

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench:

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

Criminal Appeal No.566 of 2020 & Criminal Appeal No.567 of 2020

(Against judgment dated 16.04.2020 of the Islamabad High Court, Islamabad passed in CrI. A. No.78, M.R. No.3 and JPs No.75 & 76 of 2014)

Usman Ahmed (in CrI.A.566/2020)
Hamza Jehangir (in Cr.A.567/2020)

...Appellant(s)

Versus

The State through Advocate General, Islamabad

...Respondent(s)

For the appellants:

Mr. Muhammad Ilyas Siddiqui, Sr. ASC
Syed Rifaqat Hussain Shah, AOR
(in CrI.A.566/2020)

Nemo
(in CrI.A.567/2020)

For the State:

Mr. Ghulam Sarwar Nihung, Prosecutor General,
Islamabad.

For the complainant:

Nemo.

Date of hearing:

15.04.2025

JUDGMENT

Irfan Saadat Khan, J.-

Criminal Appeal No.566 of 2020: Through this Criminal Appeal, the accused-appellant, Usman Ahmed, has challenged the High Court's judgment dated 16.04.2020, whereby the learned High Court, while modifying the findings recorded by the learned Trial Court¹, decided in the terms *infra*. This Court's order granting leave, dated 08.09.2020, provides necessary context and is reproduced below:

"During the course of robbery, Muhammad Qasim, 22, was shot dead at a picnic point within the view of his friend Muhammad Ibrahim on at 4:00 a.m. on 19.8.2010 within the precincts of Police Station Bara Kahu Islamabad by two unknown assailants, subsequently identified as Usman Ahmad and Hamza Jahangir, latter was tried as a juvenile. The trial Court returned a guilty verdict; Usman Ahmad petitioner was convicted under sections 302(b) of the Pakistan Penal Code, 1860; he was sentenced to death whereas the Hamza Jehangir, juvenile co-accused, was convicted

¹ Vide: judgment dated 23.07.2014.

under section 302(c) of the Code ibid and sentenced to 10-years rigorous imprisonment, though erroneously; they were also convicted under section 392 of the Code ibid and sentenced to 4-years rigorous imprisonment vide judgments dated 23.7.2014; Islamabad High Court acquitted both of them from the charge of murder, however, maintained their convictions for robbery vide judgment dated 16.4.2020. The High Court ruled out test identification parade for the reasons that profoundly disquieted us, however, since there is no appeal against acquittal either by the complainant or apathetic prosecution agency to redress the wrong. In the backdrop of above anomalous situation, learned counsel for the petitioner contends that after having discarded the test identification parade qua Usman Ahmad convict, there was no occasion left for the High Court to maintain his conviction on the charge of robbery; he has also drawn our attention to the statement of Abdul Shakoor PW, purportedly recorded on 19.8.2010 wherein both the petitioners are nominated by their names whereas site plan with scale drafted on 7.9.2010 on the basis of inspection notes dated 22.8.2010 again referred to unknown assailants and on the basis of above discrepancies, it is argued that shocking nature of the incident notwithstanding, nonetheless, occurrence does not appear to have taken place in the manner as mentioned in the crime report and, thus, re-appraisal of evidence is warranted to ensure safe administration of criminal justice, concluded the learned counsel. Leave is granted in both the petitions to re-appraise the evidence.

2. Precisely, Usman Ahmed & Hamza Jehangir (the “**accused**”) were tried by the learned Additional Session Judge-V, Islamabad-East (*trial Court*), the latter being tried as a juvenile, in the case bearing FIR No.223 of 2010 dated 19.08.2010 registered under sections 302 and 392 of the Pakistan Penal Code, 1860 (“**PPC**”) at Police Station, Bhara Kahu Islamabad. In the judgment that followed, the accused were convicted and sentenced as under:²

Usman Ahmed

“15. [...] The charges of Qatal-e-Amd (murder) & robbery, punishable under section 302 & 392 PPC respectively stand established through cogent, convincing and relevant independent evidence, consequently, I hold the accused **Usman Ahmed** guilty for the said offences and he is convicted accordingly. [...] Considering the aforementioned legal position, the convict is punished with **DEATH** as ta’zir under section 302(b) PPC, subject to confirmation by High Court. The convict shall be hanged by neck till he is dead. Further he shall pay to the heirs of the deceased an amount of **Rs-200,000/-** as compensation as envisaged u/s **544-A Cr.P.C.**, which shall be recovered as an arrear of land revenue and in default of payment he shall suffer imprisonment for a period of **six months**. He is sentenced to rigorous imprisonment for **FOUR YEARS & FINE RS-20,000/-** for an offence of robbery u/s 392 PPC. In case of default of payment of fine he shall undergo imprisonment for six months.”

Hamza Jehangir

“15. [...] The charges of Qatal-e-Amd (murder) & robbery, punishable under sections 302 & 392 PPC respectively stand established through cogent,

² Vide: judgment dated 23.07.2014.

*convincing and relevant independent evidence, consequently, I hold the accused **Hamza Jehangir** guilty for the said offences and he is convicted accordingly.*

*16. [...] The offender is minor and as per the provisions of section 12 of the Juvenile Justice System Ordinance, 2000, minor is exempted from death sentence. Even his case falls in the category of cases which are not liable to Qisas. Considering the aforementioned legal position, the convict is sentenced to **IMPRISONMENT FOR 10 YEARS FOR OFFENCE OF QATL-E-AMD U/S 302 (C) PPC** and he shall pay compensation of Rs-100,000/- to the heirs of the victim as envisaged u/s **544-A Cr.P.C**, which shall be recovered as an arrear of land revenue and in default of payment he shall suffer imprisonment for a period of six months. He is sentenced to rigorous imprisonment for **FOUR YEARS & FINE RS-20,000/-** for an offence of robbery u/s 392 PPC. In case of default of payment of fine he shall undergo imprisonment for six months. Both the sentences shall run concurrently. Benefit of section 382-B Cr.P.C is extended to the convict. The convict shall be kept in borstal institution."*

3. Aggrieved, the accused filed criminal appeals before the Islamabad High Court (*High Court*) which disposed off the appeals, the corresponding murder reference and the connected case of the juvenile co-accused, Hamza Jehangir, in Criminal Appeal No.567 of 2020, through the consolidated (*impugned*) judgment dated 16.04.2020. Although, the High Court upheld Usman-appellant's conviction under section 302(b) PPC, it reduced the sentence awarded to him from death to life imprisonment, in view of certain mitigating circumstances, thereby answering the murder reference in "**NEGATIVE**". However, the trial Court's finding with regard to Usman-appellant's guilt under section 392 PPC and the corresponding sentence remained undisturbed and were maintained by the High Court. At the same time, Hamza-appellant's conviction under section 302(b) PPC was set aside while the conviction and sentence awarded to him for the offence under section 392 PPC was maintained. Still aggrieved, the accused preferred the present criminal appeals, in which leave was granted as mentioned above.

4. The prosecution's case, as per the FIR *supra*, recorded pursuant to Usman Khalid Khan's (the "**Complainant**") statement was that on 19.08.2010, at about 12:30PM, Muhammad Qasim Khan (the "**Deceased**") son of the Complainant/PW-1 went to Shahdara Picnic Point, with his friend namely

Muhammad Ibrahim Khan (**eyewitness/PW-4**), where two unknown persons, aged about 20 years each, picked up their cell-phones and wallets, amongst other things, whereupon Qasim confronted the accused, asking why they were doing so. The person who had picked up the cell-phones and wallets, which were in a shopper, then told his bearded accomplice to open fire, who shot at Qasim, hitting his abdomen and right thigh. Thereafter, the accused made off with the robbed cell-phones (Nokia-5030 & Nokia E-70) belonging to Qasim and PW-4, wallet containing Rs. 40/- cash, check of Rs. 20,000/- drawn on MCB Bank, student card and challan chit of motorcycle (PQ-250). The injured Muhammad Qasim Khan succumbed to his injuries on the way to the hospital, whereupon PW-4/Muhammad Ibrahim Khan informed the Complainant, the Deceased's father, about the incident at about 4:00 PM, who reported the matter to the police, in the form of the complaint, which was then converted into the FIR *supra* lodged at about 5:40 PM.

5. In the police investigation that followed, co-accused/appellant in Criminal Appeal No.567 of 2020, Hamza Jehangir was arrested on 31.08.2010 and subsequently, during a test identification parade, conducted under the supervision of the magistrate on 21.09.2010, the eyewitness identified him as one of unknown persons involved in the commission of the offence *vide*: identification parade report **Exh.PL.** On 25.09.2010, Hamza-appellant disclosed information about the robbed articles leading to the recovery of a shopping bag containing a purse (P4), cash amounting to Rs. 40/- and a mobile phone HKT (Exh.P5) from a room within his house *vide*: recovery memo **Exh.PK.** The next day on 26.09.2010 the eyewitness identified the articles recovered upon the co-accused Hamza's pointation. More importantly, Usman-appellant had joined the police investigation on 16.09.2010 before the I.O., and was subsequently taken into custody by the police on 22.09.2010, after the dismissal of his pre-arrest bail petition. Later, during a test identification

parade, conducted under the aegis of the magistrate on 01.10.2010, the eyewitness identified Usman-appellant as the bearded assailant attributed with the role of shooting at the Deceased. On 14.10.2010, the alleged weapon of offence, a 30-bore pistol, was recovered from some bushes near the place of occurrence *vide*: recovery memo **Exh.PH.** On 17.10.2010, Usman-appellant disclosed information regarding the robbed articles, which led to the recovery of a mobile phone (P2) and a camera (P3) from a room within his house *vide*: recovery memo **Exh.PJ.** The next day on 18.10.2010, the eyewitness identified the articles recovered upon Usman-appellant's pointation *vide*: identification memo **Exh.PD.** Before proceeding any further, it is pertinent to mention here that Hamza-appellant was a juvenile, aged 15-½ years at the time of offence and was tried accordingly. The police investigation culminated into submission of a report under section 173 Cr.P.C., whereafter charges were framed; the accused pleaded not guilty, claiming trial and; the case proceeded before the trial Court in the manner highlighted above, which brings us to the present day.

6. Mr. Muhammad Ilyas Siddiqui, ASC has appeared before us on behalf of Usman-appellant and stated, at the outset, that the learned two Courts below have not properly considered the facts of the present case and that Usman-appellant has been falsely implicated by the PWs 3 and 15, who did so on account of their previous enmity with Usman-appellant. He has further argued that the prosecution has failed to prove its case beyond reasonable doubt, and that the witnesses' testimony is rife with contradictions. The learned counsel has especially drawn our attention to the reliability and admissibility of the identification proceedings, expanding on "*the reasons that profoundly disquieted us*" noticed in this Court's order granting leave. Therefore, Mr. Siddiqui has prayed that the instant appeal may be accepted, and Usman-appellant may be acquitted of all charges levelled against him.

7. Mr. Ghulam Sarwar Nihung, Prosecutor-General for Islamabad, has entered appearance on behalf of the State and has supported the High Court's judgment stating that the prosecution case has been proved beyond reasonable doubt by accentuating the decisiveness and reliability of the identification proceedings; the accused's pointation leading to the recovery of robbed articles and weapon of offence; the bullet empties recovered from the crime scene matching the weapon of offence and also the medical evidence supporting the eyewitness's ocular account. He has argued that the PWs have all deposed in consistency with each other in all material facts. Therefore, the learned Prosecutor-General prayed that the accused's convictions and sentences may be upheld, and the instant appeals be dismissed.

8. We have heard the learned counsels for the parties and have perused the impugned judgment as well as the record.

9. The entire edifice of the prosecution's case rests upon the testimony of the eyewitness/PW-4, Muhammad Ibrahim Khan and two witnesses of *wajtakar* namely Abdul Shakoor (PW-3) and Abid Hussain (PW-15) – a security guard and refreshment shop owner at Shahdara picnic point respectively – who claimed to have jointly seen the accused fleeing from the scene. Before proceeding with the various statements furnished by these witnesses, however, a brief consideration of the testimonies of other prosecution witnesses is necessary. Immediately, the record confirms that the FIR *supra* was registered pursuant to the statement/application submitted by the Complainant, Usman Khalid Khan (PW-1). The Complainant has stated during his cross-examination that in his initial application to the police, he had not disclosed that Usman-appellant, who allegedly fired upon the Deceased, had a beard. He was also unable to state the exact time at which the application was submitted to the police. What is more, the application was admittedly written by a relative—whose name he once again did not disclose—but was only signed by him. A similar type of statement was

recorded by Muhammad Ahmad Raza Khan (PW-2), the Complainant's son/the Deceased's brother.

10. Prominently, Abdul-Shakoor (PW-3), the witness of *wajtakar*, has deposed that he saw two persons running from the place of occurrence towards the forest side. Although he acknowledged that the faces of the two persons, he saw fleeing, were not turned towards him, and that he had not seen them committing the murder of the Deceased-Muhammad Qasim, he still however claimed to have identified them by disclosing their names to the S.H.O. as the accused Usman and Hamza.

11. It is further noted from the record that the eyewitness/PW-4 had firstly described the accused as unknown persons and only later identified them during separate test identification parades. Usman-appellant was specifically identified as the bearded assailant attributed with the role of shooting at the Deceased on 01.10.2010. The prosecution has then relied on the subsequent recoveries of the robbed articles and murder weapon made upon Usman-appellant's pointation to prove their case. Even at a cursory glance, the record reveals that Usman-appellant had joined the police investigation before any identification proceedings took place, admittedly appearing before the I.O., Muhammad Ishaq (PW-16), on 16.09.2010 who stated as follows during his cross-examination:³

"It is correct that accused Usman by obtaining pre-arrest bail appeared before me at Police Station on 16.09.2010."

Immediately after, the I.O. mentions:⁴

"On dismissal of bail petition I arrested the accused on 22.09.2010 from court premises."

³ See Pg. No. 86 of the paperbook for the I.O.'s statement.

⁴ *Ibid.*

In the test identification parade that followed Usman-appellant's arrest, Usman raised the objection that he had earlier been shown to the complainant party and eyewitness, and that his photos were taken. These objections were duly recorded in the identification proceeding report *vide*: **Exh.PN**. prepared by the magistrate. In this regard the I.O. has also acknowledged that:⁵

"Complainant was present at the time of decision of bail"

Although the I.O. has categorically denied the presence of the eyewitness at any place where Usman-appellant would have been in his view prior to the identification proceedings, this claim does not withstand scrutiny since the eyewitness would have had disconcertingly easy access to Usman-appellant long before any identification proceedings took place. This is especially true where the trial Court has not addressed Usman-appellant's objections and when the High Court has observed that:

*"the identification parade to the extent of Usman Ahmad/appellant has not been believed by this [High] Court."*⁶

The law in this regard is very clear. Through a plethora of judgments this Court has held that in cases where the accused may have been seen by the identifying witness prior to the test identification parade, the identification proceedings carry no evidentiary value. With respect to test identification parades, this Court has explained in the case of Kanwar Anwar Ali⁷ and reiterated recently in the case of Subha Sadiq⁸ that:

"a test identification, where the possibility of the witness having seen the accused persons after their arrest cannot be ruled out, is worth nothing at all. It is, therefore, imperative to eliminate all such possibilities."

⁵ *Ibid.*

⁶ Paragraph 40 of the High Court's Impugned Judgment.

⁷ Kanwar Anwar Ali (PLD 2019 Supreme Court 488).

⁸ Subha Sadiq vs The State (2025 SCMR 50).

Reference in this regard may also be placed upon the judgments rendered by this Court in the cases titled Nazir Ahmed⁹, Shafqat Mehmood¹⁰ and Sabir Ali alias Fauji¹¹.

12. The abundant possibility that Usman Ahmed was seen by the eyewitness before identification proceedings took place confirms its doubtful credibility and therefore nullifies any value the test identification parade may have had, even as a corroborative piece of evidence. In our view, the prosecution's failure to independently link Usman-appellant to the crime gives rise to reasonable doubt.

13. The testimony of the I.O., Muhammad Ishaq (PW-16), with respect to the recovery of the robbed articles is also telling. He stated that the robbed articles were recovered from the house of Usman-appellant, upon his pointation, which admittedly was surrounded by a number of houses. None of the neighbours were, however, associated in respect of the recovery proceedings.

14. The manner in which the weapon of offence was recovered again merits our appraisal. As can be gleaned from the record the weapon of offence, a 30-bore pistol, was recovered upon the pointation of Usman-appellant from beneath some bushes near the place of occurrence. Here, it is pertinent to reiterate the recovery witness, Sabir Khan's (PW-7/Constable) statement regarding where the weapon was recovered from – he deposed as follows:

"It is correct that it is a picnic place and numbers of people are always available there at that picnic place. We did not make any person from the public as witness"

The police's failure to associate any member of the public with the recovery of the weapon of offence despite the ready availability of such a person, constitutes yet another doubt in the myriad of flaws afflicting the prosecution's case. There is also the fact that the recovery was effected from an open place. This aspect

⁹ Nazir Ahmed v. Muhammad Iqbal and another (2011 SCMR 527).

¹⁰ Shafqat Mehmood and others v. The State (2011 SCMR 537).

¹¹ Sabir Ali alias Fauji v. The State (2011 SCMR 563).

has been noticed as a mitigating factor in the High Court's impugned judgment with the following words:

"even the recovery of weapon of offence at the instance of Usman Ahmad/appellant was from an open place."

Placing reliance on a recovery made from an open and accessible place is unsafe because it cannot be said that the recovery had been effected from the exclusive possession of the accused, as held by this Court in the cases of Amir Muhammad¹², Arshad Khan¹³ and Muhammad Saleem¹⁴.

15. It is axiomatic that where the prosecution's case contains doubts such as those highlighted above, then the benefit of such doubt favours the accused. This Court's decision in the case of Abdul Samad¹⁵ is relevant here and is reproduced below:

"where there is even a single circumstance which would create a reasonable doubt in a prudent mind about the accused's guilt, then the benefit of that doubt that would firstly accrue, as of right, in the accused's favour; and secondly, such single factor could be conclusive and form the basis of acquittal."

Reference in this regard may also be placed upon the judgments rendered by this Court in the cases of Muhammad Hassan¹⁶, Tariq Parvez¹⁷, Muhammad Akram¹⁸ and Muhammad Imran¹⁹.

16. The learned counsel for Usman-appellant has highlighted material flaws, establishing that the prosecution's case is fraught with doubts. Most saliently, the record demonstrates that the test identification parade during which Usman-appellant was identified was of doubtful validity. The recovery of the weapon of offence from an open and accessible place as well as the admitted

¹² Amir Muhammad Khan v. The State (2023 SCMR 566).

¹³ Arshad Khan v. The State (2017 SCMR 564).

¹⁴ Muhammad Saleem v. Shabbir Ahmed (2016 SCMR 1605).

¹⁵ Abdul Samad v. The State (2025 SCP 31).

¹⁶ Muhammad Hassan versus State (2024 SCMR 1427).

¹⁷ Tariq Parvez versus The State (1995 SCMR 1345).

¹⁸ Muhammad Akram versus the State (2009 SCMR 230).

¹⁹ Muhammad Imran versus The State (2020 SCMR 857).

shortcomings highlighted in the foregoing paragraphs further cast serious doubt on the prosecution's case. The benefit of such doubts would naturally extend to the accused and is conclusive in instant case.

17. In light of what has been discussed above, Usman-appellant's is a case fit for acquittal. The charges levelled against him have not been proved by the prosecution beyond reasonable doubt. Thus, the impugned judgment of the High Court is set aside by extending the benefit of doubt to Usman Ahmed-appellant. He therefore, stands acquitted of the charges levelled against and, if he is not required to be incarcerated in any other matter, he shall be released forthwith.

Criminal Appeal No.567 of 2020:

18. According to the report of the Superintendent Central Jail, Rawalpindi the appellant Hamza Jahangir son of Jahangir Akhtar had served out his sentence and he was released from the jail on 11.06.2021. None has appeared today on his behalf. This appeal, having become infructuous, is accordingly dismissed.

These are the reasons of our short order dated 15.04.2025 which is reproduced below:

"Criminal Appeal No.566/2020: For the reasons to be recorded later, this appeal is allowed. The judgments of the trial court and the High Court are hereby set aside. The appellant Usman Ahmed is acquitted from the charge framed against him by extending the benefit of doubt in his favour. In case he is not required to be incarcerated in some other case, then shall forthwith be released from the prison.

Criminal Appeal No.567/2020: According to the report of the Superintendent Central Jail, Rawalpindi the appellant Hamza Jahangir son of Jahangir Akhtar had served out his sentence and he was released from the jail on 11.06.2021. None has appeared today on his behalf. This appeal, having become infructuous, is accordingly dismissed."

ISLAMABAD
08.04.2025
Arshed/Mustafa Kundi. L.C

"Not Approved for Reporting"