

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. 304 OF 2020

*(On appeal against the judgment dated 16.03.2016
of the Lahore High Court, Rawalpindi Bench
passed in Cr. Appeal No. 11-J/2012 and Murder
Reference No. 40/2012)*

Amir Shahzad

... Appellant

Versus

The State

...Respondent

For the Appellant: Mrs. Kausar Iqbal Bhatti, ASC

For the Complainant: Sh. Ahsan-ud-Din, ASC

For the State: Mirza Abid Majeed, DPG, Punjab

Date of Hearing: 19.05.2025

ORDER

Irfan Saadat Khan, J.- In the instant matter leave was granted by
this Court *vide* order dated 04.05.2020 in the following manner:-

“Rapt No. 29 was entered into the Roznamcha maintained by the Police Station Saddar, Attock on 17th May 2011 at 5.45 pm. The complainant, Sajjad Ahmad (PW-7), reported that the petitioner was seen stealing a spade from his house and was given chase and the petitioner turned around to strike him with the spade on his wrist and struck his father, Muhammad Aslam, on the head and ran away. Subsequently, FIR No.232/2012 was registered at Police Station Saddar, Attock on 8th June 2011 at 6.10 am after Muhammad Aslam, as a result of receiving the said blow on his head, passed away on 8th June 2011. The petitioner was tried by the learned Sessions Judge, Attock and convicted under section 302 (b) of the Pakistan Penal Code ("PPC") and sentenced to death and was directed to pay compensation of an amount of three hundred thousand rupees to the legal heirs of the deceased and in default of payment to undergo six months simple imprisonment. The petitioner was also convicted under section 337-F(i) PPC for injuring the complainant, Sajjad Ahmed (PW-7),

and sentenced to one year rigorous imprisonment and to pay Daman of ten thousand rupees and in default of payment to undergo one month simple imprisonment. Murder Reference was preferred before the High Court and the petitioner appealed his conviction. The learned Judges of the High Court dismissed the petitioner's appeal, however, reduced his sentence from death to imprisonment for life because there was no premeditation, as it was a case of a single blow and recovery of the said spade was not established.

2. With the assistance of the learned Deputy Prosecutor General, Punjab we have examined the documents on record and the following points require further consideration:

- (i) The complainant did not disclose in the Rapt or the subsequent FIR how he knew the petitioner to have mentioned him by name;
- (ii) The petitioner in his statement recorded under section 342 of the Code of Criminal Procedure had stated that the parties knew each and a dispute had arisen between them over the price of beddings which the petitioner had prepared which may account for the petitioner being known to the complainant however this was not stated by the complainant;
- (iii) The petitioner resided at a distance of 10 km from the crime scene, therefore, whether he would have travelled such distance to come to steal the spade; and
- (iv) Whether in the facts and circumstances of the case and the reasons mentioned for reducing the sentence of the petitioner would attract section 302(c) PPC.

3. Leave to appeal is granted to consider, amongst others, the aforesaid points. The appeal stage paper book to be prepared on the basis of the available record, however, the parties will be at liberty to file additional documents, which were part of the record but not filed. Notice be issued to the complainant. Since the petitioner is unrepresented, therefore, Mrs. Kausar Irfan Bhatti, learned ASC, who is present in Court, is appointed to represent the petitioner at State expense. The office is directed to provide a copy of the paper book of the appeal to the learned counsel."

2. Briefly stated the facts, as per FIR bearing No. 232/2011 registered at Police Station Saddar, Attock on 08.06.2011 at about 06:10 a.m. in respect of an incident which took place on 17.05.2011 at 12:45 noon. The said FIR was lodged in respect of the statement given by the complainant, namely, Sajjad Ahmad

being that he is a resident of Moza Garyala, Tehsil and District Attock and used to live there along with his father and other family members. On the fateful day i.e. 17.05.2011, he left his house along with his cattle for grazing near his house, while his father, namely, Muhammad Aslam Khan, was present in the house when at about 12:45 p.m. while he was on the roof of the house and watching his cattle, he saw that an unknown person took away a spade belonging to them lying in their Haveli. He immediately informed his father about the said unknown person taking away the said spade whereupon, his father followed the said unknown person. He also then came down from the roof and chased the said unknown person.

3. While these persons were chasing the said unknown person one Qalandar Khan, who was *Khadim* in a nearby Mosque, also joined them. His father then stopped the said unknown person and asked him as to why he took the spade from his house. The said unknown person then disclosed his name as Amir Shahzad son of Jameel Ahmad resident of Dhok Alamgeer Dakhili Shakardara and started abusing his father. The said person, namely, Amir Shahzad then gave a spade blow on the back side of the head of Muhammad Aslam Khan, due to which he fell down. The complainant then along with Qalandar Khan tried to intervene and stop Amir Shahzad from causing further spade blows to his father, however, the said accused person gave a spade blow on the left hand of the complainant. The complainant as well as Qalandar Khan, then raised their voices, after which the accused threw away the spade and ran away from the spot. The said incident was also witnessed by one Amir Afzal, who saw it from some distance.

4. The complainant then immediately intimated rescue 1122 about the incident and then took his father, in an injured condition to the DHQ Hospital, Attock where the police came and recorded his statement, which was then read over to him and he signed the same as being correct. The father of the complainant was then shifted to DHQ Hospital, Rawalpindi where he remained under treatment in an injured condition and, thereafter, succumbed to his injuries on 08.06.2011, on which date the complainant lodged the above-mentioned FIR. The trial took place before the Sessions Judge Attock in Sessions Case No. 86 of 2011, being Sessions Trial No. 15/2011. The learned Sessions Judge *vide* judgment dated 08.02.2012, found Amir Shahzad, the accused, guilty under section 302(b) of the Pakistan Penal Code, 1860 ("**PPC**") and sentenced him to death as *Tazir*. In addition to the death sentence, the accused was also made liable to pay a sum of Rs.300,000/- as compensation to the legal heirs of the deceased under section 544-A Code of Criminal Procedure, 1898 ("**Cr. P.C.**"). and in default whereof to further suffer S.I for six months. The appellant was also convicted under section 337-F(i) for causing injuries to Sajjad Ahmad and was sentenced to one year R.I. with payment of Daman of Rs.10,000/- or in default thereof to undergo one month's S.I.

5. An appeal, thereafter, was filed by the accused/appellant before the Lahore High Court Rawalpindi Bench, Rawalpindi bearing Criminal Appeal No. 11-J/2012 and Murder Reference No. 40/2012, wherein the High Court *vide* judgment dated 16.03.2016 converted the penalty of death into imprisonment for life and the Murder Reference was answered in the negative, whereas the compensation awarded by the Trial Court was maintained with the

directions that all the sentences shall run concurrently with benefit of section 382-B of the Cr. P.C, being extended to the accused/appellant. It is against these orders of the Trial Court as well as the High Court that the present appeal has been filed in which, as stated above, leave was granted in the manner and method as stated supra.

6. Mrs. Kausar Iqbal Bhatti, ASC has appeared on behalf of the accused/appellant and stated that the prosecution case is full of contradictions and doubts and in view of those contradictions and doubts the appellant is liable to be acquitted. While elaborating the matter, she stated that the prosecution has failed to deduce any cogent material with regard to the motive involved in the case for committing the murder of the deceased, namely, Muhammad Aslam by the accused as neither was there any previous enmity between them nor was the weapon i.e. the spade was recovered from his possession, when he was arrested. She explained that in absence of motive as well as the recovery of weapon, at the time of arrest, has made this case quite doubtful, the benefit of which, may be given to the accused. She explained that though it was alleged that the spade was recovered on the pointation of the accused but that too is shrouded with mystery since it has come on the record that the accused after giving spade blow to the deceased threw away the same and then ran away from the spot; whereas according to the prosecution story the same was recovered from eastern room of his residential house lying underneath a heap of woods, which aspect in her view has put a major dent in the prosecution case.

7. She further stated that since the recovery of the weapon was highly doubtful, the benefit of the same may, in this regard, be

given to the accused. She further stated that though it has been averred that the said spade was stained with blood but it is hardly believable that it would contain blood stains even after the passage of 45 days from the incident since admittedly the incident took place on 17.05.2011 whereas the recovery was made on 30.06.2011. She further stated that there was no motive available with the accused to kill Muhammad Aslam as nothing has come on the record that the two parties either have any previous enmity or rivalry. She, therefore, stated that in view of these marked contradictions and doubts the accused may be given the benefit and may be acquitted.

8. Mirza Abid Majeed, Deputy Prosecutor General, Punjab ("DPG") appearing on behalf of the State submitted that the accused firstly stole the spade from the Haveli of the complainant and when the deceased along with the complainant and Qalandar Khan intercepted him, he caused a fatal blow on the head of the deceased and a further blow on the left hand of the complainant, which fully corroborates him with the reported crime. The learned D.P.G. stated that the medical and the ocular evidences fully support the case of the prosecution. He stated that the depositions of the PWs have remained consistent. The recovery of the crime weapon was made on the pointation of the accused hence, in view of all these facts the accused does not deserve any leniency as, according to him, since his death sentence has already been converted into imprisonment for life by the High Court, hence, ample relief has already been given to him, therefore, the conviction and the sentence awarded to him may be maintained. The learned D.P.G, however, conceded and admitted that no appeal against the conversion of the death sentence into imprisonment for

life was either filed by the State or the complainant before this Court against the order of the High Court. He stated that due to the factor no motive was established for killing the deceased Muhammad Aslam Khan by the accused, his death sentence was converted into life, which in his view, was the maximum relief given to him under the given circumstances.

9. Sh. Ahsan-ud-Din, ASC has appeared on behalf of the complainant and has adopted the arguments of the learned D.P.G and stated that the accused does not deserve any leniency as he has killed an innocent elderly person by delivering a fatal blow, from the stolen spade, and also a blow on the hand of the complainant, which were duly supported by the medical evidence as well as the ocular evidence of an independent witness, namely, Qalandar Khan. He, therefore, stated that the conviction and the sentence, along with compensation and Daman imposed by the Trial Court and affirmed by the High Court may be upheld. He has, however, admitted that no appeal has been filed against the order of the High Court whereby the death sentence was converted into imprisonment for life by the High Court.

10. We have heard the learned counsel for the appellant, the Deputy Prosecutor General, Punjab appearing for the State as well as the learned counsel for the complainant. We have also perused the available record with their able assistance.

11. The deposition of Dr. Muhammad Zubair, (PW.4) clearly demonstrates that there were marked over-writings in the column of the description of injuries, which remained unexplained. The deposition of Muhammad Afzal (PW.6) suggests that the spade was recovered from the eastern room of the residential house lying

underneath the heap of woods which, in our view, contradicts the averments made by the complainant in the FIR wherein it has been mentioned that the accused after inflicting spade blows on the complainant as well as on his deceased father threw away the same and then fled away. The deposition of Sajjad Ahmad (PW.7) the complainant also suggests that the accused threw the spade at the spot and then ran away. This aspect also disproves/belies the prosecution story of recovering of the spade from the residential house of the accused. There is also another marked contradiction in his deposition as at one place he mentioned that the said spade, before it was stolen, was lying inside the *Haveli* whereas in the FIR he mentioned that the spade was lying near his *Haveli*.

12. We were able to lay our hands on the decision given by this Court that in case of doubt in recovery of weapon, the benefit of it has to be given to the accused. Reference in this regard, may be made to the case reported as **Mian Sohail Ahmed and others versus The State and others** (2019 SCMR 956) wherein it was held that:

“The Investigation Officer (PW.15) deposed that the recovery of pistol was effected from a house whose ownership he failed to ascertain. According to him it was a double storied house and recovery was effected from the ground floor where other family members also resided. The memorandum of recovery (Ex.PG) shows that the pistol was recovered from an open room lying under rough clothes. It would be unsafe to rely on this recovery for a conviction on a capital charge. The ocular account of the sole eye-witness (PW.8) does not inspire confidence in the absence of any corroboration from the identification evidence or the recovery.”

13. Moreover, the aspect of knowing the name of the accused has somewhat been explained that when the accused was intercepted by the deceased he not disclosed his name but his father's name as well as his residential address, which though also causes doubt as to way he would introduce himself by giving his full description as well as that of his father and his full residential address. Though the accused had stated that he quarreled with the deceased on some matter regarding preparation of bedding for him but on this aspect no cogent or convincing material was produced by the accused, hence this aspect, in our view, is liable to be ignored. The aspect of coming of the accused all the way about 10-kilometers from his village just to stole a spade has also remained unexplained on the part of accused as well as the complainant.

14. The deposition of Qalandar Khan (PW.8), also depict contradictions as at one place he mentioned that the accused Muhammad Aslam Khan was a weak person whereas, according to the complainant, his father was neither weak nor was of an advanced age.

15. It is also highly improbable to suggest that the said spade remained blood stained without the blood disintegrating even after the passage of 45-days. This aspect, however, remains unexplained on the part of the D.P.G. as well as the complainant. Moreover, the case of the prosecution with regard to the blood-stains on the crime weapon also creates doubt. It was held in the case reported as Muhammad Jamil versus Muhammad Akram (2009 SCMR 120) that:

“It is borne out from the record that the alleged recovery of blood-stained Chhuri has effected after about one month of the occurrence from an open

plot which was not in exclusive possession of the respondent and was accessible to all. It was also not likely that the blood would not disintegrate meanwhile."

In the case reported as Faisal Mehmood versus The State (2016 SCMR 2138) it was held that:

"6. Another piece of evidence relied upon by the prosecution was recovery of a blood-stained hatchet at the instance of the appellant during the investigation but even this piece of evidence is not free from serious doubts. According to the Memorandum of Recovery the alleged recovery had been effected from a cattle-shed of the complainant which showed that the same had not been recovered from an exclusive custody of the appellant. The provisions of section 103, Cr.P.C. had clearly been violated in the matter of the said recovery. The report of the Chemical Examiner showing the recovered hatchet to be stained with blood is dated 20.12.2002 whereas the report of the Serologist showing the origin of the blood available on the recovered hatchet to be human blood is dated 25.05.2004. It was scientifically impossible to detect the origin of the blood after about two years of the occurrence because human blood disintegrates in a period of about three weeks."

16. If all these above factors are taken into consideration in juxtaposition position, it will reveal that it cannot be said that the instant matter is not tainted with doubts and contradictions rather from the depositions of the various PWs mentioned supra, the contradictions/doubts, in our view, are quite evident and eminent. Considering the foregoing, we are of the view that this case is shrouded with doubts and contradictions and the benefit of which, in our view, has to be given to the accused. Reference in this regard may be made to the case reported as Ahmed Ali versus

State (2023 SCMR 781). For the ease of reference, the relevant portion of the said judgment is reproduced hereinbelow:-

"12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345)."

17. In view of the what has been discussed above, the instant appeal is allowed and the appellant is acquitted from the charges framed against him by extending the benefit of doubt. The judgments of the High Court dated 16.03.2016 and the Trial Court dated 08.02.2012 are hereby set aside. In case the appellant is not required to be incarcerated in any other matter, then he shall be released forthwith.

18. These are the reasons of our short order dated 19.05.2025, which is reproduced hereinbelow:-

"For reasons to be recorded later, the appeal is allowed and consequently, the appellant is acquitted from the charges framed against him by extending the benefit of doubt. The judgments of the High Court dated 16.03.2016 and the Trial Court dated 08.02.2012 are set aside. In case the appellant is not required to be incarcerated in any other matter then he shall be released forthwith".

Islamabad
19.05.2025
Naseer

Approved for Reporting