

Present:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

Criminal Appeal No.77 of 2023

Against the judgment dated 27.03.2019
of the Lahore High Court, Multan Bench
passed in CrI.A. 180-J/2019 and MR
05/2015

Muhammad Aslam

...Appellant(s)

VERSUS

The State

...Respondent(s)

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

For the State: Mr. Sajjad H. Bhatti, DPG

Complainant: Ms. Rabia Afzal d/o M. Afzal

Date of Hearing: 08.04.2025

JUDGMENT

Irfan Saadat Khan, J.- The instant appeal calls into question the concurrent judgments of the Trial Court and the High Court, dated 06.01.2015 and 27.03.2019 respectively, whereby the accused-appellant was found guilty of the offence of murder under section 302(b) of the Pakistan Penal Code, 1860 ('PPC') and was sentenced to death on two counts, in addition to holding him liable to pay Rs. 4,00,000/- to the victims' legal heirs as compensation under section 544-A of the Code of Criminal Procedure, 1898 ('Cr.P.C.') again on two counts, and in default whereof the appellant would further undergo S.I. for six months. This Court has granted leave in the instant matter, through its order dated 26.01.2023, which is reproduced below for the ease of reference:

21 January 2013. Through the impugned judgment the sentence of death awarded to the petitioner was confirmed and the Murder Reference was answered in affirmative. In view of the fact that a sentence of death has been confirmed, we consider it appropriate to grant leave to appeal in the matter for reappraisal of the entire evidence in the interest of safe administration of criminal justice."

2. The facts, briefly stated, as per Muhammad Afzal's account (**'Complainant'**) recorded in crime report No. 840 dated 25.12.2012¹ are that the appellant, Muhammad Aslam (**'Accused'**), who is the nephew of the Complainant's wife, had been residing in the Complainant's house since three days prior to the date of the occurrence. On the intervening night between 24.12.2012 and 25.12.2012, the Accused was sleeping in a separate room alongside the Complainant's two sons namely Ali Afzal and Sajjad Afzal (**'Deceased'**)², whereas the Complainant and Muhammad Aslam S/O Ghulam Fareed & Muhammad Manwar S/O Nadar (**'PW-2'**) were sleeping in another room in the same house. On the morning of 25.12.2012, upon hearing noises, the Complainant along with the PWs rushed to the other room and witnessed the Accused launched an assault upon the heads of the Deceased, whilst armed with a wooden cricket bat, crushing/flattening their skulls. The Accused also assaulted the Deceased with iron scissors, causing injuries on Sajjad Afzal's left "بھروٹہ" / eyebrow, and Ali Afzal's forehead and the right hand. The Complainant and PWs attempted to apprehend the Accused but he was able to escape with the weapons, with which he had murdered the Deceased, whilst threatening to also murder the Complainant and PWs. Afterwards, the Complainant and PWs attended to the Deceased-children, who both succumbed to their injuries on the spot. The Accused's motive, according to the Complainant, was that the Complainant had married the real aunt of the Accused, Mst. Khadija³, after

¹ Registered at Police Station Ghallah Mandi, District Sahiwal.

² Aged 18 years and 15 years respectively.

³ The Complainant's current wife *alias* Malka.

Accused murdered the Complainant's children in order to exact revenge against the Complainant. The offence highlighted in the crime report was under section 302 of the Pakistan Penal Code.

3. The Accused was subsequently arrested by the police on 28.12.2012, relying on a spy information, and a bag containing, amongst other things, a blood-stained belt and blood-stained scissors were also recovered from him and then taken into possession *vide*: recovery memos **Ex.P.E.** and **Ex.P.F. (P-6)**. During the police investigation and upon the Accused's pointation, the wooden cricket bat, allegedly used in committing the offence, was also recovered from inside some bushes, where the Accused had hidden it *vide*: **Ex.P.G. (P-7)**.

4. After the registration of the case and the completion of the resulting investigation, the police submitted a report under section 173 Cr.P.C. before the Trial Court and charges were accordingly framed against the Accused on 18.02.2013. The Accused pleaded not guilty and claimed trial. After observing legal formalities, recording and advertent to the evidences, the Trial Court convicted and sentenced the Accused in the terms *supra*. The Accused then preferred an appeal before the High Court, which dismissed the same by upholding the Trial Court's findings, thereby answering the corresponding capital sentence reference in the "Affirmative". The Accused has thus challenged the decisions of the Trial Court and the High Court through the instant appeal.

5. Ms. Aisha Tasneem, ASC, has appeared on behalf of the appellant and has stated that the learned two courts below have not properly taken into consideration the facts and circumstances of the instant case and that the Accused-appellant's account of events had been completely ignored. Particularly, she highlighted the Accused's defence plea raised during the examination under section 342 Cr.P.C. in reply to the following question:

The Accused's reply⁴ is reproduced as under:

"it is false case against me. The PWs have made false statement due to their close relationship with the deceased persons as well as with the complainant. The complainant shrouding in mystery the real fact of the case, hatch concocted story and booked me in this case as accused. Sajjad Afzal and Ali Afzal deceased were done to death by unknown culprit at night time. No any PW was present at the spot at the relevant time of occurrence. At the braking [sic] day, the complainant inquired his wife regarding his sons Sajjad Afzal and Ali Afzal deceased, the wife of the complainant went in the room of the deceased, where she found them dead. Complainant informed his relatives, called the PWs and Police. After his information, police and the PWs attracted to the place of occurrence. When real culprit of the murder of Sajjad Afzal and Ali Afzal by the complainant, he with consultation of the PWs and his wife registered a false case against me due to the grudge and venom, after deliberation as I had supported in the criminal case which was registered against Mst. Malka⁵ by the father of Mst. Malka at P.S Ghallah Mandi, Sahiwal. One plot owned by the father of complainant's wife situated in Mohallah Noor Park, said plot was sold out to any other person by the complainant fraudulently on which a quarrel was taken place between the father of wife of the complainant with the complainant. I many times demanded the above consideration of amount of the above said plot on the asking of Peer Bukhsh father of the complainant's wife and due to that grudge the complainant and his wife roped me in this false case." [sic]

She argued that the Complainant and PWs have acted in collusion with the local police to falsely implicate the Accused in an unwitnessed crime. That the Accused had, in fact, no motive to commit the crime, whereas the Complainant had plenty of reasons to implicate the Accused. The learned counsel further stated that the prosecution has not proven its case through independent and impartial witnesses, rather, the testimonies have come from either relatives of the accused as all of whom have an animus towards the Accused or from police

⁴ See Pg. 54 of the paperback.

⁵ The Complainant's wife, Mst. Khadija, referred to by her *alias*.

absurd but also does not withstand evidentiary scrutiny. Ms. Tasneem also invited our attention to the fact that the murder weapon(s) was/were not actually recovered and that the cricket bat recovered by the police was never linked to the Accused through finger-print matches. Lastly, and most importantly, the learned counsel argued that the testimonies of the PWs are rife with contradictions and improvements and that the decisions arrived at by the learned two *fora* below cannot be maintained. Therefore, she prayed that the instant appeal may be accepted and the Accused be acquitted of all charges levelled against him.

6. Mr. Sajjad H. Bhatti, Deputy Prosecutor General ('DPG') for the province of Punjab, appeared on behalf of the State and has supported the decisions of the learned Trial Court and High Court convicting the Accused under section 302(b) PPC and sentencing him to death in addition to causing him to pay compensation to the legal heirs of the victims. He stated that the prosecution has, in his view, proven its case beyond reasonable doubt; that the ocular testimony is supported by the medical evidence; that the witness' testimony and recoveries have all been proven independently, and that the swabs from the murder weapons sent for testing have both returned positive with regard to the presence of the human blood. He, therefore, prayed that the instant appeal may be rejected, and the conviction and sentence of the Accused may be upheld.

7. The Complainant in the case has passed away, however, his real daughter i.e. the sister of the Deceased, was present before the Court in person and has adopted the arguments canvassed by the learned DPG.

8. We have heard the learned counsel for the Accused, the learned DPG and the Complainant's daughter appearing in person. We have also perused the record with their able assistance.

prominently that the prosecution witnesses have deposed in contradiction to one another and have made marked improvements in their subsequent testimony over the course of the trial. In this regard, it is apparent from the record that in his initial statement, pursuant to which the crime report No. 840/2014 was registered, the Complainant mentions "iron scissors" as one of the crime weapons, stating that:

قینچی آبنی علی افضل اور سجاد افضل پر وار کینے جو سجاد افضل کو ہائیں
”بھروٹہ علی افضل کو ماتھے پر اور دائیں ہاتھ پر وار کینے“

The Complainant, Muhammad Afzal (PW-1), also states in his deposition⁶ that:

“we witnessed that the accused Muhammad Aslam launched assault by a wooden cricket bat hold [sic] in his hands up to the heads of both the children, whereby depressed their skulls [sic].”

He does not, however, indicate here that any scissors were used in committing the murders. A similar statement was recorded by Muhammad Manwar (PW-2) who described the Accused assaulting the deceased in his deposition with the bat only, without mentioning anything about the scissors.

Interestingly, the Complainant stated during his cross-examination⁷ that:

“I have never recorded any statement before the police regarding the injuries caused by scissors”

[emphasis supplied]

This variance in the Complainant's statements becomes even more perplexing when considered in light of the post-mortem examinations of both the Deceased, which reveal, firstly, that no injuries as described by the Complainant are

⁶ See Pg. 31 of the paperback.

⁷ See Pg. 34 of the paperback.

the nature and description of the Deceased's injuries are as follows:⁸

*"Both injuries were caused by **blunt** weapon"*

The nature and description of the injuries is not then likely to have been caused by a scissor, but it still finds mention as a murder weapon in the Complainant's initial statement only for him to disclaim his own words during cross-examination. It thus appears that the Complainant may have made improvements or at the very least alterations to his account of events. If the Court does, however, take the Complainant at his word, this would undermine the investigating officer's claim of having recovered blood-stained scissors from the Accused's bag on the date of his arrest, swabs whereof were sent for testing and returned positive for the presence of human blood.

10. Muhammad Manwar (PW-2) has also deposed about the recovery and taking into possession of bloodstained mattresses (*Gaddah*) and blood-stained pillows from the spot, however no such recovery or taking into possession of these articles finds mention in the Complainant, Muhammad Afzal (PW-1)'s deposition.

11. It is also strange to note that as per the deposition of the investigating officer, Zain ul Abadeen, SI (PW-10), when the accused was apprehended on 28.12.2012 relying on spy information, he was carrying a rexine bag on his shoulder containing blood-stained *kameez-shalwar*, belt, *azarband* and scissors, which were then taken into possession and thereafter on the pointation of the accused the alleged crime weapon, a blood-stained bat, was recovered from some bushes. Interestingly, no person from the public was present either at the time of the arrest of the accused or at the time of recovery of the bat. The

⁸ Vide: **Ex-PP** at Pg. 96 of the paperbook and also the Doctor's (**PW-8**) testimony at Pg.

recovery of the bag containing blood-stained articles was also not mentioned in the police diary. It is also noteworthy that the said police official and investigating officer, namely Zain ul Abadeen, SI (PW-10), has been dismissed from service and had previously been suspended from service three times for not conducting transparent and fair investigations in some earlier cases.

12. On the basis of these facts, which could not be controverted by the Deputy Prosecutor General, Punjab appearing on behalf of the prosecution, we see that this case is shrouded with mysteries and doubts. It is a settled proposition of law that in matters where the prosecution case contains doubts and mysteries, then in such situation the benefit of the same has to be given to the accused, who is considered to be the favorite child of the law. Reference in this regard may be placed upon the judgments rendered by this Court in the cases of **Muhammad Hassan versus State** (2024 SCMR 1427); **Abdul Samad versus The State** (2025 SCP 31); **Tariq Parvez versus The State** (1995 SCMR 1345); **Muhammad Akram versus the State** (2009 SCMR 230); **Muhammad Imran versus The State** (2020 SCMR 857).

13. Adverting now to the factum of the alleged recovery of the weapon of offence i.e. the blood-stained bat. Notwithstanding the doubtfulness of the recovery itself, the recovery of a weapon of offence is *“only a corroborative piece of evidence; and in absence of substantive evidence, it is not considered sufficient to hold the accused person guilty of the offence charged. When substantive evidence fails to connect the accused person with the commission of offence or is disbelieved, corroborative evidence is of no help to the prosecution as the corroborative evidence cannot by itself prove the prosecution case”*.⁹ In the instant case, given the doubtfulness of the direct substantive ocular evidence, the

⁹ Naveed Asghar and others v. The State (PLD 2021 SC 600).

14. In view of what has been discussed above — including the doubtfulness of the prosecution witnesses' testimony; the inconsistencies between the description of the deceased's injuries in the crime report and the post-mortem report; the doubtful recovery of the crime weapon; and the absence of DNA analysis — the instant appeal is allowed, and the judgments of the High Court and the Trial Court are hereby set aside by extending the benefit of doubt to the appellant. He, therefore, stands acquitted of the charges levelled against him and if he is not incarcerated in any other matter, he shall be released forthwith.

These are the reasons of our short order dated 24.02.2025 which is reproduced below.

For reasons to be recorded later, this appeal is allowed and, consequently, the judgments of the Trial Court and the High Court are hereby set aside. The appellant is acquitted from the charges framed against him by extending the benefit of doubt. In case, if he is not required to be incarcerated in any other matter, then he shall be released forthwith.

ISLAMABAD
08.04.2025
Arshed/Mustafa Kundi. L.C

"Approved for Reporting"