

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

Jail Petition No.120/2017 and Cr. Petition No.305-L/2017

(Against the judgment dated 17.01.2017 of the Lahore High Court, Multan
Bench passed in Cr.A. No.652-J of 2016 and M.R. No.147 of 2013)

Muhammad Hassan

(in J.P. No.120/2017)

Muhammad Ibrahim

(in Cr.P. No.305-L/2017)

Petitioner(s)

Versus

The State

(in J.P. No.120/2017)

The State etc.

(in Cr.P. No.305-L/2017)

...Respondent(s)

For the Petitioner(s) : Mr. Maqbool Ahmed Bhatti, ASC
(in J.P. No.120/2017)
Nemo.
(in Cr.P. No.305-L/2017)

For the Complainant : Nemo.
(in J.P. No.120/2017)

For the State : Counsel Mirza Abdul Majeed,
Deputy Prosecutor General, Punjab

Date of hearing : 16.05.2024.

JUDGMENT

Syed Hassan Azhar Rizvi, J. Muhammad Hassan("the petitioner") along with co-accused namely Muhammad Mansha, Muhammad Abbas, Mushtaq alias Shaki, Muhammad Ahmad and Ghulam Rasool alias Mustafa faced trial before an Additional Sessions Judge, Chunian ("trial court") in a Private Complaint arising out of a case F.I.R No.154/2008 dated 18.04.2008 for the offences under sections 302/ 324/211/148/149 of the Pakistan Penal Code, 1860 ("P.P.C.") at Police Station Kanganpur Tehsil

Chunian, District Kasur. After a regular trial, the petitioner Muhammad Hassan was convicted under section 302(b), P.P.C. for causing *Qatl-e-amd* of Abdul Malik (deceased) and sentenced to death as *tazir*. He was also directed to pay an amount of Rs.2,00,000/- (two hundred thousand only) as compensation under section 544-A, Code of Criminal Procedure, 1898 ("**Cr.P.C.**") to the legal heirs of the deceased and in default whereof he had to undergo simple imprisonment of six months. While the accused Mushtaq alias Shaki was convicted under section 337 L(2), P.P.C. for causing hurt on the shin of Muhammad Akram (injured) and sentenced to undergo 02-year imprisonment. He was also directed to pay an amount of Rs.20,000/- (twenty thousand only) as Daman to the injured and in default whereof he had to undergo simple imprisonment of two months. Through the same judgment dated 28.03.2013, the accused Muhammad Mansha, Muhammad Abbas, Muhammad Ahmad and Ghulam Rasool alias Mustafa were acquitted by the trial court while extending the benefit of the doubt.

2. Feeling aggrieved by the conviction and sentence, the petitioner (Muhammad Hassan) filed the Criminal Appeal No.652-J of 2016 before the learned Lahore High Court ("**appellate court**") while the trial court transmitted the Murder Reference No.147 of 2013 for confirmation or otherwise of the sentence of death awarded to the petitioner. A Division Bench of the learned appellate court took up both these matters together and through the judgment dated 30.01.2017 ("**impugned judgment**"), dismissed his appeal and maintained the conviction of the petitioner; however, altered his sentence from death to imprisonment for life while extending the benefit of section 382-B of Cr.P.C. The compensation under section 544-A Cr.P.C. was also upheld. Resultantly, the Murder Reference was answered in negative. The other convict, Mushtaq alias Shaki, did not file an appeal and was released from jail after serving his complete sentence awarded by the trial court. Now, being dissatisfied with the impugned judgment:

- a) The complainant (Muhammad Ibrahim) has filed the Criminal Petition for Leave to Appeal No.305-L of 2017 seeking to set aside the impugned judgment and uphold the judgment of the trial court imposing the death sentence on the petitioner.

AND

- b) The petitioner (Muhammad Hassan) has filed the Jail Petition for Leave to Appeal No.120 of 2017 seeking acquittal against the impugned judgment, whereby his death sentence has been converted into life imprisonment.

This judgment will dispose of the above two petitions challenging the impugned judgment *supra*.

3. The version of the complainant, as per contents of F.I.R., is that on 17.04.2008 at about 04:00 P.M. he along with Muhammad Akram, Abdul Malik and Rehmat Ali was going to see his wheat crop. When they approached the wheat crop, the accused persons, namely, Muhammad Hassan, armed with .12-bore gun; Muhammad Ahmad, armed with a rifle; Muhammad Zaman, armed with .12-bore gun; Muhammad Abbas, armed with a rifle; Mushtaq alias Shaki, armed with a rifle; Muhammad Din, armed with a rifle; Mansha, armed with .12-bore gun; Ghulam Rasool alias Mustafa, armed with a rifle along with two unknown individuals who were already concealed in the bushes/Sarkanda and among the wheat crop, made firing indiscriminately. The shot fired by Muhammad Hassan struck Abdul Malik on the upper side of his left ear, causing him to fall. The shot fired by Muhammad Zaman landed on the right eye of Abdul Malik, who succumbed to the injuries at the scene. The other accused persons continued firing indiscriminately. Accused Mushtaq alias Shaki fired at Muhammad Akram, hitting his left shin. They protected themselves by seeking cover behind the nearby trees. It was further alleged by the complainant in the F.I.R. that the motive behind the incident stemmed from a past enmity that arose approximately five years ago. Additionally, two years prior to the present incident, the accused persons murdered his maternal uncle, Muhammad Sadiq, whose case was pending in court at that time. However, the local police unfortunately failed to conduct a proper investigation into his case. Consequently, they erroneously concluded that the main accused persons, namely, Muhammad Hassan, Muhammad Zaman, Ghulam Rasool alias Mustafa, Muhammad Abbas, and Muhammad Din, were innocent, despite they were assigned specific roles in the F.I.R. Hence, this Private Complaint.

4. The defence version, according to the statement of the petitioner Muhammad Hassan recorded under Section 342 Cr.P.C., is that the prosecution witnesses are fake and falsely testified under the influence of one Ahmad Hassan. The petitioner did not appear as his own witness under Section 340(2) Cr.P.C. nor did he produce any oral defence evidence. However, he presented documentary evidence (Exh.DA & DG) to support his version.

5. We have heard the arguments of learned counsel for the petitioner as well as learned Deputy Prosecutor General for the State assisted by learned counsel for the complainant and have also gone through the available record.

6. The incident in this case (as per the contents of the FIR and the Private Complaint) took place on 17.04.2008 at 4:00 p.m. However, the matter was reported to the police by the complainant, Muhammad Ibrahim (PW-1), through a written complaint (Ex.PA) on 18.04.2008. Consequently, the formal FIR (Ex.PA/1) was registered at 8:10 a.m., approximately more than sixteen hours after the incident, despite the police station being only 16 km away from the scene of the occurrence. Nowhere in the entire evidence, the prosecution has explained the reason for the delay in reporting the matter to the Police with such a delay. The delayed F.I.R. shows dishonesty on the part of the complainant and that it was lodged with deliberation and consultation. Reference in this regard may be made to the case of Amir Muhammad Khan versus the State (2023 SCMR 566) wherein a delay of only five hours and ten minutes in reporting the matter to and lodging the FIR by the police was considered indicative of dishonesty on the part of the complainant.

7. The prosecution case mainly hinges upon (i) the statement of Muhammad Ibrahim (PW-1), Rehmat Ali (PW-2) and Muhammad Akram (PW-3), who claim to be the eye-witnesses of the occurrence, (ii) medical evidence, (iii) motive, and (iv) recovery on the pointation of the petitioner.

We have carefully examined the statements of these PWs in order to reach a just decision in the case. It has been noted with great importance that the complainant (PW-1), during cross-examination, stated that his permanent residence is at Chak No.

27/E/B (Pakkay Ahat), P.S. Sadar Arifwala, Tehsil Arifwala, District Okara and that the distance between his residence and the place of occurrence (Moza Kari Sansari) is about 100 km. He (PW-1) also acknowledged that he has no relation with the deceased Abdul Malik. Rehmat Ali (PW-2) stated that he was a resident of village Harril and was an employee of Ahmad Hasan, son of Sadiq in the village Kari Sansari, where the alleged occurrence took place. During cross-examination, he disclosed that his village, Harril, fell within the territorial jurisdiction of Police Station Mandi Ahmadabad, Tehsil Depalpur, District Okara and that the distance between his village and the place of occurrence (Moza Kari Sansari) was about 25 kms. Similarly, Muhammad Akram (PW-3) stated that he was employed as a driver by Ahmed Hassan in the village Kari Sansari *supra*. In cross-examination, he stated that his village was situated about 8 to 10 kms away from the place of occurrence.

8. A combined effect of the aforementioned statements of the eye-witnesses is that their presence at the scene at the relevant time was not natural. Therefore, it was mandatory for the said witnesses to justify their presence at the place of occurrence at the relevant time with some cogent reasons. In order to justify their presence, Rehmat Ali (PW-2) and Muhammad Akram (PW-3) asserted that they were employees of Ahmad Hassan, a resident of the village Kari Sansari where the alleged occurrence took place, they did not produce any independent oral or documentary evidence to support this claim. Similarly, the complainant also did not justify his presence at the place of occurrence which is more than 100 kms away from his residence, especially when he admitted that he had no relation with the deceased, Abdul Malik.

In light of the aforementioned facts, we are of the considered view that the above-mentioned eyewitnesses could not justify their reasons for being at the place of occurrence at the relevant time. Therefore, they are chance witnesses, and their evidence is not free from doubt. This Court has already in the case of Mst. Sughra Begum and another versus Qaiser Pervez and others (2015 SCMR 1142) at para No.14, observed regarding the chance witnesses as under:--

"14... A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. **It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt..**"

Emphasis Supplied.

A similar view was reiterated by this Court in the case of Muhammad Irshad versus Allah Ditta and others (2017 SCMR 142).

The relevant part of the said judgment at Para No.2 reads as under:-

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"...Muhammad Irshad complainant (PW8) and Rab Nawaz (PW9) were chance witnesses **and the stated reason for their presence with the deceased at the relevant time had never been established before the trial court through any independent evidence...**"

Emphasis Supplied.

Likewise, in the case of Sufyan Nawaz and another versus the State and others (2020 SCMR 192) at Para No.5, this Court observed as under:--

".....He admitted that in his statement before police, he had not assigned any reason for coming to village on the day of occurrence. In these circumstances, complainant Muhammad Arshad (PW.7) is, by all means, a chance witness and his presence at the spot at the relevant time is not free from doubt.."

Emphasis Supplied.

9. As the above-mentioned prosecution's eye-witnesses are chance witnesses. They could not prove the reason for their presence at the spot at the time of occurrence nor prove their stance of being employees of Ahmad Hassan; therefore, their very presence at the

place of occurrence at the relevant time becomes doubtful. Moreover, all the eyewitnesses uniformly stated that all ten accused persons, who were armed with deadly weapons, kept making indiscriminate firing, but they escaped by seeking cover behind the nearby trees. This sequence of events does not appeal to reason. Furthermore, the allegation of indiscriminate firing was also negated by the recovery memo (Ex. CW), whereby only eleven empty cartridges were secured by the Investigating Officer from the place of the alleged occurrence. However, the learned appellate as well as the trial court overlooked this important aspect of the matter which throws considerable doubt on the prosecution case against the petitioner.

10. Regarding the medical evidence produced by the prosecution, the appellate court has observed in the impugned judgment that the same fully supported the ocular account. The ocular account is always considered as principle evidence. The litmus test to evaluate the veracity of the prosecution witnesses of ocular account depends on being independent, reliable, trustworthy and confidence-inspiring. While the value and status of medical evidence is always corroborative in its nature. Corroboration means support or confirmation and corroborative evidence is some evidence other than the one it confirms. Corroboration minimizes errors in judicial proceedings and is dictated by prudence. The object of corroboration is to ensure the conviction of the guilty and to prevent that of innocents. However, corroboratory evidence does not convert an unreliable witness, or evidence, into a reliable one. Reference may be made to the case of *Salamat Mansha Masih versus the State and another* (PLD 2022 SC 751).

It can reinforce the credibility of the direct evidence but cannot replace it. Where direct evidence is found to be unreliable or untrustworthy, as in this case, a conviction cannot be sustained solely on the basis of medical evidence. Reference in this regard may be made to the cases of *Hayatullah versus the State* (2018 SCMR 2092); *Aman Ullah and another versus the State and others* (2023 SCMR 723); and *Muhammad Hanif versus the State* (2023 SCMR 2016). As the eye-witnesses could not prove the reason for their presence at the spot at the time of occurrence; therefore, the

medical evidence is of little help to the prosecution in bringing home the guilt to the petitioners.

11. The motive behind the occurrence, according to the contents of the FIR and the Private Complaint, was that the present incident stemmed from an enmity that began approximately five years ago. The Complainant (PW-1) further alleged that two years before the present incident the accused persons murdered his maternal uncle, Muhammad Sadiq, whose case was pending in court at that time.

Regarding motive, the Deputy Prosecutor General, Punjab submitted before the learned appellate Court that the present petitioner was not an accused in the murder of Muhammad Sadiq, the maternal uncle of the complainant (PW-1). This fact was also confirmed by the complainant (PW-1) during his cross-examination before the trial Court. It would be highly relevant to mention here that the motive is a double-edged weapon, which can be used either way and by either side i.e. for real or false involvement. Reference in this regard may be made to the cases of Noor Elah v. Zafarul Haque (PLD 1976 SC 557); Allh Bakhsh Vs. The state (PLD 1978 SC 171); Khadim Hussain Vs. The State (2010 SCMR 1090); Tahir Khan Vs. the State (2011 SCMR 646); Tariq versus the State (2017 SCMR 1672); and Muhammad Ashraf alias Acchu versus the state (2019 SCMR 652). So, the motive asserted by the prosecution indicates that there was an enmity of murder between the parties and the said motive, being double edge, could be the reason for the false implication of the petitioner. Admittedly, the complainant (PW-1) has no relation with the deceased, Abdul Malik, yet he is vigilantly pursuing the case by filing a private complaint even after the accused was found innocent by the local police. Ordinarily, an individual with no direct relation to the victim might report a crime if witnessed, but would not usually remain actively involved beyond that initial action. The fact that the complainant (PW-1) is so invested in this case, despite having no apparent reason to be, raises questions about the motives behind his actions and, by extension, casts doubt over the prosecution's case.

Given the above circumstance, the evidence of motive was rightly not believed by the learned appellate court for valid reasons which are not open to any exception upon our independent reappraisal of evidence.

12. So far as the recovery of a single barrel gun (P-13) on the pointation of the petitioner on 20.01.2010 is concerned, the learned appellate Court has rightly disbelieved the same in the absence of any positive report of the firearm expert. Even otherwise, it is highly unsafe to rely on the evidence of recovery, which even otherwise is a corroborative piece of evidence and relevant only when the primary evidence i.e. ocular account inspires confidence as observed by this Court in Nasir Javaid and another versus the State (2016 SCMR 1144); Muhammad Nawaz and others versus the State and others (2016 SCMR 267); and Hayatullah versus the State(2018 SCMR 2092).

13. Despite having concluded in such a manner, the learned appellate court still went on to maintain the conviction of the petitioner Muhammad Hassan under section 302(b) P.P.C. while converting his sentence of death into imprisonment for life. We are of the considered view that this approach of the learned appellate court is a complete departure from the principles settled for the administration of justice in criminal cases. According to these principles, once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. Reference in this regard may be made to the cases of Daniel Boyd (Muslim Name Saifullah) and another versus the State (1992 SCMR 196); Gul Dast Khan versus the State (2009 SCMR 431); Muhammad Ashraf alias Acchu versus the State (2019 SCMR 652); Abdul Jabbar and another versus the State (2019 SCMR 129); Mst. Asia Bibi versus the State and others(PLD 2019 SC 64); and Muhammad Imran versus the State (2020 SCMR 857).

Given the above, facts and circumstances, we are of the considered view that the prosecution case against the petitioner Muhammad Hassan is doubtful; therefore, he is acquitted of the

charge. He is in jail and is ordered to be released forthwith, if not required to be detained in any other case.

14. Froeing in view, the Jail Petition for Leave to Appeal No.120 of 2017 is converted into an appeal and is allowed. The impugned judgment dated 17.01.2017 passed by the Lahore High Court and that of the trial court dated 28.03.2013 are set aside. Consequently, the Criminal Petition for Leave to Appeal No.305-L of 2017 filed by the complainant is also dismissed, accordingly.

15. Above are the reasons for our short order pronounced on even date which is reproduced hereunder for ease of reference:

"For the reasons to be recorded separately, J.P.120/2017 is converted into an appeal and is allowed. The judgments dated 17.01.2017 passed by the Lahore High Court and that of the Trial Court dated 28.03.2013 are set aside. Accordingly, Muhammad Hassan, petitioner is acquitted of the charge and he be set at liberty if not required to be detained in any other case. So far as Crl.P.305-L/2017 is concerned, the same is dismissed."

JUDGE

JUDGE

JUDGE

Islamabad, the

16th May, 2016

Approved for reporting

Ghulam Raza/*