additional Sessions Judge, Jaranwala, pursuant to a private complaint under Sections 302/337F5/337F6/148/149 PPC arising out of FIR No. 397 dated 18.06.2009 under Sections 302/148/149 PPC at Police Station Landyanwala, District Faisalabad for committing murder of Salamat Ali, son of the complainant and for causing injury to Muhammad Latif, uncle of the complainant. The learned Trial Court vide its judgment dated 30.11.2013 while acquitting the co-accused, convicted the petitioner under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs. 100,000/- to the legal heirs of the deceased or in default whereof to further undergo imprisonment for six months. He was also convicted under Section 337F(vi) PPC and sentenced to rigorous imprisonment for five years with a

direction to pay daman amounting to Rs.50,000/- . In appeal, the learned High Court while maintaining the conviction, altered the sentence of death into imprisonment for life. The amount of compensation and the sentence in default whereof was also maintained. Benefit of Section 382-B Cr.P.C. was also extended to him.

2. The prosecution story as given in the judgment of the learned Trial Court reads as under:-

“Niamat Ali complainant filed this private complaint against the respondents Muhammad Ashraf alias Nikkah etc (eight in numbers) u/s 302, 337F5, 337F6, 148, 149 PPC alleging therein that on 18.06.2009 at about 7:00 P.M (evening) in the area of Chak No.655/6, the accused Ashraf son of Sardar armed with hatchet, Muhammad Ishfaq alias Sajjad, Muhammad Mujahid alias Madu armed with hatchets, Abid alias Abi, Tariq alias Tari, Ali Muhammad alias Imam Din, Arif Hussain, Muhammad Mushtaq all armed with sotas with common intention to commit Qatl-e-Amd of Salamat Ali son of Niamat Ali while ambushed sitting at the chowk. Accusing Ali Ahmad raised lalkara while seeing Arif Hussain son of the complainant that caught hold Arif and taught him the lesson of the quarrel broke out 5/6 days ago. Consequently accused Muhammad Ashraf inflicted hatchet blow from its wrong side which hit Arif at his right arm and other accused persons also beaten Arif. Basharat Ali came home crying and told this fact to the complainant. The complainant along with Salamat (deceased) went at the spot and tried to save Arif. The accused Muhammad Ishfaq inflicted hatchet blow which hit Salamat at his back thereafter accused Abid alias Abi inflicted Sota blow which hit Salamat at his head. Meanwhile, Muhammad Latif uncle of the complainant came at the spot after hearing hue and cry and tried to rescue Salamat Ali. The accused Arif Hussain inflicted Sota blow which hit at left arm of Muhammad Latif, accused Muhammad Mushtaq inflicted Sota blow which hit on right shoulder of Arif accused, Mujahid inflicted hatchet blow which hit at the right hand of Arif, Muhammad Ashraf inflicted hatchet blow which hit Salamat at his head, Muhammad Ishfaq inflicted hatchet blow which hit at the head of Salamat (deceased), afterwards accused Muhammad Ashraf assaulted Muhammad Latif and hit on his right arm afterwards accused persons continuously assaulted and deviously injured Salamat Ali, Arif Hussain and Muhammad Latif. Muhammad Latif and Salamat Ali became unconscious at the spot. Muhammad Asif and Asghar Ali rushed to the spot and attended the injured but Salamat Ali succumbed to the injuries while taking him to the hospital for his treatment and Arif Hussain and Muhammad Latif were taken to Civil Hospital Jaranwala.

2. Motive behind the occurrence is that 5/6 days before the occurrence there was quarrel between the children of the parties

which was redressed afterwards but accused persons with this grudge and with their common object committed murder of Salamat Ali and injured the complainant party.”

3. The conviction of the petitioner was recorded in a private complaint, which was lodged after eleven months of the occurrence. The complainant produced cursory evidence whereafter the formal charge was framed against the petitioner and the co-accused on 05.11.2010 under Sections 302/337F5/337F6/148/149 PPC to which they pleaded not guilty and claimed trial. In order to prove its case the prosecution produced as many as five witnesses and six CWs. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. However, he did not make his statement on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against him. He also did not produce any evidence in his defence.

4. At the very outset, learned counsel for the petitioner argued that there are material contradictions and discrepancies in the prosecution evidence, which have not been dealt with by the courts below. Contends that the occurrence took place at the spur of the moment and there was no premeditation on the part of the petitioner. Contends that during the occurrence, the petitioner and the co-accused also sustained injuries, which have been suppressed by the prosecution. Contends that the injury ascribed to the petitioner on the head of the deceased was also ascribed to two co-accused but they have been acquitted whereas the petitioner has been sentenced to imprisonment for life. Contends that the prosecution has to prove its case without any shadow of doubt but it has miserably failed to do so. Contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature and resulted into miscarriage of justice, therefore, the impugned judgment may be set aside.

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the evidence led by the prosecution in the shape of ocular account duly supported by medical

evidence is sufficient to sustain conviction of the petitioner. So far as the argument that the petitioner had received injuries during the occurrence is concerned, he contends that the petitioner did not place on record the medico legal reports in support of their assertion, therefore, the same cannot be taken into consideration.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on record.

As per the prosecution story, the petitioner along with co-accused was alleged to give hatchet blow on the head of the deceased Salamat Ali, which proved fatal and the deceased succumbed to the injury later on. However, we have noted that in the very private complaint lodged by the complainant, the role of causing injury on the head of the deceased was enhanced while ascribing it to three accused. The other two co-accused namely Abid @ Aabi and Muhammad Ashfaq, who were ascribed the similar role, have been acquitted of the charge by the learned Trial Court, which judgment has been upheld by the learned High Court. According to medical evidence furnished by Dr. Khalid Javed, who appeared as CW-5, the deceased received only one injury on his head, which was an incised wound 4 x 1 cm on left side top of head 8.2 cm from left ear 5 cm from mid skull line. The learned High Court did not discuss this aspect of the matter in the impugned judgment at all. The perusal of record also reveals that the occurrence took place all of a sudden; there was no pre-meditation on the part of the petitioner's side and during the occurrence the petitioner and co-accused Mujahid also received injuries at the hands of the complainant party, which aspect has been suppressed. Although, no medical report in this regard could be placed on record but there is no denial to this fact that during investigation it was found that the petitioner and the co-accused had received injuries during the occurrence, therefore, the stance of the petitioner cannot be denied merely for the reason that he did not place on record the medical certificate. A careful analysis of this aspect of case reflects that it is established principle of criminal jurisprudence that the defence is not

under obligation to prove its version and the burden on it is not as heavy as on the prosecution rather the defence is to only show the glimpse that its version is true. This aspect lends support from the finding of the Investigating Officer that during the occurrence the petitioner and his co-accused had sustained injuries but due to one reason or the other they could not establish the same by producing medico legal reports. The possibility cannot be ruled out that it was because the petitioner was nominated in murder case and according to learned counsel he was arrested soon after the incident, the police officials had not let them to be medically examined being in league with the complainant. This creates a doubt in veracity of prosecution version, as such doubt in the prosecution case can be resolved in favour of the petitioner because it is settled that any doubt arising in the prosecution case is to be resolved in favour of the defence. Even otherwise, we have noted that during the course of investigation co-accused Muhammad Ashfaq, Muhammad Arif, Muhammad Mushtaq, Tariq, Abid were not recommended for *challan* as they were declared innocent by the Police. It seems the prosecution exaggerated the contents of the private complaint and has made an attempt to involve all the male members of the family. In these circumstances, a dent in the prosecution case has been created, benefit of which must be given to the petitioner. It is settled law that a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. However, as discussed above, we have observed that the case advanced by the prosecution is based upon facts not properly brought forth, rather there are certain flaws in the narration of the same particularly manner of occurrence, number of accused persons and suppression of facts, hence as an abundant caution, we refrain to accept finding of both courts below rather consider it a case of sudden affair, coupled with the fact, material facts were suppressed, hence keeping in view the act of each individual,

we consider that the case of the petitioner is covered by Section 302(c) PPC. As he has already served out major portion of sentence which is more than 15 years, hence it seems adequate to meet the ends of justice. As a consequence, we convict the petitioner under Section 302(c) PPC and sentence him to imprisonment for the period which he has already undergone.

7. For what has been discussed above, this petition is converted into appeal, partly allowed and the impugned judgment is modified as stated in the preceding paragraph. The petitioner shall be released from jail forthwith unless detained/required in any other case. The above are the detailed reasons of our short order of even date.

Islamabad, the  
12<sup>th</sup> of May, 2022  
Approved For Reporting  
Khurram