

IN THE SUPREME COURT OF PAKISTAN  
( Appellate Jurisdiction )

**Present:**

Justice Syed Hasan Azhar Rizvi  
Justice Musarrat Hilali  
Justice Naeem Akhtar Afghan

**CRIMINAL PETITION NO.708-L OF 2018**

(On appeal against the judgment dated 21.05.2018 passed by the Lahore High Court, Lahore, in Crl. Appeal No.1591/2014 and MR No.315 of 2014)

Riasat Ali and Fakhar Zaman	...	...	Petitioners
<b>Versus</b>			
The State and another	...	...	Respondents

For the petitioners	:	Mr. Salman Safdar, ASC
For the State	:	Mr. Irfan Zia, Addl. PG Pb.
For complainant	:	Mr. Muhammad Afzal (in person)
Date of hearing	:	16.04.2024

**JUDGMENT**

**Naeem Akhtar Afghan, J.** While acquitting co-accused Khizar Hayat and Sardar Khan on the charge of abetment, petitioners Riasat Ali son of Shan Ali and Fakahar Zaman son of Sardar Khan have been convicted and sentenced as follows by learned Additional Sessions Judge, Phalia, Mandi Bahauddin (**the trial Court**) vide judgment dated 13.09.2014 in FIR No.01/2012 dated 01.01.2012 registered with Police Station (**PS**) Phalia, District Mandi Bahauddin by Muhammad Afzal (**the complainant**) for committing murder of Pervez Iqbal and Asadullah Khan:

“....Fakhar Zaman is guilty of commission of murder of Pervez Iqbal Tarar, therefore, Fakhar Zaman accused is convicted u/s 302(B) PPC and awarded sentence of death penalty of causing murder of Pervez Iqbal. He be hanged from his neck till death subject to confirmation of Honourable Lahore High Court. He is ordered to pay compensation u/s 544-A Cr.P.C. Rs.1,00,000/- to the legal heirs of deceased and in case of default he would suffer further sentence for six months S.I. He is also convicted u/s 148/149 PPC as he formed an un-lawful assembly for committing the occurrence, he was member of un-lawful assembly, and sentenced for one year S.I.

38. Fakhar Zaman accused is not guilty of murder of Asadullah, as it was sole act of Riasat Ali accused, and the same was done by Riasat Ali accused solely to save skin of his co-accused. Riasat Ali accused is also found guilty for the commission of murder of Pervez Iqbal and Asadullah convicted u/s 302(B) PPC in two counts for causing murder of Pervez Iqbal and Asadullah Khan awarded death sentence in two counts subject to confirmation of Honourable Lahore High Court, Lahore and is ordered to pay compensation u/s 544-A Cr.P.C. Rs.1,00,000/- each to the legal heirs and in case of default he would further undergo to six months simple imprisonment. He is also convicted u/s 148/149 PPC read with Section 302 PPC for forming of unlawful assembly for committing the offence of murder and sentenced for one year R.I...."

2. The complainant preferred Criminal Appeal No.1858/2014 against acquittal of Khizar Hayat and Sardar Khan and also filed Criminal Revision No.1592/2016 before Lahore High Court, Lahore (**the Appellate Court**) for enhancement of the compensation amount imposed upon the convicts but same were dismissed on 21.05.2018 having been withdrawn by the complainant.

3. Criminal Appeal No.1591/2014 filed by the convicts Riasat Ali and Fakhar Zaman and Murder Reference No.315/2014 forwarded by the trial Court have been decided by the Appellate Court vide common judgment dated 21.05.2018 whereby appeal of the petitioners was dismissed and while maintaining conviction under section 302(b) of the Pakistan Penal Code (**PPC**), their sentence was altered from death to imprisonment for life. The amount of compensation and the punishment in default thereof with benefit of Section 382-B of the Code of Criminal Procedure (**Cr.P.C.**) was maintained. The Murder Reference No.315/2014 was answered in negative by the Appellate Court.

4. Feeling aggrieved of the conviction and sentence awarded by the Appellate Court, the petitioners have filed the instant petition.

5. During pendency of the instant petition, legal heirs of deceased Pervez Iqbal entered into compromise with both the petitioners. The compromise was sent to the Court of learned Sessions Judge Mandi Bahauddin for verification. After receiving report of learned Sessions Judge Mandi Bahauddin verifying the contents of compromise, the instant petition to the extent of offence in respect of murder of the deceased Pervez Iqbal

was converted into appeal by this Court vide order dated 27.10.2023. The same was allowed. Both the petitioners were acquitted of the charge for committing murder of the deceased Pervez Iqbal and they were ordered to be released if not required in any other case.

6. In the above referred order dated 27.10.2023, it was held by this Court that since the petitioner Riasat Ali has also been held responsible for committing murder of Asadullah Khan and compromise has not been effected by the legal heirs of deceased Asadullah Khan with him, therefore the instant petition to the extent of petitioner Riasat Ali for committing murder of deceased Asadullah Khan shall remain intact. The office was directed to fix the instant petition for hearing after four weeks.

7. While referring to the evidence available on record, learned counsel for the petitioner Riasat Ali contended that the complainant Muhammad Afzal (PW-14) and Sarfraz Khan (PW-15), who claim to be the eye witnesses of the occurrence, were in fact not present alongwith the deceased at the time of occurrence and being relatives of deceased Pervez Iqbal, they were planted as eye witnesses during investigation; the circumstantial evidence as well does not connect the petitioner Riasat Ali with murder of deceased Asadullah Khan; the prosecution has failed to prove the charge against the petitioner Riasat Ali for committing murder of deceased Asadullah Khan.

8. Learned counsel for the complainant duly assisted by son of deceased Pervez Iqbal stated that the legal heirs of deceased Pervez Iqbal are not interested to further pursue the matter and they are also not opposing the instant petition to the extent of petitioner Riasat Ali for committing murder of deceased Asadullah Khan.

9. Learned Addl. Prosecutor General Punjab (**APG**) appearing on behalf of the State contended that the prosecution through ocular as well as circumstantial evidence has proved the charge against the petitioner Riasat Ali for committing murder of deceased Asadullah Khan.

10. After hearing learned counsel for the petitioner, learned counsel for the complainant and learned APG, we have perused the available record.

According to the version of PW.14 and PW.15, on 01.01.2012 at about 4:45 pm. they alongwith deceased Pervez Iqbal and Muhammad

Nawaz (not produced by the prosecution at the trial) came out in the street from *Haveli* of deceased Pervez Iqbal and were going to see horses of deceased Pervez Iqbal in his stable but they were fired upon in the street by accused Tariq (deceased), petitioner Riasat Ali, accused Fakhar Abbas (acquitted by this Court due to acceptance of compromise) and two unknown accused who had come on two Motorcycles; the fire shots hit deceased Pervez Iqbal on different parts of his body; they stepped forward to apprehend the accused; meanwhile Asadullah Khan came out of his house and he grappled accused Tariq while the petitioner Riasat Ali fired upon him which hit on left side of his back due to which he fell down; all the accused fled while making firing.

11. The site map (Ex.PU) produced by the prosecution at the trial does not mention the point/place where the stable of deceased Pervez Iqbal was situated nor it mentions the distance between the *Haveli* of deceased Pervez Iqbal and his stable.

12. According to PW.14 and PW.15 they proceeded from the *Haveli* of deceased Pervez Iqbal to see horses in his stable but the site map does not mention about the *Haveli* of deceased Pervez Iqbal. In the site map *Haveli* of one Muhammad Anwar has been shown in occupation of deceased Pervez Iqbal.

Neither the prosecution witnesses have stated that deceased Pervez Iqbal was residing in *Haveli* of Muhammad Anwar nor the prosecution has produced Muhammad Anwar at the trial to prove that deceased Pervez Iqbal was residing in his *Haveli* and if so, in what capacity.

13. According to the site map and statements of PW.14 and PW.15, deceased Asadullah Khan had grappled accused Tariq at point 'D' (where his dead body was also found lying) while the petitioner Riasat Ali had fired upon deceased Asadullah Khan from point 'E'. The distance between points 'D' and 'E' is shown as one *karam* i.e. 5.5 feet. The postmortem report of deceased Asadullah Khan reveals that he had received one fire shot on the back of his chest near lower end of his left scapula with a lacerated entrance wound (2.2 cm) having inverted margins surrounded by blackened and burnt area with no exit wound.

PW.14 and PW.15 have failed to explain as to how deceased Asadullah Khan received firearm injury on the back of his chest near lower end of his left scapula if he had grappled the accused Tariq at point 'D' while coming out from his house and being fired upon from point 'E' from a distance of 5.5 feet.

14. The postmortem report of deceased Asadullah Khan mentions about blackened and burnt area of his entrance wound near lower end of his scapula. The distance from which the deceased Asadullah Khan was fired upon was 5.5 feet. According to Modi's Medical Jurisprudence and Toxicology<sup>1</sup> blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet. Reference in this regard is also made to the cases of '**Mir Muhammad v. the State**'<sup>2</sup>, '**Amin Ali v. the State**'<sup>3</sup>, and '**Muhammad Zaman v. the State**'<sup>4</sup>.

The prosecution witnesses have failed to furnish any explanation as to if the deceased Asadullah Khan was fired upon by a rifle of 222 bore from a distance of 5.5 feet, how his entrance wound was surrounded by blackened and burnt area.

15. In the instant case seven crime empties of 222 caliber have been shown recovered from the place of occurrence and one 222 caliber rifle has been shown recovered from the house of the petitioner Riasat Ali on 11<sup>th</sup> day of the occurrence on his alleged pointation.

In the site map it has been mentioned that seven crime empties were recovered from point 'I' of the place of occurrence but the site map does not mention any point 'I'. Admittedly no crime empty was recovered from near point 'E' i.e. wherefrom the petitioner Riasat Ali had allegedly fired upon deceased Asadullah Khan.

In the above regard no explanation has been offered by any prosecution witness including Imdad Hussain SI/IO (PW-16).

16. According to the site map, five accused made firing from points C1, C2, C3, C4 and C5 upon deceased Pervez Iqbal at point 'A' and deceased

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<sup>1</sup> Modi's Medical Jurisprudence and Toxicology (21 Edition) at page 354

<sup>2</sup> 1995 SCMR 610

<sup>3</sup> 2011 SCMR 323

<sup>4</sup> 2014 SCMR 749

Asadullah Khan was fired upon at point 'D' by the petitioner Riasat Ali from point 'E'.

In view of the above, the seven crime empties should have been recovered from six different places/points from the place of occurrence but surprisingly the prosecution witnesses have mentioned about recovery of seven crime empties from one place i.e. point 'I' (which has not been mentioned in the site plan).

The prosecution witnesses including Imdad Hussain SI/IO have not furnished any explanation in the above regard.

17. In his report (Ex.PZ), the firearm expert of Punjab Forensic Science Agency has identified two crime empties i.e. C1 and C2 having been fired from 222 caliber rifle. About 3<sup>rd</sup> crime empty i.e. C3, the firearm expert has not given any definite opinion. The remaining three crime empties i.e. C4, C5 and C6 have been held not suitable for comparison by the firearm expert.

18. According to the postmortem reports, the dead body of deceased Pervez Iqbal was brought to the Tehsil Headquarter (THQ) Hospital Phalia on 01.01.2012 at 6:00 pm. by Constable Muhammad Azam and the dead body of deceased Asadullah Khan was brought to the THQ Hospital Phalia on the same date at 8:00 pm by Constable Zaheer Ahmed.

Admittedly both the dead bodies were not brought to the hospital by PW.14 and PW.15 who claim to be the eye witnesses.

19. According to PW.14 and PW.15, the occurrence had taken place on 01.01.2012 at 4:45 pm. As per contents of the postmortem report of deceased Pervez Iqbal, the time between his injury and death was about half an hour while the time between the injury and death of deceased Asadullah Khan was about one hour.

From the above it reveals that deceased Pervez Iqbal remained lying injured at the place of occurrence for half an hour and deceased Asadullah Khan remained lying injured at the place of occurrence for one hour but PW.14 and PW.15, claiming to be the eye witnesses, made no efforts to immediately shift both the injured to hospital to save their life. Had PW.14 and PW.15 been present at the place of occurrence with the deceased, being

close relatives of deceased Pervez Iqbal, they would have immediately taken both the injured to the hospital to save their life.

The unnatural conduct of PW.14 and PW.15 creates serious doubt about their presence at the place of occurrence with the deceased.

20. According to the site map, at the time of occurrence when deceased Pervez Iqbal was fired upon at point 'A' by five accused persons from points C1, C2, C3, C4 and C5, PW.14 and PW.15 were standing at point 'B' at a distance of two *karmas* i.e. 10.10 feet from point 'A'. As per statements of PW.14 and PW.15, they had also stepped forward to apprehend the accused.

PW.14 and PW.15 have not explained as to how they escaped firearm injury despite indiscriminate firing by five accused persons from a close range.

The above aspect also creates doubt about presence of PW.14 and PW.15 at the place of occurrence.

21. It is not believable that by killing a person in presence of his close relatives, accused would not attempt to cause any injury to the prosecution witnesses leaving them for evidence to be hanged.

22. The prosecution has not produced witness Muhammad Nawaz at the trial who was allegedly accompanying PW.14, PW.15 and deceased Pervez Iqbal at the time of occurrence. Under Article 129(g) of the Qanoon-Shahadat Order, 1984 adverse inference is drawn to the effect that had he been produced by the prosecution at the trial, he would not have supported the case of the prosecution.

23. All the above circumstances have created reasonable doubt in the case of the prosecution benefit of which has not been extended in favour of the petitioner Riasat Ali by the trial Court as well as by the Appellate Court.

24. Reappraisal of the evidence available on record lead us to the conclusion that the prosecution has failed to prove the charge for committing murder of the deceased Asadullah Khan against the petitioner Riasat Ali beyond reasonable doubt.

25. For the above reasons the instant petition to the extent of the petitioner Riasat Ali for the offence of committing murder of deceased Asadullah Khan is converted into appeal and same is allowed. The impugned judgment dated 21.05.2018 passed by the Lahore High Court to the extent of petitioner Riasat Ali for committing murder of the deceased Asadullah Khan is set aside. The appellant Riasat Ali is acquitted of the charge under section 302(b) PPC in FIR No.01/2012 PS Phalia District Mandi Bahauddin for committing murder of deceased Asadullah Khan and he is ordered to be released forthwith, if not required in any other case.

Judge

Judge

Judge

Islamabad:  
16.04.2024  
(M. Saeed/Zohaib Afzal, LC)

APPROVED FOR REPORTING.

Announced in open Court on 10<sup>th</sup> May, 2024 at Islamabad.

Judge