

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

Criminal Petitions No.1288-L and 1354-L of 2017

[Against the judgment dated 11.09.2017, passed by the Lahore High Court, Lahore in Murder Reference No.198 of 2014 and Criminal Appeal No.967 of 2014]

Muhammad Imtiaz Baig and another. (in Crl.P.No.1288-L)
Muhammad Akram Butt. (in Crl.P.No.1354-L)

...Petitioner(s)

Versus

The State through Prosecutor General, (in Crl.P.No.1288-L)
Punjab, Lahore and another.
Muhammad Imtiaz Baig and others. (in Crl.P.No.1354-L)

...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Aurangzeb Khan, ASC
(in Crl.P.No.1288-L)

For the Petitioner(s) : Mr. Majid Hussain, ASC
(in Crl.P.No.1354-L) (via video link from Lahore)

For the State : Mirza Abid Majeed, DPG, Punjab

For the Respondent(s) : Mr. Majid Hussain, ASC
(in Crl.P.No.1288-L) (via video link from Lahore)

Date of Hearing : 29.03.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J. Muhammad Imtiaz Baig and Muhammad Fayyaz Baig ("**the petitioners**") along with their co-accused namely Asghar alias Babbi, Ghulam Hussain alias Hussaini and Muhammad Ashraf faced trial before an Additional Sessions Judge, Lahore ("**trial court**") in case F.I.R No. 878/2012 dated 28.05.2012 for the offences under sections 302/34/109 of the Pakistan Penal Code, 1860 ("**P.P.C.**") registered at the Police

Station Bhagbanpura, Lahore. During the trial, the accused Asghar Ali alias Babbi died and, as such, proceedings to his extent were abated vide order dated 23.02.2013 of the trial court. While, the accused Ghulam Hussain alias Hussaini was acquitted by the trial court under section 265-K of the Criminal Procedure Code, 1898 ("**Cr.P.C.**") vide order dated 01.04.2013 on the basis of an affidavit submitted by the complainant qua his innocence. After a regular trial, the petitioner Muhammad Imtiaz Baig was convicted under section 302(b), P.P.C. for causing *Qatl-e-amd* of Faisal Butt (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 Cr.P.C. to the legal heirs of the deceased and in default whereof he had to undergo simple imprisonment of six months. The petitioner Muhammad Fayyaz Baig was also convicted under section 302(b), P.P.C. for causing *Qatl-e-amd* of Attique alias Chand Butt (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 Cr.P.C. to the legal heirs of the deceased and in default whereof he had to undergo simple imprisonment of six months. Through the same judgment, accused Muhammad Ashraf Baig was acquitted of the charge while extending the benefit of the doubt.

2. Feeling aggrieved by their convictions and sentences, the petitioners (Muhammad Imtiaz Baig and Muhammad Fayyaz Baig) jointly filed the Criminal Appeal No.967 of 2014 before the learned Lahore High Court ("**appellate court**") while the trial court transmitted the Murder Reference No.198 of 2014 for confirmation or otherwise of the sentence of death awarded to the petitioners. A Division Bench of the learned appellate court took up both these matters together and through the judgment dated 11.09.2017 ("**impugned judgment**"), dismissed their appeal and maintained the conviction of the petitioners; however, altered their sentence from death to imprisonment for life while extending the benefit of section 382-B Cr.P.C. The compensation under section 544-A Cr.P.C. was also upheld. Resultantly, the Murder Reference was

answered in negative. Feeling dissatisfied with the impugned judgment:

- a) The complainant (Muhammad Akram Butt) has filed the Criminal Petition for Leave to Appeal No. 1354-L of 2017 seeking to set aside the impugned judgment and uphold the judgment of the trial court imposing the death sentence on both the petitioners.

AND

- b) The petitioners have filed the Criminal Petition for Leave to Appeal No. 1288-L of 2017 seeking their acquittal against the impugned judgment, whereby their death sentences have been converted into life imprisonment.

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

3. The facts necessary for adjudication of this matter, briefly, are that the complainant lodged FIR against Muhammad Imtiaz Baig, Muhammad Fayyaz Baig, Asghar alias Babbi, Ghulam Hussain alias Hussaini and Muhammad Ashraf for committing the murder of his son, Faisal Butt and his nephew, Attique alias Chand Butt. The version of the complainant, as per contents of F.I.R., is that his daughter, Mst. Saima Bibi had been married to Muhammad Imtiaz almost 6/7 years ago. After a few months of marriage, they began quarrelling. Consequently, Mst. Saima Bibi left the house of Muhammad Imtiaz and started living with her sister, Asma, at his house in *Ichra*. On 28.05.2012 around 8/9 am, she came to see me at my house in Bhagbanpura and Muhammad Imtiaz, on becoming aware of her arrival, also came to my house around 6:30 pm, where he misbehaved and abused her. Later that day, around 7:15 pm, my wife and daughter informed me about the incident. Subsequently, I, along with my son Faisal Butt, my nephew Attique Butt alias Chand Bhutt, and my cousin Khadim Hussain, proceeded to the house of my cousin Rasheed Bhutt to discuss the said issue. As we reached near his house, his son Aqeel was already standing outside. Meanwhile, Muhammad Imtiaz Baig, Muhammad Fayyaz Baig, and their friends Asghar alias Babbi and Ghulam Hussain alias Hussaini, armed with deadly weapons, came out of the house of Babbi. Ghulam Hussain raised a *lalkara* that no one should escape today, while

Muhammad Imtiaz fired from his pistol, which hit Faisal Butt at his head. Muhammad Fayyaz then snatched the pistol from his brother Muhammad Imtiaz and fired at Attique alias Chand Bhut, which hit him at his left shoulder. Both victims died on the way to the hospital. The complainant alleged that the reason behind the occurrence was that the deceased Faisal Butt and Attique Butt used to stop Imtiaz Baig from torturing his wife, Mst Saima and, due to this grudge, the accused persons committed their murder; hence this F.I.R.

4. The defence version, as per the statement of the petitioner Muhammad Imtiaz recorded under section 342 Cr.P.C is that his wife Mst. Saima is of bad character having illicit relations with others. She used to remain absent from the house for many days oftenly. Whenever Muhammad Imtiaz made a complaint to her family, they used to torture him, even when he discussed divorcing her. On the day of the incident, Muhammad Imtiaz left his house at about 9:00 p.m. and returned about an hour later, . he found Chand (deceased) and his wife, Mst. Saima, in an objectionable position, which provoked him suddenly. An exchange of hot words occurred between him and Chand (deceased). He took the pistol from the drawer of his bed and fired at Chand, who died on the spot. Due to the noise of the gunfire, his brother-in-law Faisal Butt came down from the roof of his house. He complained to Faisal Butt that he had previously warned that Chand should not come to his house, but he did not heed the warning. In response, Faisal attacked him with a Chhurri, and in order to save his life, he also fired at Faisal, who died. It was as if he felt that if he did not kill Faisal, Faisal would kill him. Due to such apprehension, he fired at Faisal. During this incident, his wife, Mst. Saima successfully fled from his house. At the time of the incident, he, his wife Mst. Saima, Chand, and Faisal Butt were present, and no one else was at the spot. He committed the murders of both deceased due to sudden provocation and he acted in self-defence as he found the actions of both the deceased and his wife unacceptable. He committed these murders alone, and no one else joined him as an accomplice in this incident. He made such a statement before the police on 26.07.2012 as well as to the

learned Magistrate. The police did not investigate his version correctly, and no effort to prove my version has been made by the investigating officer in this regard. Instead, the investigation concerning him is prejudiced and conducted in connivance with the complainant party. The petitioner Muhammad Fayyaz Baig took the version, as per his statement recorded under section 342 Cr.P.C, that he was involved in this case due to ulterior motives and being the real brother of the co-accused/petitioner Muhammad Imtiaz. He was not present at the spot and has no concern with the occurrence.

5. We have heard arguments of learned counsel for the petitioners 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 occurrence, in this case, took place on 28.05.2012 at 07.15 p.m. whereas it was reported to the Police on the same day at 08:45 p.m. i.e. just one and half hours of its happening on the basis whereof formal FIR was chalked out on the written application (Ex.PA) of the complainant. The prosecution, to bring home the guilt of the petitioners, produced the complainant as PW-11, Aqeel Butt as PW-12, and Khadim Hussain as PW-13 as eye-witnesses along with other formal witnesses. The learned appellate court, after a thorough examination of their evidence, observed that they corroborated one another on all material aspects of the case and found their evidence straightforward, trustworthy, and confidence-inspiring. And, finally concluded that they had established their presence at the spot at the time of occurrence. On our independent scrutiny of the available evidence, we agreed with the conclusion drawn by the learned appellate court with regard to the petitioner Muhammad Imtiaz; however, the story of the prosecution to the extent of the petitioner Muhammad Fayyaz does appear to be plausible and thus fails to appeal to reason due to its unusual and unnatural nature. No doubt, almost all the eye-witnesses consistently stated in their examination-in-chief that, *"....In the meantime, Imtiaz accused who was armed with pistol made a fire shot hitting my son Faisal on his head. Thereafter, my nephew Chand Butt stepped forward, accused Fayyaz snatched*

pistol from accused Imtiaz and made a fire shot with pistol hitting Chand Butt on near his left shoulder." Underlining is for emphasis.

The eye-witnesses, during cross-examination, further stated that the occurrence took place in the street. When the fire shots were made, the people from the locality also gathered at the spot. However, surprisingly no one from the locality joined the investigation and recorded the statement before the Police or the court. Consequently, the sequence of events as described and alleged by the eye-witnesses appears to be implausible and improbable. Admittedly, all the eye-witnesses are related *inter se* and no independent witness from the locality came forward to substantiate their version even though the incident, as per the version of the prosecution, took place in the street.

7. It is a matter of record that the actual dispute, as per the prosecution version, was between the petitioner, Muhammad Imtiaz, and his wife, Mst. Saima Bibi. The complainant was his father-in-law and the deceased, Faisal Butt, was his brother-in-law, while the deceased, Attique Butt, was a cousin of his wife. If, for the sake of argument, it is admitted that the petitioner Muhammad Fayyaz had any intention to murder Attique alias Chand Butt, he could have asked the petitioner Muhammad Imtiaz to do so since Imtiaz was in possession of the pistol. Alternatively, if Attique posed a threat of retaliation after Muhammad Imtiaz shot Faisal Butt, one would expect Muhammad Imtiaz to defend himself rather than handing over the weapon to his brother, Muhammad Fayyaz, so that he may shoot Attique alias Chand Butt.

Even otherwise, the complainant and other witnesses did not allege any motive, previous enmity or grudge to the petitioner Muhammad Fayyaz for the murder of the deceased Attique alias Chand Butt. In our understanding, they probably included him in the story because he is the brother of the main accused, petitioner Muhammad Imtiaz. It is so because it is a well-settled practice of our society to throw a wide net of implications to rope in all those who could possibly pursue the case or do something to save the skin of the one who is innocent or who is actually responsible for the commission of the crime. Therefore, the Court is required to exercise much greater care and circumspection when appraising

evidence in such like cases. The testimony of witnesses who are not only closely related to the deceased but also have a strong motive to falsely implicate the accused has to be appreciated carefully. Reference in this regard may be made to the cases of Muhammad Zaman versus the State and others (2014 SCMR 749) and Abdul Ghafoor versus the State (2022 SCMR 1527).

8. This is a heinous case of double murders and a son had allegedly been murdered in the presence of his real father, who promptly lodged an F.I.R. of the occurrence while specifically nominating five accused persons for their active role and participation in the occurrence. However, during the trial, the complainant and the eye-witnesses, namely Aqeel Butt (PW-12) and Khadim Hussain (PW-13), submitted their affidavits. Additionally, the complainant also recorded his statement before the trial court regarding the innocence of a nominated accused, Ghulam Hussain alias Hussaini.

Based on their affidavits and statement, the said accused was acquitted by the trial court under section 265-K Cr.P.C. vide its order dated 01.04.2023. The above conduct of the complainant and the eye-witnesses raises serious questions regarding the veracity of the prosecution case. It is further surprising to us how a father could nominate an innocent person as an accused in a heinous case involving the murder of his own son and nephew, especially when he claims to be an eye-witness.

In view of the afore-noted facts and circumstances, it can safely be concluded that the possibility of throwing a wider net by the complainant in this case cannot be ruled out.

9. Moreover, the record shows that during the investigation nothing has been recovered from the petitioner Muhammad Fayyaz. The weapon of offence/pistol (P-9) was allegedly recovered on the pointation of the petitioner Muhammad Imtiaz on 26.07.2012 while he was on physical remand. The report (Exh.P.FF) of the Punjab Forensic Science Laboratory ("PFSL") disclosed that parcel "1" of crime empties, which were taken into custody by the Investigating officer from the place of occurrence on 28.05.2012 vide the recovery memo (Ex-PF), was received in the office of PFSL on 31.07.2012 for comparison after the recovery of

alleged weapon of offence i.e. pistol (P-9). Such delayed submission of crime empties, especially after the recovery of the weapon of offense, is not warranted under the law. Therefore, the learned appellate court correctly observed that in such cases, the possibility of manufacturing the crime empties before their dispatch to the PFSL cannot be ruled out and, as such, rightly disbelieved this piece of evidence.

10. The motive behind the occurrence according to the contents of the FIR was that the daughter of the complainant namely Mst. Saima Bibi had been married to the petitioner Muhammad Imtiaz almost 6/7 years ago. After a few months of marriage, they began quarrelling. Consequently, Mst. Saima Bibi left his house and started living with her sister, Asma, at his house in *Ichra*. On the day of occurrence on 28.05.2012, around 8/9 am, she came to see the complainant at his residence in Bhagbanpura and the petitioner Muhammad Imtiaz, on becoming aware of her arrival, also came to the house of the complainant around 6:30 pm, where he misbehaved and abused Mst. Saima Bibi. Later that day, around 7:15 pm, the wife and daughter of the complainant informed him about the said untoward incident. Almost similar facts regarding motive were narrated by the complainant in his examination-in-chief while appearing as the PW-11. The learned appellate court has correctly noted that Mst. Saima Bibi wife of the petitioner Muhammad Imtiaz as well as her sister Asma Bibi (the real daughters of the complainant) did not appear before the trial court to support the motive story of the prosecution. Even, the wife of the complainant also did not appear before the court to support the prosecution version.

We believe that the prosecution has withheld the best evidence, which undermines the credibility of its account as it has now been well settled that whenever a party withheld the best evidence available, it is presumed in view of Article 129(g) of the Qanun-e-Shahadat Order, 1984 that if such evidence had been produced, it would not have supported the stance of that party.

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.

11. Despite having concluded in such a manner, the learned appellate court still went on to maintain the conviction of the petitioner Muhammad Fayyaz 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 whereof 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).

12. Now we advert to the defence plea taken by the petitioner Muhammad Imtiaz while replying to questions under section 342 Cr.P.C. as well as appearing as his own witness under section 340(2) Cr.P.C. We have noted that he categorically negated the prosecution story and set up an independent defence to the effect that his wife, Mst. Saima, was of bad character having illicit relations with others. She used to remain absent from the house for many days oftenly. Whenever he made a complaint to her family, they used to torture him, even when he discussed divorcing her. On the day of the incident, he left his house at about 9:00 p.m. and returned about an hour later. He found Chand (deceased) and his wife, Mst. Saima, in an objectionable position, which provoked him suddenly. An exchange of heated words occurred between him and Chand (deceased). He took the pistol from the drawer of his bed and fired at Chand, who died on the spot. Due to the noise of the fire shot, his brother-in-law Faisal Butt came down from the roof of his house. He complained to Faisal Butt that he had previously warned that Chand should not come to his house,

but he did not heed the warning. In response, Faisal attacked him with a Chhurri and he, in order to save his life, also fired at Faisal, who died. It was as if he felt that if he did not kill Faisal, Faisal would kill him. Due to such apprehension, he fired at Faisal. During this incident, his wife, Mst. Saima, successfully fled away from his house. At the time of the incident, he, his wife Mst. Saima, Chand, and Faisal Butt were present and no one else was at the spot. He committed the murders of both deceased due to sudden provocation and he acted in self-defence as he found the actions of both the deceased Chand and his wife unacceptable. He committed these murders alone and no one else joined him as an accomplice in this incident. He made such a statement before the police on 26.07.2012 as well as to the learned Magistrate. The police did not investigate his version correctly and no effort to prove his version has been made by the investigating officer in this regard. Instead, the investigation concerning him is prejudiced and conducted in connivance with the complainant party.

13. The proper and legal way of dealing with a criminal case is that the Court should first discuss the prosecution case/evidence to come to an independent finding about the reliability of the prosecution witnesses, particularly the eye-witnesses and the probability of the story told by them, and then examine the statement of the accused under section 342, Cr.P.C; the statement under section 340(2), Cr.P.C. and the defence evidence. If the Court disbelieves the prosecution evidence, then the Court must accept the statement of the accused as a whole without scrutiny. If the statement under section 342, Cr.P.C. is exculpatory, then the accused must be acquitted. If the statement under section 342, Cr.P.C. believed as a whole, constitutes some offence punishable under the law, then the accused should be convicted for that offence only.

In the case of counter versions, if the Court believes the prosecution evidence and is not prepared to exclude the same from consideration, it will not straightaway convict the accused but will review the entire evidence including the circumstances appearing the case at the close before reaching a conclusion regarding the truth or falsity of the defence plea/version.

All the factors favouring belief in the accusation must be placed in juxtaposition to the corresponding factors favouring the plea in defence and the total effect should be estimated in relation to the questions viz. is the plea/version raised by the accused satisfactorily established by the evidence and circumstances appearing in the case? If the answer is in the affirmative, then the Court must accept the plea of the accused and act accordingly. If the answer to the question is negative, then the Court will not reject the defence plea as being false but will go a step further to find out whether or not there is yet a reasonable possibility of the defence plea/version being true. If the Court finds that although the accused has failed to establish his plea/version to the satisfaction of the Court but the plea might reasonably be true, even then the Court must accept his plea and acquit or convict him accordingly. Reference in this regard may be to the cases of Faiz and others versus the State (1983 SCMR 76); Ashiq Hussain alias Muhammad Ashraf versus the State (PLD 1994 SC 879); Sultan Khan versus Sher Khan and others (PLD 1991 SC 520); Muhammad Asghar versus Muzammal Khan and 2 others (2004 SCMR 747); Muhammad Ashraf versus the State (2006 SCMR 1815); Sabir Ali versus the State (2011 SCMR 629); and Ahmad Nawaz and another versus the State (2011 SCMR 593). Recently, a similar view has been expressed by this court in the case of Ali Ahmad and another versus the State and others (PLD 2020 SC 201).

14. Considering the above-settled principles of law, the prosecution case and the defence plea taken by the accused have been juxtaposed and it has been found that the prosecution successfully proved its case against the accused Muhammad Imtiaz beyond a reasonable doubt. However, the accused Muhammad Imtiaz failed to establish his defence plea. Additionally, the co-accused Muhammad Fayyaz and Muhammad Ashraf did not support his plea, as they did not utter a single word while answering questions under section 342 Cr.P.C. regarding the manner of the murder of both the deceased persons as alleged by the accused Muhammad Imtiaz in his statement under section 342 or 340(2) Cr.P.C.

15. The learned appellate has correctly discarded the defence plea and while taking a lenient view in the peculiar circumstances of the case, has rightly converted his death sentence into life imprisonment. However, the prosecution case against the petitioner Muhammad Fayyaz 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.

16. Foregoing in view, Criminal Petition No.1288-L of 2017 is converted into an appeal and is allowed to the extent of the petitioner Muhammad Fayyaz Baig and to the extent of the petitioner Muhammad Imtiaz Baig is dismissed while maintaining his sentence as modified by the High Court in the impugned judgment. Consequently, Criminal Petition No.1354-L of 2017 filed by the complainant is also dismissed.

17. Above are the reasons for our short order dated 29.03.2024 which is reproduced hereunder for ease of reference:-

"For the reasons to be recorded later, Crl.P.No.1288-L/2017 is converted into an appeal and is allowed to the extent of Muhammad Fayyaz Baig, Petitioner No.2. The judgment dated 11.09.2017 passed by the High Court in Criminal Appeal No.967 of 2014 and judgment dated 02.06.2014 passed by Trial Court are set aside. He be released from jail forthwith, if not required to be detained in any other case whereas this petition is dismissed to the extent of Muhammad Imtiaz Baig, Petitioner No.1. Crl.P.No.1354-L/2017 is also dismissed."

JUDGE

JUDGE

JUDGE

Bench-V
Islamabad, the
29th March, 2024
NOT APPROVED FOR REPORTING
Ghulam Raza/*