

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

40/25

PRESENT: Justice Naeem Akhtar Afghani
Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim

AFR
HAD

Jail Petition No.23/2023

(Against the judgment/order dated 24.01.2023
passed by the Lahore High Court, Rawalpindi Bench
in CrI. A. No. 758/2020 and C.S.R. No. 6-T/2020)

Muhammad Ikram, etc.

Petitioner(s)

Versus

The State

Respondent(s)

For the Petitioner(s):

Mr. Basharatullah Khan, ASC
Syed Rifaqat Hussain Shah, AOR

For the State:

Rai Akhtar Hussain, Addl.PG

For the Complainant:

Mr. Ashiq Mahmood, ASC

Date of Hearing:

03.06.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. Muhammad Ikram, Muhammad Kamran and Muhammad Rizwan (petitioners) along with seven others co-accused, namely, Muhammad Imran, Muhammad Zubair, Imtiaz Hussain, Muhammad Awais, Ghulam Sarwar, Muhammad Saqib and Mehram Khan were tried by the learned Judge Anti-Terrorism Court-III, Rawalpindi in a private complaint for the offences under sections 302, 324, 186, 353, 109, 148 and 149 PPC and section 7 of the Anti-Terrorism Act, 1997 ("the ATA") with regard to an incident having occurred within the territorial jurisdiction of police station Talagang, District Chakwal. The Trial Court vide judgement dated 20.11.2020 while acquitting the aforesaid co-accused proceeded to convict and sentence the petitioners in the following terms:

"Accused Muhammad Ikraam

- i. U/S 302(b) of PPC for the murder of Ghulam Dastagir and is sentenced to death. He is also ordered to pay compensation in the sum of Rs.500,000/- U/S 544-A of Cr.P.C., to be apportioned by the legal heirs of the deceased, if realized, failing which, to undergo SI for 6 months.
- ii. U/S 302(b) of PPC for the murder of Ghulam Habib and is sentenced to death. He is also ordered to pay compensation in the sum of Rs.500,000/- U/S 544-A of Cr.P.C., to be apportioned by the legal heirs of the deceased, if realized, failing which, to undergo SI for 6 months.
- iii. U/S 7(a) of Anti-Terrorism Act, 1997 and is sentenced to death with fine in the sum of Rs.500,000/- and in case of default, to undergo SI for one year.

Accused Muhammad Kamran

- i. U/S 302(b) of PPC for the murder of Ghulam Dastagir and is sentenced to death. He is also ordered to pay compensation in the sum of Rs.500,000/- U/S 544-A of Cr.P.C., to be apportioned by the legal heirs of the deceased, if realized, failing which, to undergo SI for 6 months.
- ii. U/S 302(b) of PPC for the murder of Ghulam Habib and is sentenced to death. He is also ordered to pay compensation in the sum of Rs.500,000/- U/S 544-A of Cr.P.C., to be apportioned by the legal heirs of the deceased, if realized, failing which, to undergo SI for 6 months.
- iii. U/S 7(a) of Anti-Terrorism Act, 1997 and is sentenced to death with fine in the sum of Rs.500,000/- and in case of default, to undergo SI for one year.

Accused Muhammad Rizwan

- i. U/S 302(b) of PPC for the murder of Ghulam Dastagir and is sentenced to life imprisonment. He is also ordered to pay compensation in the sum of Rs.500,000/- U/S 544-A of Cr.P.C., to be apportioned by the legal heirs of the deceased, if realized, failing which, to undergo SI for 6 months.
- ii. U/S 302(b) of PPC for the murder of Ghulam Habib and is sentenced to life imprisonment. He is also ordered to pay compensation in the sum of Rs.500,000/- U/S 544-A of Cr.P.C., to be apportioned by the legal heirs of the deceased, if realized, failing which, to undergo SI for 6 months.
- iii. U/S 7(a) of Anti-Terrorism Act, 1997 and is sentenced to life imprisonment with fine in the sum of Rs.5,00,000/- and in case of default, to undergo SI for one year."

2. Aggrieved by their convictions and sentences, the petitioners assailed the same before the High Court by means of filing Criminal Appeal No. 758/2020, whereas the Trial Court sent reference under section 374 Cr.P.C. for confirmation or otherwise of death sentence awarded to Muhammad Ikram and Muhammad Kamran. The High Court dismissed the appeal of the petitioners by maintaining their convictions and sentences under the PPC, however, it set aside their conviction and sentence under the ATA. Hence, the present petition for leave to appeal.

3. The brief facts of the case, as narrated in the impugned judgement of the High Court, speak as under:

“Precisely stated the facts of the prosecution case as disclosed by complainant Ghulam Shabbir in Exh.PA/2 (F.I.R No.166/2017 dated 05.09.2017 registered under Sections 302,324,353,186,109 & 34 P.P.C read with Section 7 of Anti-Terrorism Act, 1997 at Police Station City Talagang, District Chakwal) are to the effect that he is having abode in a vicinity known as village Badhar and during the days of incident was working as Imam Masjid and Khateeb in Jamia Masjid Warai Mal, Tehsil and District Chakwal; that his two real brothers Ghulam Dastgir and Ghulam Habib were accused of F.I.R No.145/2019 registered under Sections 302 & 34 P.P.C, at Police Station, Tamman and F.I.R No.132/2013 registered under Sections 302,324,34 & 109 P.P.C, at Police Station Tamman and were confined in District Jail Jhelum; that on 05.09.2017. Ghulam Dastgir and Ghulam Habib were brought from jail for their appearance in the Tehsil Courts, Talagang and were accordingly produced in the court of Mr.Javed Iqbal Bosal, ASJ, Talagang; that as the complainant was also accused of F.I.R. No.8/2015, hence he also appeared before the court along with them and after marking his presence in the case came out of the court, while Ghulam Dastgir and Ghulam Habib, who were in custody, were brought out of the court premises; that he along with Haji Gul Akhtar was following the accused towards the lock-up; that meanwhile accused Muhammad Awais made a call on mobile phone and said "reach immediately"; that at about 1:00 p.m. police officials along with Ghulam Dastgir and Ghulam Habib reached outside the previous office of Chaudhry Sher Afzal Advocate, when accused Ghulam Sarwar along with Muhammad Kamran & Muhammad Ikraam armed with pistols on one motorcycle while on the other motorcycle an unknown person along with Muhammad Rizwan (appellant) while carrying dagger came there; that Ghulam Sarwar and unknown accused while dropping Muhammad Kamran, Muhammad Ikraam and Muhammad Rizwan went straight; that he and Haji Gul Akhtar can identify the said unknown. accused, if brought before them; that Muhammad Awais accused also reached the spot; that Muhammad Ikraam (appellant) made 7/8 pistol shots which hit Ghulam Dastgir at different parts of his body who fell down while Muhammad Kamran (appellant) made 7/8 pistol shots which hit Ghulam Habib on his different parts of body; that Muhammad Rizwan (appellant) inflicted a dagger blow which landed Ghulam Dastgir at his back and said dagger remained in his body; that the

police guards tried to interfere, upon which Muhammad Ikraam and Muhammad Kamran made firing towards guards, namely Arshad Mehmood 622/C, Farhad Ashraf 900/C, Rizwan Ashraf 1186/C and Izhar-ul-Haq 496/HC but to their good luck they survived; that the accused made indiscriminate firing, due to which the traffic plying on Katchery Road and the children carrying vehicles coming from the schools were stopped; that the children, people and lawyers rushed in hustle and bustle; that thereafter accused by riding on the same motorcycles along with their riders fled away towards main road; that besides the complainant the occurrence was also witnessed by Haji Gul Akhtar; that he along with police guards took both the injured to THQ Hospital, Talagang where they succumbed to the injuries; that on the previous date of hearing i.e. 28.08.2017 Ameer Zaman, Mehboob Khan and Mehram Khan, who had come to meet Ghulam Dastgir and Ghulam Habib, informed the complainant after hearing that in court premises of ASJ, Mehram Khan, Muhammad Saqib, Muhammad Imran, Imtiaz Hussain and Muhammad Zubair were sitting on the benches and were abetting/instigating Muhammad Ikraam, Muhammad Kamran and Muhammad Rizwan that Ghulam Dastgir and Ghulam Habib had committed a very cruel act and there was no hope of justice from the court and on getting reasonable opportunity they should kill both of them and that they would pursue their case. The motive behind the occurrence statedly was the previous enmity."

4. We have heard the learned counsel for the parties and have gone through the record with their able assistance. The learned counsel for the petitioners has maintained that the prosecution lacked proof of its case against the petitioners beyond a reasonable doubt, so this petition merits acceptance with a consequent acquittal of the petitioners. Conversely, the learned counsel for the complainant maintained that the current petition for leave to appeal may be denied since prosecution had effectively shown the guilt of the petitioners to the hilt.

5. The alleged incident in this case occurred in broad daylight near the court premises, and the matter was reported with reasonable promptness. The present petitioners were identified as the individuals responsible for the gun fires. Four eyewitnesses had provided the ocular account. Ghulam Shabbir (PW-1) and Haji Gul Akhter (PW-2) were private witnesses while Muhammad Izhar-ul-Haq (PW-5) and Arshad Mehmood (PW-6) were police personnel. Ghulam Shabbir (PW-1) is the real brother of the deceased, Ghulam Dastagir and Ghulam Habib, who were also on trial for crimes No. 145/2009 and 132/2013. He was present at the time of the incident while Haji Gul Akhter (PW-2) was a family friend of the complainant and the deceased individuals.

Consequently, their presence at the time of the incident cannot be questioned in any way. In the same vein, the ocular evidence provided by the eyewitnesses was also consistent with the testimony of Muhammad Izhar-ul-Haq (PW-5) and Arshad Mehmood (PW-6), who were police officials. It is not plausible that the complainant will falsely implicate or substitute the petitioners in the murder of his real siblings and allow the real culprits to escape without consequence. The ocular account provided by the aforementioned witnesses was fully substantiated by the medical evidence. It was also supported by the Punjab Forensic Science Agency's affirmative report and the recovery of crime weapons from the possession of petitioners. The petitioners' guilt had been established to the hilt by both the courts below, which had conducted an exhaustive analysis of the evidence on record. Upon our own independent evaluation of the evidence, we have been unable to adopt a stance that differs from the concurrently held view of the courts below.

6. In terms of the sentence, it is evident that both parties were deeply embroiled in animosity toward one another. This animosity resulted in the deaths of numerous innocent individuals, including Haleem Khatoon, Ahsan Irfan, Muhammad Farooq and Awais from the petitioners' perspective. The accusing fingers were pointed at the deceased Ghulam Dastagir and Ghulam Habib. The prosecution's case is that the petitioners were motivated to commit the crime in question by the co-accused (who have since been acquitted) due to the lack of hope for justice from the court. It appears that personal animosities and revenge had played a substantial role in the commission of the crime in the instant case. The petitioners' revenge was cultivated in their minds and, ultimately, the instant occurrence occurred. If mitigating circumstances are present, a life imprisonment sentence may be appropriate in lieu of the death penalty. This Court in the case of *Ghulam Mohy-ud-Din v State* (2014 SCMR 1034) has determined that a Judge may be able to refrain from imposing the death penalty based on a single mitigating circumstance. The courts have acknowledged that the motivations behind the crime may be influenced by personal vendetta rather than a premeditated intent to murder in situations characterized by enmity. In

our opinion, the objectives of justice would be satisfactorily accomplished if they were compensated with a diminished penalty permissible by law.

7. For the above reasons, while granting leave, the petition is converted into appeal and same is partly accepted in the following terms:

“Keeping in view the peculiar circumstances of the case and mitigating circumstances surrounding the case, whilst maintaining the conviction of the petitioners, their sentence of death u/s 302(b) PPC is converted to imprisonment for life on two counts which shall run concurrently with benefit of section 382-B Cr.P.C.

ISLAMABAD
03.06.2025
(Farrukh)

Announced in open Court at Islamabad on 5th June 2025

Approved for Reporting