

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Hashim Khan Kakar
Mr. Justice Salahuddin Panhwar
Mr. Justice Ishtiaq Ibrahim

Criminal Appeal Nos.229 & 230 of 2021

(On appeal against the judgments dated 01.02.2016 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Murder Reference Nos.36 of 2014, 105 of 2009 & CrI.A.Nos.10-J of 2014 & CrI.As.14-J, 81 & 96 of 2009)

Sher Afzal (CrI.A.229/21)
Muhammad Latif (CrI.A.230/21)

...Appellant(s)

Vs.

The State (in both cases)

...Respondent(s)

For the Appellant(s): Mr. Basharatullah Khan, ASC
(in both cases)

For the State: Rai Akhtar Hussain, Addl. PG.
(in both cases)

For the Complainant: Sheikh Ahsan-ud-Din, ASC
(CrI.A.229/21)
Nemo in *(CrI.A.230/2021)*

Assistance: Muhammad Subhan Malik
(Judicial Law Clerk)

Date of hearing: 25.02.2025

JUDGMENT

Salahuddin Panhwar, J. Both these appeals are arising from the judgments of the Lahore High Court, Rawalpindi Bench, Rawalpindi dated 01st February, 2016 whereby, death sentence awarded to the appellants, namely Sher Afzal and Muhammad Latif, by the learned trial court were maintained vide impugned judgments dated 01st February, 2016. The allegations on the appellants were that they brutally murdered five persons namely Taj Muhammad, Shahbaz Khan, Sajjad Hussain, Mst. Afsar Jan and Muhammad Ismail, and after a duly completed trial, they were convicted under Section 302(b) of the Pakistan Penal Code (PPC) 1860 and maintained by learned High court as follows:

Appellants	Sentence	Fine
Sher Afzal	Death Sentence	Rs. 300000/-
Muhammad Latif	Death Sentence	Rs.200000/-

2. The prosecution case, as per the FIR No.213/07 dated 08.09.2007, under sections 302, 148, 149 PPC, Registered at Police Station Pindigheb, District Attock is that on 08.09.2007 at about 01:00 p.m. the complainant alongwith his mother Mst. Afsar Jan, brother-Sajjad Hussain, Muhammad Ismail, brother-in-law Muhammad Sarwar, his sister Mst. Begum Jan were present on their Dhok, when they heard hue and cry, they all came out of the Dhok and saw that Sher Afzal arm with 12 bore double barrel gun, Muhammad Latif armed with 12 bore single barrel gun, Khan Gul and Mst. Suneran Bibi empty handed, were quarrelling with their brother Shahbaz Khan and father Taj Muhammad. Meanwhile accused Khan Gul and Sunaran Bibi while raising *lalkara* forced the accused Sher Afzal, etc that not to spare opponent party today, whereupon accused Sher Afzal fired shots at father of the complainant, Taj Muhammad who fell after the hit, then Appellant (Sher Afzal) fired shots at Shahbaz Khan who too after hit fell down, lastly the Appellant (Sher Afzal) then fired shots at complainant's mother who fell down after suffering firearm injury. Appellant (Muhammad Latif) fired at brother of the complainant, namely Sajjad Hussain, who too, on receipt of fire shot fell down. Appellant (Muhammad Latif) then chased the younger brother of the Complainant, Muhammad Ismail and fired shots at him who on receipt of the fire shot fell down and succumbed to the injuries.

3. The accused Muhammad Latif was tried by the trial Court alongwith co-accused persons in Session Case No.16 of 2007, whereas accused Sher Afzal remained proclaimed offender and subsequently, on his arrest he was tried in Sessions Case No. 24 of 2012, where he was accordingly convicted and awarded death sentence.

4. We have heard the learned counsel for the appellants, learned counsel for the complainant and learned Additional Prosecutor General, Punjab at length and we have also perused the available record with their able assistance, compelling us to turn to the individual merits of the petitions before us:

Criminal Appeal No.229 of 2021:

To prove the case against the Appellant (Sher Afzal), the prosecution examined Mumtaz Khan, complainant (PW-9) Mst. Begum Jahan (PW-10), who had sufficiently explained the place of occurrence, the motive, the manner of the occurrence, locale of the injuries sustained by the deceased persons from the hands of the Appellant and his Co-

accused. Both the eyewitnesses have categorically stated before the trial court that they heard hue and cry and went outside where the appellant (Sher Afzal) was armed with 12 bore double barrel gun, Co-accused (Muhammad Latif) armed with 12 bore single barrel gun along with Nazir Co-accused armed with pistol while Khan Gul and Mst. Suneran Bibi, co-accused who was empty handed. whereas the Appellant (Sher Afzal) fired two shots which landed on the deceased. The eyewitnesses were cross examined by the defense at length but were unable to shatter the evidence of above said eyewitnesses. Both witnesses produced credible, concrete, inspiring confidence and trust worthy evidence. The ocular accounts furnished by the prosecution also imported corroboration from medical evidence as the ante-mortem injuries on the person of all the deceased attributed to the appellant and his Co accused are reflected in the postmortem reports. The medical evidence furnished by Dr. Tabassum Shaheen (PW-11) conducted autopsy of Mst. Afsar Jan who proved postmortem report and gave opinion that injuries were sufficient to was death in ordinary course of nature, whereas Dr. Zahir ul Haq (PW-3) conducted postmortem examination of the deceased, who found three firearm ante-mortem injuries and proved his postmortem report and the pictorial diagram. Dr. Zahir ul Haq (PW-3) also conducted the postmortem of other deceased. As regards to the motive behind the occurrence was that there was a dispute of the land between themselves and the accused party, due to said dispute accused person with common intention and object attacked the deceased. The evidence of recovery was excluded, but regardless the High Court was of the view that the prosecution by producing cogent, concrete, inspiring confidence and trustworthy ocular account of eyewitnesses, finding support from medical evidence, motive and other corroborating evidence in the form of blood stained earth, report of chemical examiner, report of serologist to the extent of the deceased persons, proved its case beyond any shadow of doubt to the extent of the Appellant (Sher Afzal) is guilty of said offence and therefore the conviction is maintained.

Criminal Appeal No.230 of 2021:

The case of prosecution case chiefly rests on the statements of Mumtaz Khan (PW-8) and Begum Jahan (PW-9). Mumtaz Khan is the complainant of the FIR and real son of the deceased Taj Muhammad and closely related related to the deceased. His statement stands fully corroborated by the evidence of Begum Jahan (PW-9), who is the real sister of the complainant. On all material particulars, these eyewitnesses

were subjected to searching cross examination but there is nothing on file which may tend to discredit their testimony. The learned counsel for the appellants vehemently contended that eye-witnesses are interested witnesses. The learned High Court gave anxious consideration to such contentions but see no force in it, for the reason that although the witnesses are closely related to the deceased but they explained minute details of the mode and method of the occurrence. The ocular accounts also corroborated with the medical evidence as the ante-mortem injuries on the person of all the deceased attributed to the appellants and their co-accused are reflected in the post mortem reports which become the cause of the unnatural death of all five deceased as opined by the medical officer Dr. Tabassum Shaheem (PW-3) who conducted autopsy of Mst. Afsar Jan and Dr. Zahir-ul-Haq (PW-7), who conducted Post-mortem examination of Muhammad Ismail (deceased), Sajjad Hussain (deceased), Shehbaz Khan (deceased) and Taj Muhammad (deceased) found fire arm ante-mortem injuries and proved their PMR and Pictorial diagrams. Nothing helpful could be extracted in support of the defence even though they were subjected to cross examinations. The motive was furnished by Mumtaz Khan (PW-8) that dispute of the land between themselves and the accused party and due to the grudge accused person with common intention, such was also deposed in depth by Mst. Begum Jan (PW-9). The appellant (Muhammad Latif) did not produced any evidence in defence to prove that he has been falsely accused and was not present at the scene of occurrence. The evidence of recovery was excluded, but regardless the High Court was of the view that the prosecution by producing cogent, concrete, inspiring confidence and trustworthy ocular account of eyewitnesses, finding support from medical evidence, motive and other corroborating evidence in the form of blood stained earth, report of chemical examiner, report of serologist to the extent of the deceased persons, had proved its case beyond any shadow of doubt to the extent of the Appellant (Muhammad Latif) is guilty of said offence and therefore his conviction was maintained, whereas the co-accused Nazir was acquitted.

5. Now coming to the present case, learned counsel for the Appellants contented that contradictions in the statements of the witnesses which deposed regarding the facts of the case, entitled the appellant for benefit of doubt. In addition to that, the counsel argued that the witnesses are interested witnesses due to their close relationship with all the deceased. In addition to that, it was argued by the appellants that empty shells were not recovered, so he contended that this aspect is fatal to the

prosecution case in so far as it relates to the recovery and matching of the weapon and empties.

6. We gave due consideration to the arguments of the learned counsel, but such are devoid of any force for the reason that these were immaterial contradictions, therefore we feel compelled to address such objections. The standard of proof in criminal cases is that the prosecution shall establish the guilt beyond reasonable doubt, unlike the preponderance of evidence in civil matters. There is no cavil that the accused is the favorite child of the law, but said phrase does not imply that the Court should grant any unwarranted favour, indulgence or preferential treatment to the accused as held by this court recently in Muhammad Riaz¹.

7. The settled principle of law is that "accused is the favorite child of law", therefore the benefit of doubt is extended to the accused *commonly* and *frequently*, but we must not forget that it is based upon some "Reasonable doubt", and not on the whims of a judge. I take the *prerogative* in defining the term "Reasonable doubt", when the law requires it to become the basis for advancing the benefit of doubt, it means having regard to the circumstances of the case which includes following points:-

- It may be entertained by persons of common prudence,
- The doubt must be genuine and inherent in present circumstances
- It must not be artificial, imaginary or exaggerated in nature.
- The doubt must not belong to a weak and vacillating mind, nor to a person inclined to be over-suspicious or unduly to magnify his doubt.²

8. The doctrinal principles applied in west cannot *stricto sensu* be applied in Pakistan for multiple reasons which I shall discuss hereafter, a prime example is the "*Falsus in uno, Falsus in omnibus*" principle which is that witness who lies about any fact must be *disbelieved* as to all other facts, considering the social circumstance of the subcontinent, the rule's application has been modified by this court in the Khizar Hayat Case³ to the extent that the contradiction must be regarding "material facts" only. However, the application of "*Falsus in uno, Falsus in omnibus*" does not render the principle of "*to sift the grain out of the chaff*" redundant, since

¹ Muhammad Riaz Vs Khurram Shehzad (2024 SCMR 51)

² See (1974 SCMR 215), (PLD 1973 SC 418), (PLD 1964 SC 26) & **Tichborne's** case quoted in Kenny's Outline of Criminal Law, 1936 Ed., p.455, 1945 L. 27=46 Cr. L J 407.

³ (PLD 2019 SC 527)

the judge now still has to sift the grain out of chaff, whilst he differentiates between the *materiality* of the facts in appraisal of evidence. This court has held numerous times, that the primary duty of the judge is to sift the grain out of the shaft e.g. in the Khadim Hussain Case⁴, Muhammad Afzal Case⁵ & Munir Ahmad Case⁶ and one shall not lose sight that the criminal case is to be decided in its totality of its circumstance as held in the case of Muhammad Makki Case⁷ and recently in Sadaruddin Case⁸.

9. The above stated modification was introduced after considering the society existing in the subcontinent. In an article "Truthful Character of Indian Witnesses" ⁹ Thakur Prasad Dubey had written about the *unfortunate* trend of false testimonies in courts in the undivided India. He observed as follows: *"It is a well-known fact that Judges even of the Highest Tribunals of the land have very often expressed their opinions that witnesses in India are greater liars than elsewhere and such an opinion yet continues to be entertained throughout the country by many Judges. The Judicial Committee made the following observations in a Mudhoo Soodun Case¹⁰ that "It is quite true that such is the lamentable disregard of truth prevailing among the native inhabitants of Hindustan that all oral evidence is necessarily received with great suspicion."* Their Lordships again affirmed their conviction in another reported case¹¹ where it was said: *"In a native case it is not uncommon to find a true case placed on a false foundation and supported in part by false evidence."*

10. In addition to that, in the natural course of conduct there can be various factors which result in minor contradictions in the statement of the witnesses. It would be against the interest of justice to discard the whole evidence on minor contradiction of facts which is not even vital to the case, occurrence of contradictions have many reasons, *primarily* that it is common that sometimes the witnesses *exaggerate* the statements in desperation for justice and to emphasize on the intensity of their words, *secondly* passage of time to occurrence till recording of evidence. The Constitution of the Pakistan 1973 envisages duty upon the courts for dispensation of justice, so the contradictions must not play as hurdles in

⁴ Khadim Hussain Vs the State (2010 SCMR 1090)

⁵ Muhammad Afzal Vs the State (2017 SCMR 1645)

⁶ Munir Ahmad Vs the State (2019 SCMR 79)

⁷ Muhammad Makki Vs The State, (2021 SCMR 1672)

⁸ Sardar@ Sadaruddin Vs The State, Criminal Jail appeal No.S-26 of 2019, <https://caselaw.shc.gov.pk/caselaw/view-file>.

⁹ (AIR 1945 Journal 6) Thakur Prasad Dubey, M.A., LL.B., P.C.S. (Judicial), Farrukhabad

¹⁰ 4 M.I.A. 431 [(1849) 4 M.I.A. 431 (P.C.), Mudhoo Soodun Sundial v. Suroop Chunder Sirkar.] at p.441

¹¹ 11 M.I.A. 177 [(1867) 11 M.I.A. 177 (P.C.), Wise v. Sunduloonissa Chowdhance

dispensation of justice and must not lead to miscarriage of justice. We find numerous commandments of the Allah Almighty in this regards to the prevalence of justice including:

"Believers should stand firm in justice, even if it goes against their own interests" **Surah An-Nisa' (4:135)**

11. This court has already expressed its views numerous times in regards to the evidential value of the witnesses with minor discrepancies, it has held that minor discrepancies being trivial in nature or those which do not go deep to the roots of a criminal case are immaterial discrepancies, which are natural and if such minor contradictions having no significance are given importance, then there would hardly be any conviction, so such cannot be made the sole ground for acquittal, such is based upon plethora of judgments¹² of this court.

In Khairu's Case¹³, this court held that:

"It was next submitted that as the prosecution witnesses had lied in one essential respect namely, as to the first petitioner having been over-powered it was difficult to rely on their ipse dixit as to the culpability of the petitioners. The High Court held that the rule, falsus in uno falsus in omnibus, is not applicable for discarding the evidence of the witnesses as a whole and hence so much of the evidence which is credible can be accepted."

12. At this point, we are compelled to address the second contention of the learned counsel for the Petitioner which was that the eye-witnesses of the occurrence, Mumtaz Khan (PW-8) and Begum Jan (PW-9) are interested witnesses for the reason that the witnesses are closely related to all of the deceased. We see no force in the contention raised by the counsel for the appellant as such is in defiance of the settled law laid by this court vide esteemed judgment reported as Haji Case¹⁴, this Court held that:-

"Both the ocular witnesses undoubtedly are inter se related to the deceased but their relationship ipso facto would not reflect adversely against the veracity of the evidence of these witnesses in absence of any motive wanting in the case, to falsely involve the appellant with the commission of the offence and there is nothing in their evidence to suggest that they were inimical towards the appellant and mere

¹² 2023 SCMR 527 (Amanullah Khan Vs the State)
 2023 SCMR 487 (Muhammad Abbas Vs the State)
 2023 SCMR 478 (Nasir Ahmed Vs the State)
 2022 SCMR 2143 (Muhammad Usama Vs the State)
 2022 SCMR 2024 (Muhammad Ali Vs the State)
 2017 SCMR 1662 (Makeen Ullah vs the State)
 2009 SCMR 14 (Mst Razia alias JIA vs the State)
 2009 SCMR 91 (Liaquat Ali vs the State)
 2007 PLD 223 (Muhammad Suleman Versus the State)
 2006 SCMR 1801 (Dilbar Masih Vs the State)
 1998 SCMR 1148 (Kausar Irshad Versus the State)
 1990 SCMR 416 (Taj Muhammad Versus the State)

¹³ Khairu and another v. The State (1981 SCMR 1136)

¹⁴ Haji vs. The State (2010 SCMR 650)

inter se relationship as above noted would not be a reason to discard their evidence which otherwise in our considered opinion is confidence-inspiring for the purpose of conviction of the appellant on the capital charge being natural and reliable witnesses of the incident."

So therefore, we can safely rely on the testimonies of such witnesses as we observed that the evidence deposed was confidence-inspiring for the purpose of conviction of the appellants on capital charge.

13. At this juncture, we observed that the evidence tendered by the prosecution case included the testimonies of the eye-witnesses, Mumtaz Khan (PW-8) and Begum Jahan (PW-9). Mumtaz Khan is the complainant of the FIR and also the real son of the deceased Taj Muhammad and closely related to all the deceased. Statement of Mumtaz Khan (PW-8) stands fully corroborated by the evidence of Begum Jahan (PW-9), who is the real sister of the complainant. On all material particulars, these eyewitnesses were subjected to lengthy cross examination but there is nothing on file which may tend to discredit their testimony. The ocular accounts also corroborated with the medical evidence as the ante-mortem injuries on the person of all the deceased attributed to the appellants and their co-accused are reflected in the post mortem reports which become the cause of the unnatural death of all five deceased as opined by the medical officer Dr. Tabassum Shaheem (PW-3) who conducted autopsy of Mst. Afsar Jan and Dr. Zahir-ul-Haq (PW-7), who conducted Post-mortem examination of Muhammad Ismail (deceased), Sajjad Hussain (deceased), Shehbaz Khan (deceased) and Taj Muhammad (deceased) found fire arm ante-mortem injuries and proved their PMR and Pictorial diagrams. Nothing helpful could be extracted in support of the defence even though they were subjected to cross examinations. The appellant (Muhammad Latif) did not produce any evidence in defence to prove that he has been falsely accused and was not present at the scene of occurrence. Even if we exclude the evidence of recovery for being inconsequential, the prosecution by producing cogent, concrete, inspiring confidence and trustworthy ocular account of eyewitnesses, finding support from medical evidence motive and other corroborating evidence in the form of blood stained earth, report of chemical examiner, report of serologist to the extent of the deceased persons, proved its case beyond any shadow of doubt against the appellants.

14. The incident in question is a matter of record, having occurred in broad daylight, with both the complainant party and the petitioners (accused) being well-acquainted with each other. Consequently, the issue

of mistaken identity does not arise. The petitioners are documented to have brutally and mercilessly murdered five members of a single family, namely:

1. Taj Muhammad (father)
2. Afsar Jan (mother)
3. Shehbaz Khan (brother)
4. Sajjad Hussain (brother)
5. Muhammad Ismaeel (brother)

—all of whom were relatives of the complainant, Mumtaz Khan.

Furthermore, the presence of the complainant and other eyewitnesses at the scene of the crime on the day of the incident remains undisputed. The petitioners have failed to provide any plausible reason for their alleged false implication in the case while allowing the actual perpetrators to escape justice. The possibility of wrongful substitution in such cases is exceedingly rare. Reference may be made to the case of Nasir Ahmed v. The State (2023 SCMR 478), where this Court observed that: *“Presence of PWs cannot be doubted. Learned counsel for the petitioner could not point out any reason as to why the complainant has falsely involved the petitioner in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon”*.

15. The motive was furnished by Mumtaz Khan (PW-8) that dispute of the land between themselves and the accused party and due to the grudge accused person with common intention, such was also deposed in depth by Mst. Begum Jan (PW-9). The deposition was not discredited in cross-examination, hence why the learned High Court rightly believed the motive behind the prosecution case. It is pertinent here to address the value of the motive in criminal case. we therefore consider it necessary to address it through the established precedents of this court, we will refer to Maqbool Ahmed Case¹⁵, in which Lordship Mr. Justice Shafiur Rahman observed that:

“There are three features of the prosecution case which make it unfit for proving the guilt of the appellant. The first is that motive, and a satisfactory one, always plays an important part in any case dependent on entirely circumstantial evidence.”

So we are of the view that it holds even greater value in cases of direct evidence, and hits the last hammer in support of the prosecution at its conclusion.

¹⁵ 1992 SCMR 2279

16. We also observed that such is also discussed in Wharton's Criminal Evidence¹⁶ that:-

"Nevertheless, the prosecution may find it useful to produce evidence of motive in order to confirm the conclusion reached from the other evidence that it was in fact the defendant who had committed the offence charged. Ordinarily, evidence as to motive is admissible even though it may be prejudicial in the sense that it will arouse or inflame the jury against the defendant. An inquiry as to motive is often of great importance, particularly in a case resting upon circumstantial evidence. It may be helpful in fixing the crime upon the proper person and, in some cases, is strongly instrumental in determining the degree of the offence."

17. With regard to the death sentence, the petitioners committed a brutal and ruthless act by murdering five members of the same family over a land dispute. The crime was premeditated and carried out in cold blood. Given the severity and deliberate nature of the offense, the petitioners are not entitled to have their death sentence commuted to life imprisonment. This position is reinforced by the precedent set by this Court in the case of Muhammad Hayat and another v. The State (2021 SCMR 92).

18. In light of the foregoing, the conviction and sentence of the appellant, Sher Afzal, are upheld on three counts, as the prosecution has successfully established the charges related to the murders of Taj Muhammad, Mst. Afsar Jan, and Shahbaz Khan. Similarly, the conviction and sentence of the appellant, Muhammad Latif, are maintained on two counts for the murders of Sajid Hussain and Muhammad Ismail. Given the facts and circumstances of the case, both appeals stand dismissed.

Judge

Judge

Judge

Announced in open Court on 2025 at Islamabad.

Judge

Islamabad

Approved for reporting

M. Subhan Malik, L.C/-

¹⁶ 13th Edition by Charles E. Toricia (Volume I) at page 316