

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:

Mr. Justice Athar Minallah
Mr. Justice Naeem Akhtar Afghan
Mr. Justice Malik Shahzad Ahmad Khan

Jail Petition No.213 and 214 of 2024

(Against judgment dated 16.05.2024 of the Islamabad High Court, Islamabad passed in CrI. Appeal No.148 of 2022 and CrI. Appeal No.170 of 2022, CrI. Revision No.29 of 2022 and M. R. No.02 of 2022)

Muhammad Ramzan ...Petitioner in JP-213/2024
Muhammad Sabir ...Petitioner in JP-214/2024

Versus

The State ...Respondent in both cases

For the petitioner: Mr. Hameed uz Zaman, ASC

For the State: Mr. Ghulam Sarwar Nihung, Prosecutor General
Islamabad along with Asif Khan, Inspector and
Ashfaq, S.I.

For the deceased: M. Faisal and Hamad (brothers of the deceased)

Date of hearing: 05.06.2025

JUDGMENT

Naeem Akhter Afghan, J.- While acquitting co-accused *Chand*, both the petitioners were awarded following conviction and sentence by the learned Additional District & Sessions Judge (West) Islamabad (**the trial Court**) vide judgment dated 26.2.2022 in FIR No.407/2020 lodged by the complainant Abdul Ayan with Police Station, (**PS**) Shalimar, Islamabad on 28.12.2020 with regard to murder of *Nasir Asghar* due to firing by one unknown accused who alongwith co-accused had entered the *One Dollar Shop*, Irfan Plaza, Sector, F-10, Markaz, Islamabad :

“(i) *Accused Muhammad Ramzan had made fatal fire shot with pistol 30 bore on deceased Nasir Asghar which landed near*

the shoulder of the deceased, hence, he has committed qatle amad of deceased Nasir Asghar and therefore he is convicted u/s 302(b) P.P.C and awarded major penalty of death sentence as Tazir, he will be hang till death he is also liable to pay compensation of Rs.10,00,000/- (rupees ten lac) under section 544-A Cr.P.C. to the legal heirs of the deceased and if he failed to pay the same, the same be recovered as arrear of land revenues and in case the same is not possible then he shall undergo simple imprisonment of four months.

- (ii) Accused Muhammad Ramzan is also convicted and sentenced under Section 398 PPC to undergo rigorous imprisonment of 10 years.*
- (iii) While accused Sabir is convicted and sentenced u/s 398 PPC to undergo rigorous imprisonment of 15 years.*
- (iv) To the extent of accused Chand prosecution failed to establish the offences against him, hence he is acquitted of charge".*

2. Both the petitioners challenged their conviction and sentence by filing appeal before Islamabad High Court. The complainant preferred appeal against the acquittal of co-accused *Chand*. The complainant also filed Criminal Revision for enhancement of sentence of convict Muhammad Sabir. Murder Reference No.2/2022 was also forwarded by the trial Court to the Islamabad High Court.

3. After hearing all the concerned, vide impugned judgment dated 16.5.2024, the Islamabad High Court accepted acquittal appeal filed by the complainant against acquittal of co-accused *Chand* and after setting aside the judgment passed by trial Court to the extent of his acquittal, he was convicted under Section 390 PPC and sentenced to suffer three years rigorous imprisonment (**RI**) with fine of Rs.100,000/- and in default thereof to further suffer three months simple imprisonment (**SI**) with benefit of Section 382-B Cr.P.C. Criminal Revision for enhancement of sentence of *Muhammad Sabir* and Criminal Appeal filed by the convict *Muhammad Ramzan* were dismissed. While answering Murder Reference in affirmative, the death sentence awarded to the convict *Muhammad Ramzan* was confirmed by the Islamabad High Court.

4. The convict *Chand* has not challenged his conviction and sentence before this Court. However, the convicts *Muhammad Ramzan* and *Muhammad Sabir* have challenged their conviction and sentence by filing petitions through Superintendent District Jail, Jhang and Superintendent Central Jail, Rawalpindi respectively.

5. After hearing learned counsel for the petitioner, learned Prosecutor General, Islamabad and brothers of the deceased appearing in person, we have perused the available record. In the FIR registered on 28.12.2020 at 11:50 pm for the occurrence of 10:20 pm, the complainant *Abdul Ayan (PW-14)* stated that he was working as sales-man in the *one-dollar shop*; his duty hours were from 10:00 am to 10:00 pm; *Nasir Asghar (the deceased)* had come to meet him, *Usman, Muhammad Abdullah* and Manager *Sumair (PW-15)*; he noticed two persons in *shalwar kameez* roaming around the shop for 15/20 minutes and at about 10:20 pm they both entered the shop; one person stood at the door of the shop while the other person suddenly took out his pistol and made a fire upon the deceased with intention of his murder; the fire shot hit the deceased on his left shoulder due to which he fell down and both the accused fled; they can identify both the accused on coming forward.

6. Subsequent to the registration of FIR, PW-14 improved the version of occurrence by making supplementary statement wherein he mentioned about coming of the deceased at the shop to meet his brother *Hammad Asghar*, Branch Manager (**PW-16**) and about his going out of the shop for some work telling his brother *Nasir Asghar* to sit at the counter with PW-15; the two persons who had entered the shop approached the counter and asked PW-15 for shopping; they went on the upper floor of the shop, brought one artificial necklace to the counter and handed over the same to PW-15; one of them started seeing a hand-free set at the counter; the person with short height took out a pistol and jumped inside the counter;

he had a scuffle with the deceased; his second fire hit on the back of the deceased; they both fled on a motorcycle with a third person sitting on the same.

7. In his FIR as well as supplementary statement PW-14 did not nominate the two accused who had entered the shop and had committed the offence. However in his supplementary statement he suspected convict *Chand*, being an ex-employee of *One Dollar Shop*, as an accomplice who was sitting on the motorcycle outside the shop upon which both the accused had fled.

8. Admittedly, PW-16 is not an eye-witness of the occurrence as he was not present in the shop at the time of the occurrence. However, PW-14 and PW-15 are the witnesses of the occurrence. Both the convicts i.e. the petitioners were not previously known to PW-14 and PW-15 and they both were also not aware of their names. Record transpires that PW-14 and PW-15 nominated both the petitioners in their statements at the trial with explanation that names of both the petitioners came to their knowledge during investigation.

9. Record reveals that due to implication of convict *Chand* as a suspect by PW-14 in his supplementary statement, the convict *Chand* as well as the petitioners were arrested by *Asif Khan*, SI (**PW-17**) on 29.12.2020 (i.e. next day of the occurrence) under Section 54 of the Criminal Procedure Code (**Cr.P.C.**) as suspects as the FIR was against unknown accused.

10. The occurrence is of 28.12.2020 at 10:20 pm. According to the statement of PW-17, on 29.12.2020 (i.e. on the next day of occurrence) he recovered two empties of .30 pistol from the place of occurrence i.e. *One Dollar Shop* and he also took into possession a mobile phone with sim of Telenor bearing number 0341-5310500 from the counter of *One Dollar Shop* (this number and cell phone belongs to the petitioner *Muhammad*

Sabir). Call Data Record (**CDR**) revealed of telephonic contacts between the petitioner *Muhammad Sabir* and the convict *Chand*. Surprisingly, PW-15 and PW-16 have not mentioned in their statements recorded at the trial about the recovery of the mobile phone of the petitioner *Muhammad Sabir* from the counter of the shop on 29.12.2020 by PW-17. In contradiction to the statement of PW-17 about recovery of the above cell phone from the counter of the shop on 29.12.2020, according to the statement of PW-15, the said phone was recovered by PW-17 in his presence on 28.12.2020. Foisting the recovery of cell phone by PW-17 from the counter of the shop on the next day of the occurrence after arrest of the convict *Chand* and the petitioners to create incriminating evidence against them cannot be ruled out of consideration.

11. PW-14 and PW-15 are also witnesses of the identification parade of the petitioners and the convict *Chand* which was conducted on 08.1.2021 in the premises of Central Jail, Rawalpindi under the supervision of *Sidra Anwar*, Assistant Commissioner, Sub Divisional Magistrate-ICT (**PW-10**).

12. Record transpires that identification parade of the petitioners and the convict *Chand* was not conducted by PW-10 in accordance with law. During identification parade proceedings objections were raised by the petitioners and the convict *Chand* that prior to the identification parade, their photographs were taken in the police station but the said objection was not dealt with/attended by PW-10.

13. The identification parade proceedings of petitioners and the convict *Chand* have been brought on record by the prosecution as Ex-PY/1-18. According to Ex-PY/1-18 (comprising of 18 pages), the petitioners and the convict *Chand* were identified by the witnesses namely *Abdul Ayan*, *Usman Waheed*, *Abdullah* and *Muhammad Sumair* and they were assigned numbers as witness No.1, witness No.2, witness No.3 and witness No.4 respectively by PW-10. In the identification parade proceedings of petitioner *Muhammad*

Ramzan, Abdul Ayan has been mentioned as witness No.1, *Abdullah* as witness No.3 and *Muhammad Sumair* as witness No.4 but there is no mention in his identification parade proceedings about witness No.2 *Usman Waheed*; whereas in the identification parade proceedings of petitioner *Muhammad Sabir and the convict Chand*, names of all four witnesses have been mentioned with their correct serial numbers in Ex-PY/1-18.

14. It further reveals that in Ex-PY/1-18, PW-10 has tried to portray that identification parade of all the petitioners and the convict *Chand* was conducted separately on 8.1.2021 but PW-10 has not appended three separate certificates for each identification parade. With regard to identification parade of both the petitioners and the convict *Chand*, at Page-18 of Ex-PY/1-18, PW-10 has appended a certificate to the effect that the identification parade was conducted according to rules and laws of Lahore High Court and Supreme Court judgments.

15. During the identification parade proceedings, PW-10 has recorded statements of the four witnesses of the identification parade in narrative form. Ex-PY/1-18 reveals that the witnesses have simply identified the petitioners and the convict *Chand* without any reference to their description and without assigning the role allegedly played by each of them in the occurrence. In the circumstances, the identification parade of the petitioners by the witnesses without stating the role allegedly played by them in the occurrence is not in-line with Article 22 of the Qanoon-e-Shahadat Order, 1984. Hence it is of no evidentiary value and cannot be relied upon for conviction of the petitioners¹. It has repeatedly been held by this Court that identification parade of an accused person without reference to the role allegedly played by him during the occurrence is *shorn* of any evidentiary value².

¹ Mehboob Hassan vs. Akhtar Islam and others (2024 SCMR 757)
Abdul Hayee vs. State (2025 SCMR 281)

² Abdul Qadeer vs. The State (2024 SCMR 1146)

16. The CCTV footage of the shop with regard to the occurrence, procured during investigation and recorded in USB, duly played at the trial and relied upon by the trial court for conviction of the petitioners, was also played in this Court. The same is of no avail to the prosecution and it cannot be made a basis for conviction of the petitioners as in the CCTV footage, the faces of the culprits are not visible and it is showing only the back of the culprit who had a scuffle with the deceased.

17. According to PW-17 two crime empties were recovered on 29.12.2020 from the shop wherein the occurrence had taken place. PW-14 and PW-16 have not mentioned about recovery of two crime empties by PW-17 from the shop on 29.12.2020. While contradicting the statement of PW-17, PW-15 stated that the said crime empties were recovered by PW-17 on the same day i.e. 28.12.2020.

18. According to the prosecution, on 17.1.2021, on the disclosure and pointation of petitioner *Muhammad Ramzan* .30 bore pistol with four live cartridges were recovered in presence of Khiasta Khan, Constable (**PW-3**) and Tariq Aziz, Constable (**PW-2**) from cattle shed of *Mushtaq Khan* at Shah Allah Ditta. As per prosecution version, from the same cattle shed of *Mushtaq Khan* at Shah Allah Ditta, a .30 bore pistol with five live cartridges were recovered on 20.1.2021 on the disclosure and pointation of petitioner *Muhammad Sabir*. No disclosure memos of the petitioners were prepared in the above regard by the investigating officer. No independent witnesses of the locality/workers of the cattle shed as well as owner of the cattle shed were associated to attest the alleged recoveries nor they have been produced at the trial to lend independent corroboration to the alleged recoveries of pistols and live cartridges on the pointation of the petitioners. It weakens the prosecution case and leads to possibility of foisting the recovery of weapons by the investigating officer to lend corroboration to the prosecution version.

19. The pistol allegedly recovered on the pointation of petitioner *Muhammad Ramzan* on 17.01.2021 was sent to the National Forensic Science Agency (**NFSA**) on 22.01.2021 with two crime empties already lying therein. Record also reveals of break in chain of custody of the weapon.

20. The positive report of NFSA was issued on 08.02.2021. Though positive report of a firearm expert is a valid piece of corroborative evidence but its weight is heavily dependent on the reliability of the weapon recovery. If the recovery of weapon is found to be doubtful, fabricated or otherwise unreliable, the report of firearm expert, even if positive, can be disregarded by the Court as it fails to connect the weapon genuinely to the accused or the crime in a credible manner.

21. If the court suspects fabrication, the expert report, no matter how positive, becomes irrelevant in proving the guilt of accused.

22. If the primary evidence i.e. recovery of weapon is weak or disbelieved, the corroborative evidence i.e. the firearm expert report cannot stand alone to establish the guilt.

23. It is generally unsafe to convict an accused while relying exclusively on expert evidence without substantial corroboration.

24. Since recovery of crime weapon is disbelieved due to lack of independent corroboration, the positive report of the firearm expert loses its evidentiary value in connecting the petitioner *Muhammad Ramzan* to the crime.

25. All the above infirmities in the case of the prosecution have led us to the conclusion that the conviction and sentence awarded to the petitioners by the trial Court and by the Islamabad High Court is result of misreading and mis-appreciation of the evidence available on the record. It is further

concluded that prosecution has miserably failed to prove the charge against the petitioners beyond reasonable doubt.

26. The above are the reasons of our short order of even date which is reproduced hereinbelow :

“For reasons to be recorded later, these petitions are converted into appeals and the same are allowed. The appellants Muhammad Ramzan and Muhammad Sabir are acquitted from the charges framed against them by extending the benefit of doubt in their favour. Consequently the judgments of the trial court and the High Court dated 26.02.2022 and 16.05.2024 respectively are hereby set aside. In case the appellants are not required to be incarcerated in any other case, then they shall be released from the prison forthwith”.

Judge

Judge

Judge

Islamabad, the
5th June, 2025
Sarfraz/-
'Approved for reporting'