

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE JAMAL KHAN MANDOKHAIL  
MS. JUSTICE MUSARRAT HILALI  
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

**Criminal Petition Nos. 260-L & 275-L of 2015**

(On appeal against the judgment dated 28.01.2015 passed by the Lahore High Court, Lahore in Criminal Appeal Nos. 1202/2010, 1245/2010 and Capital Sentence Reference No. 33-T/2010)

Abdul Hayee & Abdullah @ Ghazali  
*(To the extent of petitioner Abdullah @ Ghazali, Cr.P. 260-L/2015 stands partly abated on account of his death vide our separate order of even date)*

(In Cr.P. 260-L/2015)

Saleem Zaman

(In Cr.P. 275-L/2015)

...Petitioner(s)

**Versus**

The State etc

(In both cases)

...Respondent(s)

For the Petitioner(s): Mr. Munir Ahmed Bhatti, Sr. ASC

For the State: Mirza Abid Majeed, DPG

Date of Hearing: 21.10.2024

...

**JUDGMENT**

**MALIK SHAHZAD AHMAD KHAN, J.**-Abdul Hayee,

Saleem Zaman, petitioners and Abdullah alias Ghazali, co-accused/co-convict (since died) were tried by the learned District & Sessions Judge / Special Judge Anti Terrorism Court, Sargodha, in case FIR No. 30 dated 07.02.2009 under Sections 302/396/440/412 PPC read with Section 7 of the Anti Terrorism Act, 1997 and Sections 3/4 of the Explosive Substance Act, 1908, registered at Police Station Wan Bhachran, District Mainwali. The learned Trial Court vide its judgment dated 04.05.2010 convicted

and sentenced the petitioners and Abdullah alias Ghazali co-accused/co-convict (since died), as under:-

**Under Sections 302(b)/149 PPC**

Death sentence to each on eight counts along with compensation of Rs.200,000/- each to be paid to the legal heirs of each deceased or in default thereof to further undergo six months' SI each on each count.

**Under Sections 440/149 PPC**

To undergo 05 years rigorous imprisonment each with fine of Rs.20,000/- each or in default whereof to further undergo 03 months simple imprisonment each.

**Under Section 148 PPC**

To undergo 03 years rigorous imprisonment each with fine of Rs.20,000/- each or in default thereof to further undergo 03 months simple imprisonment each.

**Under Section 3 of the Explosive Substance Act, 1908**

Death sentence to each.

**Under Section 7(a) of the ATA, 1997 read with Section 149 PPC**

Death sentence to each with fine of Rs.50,000/- each or in default thereof to further undergo 06 months simple imprisonment each.

**Under Section 412 PPC**

Only Abdullah @ Ghazali, co-accused/co-convict (since died) was convicted under Section 412 PPC and sentenced to undergo 10 years rigorous imprisonment with fine of Rs.20,000/- or in default whereof to further undergo 03 months simple imprisonment.

2. In appeal, the learned High Court upheld the judgment of the learned Trial Court.

3. As per contents of the FIR on 7.2.2009 at about 3.30 A.M., *Khalid Mahmood, Inspector/Complainant/SHO, PS Wan Bhachran District Mianwali*, alongwith Ghulam Mohammad C-255, Nasrullah C-1348 and driver Ahmad Khan C-256 was present on official vehicle No.3812-MIB at Sargodha-Mianwali Road near village Pakka Sandanwala in connection with patrolling duty and

was heading towards police Check Post Qudratabad. In the meanwhile, he heard the report of blast from the side of police Check Post Qudratabad, whereupon he (complainant) along with other police personnels reached the above-mentioned Check Post and saw that police officials namely Yasir Arfat C-6352 and Mohammad Ilyas C-6341 were lying dead at the spot outside the building of the check post whereas, the building of police Check Post had completely collapsed due to the bomb blast. It was further stated in the FIR that the dead bodies of Sher Khan ASI, Zafar Iqbal 6129-HC, Ghulam Abbas C-6390, Bahadur Khan C-1046, "*Razakar*" Ghulam Shabbir and Sajawal Khan were also lying underneath the debris of the building of the Check Post. It was also stated that the unknown terrorists had committed the occurrence with the help of firearms and demolished the building of the police post with bomb blast, whereafter, the unknown accused had also taken away with them a rifle G-III along with three magazines and 60 live cartridges and a rifle MP-5 along with two magazines and 56 cartridges. On the complaint of Khalid Mehmood, Inspector/SHO the above-mentioned FIR was lodged against unknown accused.

4. After registration of FIR on the same day two eye-witnesses namely Fateh Sher (PW-15) and Alam Khan (PW-16) appeared before the police and made their statements that they had witnessed the occurrence which was committed by seven (07) unknown accused. During the investigation of the case the petitioners were arrested in this case under Section 54 Cr.P.C. whereafter they were identified in the identification parades by the

above-mentioned eye-witnesses. The petitioners also led to the recoveries of weapons of offence. After completion of investigation report under Section 173 Cr.P.C. was submitted before the learned trial court. The learned trial court after completion of trial convicted and sentenced the petitioners as mentioned and detailed above.

5. It is contended by learned counsel for the petitioners that the petitioners were not named in the FIR, which was lodged against unknown accused; that FIR was registered with considerable delay from the occurrence but a wrong time regarding registration of the FIR has been mentioned in the relevant column of the FIR in order to show that the FIR was promptly lodged; that the name of any eye-witness was also not mentioned in the contents of the FIR; that Fateh Sher (PW-15) and Alam Khan (PW-16) were subsequently introduced as eye-witnesses of the occurrence but the conduct of both the above-mentioned eye-witnesses is highly unnatural because they claimed that they had seen the occurrence of a shocking and heinous offence regarding the murders of 08 innocent police employees through firing and bomb blast in a police post but even then they did not report the matter to the police and went to Chiniot to purchase a buffalo; that both the above-mentioned eye-witnesses were not residents of the area where the occurrence took place and, as such, they are chance witnesses and as they could not prove the reason of their presence at the spot at the relevant time, therefore, their evidence is not reliable; that identification parades of the petitioners were also conducted in violation of the law/rules on the subject because it was a joint identification parade of two accused namely Abdullah

alias Ghazali (since died) and Saleem Zaman, petitioner, whereas no specific role during the occurrence was assigned to Abdul Hayee, petitioner by the alleged eye-witnesses at the time of his identification parade, therefore, identification of the petitioners during their identification parades by the prosecution eye-witnesses carries no value in the eye of law; that the alleged recoveries of the weapons of offence were planted against the petitioners and as the said recoveries were not put to the petitioners in their statements recorded under Section 342 Cr.P.C., therefore, the same were rightly discarded by the learned High Court in paragraph No. 15 of the impugned judgment; that there was no motive with the petitioners to commit the alleged offence; that the petitioners are previous non-record holders and they have falsely been implicated in this case due to the reason that Amir Hayat who was Brother-in-law of Saleem Zaman, petitioner was illegally detained by the local police, therefore, the learned Chief Justice of Lahore High Court after releasing him from custody also observed that he can get a case registered against police officers and on account of the said grudge the Police has falsely implicated the petitioners in this case; that the prosecution has miserably failed to prove its case against the petitioners beyond the shadow of doubt, therefore, leave may be granted in these petitions and the petitioners may be acquitted from all the charges while setting aside the impugned judgments of the *foras* below.

5. On the other hand, it is contended by the learned Deputy Prosecutor General that the FIR was promptly lodged in this case, which rules out the possibility of any consultation or deliberation; that although the petitioners were not named in the

FIR but soon after the registration of FIR, Fateh Sher (PW-15) and Alam Khan (PW-16) appeared before the Police and made their statements that they had seen the occurrence and they fully implicated the petitioners in this case; that the petitioners were duly identified by the above-mentioned eye-witnesses during the identification parades, which were held strictly in accordance with the law/rules on the subject; that the petitioners could not establish any *mala fide* for their false involvement in this case by the above-mentioned Fateh Sher (PW-15) and Alam Khan (PW-16) who had no enmity with the petitioners; that the prosecution case against the petitioners was further corroborated by the recoveries of weapons of offence from the petitioners and positive reports of the Forensic Science Laboratory but the said recoveries have wrongly been disbelieved by the learned High Court in the impugned judgment; that the medical evidence has also fully supported the ocular account of the prosecution; that the petitioners committed brutal murders of as many as 08 innocent police employees, therefore, they do not deserve any leniency in their sentences; that the prosecution has proved its case against the petitioners beyond the shadow of any doubt, therefore, leave to appeal may be refused and these petitions may be dismissed.

6. Arguments heard. Record perused.

7. It is true that the occurrence of this case is very shocking and brutal wherein as many as 08 police employees of Police Station Wan Bhachran, District Mianwali were murdered through firing and bomb blast. We are also conscious of the fact that overwhelming majority of the employees and officers of the police department have rendered countless sacrifices to maintain

law and order in the country and we fully recognize their sacrifices. We have a lot of respect for the police department on account of above-mentioned reasons but needless to mention here that it is a Court of law and we have to decide this case on the basis of evidence available on the record despite of our sympathies for the families of the deceased police employees of this case. We, therefore, proceed to evaluate the prosecution evidence on merits in order to determine that as to whether or not the prosecution has proved its case against the petitioners beyond the shadow of doubt.

8. The occurrence in this case took place on 07.02.2009 at 03:30 AM (night). As per contents of the FIR, the matter was reported at Police Station Van Bhachran, District Mianwali by Khalid Mehmood, Inspector/complainant (PW-18) on the same night at 04:00 AM and the formal FIR was also statedly chalked out on the same night i.e. on 07.02.2009 at 04:30 AM. It is noteworthy that during the occurrence of this case the building of Police Post Qudratabad District Mianwali collapsed due to the bomb blast and the names of those police employees whose dead bodies were still lying underneath the debris of the building were also mentioned in the complaint of Malik Khalid Mehmood, Inspector/complainant (PW-18), which complaint was sent to the Police Station within 30 minutes from the occurrence, for registration of the FIR. Malik Khalid Mehmood, Inspector/complainant (PW-18) has stated in his examination-in-chief that when he reached at the spot, he found that the building of the above-mentioned Police Post had collapsed because of the bomb blast and the dead bodies of the police employees were lying underneath the debris. He further stated that he first arranged a

weightlifter/Crain (for removal of the debris and recovery of dead bodies) and also completed other proceedings at the spot whereafter, he sent the complaint for registration of FIR. Relevant part of his statement in this respect is reproduced hereunder:-

*"I also saw that building had collapsed because of the blast. Debris was lying scattered. The dead bodies of police employees were underneath the debris. I arranged for weight lifter (Crain) and necessary message were onwarded to the high-ups of the police. After receiving the message DPO/SDPO concerned reached at the spot along with their subordinates. Debris was removed and dead bodies of six other police persons were brought out. I had prepared injuries statements and inquest reports regarding the dead bodies and dispatched the same through Nasrullah constable and other for autopsy. After this I prepared complaint (Ex. PLL) which was handed over to Nasrullah constable for registration of case where formal FIR (Ex. PLL/1) was registered on the same day."*

It is evident from the perusal of the above-mentioned statement of Malik Khalid Mehmood, Inspector/complainant (PW-18) that the dead bodies of 06 police employees were lying underneath the debris of the building, which collapsed due to the bomb blast. A weightlifter (crane) was arranged for removing the above-mentioned debris of the building and for recoveries of dead bodies. A message was also sent to the DPO/SDPO concerned, who reached at the spot and thereafter the debris were removed and the dead bodies of 06 police employees were brought out from underneath the debris. The complainant then prepared the injury statements and inquest reports regarding the dead bodies and dispatched all the dead bodies through Nasrullah, constable and then, the complaint (Ex.PLL) was sent for registration of FIR (Ex.PLL/1). It is, therefore, clear that a lot of time must have been



consumed in arranging the weightlifter (crane) and removing the debris of the building and bringing out the dead bodies of 06 police persons from underneath the said debris and thereafter in preparation of the injury statements and inquest reports of the said dead bodies, and all these proceedings were not possible to have been completed within a period of 30 minutes as claimed by the prosecution. The names of the six (06) police employees whose dead bodies were still lying underneath the debris of the building were also mentioned in the complaint (Ex-PLL) which was statedly sent to the police station for registration of FIR within 30-minutes of the occurrence. It is, thus evident that the FIR was not lodged at the given time mentioned in the relevant column of the FIR rather the same was registered with a considerable delay but a wrong time of registration of the FIR has been mentioned in its relevant columns to show the promptness of the FIR.

9. It was argued by the learned DPG that as the PWs had no enmity with the accused, therefore, their evidence cannot be discarded but it is by now well settled that absence of enmity of the witnesses with the accused does not mean that they should be relied upon blindly without determining that as to whether their evidence was trustworthy or the same was inherently unreliable. Reference in this context may be made to the cases of Haroon v. State (1995 SCMR 1627) and Muhammad Iqbal v. State (1984 SCMR 930).

10. We have also perused the contents of the FIR (Ex.PLL/1) and noticed that Malik Khalid Mehmood, Inspector/complainant (PW-18) stated that on the night of occurrence i.e. on 07.02.2009 at 03:30 AM, he (complainant) along

with other police employees was present on a patrolling duty near village Sandanwala at Sargodha-Mianwali Road and in the meanwhile he heard the report of firing and blast from the side of Police Check Post Qudratabad, whereupon, he along with other police employees reached at the above-mentioned Check Post and saw that the dead bodies of Yasir Arafat, constable and Muhammad Ilyas, constable, were lying outside the above-mentioned police post. He also noticed that the building of Check Post had collapsed due to bomb blast and inside the said building, dead bodies of Sher Khan ASI, Zafar Iqbal Head Constable, Ghulam Abbas, Bahadur Khan constables, Ghulam Shabbir and Sajawal Khan volunteers, were lying under the debris of the building. He further alleged that the arms and ammunition from the above-mentioned police post were also found to be robbed by the unknown accused. The name of any witness who had seen the occurrence was not mentioned in the contents of the FIR. Likewise, it was not stated therein that how many accused participated in the occurrence and what were their descriptions. However, according to the persecution case on the same day, Fateh Sher (PW-15) and Alam Khan (PW-16) appeared before the Police and claimed that they had witnessed the occurrence. As mentioned earlier, the occurrence of this case took place on 07.02.2009 at 03:30 AM but the above-mentioned witnesses stated that they appeared before the Police on 07.02.2009 at 01:00 PM. They claimed that they saw 07 unknown accused persons while carrying firearms, who committed the murders of 08 police employees by firing and blew Police Post Qudratabad through a bomb blast. Later on, the said witnesses also identified the petitioners during

the identification parades. It is noteworthy that the names of both the above-mentioned eye-witnesses were not mentioned in the FIR. We have also observed that the conduct of the said eye-witnesses was highly unnatural because according to their statements they had witnessed the occurrence of a shocking, brutal and heinous offence of the murders of 08 innocent police employees through firing and bomb blast but they stated that instead of reporting the matter to the police they went to Chiniot to purchase a buffalo. Alam Khan (PW-16) admitted during his cross-examination that one of the deceased police employee of this case namely Sher Khan, ASI was his son-in-law whereas Fateh Sher (PW-15) has also admitted during his cross-examination that another deceased police employee of this case namely Bahadar Khan, constable, was his co-villager but even then they both did not report the matter to the police and went to Chiniot to purchase a buffalo. The relevant parts of their statements in this respect are reproduced hereunder for ready reference:-

**Alam Khan (PW-16)**

*"It is correct that Sher Khan ASI was my son-in-law who had died in the occurrence."*

**Fateh Sher (PW-15)**

*Anyhow Bahadur Khan mentioned above constable was my co-villager."*

Fateh Sher (PW-15) further conceded during his cross-examination that there were many police stations in between the place of occurrence and Chiniot but he did not disclose the above-mentioned fact to any police officer or official. The relevant part of his statement in this respect reads as under:-

*"There are many police stations in between the place of the occurrence and Chiniot but we did not disclose the above fact to any police officer or official nor we talked about it with any other person."*

.....  
 .....  
*It is correct that there are many barriers and pickets of police upto Chiniot from the place of occurrence."*

He further stated that his statement was recorded by the Police on the day of occurrence at 01:00 PM but he had not mentioned any reason of delay in his above-referred statement. Likewise, Alam Khan (PW-16) also stated that he had not assigned any reason of delay in making his statement before the Police. The relevant parts of the statements of Fateh Sher (PW-15) and Alam Khan (PW-16) read as under:-

***Fateh Sher (PW-15)***

*"My statement was recorded by police at 01:00 pm on the day of occurrence. It is correct that my reason of delay in making statement has not been mentioned in my statement before police."*

***Alam Khan (PW-16)***

*"The Police has not recorded reason of delay in making my statement nor I had assigned the same."*

11. It is further noteworthy that the occurrence of this case took place at Police Check Post Qudratabad of Police Station Van Bhachran, District Mianwali but both above-mentioned eye-witnesses namely Fateh Sher (PW-15) and Alam Khan (PW-16) were not residents of the area where the occurrence took place. Fateh Sher (PW-15) was resident of village Gulmirri, District Mianwali, whereas Alam Khan (PW-16) was resident of Musa Khan, District Mianwali. Fateh Sher (PW-15) stated during his cross-examination that his residence was at a distance of 25/26 kilometers from the place of occurrence, whereas the residence of Alam Khan (PW-16) was at a distance of 32/33 kilometers from the

said place. Likewise, Alam Khan (PW-16) also conceded during his cross-examination that his residence was at a distance of 25 miles from the place of occurrence. The relevant parts of their statements are reproduced hereunder:-

***Fateh Sher (PW-15)***

*"My place of residence may be at a distance of 25/26 kilometers from the place where I had seen the accused standing. The residence of Alam Khan the other witness is at a distance of 32/33 kilometers from the place of occurrence."*

***Alam Khan (PW-16)***

*"My place of residence is at a distance of about 25 miles from the place of occurrence where I saw the occurrence."*

It is, therefore, evident that both the above-mentioned eye-witnesses of the prosecution were not residents of the place where the occurrence took place and, as such, they were chance witnesses. In order to justify their presence at the spot at the odd hours of night i.e. 03:30, AM they stated that on the relevant date and time they were going to Chiniot to purchase a buffalo and on their way when they reached at the Police Post Qudratabad, they witnessed the occurrence and thereafter they proceeded to Chiniot for the above-mentioned purpose. No receipt of the cattle market Chiniot was produced by the above-mentioned eye-witnesses regarding purchase of any buffalo from the said market in order to justify the reason of their presence at the spot on the night of occurrence rather they made an excuse that they did not purchase any buffalo from Chiniot on the above-mentioned day. It is further noteworthy that Alam Khan (PW-16) has mentioned his age as 80 years while making his statement before the learned Trial Court. He further conceded during his cross-examination that he being an

old person was not doing any work and used to remain in his house. The relevant part of his statement in this respect reads as under:-

*"It is correct I being an old person do not do any work and remain in the house."*

The above-mentioned prosecution eye-witnesses have also conceded that during investigation they did not produce any person from Chiniot who was visited by them in order to purchase a buffalo on the relevant day. Under the circumstances, the reason given by the above-mentioned chance witnesses for their presence at the spot at the time of occurrence has not been established in this case, hence, it is not safe to rely upon their evidence. Reference in this respect may be made to the cases of Mst. Sughra Begum Vs. Qaiser Pervez (2015 SCMR 1142), Mst. Mir Zalai v. Ghazi Khan and others (2020 SCMR 319), G.M. Niaz v. The State (2018 SCMR 506), Muhammad Ali Vs. The State (2015 SCMR 137), Muhammad Irshad vs. Allah Ditta and others (2017 SCMR 142), Sufyan Nawaz and another vs. The State and others (2020 SCMR 192).

In the case of "Mst. Sughra Begum" supra, this Court held 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 a 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 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.'*

In the case of "Mst. Mir Zalai" supra, while disbelieving the evidence of chance eye-witnesses this Court has observed as under:-

*"The circumstances in which the FIR had been lodged in this case were quite suspicious and the eye-witnesses produced by the prosecution before the trial court were admittedly chance witnesses who had failed to establish the stated reason for their presence with the deceased at the relevant time".*

12. As mentioned earlier, the names of the prosecution eye-witnesses namely Fateh Sher (PW-15) and Alam Khan (PW-16) were not mentioned in the FIR. Fateh Sher (PW-15) categorically stated during his cross-examination that they (PWs) stayed near the place of occurrence for about 10 minutes. The complainant of the case namely Malik Khalid Mehmood, Inspector/complainant (PW-18) stated that on the night of occurrence, he was present in his official vehicle at Sargodha Mianwali road on a patrolling duty, when he heard the report of firing and bomb blast from the side of Police Check Post Qudratabad whereupon, he reached at the said place within 2/3 minutes but he did not see Alam Khan and Fateh Sher PWs at the spot. The relevant parts of the statements of Fateh Sher (PW-15) and Malik Khalid Mehmood, Inspector/complainant (PW-18) read as under:-

***Fateh Sher (PW-15)***

***"We stayed near the place of occurrence for about 10 minutes on the road which is a busy road."***

***Malik Khalid Mehmood, Inspector/complainant (PW-18)***

*"I heard sound of blast at Adda Pakka Sandanwala, which is about 1 to 1 ½ kilometer away from Qudratabad Check Post. I reached at scene of occurrence **within two to three minutes.***

.....  
 .....

*When I reached at scene of occurrence Alam Khan and Fateh Sher PWs were not present."*

**(Bold and underling is supplied for emphasis)**

It is, therefore, evident that had Fateh Sher (PW-15) and Alam Khan (PW-16) witnessed the occurrence and stayed at the spot for 10-minutes, as stated by Fateh Sher (PW-15), then they should have been seen by Malik Khalid Mehmood, Inspector/Complainant (PW-18), who reached at the spot within two to three minutes from the occurrence. It is, therefore, clear that the above-mentioned eye-witnesses were actually not present at the place of occurrence at the relevant time and the story of their presence at the spot at the time of occurrence was subsequently concocted to strengthen the weak prosecution case of an unseen occurrence.

13. Insofar as identification of the petitioners by the above-mentioned eye-witnesses during identification parades is concerned, we have noted that the identification parade of Saleem Zaman, petitioner and Abdullah alias Ghazali co-accused (since died) was jointly held. In this respect, the statement of Khuda Yar, Judicial Magistrate (PW-17) who conducted the identification parade of Saleem Zaman, petitioner and Abdullah alias Ghazali, co-accused (since died) is reproduced hereunder:-



*"Two accused namely Abdullah and Saleem Zaman had been mixed with eighteen others under trial dummies in two rows. ....*

*Thereafter, I summoned Alam Khan PW from outside the jail premises and he was asked to identify the accused. He correctly identified Abdullah accused from one row and accused Saleem Zaman from the second row."*

It is, therefore, evident that the identification parade of Saleem Zaman, petitioner and Abdullah alias Ghazali, co-accused (since died) was jointly held. Although the identification parade of Abdul Hayee, petitioner was not jointly held with any other accused but no role whatsoever during the occurrence was attributed to the said petitioner by the prosecution eye-witnesses at the time of his identification parade. Likewise, Fateh Sher (PW-15) also conceded that he did not attribute any role to Saleem Zaman, petitioner and Abdullah alias Ghazali, co-accused (since died) during their identification parade. The relevant parts of the statements of Fateh Sher (PW-15) and Khuda Yar, Judicial Magistrate (PW-17) read as under:-

***Fateh Sher (PW-15)***

*"It is correct that I did not attribute any role to Saleem Zaman and Abdullah accused before the Magistrate."*

***Khuda Yar, Judicial Magistrate (PW-17)***

*"The witnesses did not attribute any specific role to Mohammad Saleem Zaman accused during the identification parade. ....*

*During the proceedings dated 06.06.2009 the witnesses only placed their hands on the head of the accused Abdul Hayee and said that he was Abdul Hayee. It is correct that Alam Khan placed his hand on the person sitting at Serial No. 7 and said that "he is". No role was attributed to any of the accused by the PWs."*

As the identification parade of Saleem Zaman, petitioner and Abdullah alias Ghazali, co-accused (since died) was jointly held and as no specific roles during the occurrence were

attributed to both the petitioners by the prosecution eye-witnesses at the time of their identification parades, therefore, the identification of the petitioners during their identification parades carries no value in the eyes of law. Reference in this context may be made to the cases of Kamal Din Vs. The State(2018 SCMR 577), In the matter of Kanwar Ali, Special Judicial Magistrate (PLD 2019 SC 488) and Azhar Mehmood Vs. The State(2017 SCMR 135).

14. Insofar as the recoveries of weapons of offence from the petitioners in another case bearing FIR No. 121 dated 26.05.2009 under Sections 324/353/186/148/149 PPC, read with Section 13 of the Arms Ordinance, 1965 and Section 7 of the Anti Terrorism Act, 1997, at Police Station Mochh, District Mianwali, which recoveries were also relied upon by the prosecution in the instant case and positive reports of Forensic Science Laboratory are concerned, we have noted that the said recoveries were not put to the petitioners in their statements recorded under Section 342 Cr.P.C., therefore, the above-mentioned pieces of prosecution evidence cannot be considered against the petitioners and the same have rightly been discarded by the learned High Court in paragraph No. 15 of the impugned judgment. Reference in this context may also be made to the cases of, Fida Hussain Shah Vs. The State (2024 SCMR 1622), Haji Nawaz Vs. The State (2020 SCMR 687) & Mst. Anwar Begum Vs. Akhtar Hussain (2017 SCMR 1710).

Even otherwise, we have already discarded the direct evidence of above-mentioned prosecution eye-witnesses in this case, therefore, the convictions and sentences of the petitioners

under the capital charge cannot sustain merely on the basis of above-mentioned alleged recoveries. Reference in this context may further be made to the case of Muhammad Fazal Vs. The State (2009 SCMR 436).

15. Insofar as the motive is concerned, although it is argued by learned DPG that the petitioners were involved in other criminal cases of terrorism and they have committed the occurrence of this case in order to create terror in the society but we have noted that no previous record of the petitioners regarding their involvement in any other criminal case prior to the registration of present case has been brought on the record. It is true that Haji Khan, Inspector (PW-19) in his statement before the learned Trial Court has made reference to another FIR No. 121 dated 26.05.2009 registered against the petitioners but as mentioned earlier the FIR of the instant case was lodged on 07.02.2009, therefore, it is evident that the above-mentioned other FIR No. 121 was subsequently lodged against the petitioners and as such no record qua involvement of the petitioners in any other criminal case prior to the registration of the instant case has been brought on the record. Moreover, the enmity of the petitioners with the local police was established during the cross-examination of Haji Khan, Inspector (PW-19). The relevant part of his statement in this respect is reproduced hereunder:-

“Sher Zaman is father of Saleem Zaman accused but I do not know whether Aamir Hayat is Behnoi of Saleem Zaman accused. I know that Sher Zaman aforementioned filed writ petition before Honourable Lahore High Court Lahore that his son-in-law Aamir Hayat was being detained illegally by the police and was

being tortured. It is correct that on the orders of Honourable Lahore High Court Lahore Bailiff was deputed by learned Sessions Judge Khushab and we produced Aamir Hayat before his lordship, the Chief Justice. It is correct that after the statement of Aamir Hayat his lordship released Aamir Hayat and FIR No.122 registered against him at Police Station Wan Bhachran was also quashed. It is correct that Honourable Chief Justice also held that if Aamir Hayat wanted to get register cases against the relevant police officers for highhandedness, he can get the case register against them".

It is therefore, evident that a habeas petition was filed against the local police, by the father of Saleem Zaman petitioner, before the Lahore High Court and in the said case the detainee was released and the learned Chief Justice of the High Court also observed that the detainee may get the cases registered against the relevant police officers for their highhandedness and the said order invited the wrath of the local police against the petitioners who were mala fide implicated in the instant case of un-seen occurrence, so that the petitioners or their above-mentioned relative may not pursue his above-referred case and lodge FIRs against the local police officers/officials.

Moreover, no record was produced by the prosecution to establish that the petitioners had any link with any terrorist/proscribed organization. Furthermore, neither Fateh Sher (PW-15) nor Alam Khan (PW-16) or Malik Khalid Mehmood, Inspector/complainant (PW-18) or Haji Khan, Inspector (PW-19) stated that the petitioners were terrorists and they committed the occurrence of this case for the purposes of terrorism. Furthermore, the above-mentioned motive that the petitioners committed the occurrence in order to

create terror in the society was not put to the petitioners in their statements recorded under Section 342 Cr.P.C. Under the circumstance, it cannot be held that the prosecution has proved the alleged motive against the petitioners. It is, therefore, evident that the petitioners had no reason to commit the occurrence of this case rather the local police had a motive to falsely involve the petitioners the instant case of unseen occurrence.

16. Keeping in view all the above-mentioned facts, we have come to this irresistible conclusion that the prosecution has not been able to prove its case against the petitioners beyond the shadow of doubt, therefore, these petitions are converted into appeals and allowed. The impugned judgment is set aside. Petitioners are acquitted of all the charges while extending them the benefit of doubt. They shall be released from the jail forthwith unless required to be detained in any other case.

JUDGE

JUDGE

JUDGE

Islamabad, the  
21<sup>st</sup> of October, 2024  
'Approved For Reporting'  
Khurram