

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 PETITION NO. 132 OF 2018 AND
JAIL PETITION NO. 120 OF 2023

*(On appeal against the judgment dated 10.01.2018 of the
High Court of Balochistan, Turbat Bench in Cr. Appeal Nos.
(T) 32 & 34/2017)*

Khair Muhammad
Zahoor Ahmed

(In Cr.P. 132/2018)

(In JP 120/2023)

... Petitioners

Versus

The State

(In both cases)

... Respondents

For the Petitioners:

Mr. Muhammad Amjad Iqbal Qureshi, ASC
Syed Rifaqat Hussain Shah, AOR
(In both cases)

For the Complainant:

Nemo

For the State:

Syed Pervez Bokhari, State counsel

Date of Hearing:

30.04.2025

JUDGMENT

Irfan Saadat Khan, J.- Khair Muhammad and Zahoor Ahmed (the "petitioners") were tried by the learned Sessions Judge, Panjgur ("trial Court") in the criminal case arising out of FIR No. 179/2015 dated 07.12.2015, registered at Police Station City Panjgur under sections 302/34 of the Pakistan Penal Code, 1860 ("PPC"). Upon conclusion of the trial, the learned trial Court convicted the petitioners under sections 302 and 34 PPC, sentencing them to imprisonment for life in addition to holding them liable to pay Rs. 100,000/- each, as compensation to the legal heirs of the deceased under section 544-A of the Code of Criminal Procedure, 1898 ("Cr.P.C.") and in default thereof to further undergo SI for six months *vide*: judgment dated 25.02.2017. The benefit of section 382-B Cr.P.C. was also extended to the petitioners.

2. Aggrieved by the above conviction and sentence, the petitioners preferred appeals before High Court of Balochistan ("**High Court**"). The learned High Court dismissed the appeals and upheld the findings recorded by the trial Court through its judgment dated 10.01.2018 in the following terms:

"The re-appraisal of oral, circumstantial and medical evidences coupled with the minute consideration of all the circumstances, in the light of law declared by the Hon'ble Supreme Court as well as the recoveries articles on the pointation of the appellant and receipt of FSL report in affirmative regarding blood stained soil that had been taken into possession from the house of appellant Khair Muhammad and blood stained clothes of the deceased, we are of the considered view that the appellants are responsible for the murder of the deceased and has rightly been convicted by the trial Court. The counsel for appellant has failed to point out any single circumstances giving dent or creating reasonable doubt in the case of the prosecution. The defence has absolutely failed to point out any material illegality, irregularity or infirmity in the case of prosecution, warranting interference by this Court.

For the above reasons, the appeals being devoid of merit are dismissed accordingly"

3. Still aggrieved, the petitioners have impugned the High Court's judgment through these petitions.

4. Briefly, the facts of the case are that the complainant/PW-1, Musa Khan son of Muhammad Umer, a resident of Mohallah Chitkan, Panjgoor, and a vegetable merchant by profession, lodged the FIR *supra* against the petitioners at 12:45 a.m.. According to him, approximately an hour earlier at 11:48 p.m. he was present at his home along with his son Abdul Hameed, and two others i.e. Muhammad Hashim¹ ("**PW-2**") and Habib-ur-Rehman. At that time, Abdul Hameed was engaged in a telephone conversation who thereafter stood up to leave the house. Upon being questioned by his father where he was going, Abdul Hameed replied that his

¹ The complainant Musa Khan's brother.

neighbours Zahoor Ahmed and Khair Muhammad were calling him, and he was going to meet them. Shortly after Abdul Hameed had left, the complainant/PW-1 heard gunfire coming from the direction of Khair Muhammad's house. Alarmed, he, along with Muhammad Hashim (PW-2) and Habib-ur-Rehman, rushed outside. In the light of the bulb, they observed both accused — Zahoor Ahmed holding a pistol and Khair Muhammad empty-handed — running away from the street. The complainant/PW-1 and the others then entered the house of Khair Muhammad, where they discovered Abdul Hameed lying in a pool of blood, having already succumbed to his injuries. These events were then promptly reported, leading to the registration of FIR *supra* under Sections 302 and 34 of the PPC, naming Zahoor Ahmed and Khair Muhammad as the persons responsible for the intentional and brutal murder of Abdul Hameed ("**deceased**"). The medico legal examination as well as inquest report recorded firearm injuries as the cause of Abdul Hameed's death.

5. Mr. Muhammad Amjad Iqbal Qureshi, ASC and Syed Rifaqat Hussain Shah, AOR have appeared on behalf of the petitioners and contended that the impugned judgment was a result of misreading, non-reading and misappreciation of the evidences available on the record. They argued that the occurrence was unseen and was founded entirely on circumstantial evidence, with no direct witness to the murder. The prosecution relied only on related witnesses, while an independent witness, Habib-ur-Rehman, though admittedly present, was not produced. This omission, coupled with inconsistencies in the site plans and unclear identification based on disputed source of light rendered the ocular account unreliable. The learned counsel further contended that the recovery of the pistol was made after a delay of nearly two weeks from a public location not

shown to be in the petitioner's possession and lacked evidentiary value particularly in absence of any independent recovery witness, in violation of Section 103 Cr.P.C.. The forensic and medical evidence was also disputed as incongruent with the prosecution's version and unsupported by established credentials. No motive was alleged or proved. It was thus prayed that the convictions be set aside and the petitioners acquitted.

6. Mr. Syed Pervez Bokhari has appeared on behalf of the State and stated, at the very outset, that the impugned judgments suffer from no legal infirmity and are the result of a thorough and well-reasoned appraisal of the evidences brought on record. It was contended that the prosecution case stood firmly established through a combination of prompt reporting, consistent ocular testimony, corroborated recoveries and unimpeached forensic and medical evidences. The learned counsel further submitted that the murder weapon was recovered on the pointation of the petitioner Zahoor Ahmed, and the same was duly forwarded for the forensic analysis. The Forensic Science Laboratory ("**FSL**") report confirmed that the spent bullet casings (empties) recovered from the scene had been fired from the recovered pistol. In addition, the prosecution placed reliance on call data records which, it was argued, established communication between the deceased and the petitioners immediately prior to the occurrence, thereby corroborating the claim that the deceased had been lured from his home by the accused-petitioners. It was also argued that the medical evidence was in full consonance with the ocular account, with the medico-legal examination confirming firearm injuries as the cause of death. The cumulative effect of the above, it was submitted, leaves no room for reasonable doubt that the learned Trial Court as well as

the High Court had rightly reached to the conclusion that the petitioners, acting in concert, committed the murder of Abdul Hameed. Accordingly, it was prayed that the convictions and sentences awarded to the petitioners be maintained and the instant petitions be dismissed.

7. No one has entered appearance on behalf of the complainant.

8. We have heard both the learned counsel and have re-examined the record with their able assistance.

9. It is important to highlight that the occurrence took place in the night of 07.12.2015 at 11:48 p.m. and although the incident was unseen, the PWs claim to have seen the petitioners fleeing from the scene, one of them armed and the other empty-handed. The absence of any substantial moonlight on that fateful night necessitates a discussion into the source of light which could have made the identification of the petitioners by the PWs possible. The complainant/PW-1 stated in his complaint to the police and again in his examination-in-chief that he saw the petitioners running away from the street, as described above, in light being emitted by a bulb. The witness accompanying the complainant, Muhammad Hasim/PW-2, stated in his examination-in-chief that he also saw the petitioners fleeing in the same way, one armed and the other unarmed, in some light. He later clarifies during cross-examination that it was certainly in the light of a bulb that he saw the petitioners fleeing and not in light being emitted from some torch. Both witnesses have also accentuated during their respective cross-examinations that there was certainly some bulb installed at the scene of occurrence. It is then increasingly alarming, especially in

view of above, that the complainant/PW-1 stated during his cross-examination as follows:

”یہ غلط ہے کہ موقع پر حاضر عدالت ملزمان پستل ہاتھ میں لئے
بھاگ رہے تھے اور میں نے بلب کی روشنی میں انکو شناخت کیا۔“

This express statement by the complainant/PW-1 has two effects; firstly, it becomes clear that the petitioners were not identified in the light of a bulb, which clearly contradicts the complainant/PW-1's statement recorded under section 161 Cr.P.C. as well as the FIR. The FIR *supra* is also silent about any other source of light. Furthermore, no recovery has been made in regards a supposed alternate source of light and the site map again does not mention any source of light or place from where such source may have been recovered. The identification of the petitioners is thus not free from doubt.

10. Here, it may be pertinent to note that the investigating officer (“I.O.”), Muhammad Ramzan (PW-7) stated during cross-examination that in the FIR *supra* a bulb has been mentioned as the source of light and then corrected himself by stating that the light source was a torch. In the same breath, the I.O. sought to explain the apparent contradiction by stating that there is no difference between the two. He then stated there is a difference between a bulb and a torch but argued that the witnesses were illiterate and did not know the difference between the two. At the very outset, the I.O.'s explanation in regards the light source being mentioned as a bulb at one place and a torch at the other, is self-contradictory. Highlighting this contradiction further, Muhammad Hashim (PW-2) has mentioned a bulb as the light source, as noted above, despite having earlier stated before the police that it was a torch. This is

evidenced by the fact that during cross-examination he denied that he mentioned a torch as the light source in his statement to the police but when the record was referred to, it was shown to be otherwise. These facts constitute yet another doubt in regards the identification of the petitioners. Still, if we assess the possibility of a torch being the source of light, it becomes apparent that this was not the case since the complainant/PW-1 was completely silent about a torch and just as in the case of the bulb, no recovery was made to that effect nor was there any mention of a torch in the site map.

11. The complainant/PW-1's express statement also introduces a second doubt in our minds. The prosecution's claim that the petitioner Zahoor Ahmed was seen fleeing with a pistol in his hand is now also undermined significantly. The complainant/PW-1's earlier statements in his complaint to the police and examination-in-chief both mention that Zahoor Ahmed was armed when he was fleeing. During the rigours of cross-examination, however, the complainant/PW-1 belies his own claim by stating categorically that he did not see the petitioner Zahoor Ahmed armed, while he was running. Similarly, the witness Habib ur Rehman, statedly accompanying the complainant/PW-1 and PW-2 as they all saw the petitioners run away from street, was not arrayed as a witness despite his crucial presence at the scene.

12. A discussion of the manner in which the alleged weapon of offence was recovered also merits our attention. Statedly, on 21.12.2015, the petitioner-Zahoor Ahmed disclosed that on the night of the occurrence before dawn, he had hidden away the weapon of offence, a pistol, in a pile of garbage outside his home and

that he could guide the police to its recovery. The recovery witness, Abdul Mannan (PW-5), explained during his cross-examination that the petitioner-Zahoor Ahmed led him, another recovery witness and police officers from the police station to outside Zahoor's house. Here, the recovery witness' (PW-5) account begins to vary; he stated firstly that the place of recovery / pile of garbage was outside the petitioner-Zahoor's home, he however stated immediately after that the petitioner-Zahoor entered his home and that the garbage was inside Zahoor's home. Again surprisingly, the site-map for the recovery proceeding indicates that the pistol was recovered from outside the petitioner-Zahoor's home. This contradiction thus, in our view, cannot be reconciled, rendering the recovery witness' account quite doubtful.

13. The prosecution has also relied on the results of the chemical testing conducted in order to match the empties recovered from the place of occurrence and the weapon of offence, a pistol, recovered from the petitioner-Zahoor's home. Two crime empties were statedly recovered from the scene on 08.12.2015. The weapon of offence, a pistol, was allegedly recovered on 21.12.2015. The record however shows that both the articles were sent to the FSL together on the same day, i.e. 12.02.2016, pursuant to which the FSL report recorded a positive result – that the empties had been fired from the pistol. Not only was there a proven inordinate delay in dispatching the articles but the police's failure to send the empties to the FSL before the recovery of the weapon of offence also stands established. The law in this regard is well settled that no reliance can be placed upon the result of an FSL report where the crime empties were sent for FSL testing after the recovery of the weapon of offence.

14. The prosecution had also invited our attention to the Call Data Record ("**CDR**") to showcase that it was Zahoor Ahmed, who was on the other line with the deceased before he headed towards Khair Muhammad's home where he was allegedly killed. It appears the prosecution's claim is that the petitioners lured the deceased to their home and then killed him. In this respect the I.O. stated that he recovered the deceased's personal mobile phone through parcel No. 3 and recovered the petitioner-Khair Muhammad's mobile phone through parcel No. 5. He stated that subsequently, on 11.12.2015, he sent a letter to the crime agency requesting the Call Data Record for the mobile numbers of the deceased-Abdul Hameed and the petitioner-Zahoor Ahmed. It is pertinent to highlight here that the mobile phone was stated to have been recovered from the petitioner-Khair Muhmmad whereas the I.O. made a request for the CDR pertaining to the petitioner-Zahoor Ahmed's mobile number. It is also apparent that the record does not disclose whether the mobile phones purportedly recovered were in the use of the deceased or accused as acknowledged by the I.O. during the cross-examination. Moreover, the complainant Musa Khan (PW-1) has also stated during his examination-in-chief that he had not mentioned the cell number of the mobile phone from which his son, the deceased-Abdul Hameed, received the call following which his son left home whereas in his statement recorded under section 161 of the Cr.P.C. he has mentioned the number from which his son received the call.

15. There is another telling revelation, which the I.O. made during his cross-examination, i.e. the record does not mention which SIMs were taken from the recovered mobile phones and in whose name the corresponding mobile number was issued. In reply to the I.O.'s letter requesting the CDR concerning the mobile phones,

the crime agency delivered a report allegedly from "the franchise" on 16.12.2015 which was duly recovered by Javed Ahmed S.I. (PW-4) and Abdul Waris S.I.. The I.O. further acknowledged during examination-in-chief that on the same date, i.e. 16.12.2015, he also sent a letter requesting a more detailed record from the crime agency, which received no reply. The purported copies of the CDR, labelled Art/11 and Art/12, appear to be typed/computerized documents containing the details of calls dialed and received from the mobile number 03151032799, as well as the date, duration and location of the calls etc.. Firstly, the alleged CDR has handwriting over it; above the number 03151032799, the petitioner-Zahoor's name is written by hand, and above the number 03362100565, the deceased's name is written by hand. The witness to the recovery/receipt of the CDR, Javed Ahmed (PW-4), stated during the cross-examination that it was the I.O. (PW.7) who interpolated this detail whereas the I.O. stated that he did not know who wrote over the CDR but that it was not the franchise which wrote over it – regardless, the handwritten text cannot be considered a part of the CDR. The foregoing does however raise doubt that even if there were clear recovery proceedings in respect of the CDR, it may not have been safely transmitted. Importantly, the I.O. and PW-4, both mention that the names of the deceased and petitioner-Zahoor Ahmed cannot be found anywhere on the alleged CDR. While the alleged CDR depicts continuous communication between the number 03151032799 and what is ostensibly the number of the deceased i.e. 03362100565 on the night of the occurrence, the law in this regard is clear and a portion of this Court's judgment in Azeem Khan v. Mujahid Khan (2016 SCMR 274) is relevant:

"The cell phone call data collected is of no help to the prosecution for the reasons that numerous calls have been made indicating continuous interaction between the two cell phones, contrary to the evidence given by Muhammad Wali (PW-3), who has stated at the trial that the unknown caller made calls on his cell phone four time. No competent witness was produced at the trial, who provided the call data, Ex.P-1 to Ex.P-5. No voice record transcript has been brought on record. Similarly from which area the caller made the calls, is also not shown in it. Above all, the most crucial and conclusive proof that the cell phone was owned by the accused and SIM allotted was in his name is also missing. In this view of the matter, this piece of evidence is absolutely inconclusive and of no benefit to the prosecution nor it connects the accused with the crime in any matter."

[underlining is ours]

Whilst referencing the case *supra* this Court has also explained in the case *Khalid Perviz v. State* (2021 SCMR 522) that:

*"6. Some of the documentary evidence in defence produced by the Appellant was recorded by automated information system which according to law is admissible under Article 164 of the Qanun-e-Shahadat Order, 1984 (P.O. No.10 of 1984) but in case of denial, law requires that such evidence generated through the system *ibid* must be proved in accordance with law. The Courts have been empowered to receive and make use of such evidence collected through modern technologies. Articles 46-A and 78-A of the Order *ibid* as well as the provisions of Electronic Transactions Ordinance (LI of 2002) provide procedure to receive and prove such evidence. Reference in this regard can also be made to the case of *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675) and *Ali Raza v. State* (2019 SCMR 1982).*

7. The defence evidence recorded by Najam Riaz (DW-1) and Nouman Khan Bangash (DW-2), pertains to calls data of Appellant's mobile phones and that of the cell phones of Investigating Officer (I.O.) (Ex. DB to DE and DJ). A perusal of these documents would reveal that these were general in nature. Neither relevant entries were pointed out in the data nor the voice record transcripts were produced which, if available, could have made a point. There is nothing on the record in this regard to help out the Appellant in support of his allegations made in defence. Mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. Besides the call transcripts, it should also be established on the record that callers on

both the ends were the same persons whose calls data is being used in evidence. While considering such type of evidence extra care is required to be taken by the Courts as advancement of science and technology, on the other hand, has also made it very convenient and easy to edit and make changes of one's choice as highlighted and discussed in the case of Ishtiaq Abmad Mirza supra. We also can lay hand on the case of Azeem Khan v. Mujahid Khan (2016 SCMR 274) in this regard. So, the CDR DATA produced by the said witnesses is of no help to the Appellant and cannot be termed as an evidence worth reliance to shatter the direct evidence adduced by the prosecution."

[underlining is ours]

Admittedly, it has not been proved whether the mobile phones allegedly recovered from the deceased and the petitioners were in their personal use, nor has it been proved which SIMs were recovered from the mobile phones and to whom they were issued. Again, the names of the deceased and petitioners were absent from purported CDR except in the form of handwriting subsequently interpolated into the document. Reference in this regard may also be made to the case of Rehmatullah and others v. The State (2024 SCMR 1782).

16. Importantly, the instant CDR is in the form of a standard computerized document which, according to PW-4's own admission can be printed and prepared with the help of any computer. Thus, it is also of foremost importance that the Call Data Record (CDR) must bear the endorsement/authentication of the cellular / telecom company which has issued it. A bare document such as the CDR without any signature of the concerned officer of the cellular / telecom company issuing the CDR cannot be considered for the purposes of trial and relied upon until and unless it bears the company's seal or a letter of its authentication. This Court's judgment rendered in the case of Asmat Ullah Khan v. The State

(2024 PLD 1119 SUPREME COURT) crystallizes the legal position with respect to CDRs and is reproduced below:

"We have carefully examined the said C.D.R. and found that it neither bears the name nor the signature of any authorized officer, nor does it carry the seal of the issuing company. Moreover, the witness (PW-1) acknowledged that the C.D.R. was not sealed and was not accompanied by any covering letter even from the RPO's office. Thus, it cannot be safely relied upon in any manner. It can be doubted that the I.O. has himself generated such C.D.R. or the same has been issued by the Company concerned. It is further noted with considerable importance that neither were the relevant entries indicated in the data, nor were the voice record transcripts produced, which, if available, could have substantiated the point of the prosecution. No doubt, the mere production of C.D.R., without transcripts of the calls or complete audio recordings, cannot be deemed reliable evidence. In addition to call transcripts, it must also be established on record that the individuals at both ends of the call are the same as those whose call data is produced as evidence. The Courts must exercise heightened caution when evaluating such evidence, as advancements in science and technology have greatly facilitated the editing and alteration of recordings to suit one's preferences. Reference in this regard may be made to the cases of Azeem Khan and another versus Mujahid Khan and others (2016 SCMR 274) and Mian Khalid Perviz versus the State through Special Prosecutor ANF and another (2021 SCMR 522). Being so, the C.D.R. is of no help to the prosecution in supporting its allegations against the petitioners."

[underlining is ours]

17. The motive for the crime also merits appraisal. The complainant/PW-1 clearly mentioned during cross-examination that the petitioners had no enmity with the complainant and his son, the deceased. After gleaning the entire record, we are also satisfied that the prosecution has not ascribed any motive to the petitioners as would motivate them to commit the crime. This fact has duly been noticed by the High Court in the impugned judgment.

18. The foregoing paragraphs have highlighted material flaws in the prosecution's case, rendering it doubtful. We are thus ultimately

of the view that the prosecution has not been able to prove its case beyond reasonable doubt. Since reasonable doubts abound and these would accrue as of right to the petitioners, we are sanguine that the petitioners are entitled to the benefit of the same. The judgment of this Court rendered in the case of Ahmed Ali and another v. The State (2023 SCMR 781) is of relevance in this regard and is reproduced below:

“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).”

19. In view of the above and by extending the petitioners the benefit of doubt in this case rife with contradictions and controversies, we acquit the petitioners of all the charges levelled against them. The decisions of the Trial Court as well as of the High Court are therefore set aside and the petitioners are directed to be

released forthwith if not required to be incarcerated in any other matter.

20. These are the reasons for our short order dated 30.04.2025 which is reproduced below for the facility of reference:

"For reasons to be recorded later, the petitions i.e. Criminal Petition No. 132/2018 and Jail Petition No. 120/2023 are converted into appeals and allowed. The appellants Khair Muhammad and Zahoor Ahmed are acquitted from the charges framed against them by extending the benefit of doubt. The judgments of the Trial Court and the High Court are set aside. In case the appellants are not required to be incarcerated in any other matter then they shall be released forthwith."

Islamabad, the
30th of April, 2025
Approved For Reporting
Arshed / Mustafa Kundi L.C.