

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Athar Minallah

Mr. Justice Malik Shahzad Ahmad Khan

Mr. Justice Shakeel Ahmad

Jail Petition No. 441 of 2017.

(Against judgments dated 13.04.2017 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Cr.A No. 34 of 2013 and MR No. 07 of 2013)

Muhammad Masood @ Mithu

... Petitioner(s)

Versus

The State etc.

...Respondent(s)

For the Petitioner(s) : Ms. Aisha Tasneem, ASC.

For the State : Mirza Abid Majeed, DPG,
Punjab.

For the complainant : Nemo.

Date of Hearing : 10.03.2025.

JUDGMENT

Shakeel Ahmad, J.- Muhammad Masood @ Mithu (hereinafter referred to as the "***Petitioner***"), son of Muhammad Sodagar Khan (hereinafter referred to as the "***deceased***"), aged about 36 years, by caste Rajpoot stood tried before the learned Additional Sessions Judge, Chakwal, on charges under Section 302/109/34 Pakistan Penal Code ("***PPC***"), arising out of a private complaint submitted by Mst. Nazeer Begum (PW-3) (hereinafter referred to as the "***complainant***"). The allegation against the petitioner was that on 8th October 2011, at about 07:10 PM, at Kassi of Fauji Mushtaq, within the territorial limits of Police Station Saddar, Chakwal, he committed the murder of his own father, Sodagar Khan, aged about 55 years by causing firearm injuries and inflicting stab wounds. The learned trial Judge vide judgment dated 11.01.2013, found the petitioner

guilty of the offence and convicted and sentenced him as under:-

Under Section 302 (b) PPC to death and payment of compensation of Rs. 400,000/- to the legal heirs of the deceased in terms of Section 544-A Cr.PC, in default thereof to suffer further six months simple imprisonment.

The remaining accused, namely Muhammad Azam and Muhammad Asif were acquitted by extending them the benefit of the doubt through the same judgment. Not contented with his conviction and sentence aforesaid, the Petitioner preferred an appeal before the Lahore High Court, Rawalpindi Bench, Rawalpindi. The High Court while maintaining his conviction partly allowed the appeal to the extent of altering his sentence from death to imprisonment for life. Benefit of Section 382-B, Code of Criminal Procedure, 1898 ("**Cr.P.C.**"), was also extended to the Petitioner vide judgment dated 13.04.2017. Being aggrieved of the aforesaid judgment, the Petitioner has filed the instant Jail Petition.

2. The prosecution's case, in brief, was that the deceased had a dispute over the land with his sons including the Petitioner. Approximately, two months prior to the incident, the deceased had shifted to the house of the complainant i.e., the real sister of the deceased. On 8.10.2011, the deceased had gone to Kuriala, another village, to engage a counsel for his son, Muhammad Asif in relation to a matrimonial dispute of his said son. On the same day, at around 5.00 PM, the complainant and her son, Muhammad Rafique (PW-8) were attending a matrimonial ceremony in the meanwhile they heard the sound of gunfire. On reaching to the site of firing, they found the deceased lying in a pool of blood whereas the Petitioner was seen holding a pistol in one hand and a knife (*churi*) in the other, inflicting blows to the deceased, whereafter, the Petitioner fled away from the crime scene. The occurrence was formally reported by the

complainant (PW-3) at Police Station Saddar, Chakwal, at 07:10 p.m. on the same day. Subsequently, the complainant also submitted an application (Ex.PC) to the SHO of the concerned police station, alleging that the Petitioner, alongwith his brothers, Muhammad Azam, Muhammad Arif, Muhammad Asif, sisters, Parveen, Nasreen, Bushra, and mother, Mst. Arshad Begum, had confessed before the complainant and her son (PW-8) that they had hatched a conspiracy to commit murder of the deceased and, in pursuance thereof, the Petitioner has committed his murder. However, since no action was initiated by the police on the said application, the complainant instituted a private complaint (Ex.PD), wherein the aforementioned family members were arrayed as accused. Subsequently, the learned Trial Court, after evaluating the preliminary evidence, summoned the Petitioner alongwith his two brothers, Muhammad Azam and Muhammad Asif, to face trial. During the course of trial, the prosecution primarily relied upon the ocular testimony of the complainant (PW-3) and Muhammad Rafique (PW-8), the alleged motive arising out of the land dispute, medical evidence (Ex.PL), recovery of the crime weapon (*churi*), and its positive serologist report (Ex.PV). Upon conclusion of the trial, the learned Trial Court vide judgment dated 11.01.2013 convicted the Petitioner under Section 302(b) PPC and sentenced him to death, whereas the co-accused Muhammad Azam and Muhammad Asif were acquitted of the charge. Feeling aggrieved by his conviction and sentence, the Petitioner preferred a Criminal Appeal before the Lahore High Court, Rawalpindi Bench, Rawalpindi. Vide judgment dated 13.04.2017, the High Court while maintaining the conviction of the Petitioner under Section 302(b) PPC, altered his sentence from death to imprisonment for life extending him the benefit of Section 382-B Cr.PC. Hence, this petition.

3. We have heard learned counsel for the Petitioner at length and have also carefully examined the record of the

case. We have also given due consideration to the arguments of the learned counsel representing the State.

4. The ocular evidence, on which reliance has been placed by the prosecution in this case consists of the depositions of the complainant (PW-3) and Muhammad Rafique (PW-8). The complainant (PW-3), who is the informant in the case, is the real sister of the deceased and Paternal aunt of the Petitioner whereas Muhammad Rafique (PW-8) is her real son, and is the cousin of the Petitioner. It is by now settled that when witnesses claim to have seen the occurrence, the foremost consideration is whether they saw the occurrence/incident with their own eyes and whether they were in a position to identify the assailant(s). It is observed that PW-3 and PW-8 were residents of Tatral, Tehsil and District Chakwal, whereas the incident took place near Kassi of Fauji Mushtaq. The site of occurrence is surrounded by roads, one leading to Janga and the other leading to Satwal Village. Both eye-witnesses deposed that on the day of occurrence, they had gone to attend the wedding ceremony of the son of one Ahmad Khan, accompanied by Muhammad Iftikhar, cousin of PW-8. It was during the course of the marriage ceremony, at around 5:00 p.m., they allegedly heard gunshots coming from the direction of Satwal village. Upon hearing the gunfire, they claim to have rushed to the place of occurrence, where they allegedly witnessed the Petitioner assaulting the deceased with a *churi* while also holding a pistol in his other hand. On their hue and cry, the Petitioner fled away from the crime scene whilst hurling abuses. What is astonishing here is that PW-3 and PW-8 stated that there were about 100-150 guests present at the ceremony, however, only PW-3 and PW-8 along with Muhammad Iftikhar rushed to the place of occurrence, after hearing gunfire. None of the other guests, despite being present in such large numbers, are not shown to have accompanied them or witnessed the incident. During the cross-examination, PW-8 deposed that after approximately 20-30

minutes, other persons were attracted to the scene of the crime, but, none of them was cited as witness. Furthermore, PW-8, in his examination-in-chief stated that while abusing them, the Petitioner fled towards the south, but PW-3 despite allegedly being present at the same place and time, does not mention the fact that the accused left towards the south whilst abusing them.

5. We have also carefully examined the site plan (Ex.PT) and found that there is no *abadi* near the place of occurrence. Even the venue where the matrimonial ceremony of the son of Ahmad Khan was held has not been shown in the site plan. It was incumbent upon the prosecution to examine the said Ahmad Khan to establish that both the eyewitnesses were indeed present in the matrimonial ceremony of his son, and upon hearing the fireshot, they rushed towards the crime scene. However, no such effort was made and none of the guests at the ceremony were examined to corroborate the ocular account furnished by the said witnesses. Furthermore, at the crime scene, according to the statements of the eyewitnesses, they saw the petitioner armed with a pistol in one hand whilst giving *churi* blows to the deceased with the other hand. A perusal of the Postmortem report (Ex-PL) reveals that the deceased sustained both firearm as well as injuries caused by knife. It, however, does not appeal to reason or common sense that an accused, armed with a deadly weapon and having already fired upon the deceased, would resort to inflicting *churi* blows, particularly, when he had come there to commit murder of the deceased by means of firearms. If the intention was to kill, the same could have been achieved merely by use of the pistol without the need to inflict injuries by means of a *churi*. Therefore, the infliction of injuries using a *churi* in addition to firearm injuries, clearly shows that the number of assailants was more than one. However, the prosecution has kept concealed the real facts for the reason best known to them or the witnesses have not narrated the truth. Under

these circumstances, we are of the firm opinion that both the witnesses have failed to establish their presence in the matrimonial ceremony of the son of Ahmad Khan, and consequently, their claim of rushing to the place of occurrence upon hearing gunshots, and witnessing the incident with their own eyes, is not free from doubt. We, therefore, disbelieve their testimonies.

6. Now advertent to the recovery of blood-stained *churi* and pistol allegedly recovered from the petitioner, it may be observed that although these are at best corroborative pieces of evidence, they do not advance the prosecution's case. Insofar as the pistol and crime empties recovered from the place of occurrence are concerned, the Punjab Forensic Science Agency ("**PFSA**") returned it with a negative report. As regards the *churi*, the PFSA report was returned positive. At this juncture, it is pertinent to observe that this Court in several cases, notably in "*Salman Akram Raja v. Government of Punjab*" **(2013 SCMR 203)** and "*Ali Haider @ Pappu v. Jameel Hussain, etc*" **(PLD 2021 SC 362)** have highlighted that DNA-based evidence is considered as a gold standard to establish the identity of the accused. Due to its accuracy and conclusiveness, it has been held to be one of the strongest corroborative evidence because it assists the courts in identifying the perpetrator with a higher degree of confidence and reaching just conclusions. However, both the aforesaid cases have also underscored that the usefulness of DNA analysis is contingent upon several factors including the proper documentation, collection, packing, and preservation of such evidence, in the absence of which it shall not meet legal and scientific requirements for admissibility. In the instant case, although the PFSA report was returned positive in respect of the *churi*, it is an admitted fact that the said *churi* was recovered approximately ten months after the date of occurrence. The inordinate delay in recovery of the same, coupled with the lack of any evidence on record regarding the manner in

which it was preserved or stored, casts serious doubt on the reliability of the forensic result. In these circumstances, it is difficult to accept that human blood could have remained detectable on the weapon after such a prolonged period, with absence of proper preservation. Therefore, we are not inclined to place reliance upon such recovery. In this context reference may be made to the case reported as "*Basharat & another VS The State*" **(1995 SCMR 1735)**, wherein similar observations were made regarding delayed recoveries.

7. We also find from the record that besides lodging of FIR, the complainant had filed a private criminal complaint against the petitioner, his nephews Muhammad Azam and Muhammad Asif, alleging therein that Muhammad Azam and Muhammad Asif had made extra judicial confession before her and her son (PW-8), to the effect that they had hatched a conspiracy to commit murder of the deceased and in pursuance thereof, the petitioner committed murder of her brother, deviating from her earlier stance, however, after a full-dressed trial, the accused Muhammad Azam and Muhammad Asif were acquitted of the charges, which has caused another dent in the prosecution case, which cannot be repaired even by the efforts made by the learned Law Officer.

8. Coming to the absconsion of the petitioner, it is by now settled that mere absconsion, though relevant circumstance, cannot by itself form the sole basis of conviction. Though while absconsion may be treated as a corroborative piece of evidence, it cannot be read in isolation, nor can it compensate for the inherent defects and shortcomings in the prosecution's case. Reliance in this regard shall be placed on the case of "*Rohtas Khan v. The State*" **(2010 SCMR 566)** and "*Muhammad Khan v. State*" **(1999 SCMR 1220)**.

9. So far as the post-mortem report is concerned, we are clear in our mind that it merely confirms the cause of death, the nature of the injuries, and the kind of weapon used. It

does not, in any matter, establish the identity of the assailant.

10. The upshot of the above discussion, in our opinion, is that the prosecution has failed to establish the charge against the petitioner beyond reasonable doubt. Consequently, the impugned judgment, convicting and sentencing the petitioner is therefore not sustainable in the eyes of law. Accordingly, we convert this petition into an appeal, set aside the impugned judgment of conviction and sentence passed against the appellant/Petitioner. The appellant/Petitioner is acquitted of the charge and shall be released from jail forthwith if not required to be detained in any other case.

11. These are the detailed reasons for our short order of even date, reproduced below:-

"For the reasons to be recorded later, this petition is converted into an appeal and allowed. The judgment of the High Court dated 13.04.2017 is hereby set aside. The appellant is acquitted of the charge framed against him by extending the benefit of doubt in his favour. In case he is not required to be incarcerated in any other case, then he shall be released from the prison forthwith."

Judge

Judge

Judge

Islamabad
10.03.2025
APPROVED FOR REPORTING
Zia, Rameen, LC