

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

JAIL PETITION NO. 853 OF 2017

*(On appeal against the judgment dated
18.10.2017 of the Lahore High Court, Lahore
passed in Murder Reference No. 356/2014
and Cr. Appeal No. 563-J/2014)*

Mushtaq Ahmed

...Petitioner

Versus

The State

...Respondent

For the Petitioner: Mr. Aftab Alam Yasir, ASC

For the Complainant: Nemo

For the State: Mirza Abid Majeed, DPG Punjab

Date of Hearing: 18.06.2025

ORDER

Irfan Saadat Khan, J.- This jail petition has been filed against the judgment of the Lahore High Court dated 18.10.2017, whereby the Criminal Appeal No. 563-J of 2014 was dismissed. While maintaining the conviction of the Mushtaq Ahmed ("**petitioner**") under section 302(b) of the Pakistan Penal Code, 1860 ("**PPC**"), the sentence of death awarded by the Trial Court was modified to imprisonment for life. The amount of compensation in the sum of Rs.200,000/- or the punishment in default thereof, as ordered by the Trial Court, were however maintained. The Murder Reference No. 356 of 2014 was thus answered in NEGATIVE. The benefit of section 382-B, Code of Criminal Procedure, 1898 ("**Cr.P.C.**") was however extended to the petitioner.

2. The petitioner, Mushtaq Ahmad was charged with the offence under section 34/302 of the PPC, for allegedly causing the murder of Abdul Shakoor. An FIR bearing No. 592/2010, was registered at Police Station Narang on 21.11.2010 at 12:00 (noon) in respect of an incident, which took place on the same date i.e. 21.11.2010, at 11:00 a.m.. The Trial Court, *vide*: judgment dated 21.10.2014, after finding the petitioner guilty of the offence through Sessions Trial No. 17 of 2011 in Sessions Case No. 17 of 2011 directed that he be hanged by his neck till his death. He was also directed to pay Rs.200,000/- as compensation to the legal heirs of the deceased under section 544-A of the Cr.P.C., or in default thereof to undergo rigorous imprisonment for six months. Being aggrieved by the said judgment, an appeal¹ was preferred by the petitioner before the High Court corresponding to Murder Reference No. 356 of 2014. The learned High Court through its impugned judgment dated 18.10.2017, altered the sentence of the death awarded to the petitioner to that of imprisonment for life while extending the benefit of section 382-B, Cr.P.C.. The learned High Court, however, maintained the directions of the Trial Court with regards to the compensation and its effect on non-payment thereof. It is against this judgment that the present jail petition has been preferred before us.

3. Briefly stating the facts, as narrated by Abdul Rauf ("**complainant**") in the FIR, are that he is a permanent resident of District Sheikhupura. On 21.11.2010 at about 9:00 a.m. in the morning, Nasir Mehmood, son of Faiz Muhammad, in connivance with his brother, Mushtaq Ahmed, planned to murder Abdul Shakoor. They sent a message to Abdul Shakoor, that they will be coming to discuss some financial matter with him at Narang. Thereafter, the deceased Abdul Shakoor took with him the complainant, Abdul Ghafoor, Muhammad Ilyas and Mubashar Ali and reached the residence of the petitioner-Mushtaq at

¹ Criminal Appeal No. 563-J of 2014.

about 11:00 a.m.. During the discussion, some hot words were exchanged between the parties, which led to Ali Raza, armed with a pistol, and Liaqat Ali, armed with a 12-bore rifle, opening fire upon Abdul Shakoor, who after receiving the firearm injuries fell down on the ground, after which Mushtaq Ahmed inflicted hatchet blows upon him. Due to the injuries caused by the bullets as well as the hatchet, Abdul Shakoor succumbed on the spot. Thereafter, Ali Raza, Liaqat Ali and Mushtaq Ahmed aligned the complainant and other persons, and threatened to shoot them if they interfered, subsequently fleeing away from the spot. It is stated in the FIR that the motive for killing Abdul Shakoor was that he married the daughter of Mushtaq Ahmed against his will and wish, which brewed enmity between them. Though the area respectables have patched up the matter between them but it is alleged that the accused persons have not ignored this aspect and have now killed Abdul Shakoor. Hence, appropriate action may be taken against all these three persons.

4. Mr. Aftab Alam Yasir, ASC has appeared on behalf of the petitioner and stated at the outset, that under identical facts and circumstances the Trial Court has acquitted the co-accused, namely, Ali Raza and Liaqat Ali, therefore, the Trial Court as well as the High Court were not justified on the same set of facts in awarding either the death sentence or the sentence for imprisonment for life to Mushtaq Ahmed, the petitioner. He stated that since the case of Mushtaq Ahmed, petitioner could be considered at par with that of Ali Raza and Liaqat Ali, who have been given the benefit of doubt, the same benefit ought to be granted and given to the present petitioner Mushtaq Ahmed.

5. Mirza Abid Majeed, Deputy Prosecutor General, Punjab ("DPG") appearing for the State, submitted that no doubt Ali Raza and Liaqat Ali were acquitted by the Trial Court however the role of Mushtaq Ahmed was quite different from that of Ali Raza and Liaqat Ali as, according to him, it was

Mushtaq Ahmed who caused fatal hatchet blows to Abdul Shakoor and, therefore, he does not deserve any leniency, hence, the judgment of the High Court may be affirmed, as a lenient view has already been taken by the High Court by converting the sentence of death awarded to Mushtaq Ahmed-petitioner by the Trial Court, to that of imprisonment for life. He also prayed that the amount of compensation and the rigorous imprisonment, to be undergone for its non-payment, may also be affirmed by dismissing the instant petition.

6. Nobody has appeared on behalf of the complainant.

7. We have heard the learned counsel for the petitioner, as well as the DPG appearing for the State. We have also perused the available record with their able assistance.

8. The deposition of Dr. Khalid Bashir (PW-10) reveals that there was a delay about ten hours in conducting the postmortem examination after receiving the dead body of Abdul Shakoor. He explained that it was not his fault since the police papers were not made available to him by the police, hence the postmortem could not be conducted in a timely manner. The record also reveals that there was a delay of almost twenty three hours in conducting the postmortem from the time of the death of Abdul Shakoor. A delay in conducting postmortem could be considered as a factor which creates doubt in the prosecution case. It suggests that the occurrence was unseen and the said delay was consumed in procuring the attendance of false eye-witnesses. It is a settled proposition of law that unexplained delay in conducting the postmortem examination causes damage to the prosecution's case. Reference in this regard may also be made to the cases of Sufyan Nawaz v. The State (2020 SCMR 192), Safdar Mehmood v. Tanvir Hussain (2019 SCMR 1978), Muhammad Rafique alias Feeqa v. The State (2019 SCMR 1068), Muhammad Yaseen v. Muhammad Afzal (2018 SCMR 1549) and Irshad Ahmed v. The State (2011 SCMR 1190).

9. The deposition of the complainant, Abdur Rauf, reveals that since the police declared Ali Raza, Liaqat Ali and Nasir Ali innocent, he filed a private complainant against those persons, which was subsequently dismissed to their extent. Moreover, one Mubashir was named in the private complaint filed by him but was never produced as a witness in the instant case. Strangely enough, no *Muhallah* residents have also been arrayed as witnesses and all the witnesses are relatives of the complainant. Moreover, no document with regard to the dispute concerning any financial matter has been furnished by him so as to justify that there was, apart from the fact that the deceased had married the daughter of the accused, difference between the parties with regard to any financial aspect.

10. A similar type of statement was given by Abdul Ghafoor (PW-3), the brother of the complainant, who also stated that he simply recorded a cursory statement before the Court and stated nothing about recovery of blood stained cotton, one empty from the spot as well as, regarding the recovery of blood stained *Kassi*, 12.bore gun and two live bullets from the house of the petitioner-Mushtaq. He also admitted that he did not try to catch hold of Mushtaq, while he was inflicting hatchet blows upon the deceased. He also admitted that he did not try to save his brother by rushing him to the hospital and instead he merely stood by during the occurrence and remained silent. It is therefore evident that the conduct of the prosecution eye-witnesses who were closely related to the deceased was highly un-natural which shows that actually they were not present at the spot at the relevant time. Abdul Ghafoor (PW-3) also admitted that though there was a hue and cry raised by the complainant but no *Muhallah* residents were attracted to the spot after the occurrence. The record further reveals a major contradiction in statement of the witnesses as according to some there were financial dispute between the deceased-Abdul Shakoor and the,

petitioner-Mushtaq, whereas some say that there was a grudge between Abdul Shakoor and Mushtaq on the ground that Abdul Shakoor had married Mushtaq's daughter against his wish.

11. The deposition of Mehmood Ahmed S.I. (CW-5) also reveals that when he arrested the petitioner-Mushtaq, he was carrying a 30-bore pistol with two live bullets. However, he did not recover or find any incriminating material from Liaqat Ali, Nasir Ali and Ali Raza (co-accused since acquitted). He admitted that since he did not recover any objectionable material from these three persons, he declared them innocent as, according to him, the main culprit was Mushtaq Ahmed, the petitioner. The record further reveals that the Trial Court acquitted the co-accused, namely, Liaqat Ali, Nasir Ali and Ali Raza *vide*: judgment dated 21.11.2014, against which, acquittal appeals were filed against Liaqat Ali and Ali Raza only but subsequently the said appeals were withdrawn, whereas no appeal was filed against the acquittal of Nasir Ali. The judgment of the High Court also reveals that the *Kassi* (hatchet) was not recovered from the accused-petitioner rather the same was recovered from the place of occurrence. It is also alleged that hot words were exchanged at the time of occurrence during the discussion on a financial matter between the parties. The High Court has also held that the prosecution had failed to prove any motive on the part of the accused-petitioner to kill the deceased.

12. Moreover, the most significant impeding factor involved in the instant matter is that as per the doctor's report, death was caused due to the collective wounds/injuries mentioned in his postmortem report. He opined that injuries No. 1, 2, 3, 4, 6, 12 and 13 were caused by sharp edged weapon whereas injury No. 5 was caused by a blunt weapon. He further opined that injuries No.7, 8, 9, 10 and 11 were caused by firearm and he finally concluded that death was caused due to these collective wounds/injuries. However, it is noted that the

police has declared Liaqat Ali and Ali Raza as innocent which aspect has also been endorsed by the Trial Court and subsequently affirmed by the High Court since appeals against their acquittal were dismissed by the High Court as withdrawn. The above aspect clearly leads to the conclusion that on the given set of facts/evidence — and when, as per the doctor, death was caused due to collective wounds — and benefit of doubt has been given by the Courts below to Liaqat Ali and Ali Raza (co-accused), who were allegedly carrying a gun and pistol respectively, then there is no reason why the said benefit of doubt could not be extended to the present petitioner.

13. We are of the view that under the given set of facts/evidence, the benefit of doubt ought to be given to the present petitioner as well. We are fortified by the view expressed in some of the decisions by this Court. Reference in this regard may be made to the case of Maqsood Alam and another versus The State and another (2024 SCMR 156) wherein this Court explained that:

“Although the complainant challenged the acquittal of said Fawad Alam before the learned High Court by filing a petition against acquittal but later on withdrew the same, which means that the findings of the learned Trial Court regarding the acquittal attained finality and the prosecution case, to the extent of murder of Muhammad Anwaar has been disbelieved. In these circumstances, more caution was needed to decide the case of the petitioner Maqsood Alam.”

This Court’s observations in the case of Pervaiz Khan and another versus The State (2022 SCMR 393) are also reproduced below:

“So there is nothing on record to distinguish the role of the present appellants from the role of those accused who have been acquitted by the trial Court and their acquittal has been maintained by the High Court and further their acquittal was never challenged before this Court. Due to the above circumstances, the conviction and sentence of appellants is not sustainable on the same set of evidence, which was found doubtful to the extent of three acquitted co-accused.”

Attention may also be drawn to the decision rendered in the case of Shaukat Hussain versus The State through PG Punjab and another (2024 SCMR 929), wherein it was observed that:

"We note that on the same set of evidence, the accused persons have been acquitted of the charges, whereas the appellant has been convicted and sentenced, benefit whereof should have also been extended to the appellant."

In a case recently decided by this Court titled Nasir-ud-Din v. The State [Jail Petition No.431 of 2017 dated 24.01.2025]², the following was stated and applies in the instant case:

"Under the circumstances, the moot point for determination before this Court is that if the same prosecution evidence which has been disbelieved qua one accused or another set of accused then the same evidence can be believed against the petitioner. It is by now well settled that if the same prosecution evidence is disbelieved regarding one accused or set of accused then the same prosecution evidence cannot be believed against the other accused or set of accused, without independent corroboration. As the same prosecution evidence of the instant case has already been disbelieved against Zaki-ud-Din and Mst. Imrana Bibi (co-accused), therefore, the said evidence cannot be believed against Nasir-ud-Din (petitioner), without independent corroboration, which is very much lacking in this case. Reference in this context may be made to the judgments reported as "Akhtar Ali and others Vs The State" (2008 SCMR 6), "Muhammad Pervaiz Vs. The State and other" (PLD 2019 Supreme Court 592), "Llagat Ali and others Vs. The State and others" (2021 SCMR 455) and "Shaukat Hussain Vs. The State through PG Punjab and another" (2024 SCMR 929)".

14. In our view, since the prosecution evidence has already been disbelieved against Liaqat Ali and Ali Raza (co-accused), therefore, it would not be prudent and justified to rely on that evidence in the case of the present petitioner i.e. it would be unsafe to rely upon that evidence alone for convicting the present petitioner Mushtaq Ahmed, without independent corroboration which, in our view, is lacking. We, therefore, under the given circumstances, convert this petition into an appeal and allow the same. The judgments of the Trial Court and the High Court dated 21.10.2014 and 18.10.2017 respectively are hereby set aside. The appellant if not required to be detained in any other matter may then be released forthwith.

15. These are the reasons of our short order dated 18.06.2025, which is reproduced hereinbelow:

"For reasons to be recorded later, this petition is converted into appeal and is allowed. The judgments of the Trial Court and the

² Authored by Malik Shahzad Ahmad Khan, J.

High Court dated 21.10.2014 and 18.10.2017 respectively are hereby set aside. The appellant is acquitted from the charge framed against him by extending the benefit of doubt. In case, the appellant is not required to be incarcerated in any other matter then he shall forthwith be released.”

ISLAMABAD
18.06.2025
arshed

Approved for Reporting