

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate jurisdiction)

33/25

**PRESENT:** Justice Muhammad Hashim Khan Kakar  
Justice Salahuddin Panhwar  
Justice Ishtiaq Ibrahim

**Criminal Appeal No. 181/2022**

(Against the judgment/order dated 18.04.2017  
passed by the Lahore High Court, Multan Bench,  
in CrI. Appeal No. 15-J/2013 and M. R. No. 28/2012)

Khizar Hayat

Appellant(s)

Versus

The State

Respondent(s)

For the Appellant(s):

Ms. Aisha Tasneem, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State:

Mr. Tariq Siddique, APG

Date of Hearing:

28.04.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar, J.** Khizar Hayat, appellant, and some others had allegedly murdered one Ghulam Rasool and had injured Abid Hussain in an incident which took place at about 9.00 p.m. on 30.11.2009 in the area of police station Haveli Karanga, Tehsil Kabirwala, District Khanewal in the backdrop of a motive according to which the accused party abducted the daughter of complainant namely Mst. Nasreen.. With these delegations the appellant and his co-accused were booked in case FIR No. 240 dated 01.12.2009 registered at the above-mentioned police station and after a regular trial the appellant was convicted by the Trial Court for an offence under section 302(b) PPC and was sentenced to death. The appellant challenged his conviction and sentences before the Lahore High Court through an appeal which was partly allowed and his sentence of death for the said offence was reduced to imprisonment for life. Hence, this appeal with the leave of the Court.

2. Leave to appeal was granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

AFR  
AD



3. The occurrence in this case had taken place during the night and although the prosecution had mentioned availability of torch with the prosecution witnesses at the spot yet admittedly no torch had been secured during the investigation of this case. Thus, the claim of the above alleged eyewitnesses regarding identification of culprits with graphic details of the incident appears to be a claim which can be accepted only with a lump of salt. Similarly, the occurrence which became the foundation stone of the case took place on 30.11.2009 at about 9:00 p.m. According to the record, the police station Haveli Karanga is situated at a distance of approximately 9 miles from the crime scene. However, the matter was brought to the notice of local police through the statement of Muhammad Ramzan (PW-10) recorded on 01.12.2009 at about 1:05 p.m. after a delay of about 14 hours without any justifiable explanation, thus, a possibility regarding deliberations before lodging of the FIR could not safely be ruled out of consideration.

4. The ocular account was furnished by three witnesses, namely, Muhammad Ramzan, Muhammad Sadiq and Abid Hussain. They unanimously attributed the injuries on the body of Ghulam Rasool (deceased) to Khizar Hayat and Aamir Shehzad. Similarly, all the three prosecution witnesses saddled Sadar Ayub with the responsibility of inflicting two injuries with his hatchet on the head and shoulder of Abid Hasan (PW-12) whereas the remaining accused persons namely, Maqbool Hussain, Muhammad Yaqoob and Asif Iqbal were not ascribed overt act in the commission of the crime. It is not disputed that two co-accused of the appellant attributed effective role of causing injuries to the deceased Ghulam Rasool and Abid Hussain (PW-12) had been acquitted of the charge. The law is settled that if the eyewitnesses have been disbelieved against some accused persons attributed effective roles then the same eyewitnesses cannot be believed against another accused person attributed a similar role unless such eyewitnesses receive independent corroboration qua the other accused person.

5. Abid Hussain is being portrayed by the prosecution as a star witness on account of injuries on his body, which fact is projected by the prosecution as stamp of his presence at the time of occurrence. We are mindful of the fact that prosecution witness Abid Hussain had allegedly sustained injuries on his head and shoulder caused by co-accused Sadar



Ayub, however, due to non-production of the concerned Doctor as well as acquittal of Sadar Ayub, no reliance can be placed on his evidence being shaky in nature. Even otherwise, it is not necessary that the injured witness had spoken the whole truth, it cannot be relied upon unless corroborated, which is lacking in the instant case. There is glaring conflict between the ocular account and the medical evidence. We have also noted that the conduct allegedly exhibited by the complainant party is offensive to normal human conduct, taking into account the number of individuals from both factions at the time of the occurrence. Despite the absence of definitive guidelines regarding human conduct and behavior, it is reasonable to assume that the prosecution witnesses would not let the perpetrators go scot-free after the murder of their loved ones in the normal course of events, given the accepted standards of human behavior.

6. It is also noteworthy that the High Court had categorically found that the motive set up by the prosecution had not been proved by it. It is by now settled that the prosecution though is not obliged to prove the motive in each and every case, however, once the motive is set up then it must be established and in case of failure to prove the same, then prosecution must suffer its consequences and not the defence.

7. For what has been discussed above, we have found that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. Consequently, whilst setting aside the impugned judgment, this appeal is allowed and the conviction and sentences of the appellant are set aside and he is acquitted of the charge by extending him the benefit of doubt. He shall be released from jail forthwith if not required to be detained in any other case.

Islamabad  
28.04.2025  
(Farrukh)

Approved for Reporting