

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 NO.507 OF 2023

(Against the judgment dated 10.06.2019, in Criminal Appeal
No.2068 of 2016, passed by the Lahore High Court, Lahore)

Altaf Hussain

.....Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant: Mr. Khawar Mehmood Khatana, ASC

For the Complainant: Nemo

For the State: Mr. Rai Akhtar Hussain, APG Punjab

Date of hearing: 29.04.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- The Appellant, Altaf Hussain, charged for committing the murder of Muhammad Ashfaq deceased was tried by the learned Additional Sessions Judge, Ferozewala (**“Trial Court”**) in case FIR No. 413/2013 dated 20.05.2013 under Sections 302, 324, 148, and 149 of the Pakistan Penal Code, 1860 (**“PPC”**), and Section 13 West Pakistan Arms Ordinance, 1965, registered at Police Station Factory Area, District Sheikhupura. Upon conclusion of the trial, the Trial Court convicted the appellant under Section 302(b) PPC and sentenced him to imprisonment for life along with a fine of Rs.100,000/- and in default thereof to further undergo six months simple imprisonment. The appellant was directed to pay Rs.200,000/- as compensation to the legal heirs of the deceased under Section 544-A of the Code of Criminal Procedure, 1898 (**“Cr.P.C.”**), and in default of payment, to undergo one year simple imprisonment. Additionally, the appellant was convicted under Section 324 PPC and sentenced to five years rigorous imprisonment with a fine of Rs.50,000/- and in default thereof, to undergo three months simple imprisonment. The benefit of Section

382-B Cr.P.C. was extended to him. The Lahore High Court Lahore while dismissing appeal of the appellant vide judgment dated 10.06.2019 (**'Impugned judgment'**), upheld his conviction. However, the fine of Rs.100,000/- imposed under Section 302(b) PPC was set aside and the sentence in default of payment of compensation under Section 544-A Cr.P.C. was reduced from one year to six months simple imprisonment.

2. Aggrieved by the judgment of the learned High Court, the appellant preferred Jail Petition No. 440 of 2019 before this Court, wherein leave to appeal was granted vide order dated 13.04.2023.

3. According to the prosecution's case, as set forth in the First Information Report (FIR) Exh. PA, on 19.05.2013 at approximately 11:45 p.m., the complainant Abdul Ghafoor (PW-1) along with his brothers Muhammad Ashfaq deceased, Muhammad Yasin (PW.2), and Liaqat Ali, left their house with the intention of settling a monetary dispute with the accused Manzoor Ahmad (since acquitted), who was present at the residence of Haji Munawar Hussain (PW.3), located in Ismail Park. It is alleged that, in the illumination provided by an electric street bulb, they observed Haji Munawar Hussain (PW.3) standing in front of his house as well as appellant Altaf Hussain armed with a Kalashnikov, accused Manzoor Ahmad (since acquitted) and Sajid Ali (absconding) armed with pistols accompanied by two unidentified armed individuals. During the ensuing conversation regarding the money dispute between the deceased and accused Manzoor Ahmad (since acquitted), an exchange of harsh words occurred, whereupon the appellant Altaf Hussain allegedly opened fire with his Kalashnikov in a burst striking Muhammad Ashfaq deceased, who fell to the ground. Subsequently, accused Manzoor Ahmad (since acquitted) is alleged to have fired a shot with his pistol, which hit the deceased on his left arm. As the complainant and the aforementioned prosecution witnesses attempted to rescue the injured Muhammad Ashfaq, co-accused Sajid Ali (absconding) allegedly fired at them, injuring PW Muhammad Yasin. Upon hearing the gunshots, local residents gathered attracted to the spot and during the commotion, a Kalashnikov allegedly fell from the possession of Altaf Hussain. Nevertheless, the appellant and his co-accused managed to escape from the spot. Both the injured were shifted to Mayo hospital Lahore, however, Muhammad Ashfaq deceased succumbed to injuries. A dispute over money was advanced as a motive behind the occurrence.

4. We have heard the learned counsel for the appellant as well as the learned Additional Prosecutor General, Punjab, appearing on behalf of the State and have examined the record and evidence with their valuable assistance.

5. In the instant case, the occurrence took place on 19.05.2013 at about 11:45 p.m., in front of the house of Haji Munawar Hussain (PW-3), ocular account of which was furnished by the complainant Abdul Ghafoor (PW-1), injured Muhammad Yasin (PW.2) and Haji Munawar Hussain (PW-3), the eyewitnesses respectively out of them, the former two eyewitnesses are the brothers of the deceased. The depositions of the eyewitnesses are consistent and corroborative with each other on all material particulars, including the day, date, time, and place of occurrence, as well as the mode and manner in which the deceased was fatally injured and done to death by the appellant through burst firing from a Kalashnikov. The eyewitnesses also provided a coherent and credible account regarding the firearm injuries sustained by injured Muhammad Yasin (PW.2) as a result of firing by Sajid Ali (the absconding co-accused). Although the occurrence took place at nighttime, however, all the eyewitnesses have consistently stated that the area was sufficiently illuminated by an electric bulb installed outside the house of PW Haji Munawar Hussain, thereby enabling them to clearly identify the appellant and his co-accused. The presence of the appellant and co-accused at the crime scene has been unequivocally confirmed by Haji Munawar Hussain (PW.3), outside whose house the incident took place. He categorically deposed that at about 10:35 p.m., upon hearing a knock at his door, he opened it and, under the light of the electric bulb, saw the appellant Altaf Hussain armed with a Kalashnikov, co-accused Manzoor Hussain and Sajid Ali armed with pistols and two unknown armed persons, all standing outside having parked their vehicle bearing registration No. 6316-LEB in the street. Upon query of PW Haji Munawar Hussain, accused Manzoor Hussain told him that they had come to settle a monetary dispute with Muhammad Ashfaq deceased, who is coming. After some time, the deceased along with the complainant, Liaqat Ali and Muhammad Yasin, arrived at the spot. An exchange of hot words ensued between the deceased and Manzoor Hussain accused, following which the appellant opened fire in a burst from his Kalashnikov, resulting in multiple injuries to the deceased who fell to the ground. Then accused Manzoor Hussain also fired at the deceased, hitting him on the left arm, while the absconding accused Sajid Ali fired upon Muhammad Yasin (PW-2), causing him firearm injuries. The eyewitnesses were subjected to rigorous

cross-examination, but nothing material could be elicited to cast doubt on their credibility or contradict their version. The presence of Muhammad Yasin (PW.2), having firearm injuries, stands as unrefuted physical evidence supporting the ocular account. Likewise, the presence of the complainant Abdul Ghafoor (PW.1) and Haji Munawar Hussain (PW.3) at the crime spot at the time of occurrence has been plausibly explained and remains unimpeached during cross-examination. Admittedly, the complainant and injured Muhammad Yasin are real brothers of the deceased but their mere relationship with the deceased is not a sufficient ground for discarding their testimony, especially in the absence of any established animus or motive for false implication. The principle that substitution of the actual perpetrator in place of innocent individual particularly where close relatives are killed in the presence of family members is an improbable proposition and finds consistent affirmation in the jurisprudence of this Court. Reliance in this regard may be placed on *Asfandiyar v. The State and others* (**2021 SCMR 2009**) and *Muhammad Abbas & another v. The State* (**2023 SCMR 487**). In the absence of any mala fide intent or ulterior motive to falsely implicate the appellant, the testimony of the eyewitnesses being confidence inspiring and having remained consistent throughout cannot be discredited merely on the basis of their relationship with the deceased. Reliance is placed on *Aman Ullah v. The State* (**2023 SCMR 723**) and *Imran Mehmood v. The State* (**2023 SCMR 795**).

6. The medical evidence adduced by Dr. Muhammad Hanif (PW-6), who conducted the post-mortem examination on the dead body of Muhammad Ashfaq deceased, fully corroborates the ocular account of the prosecution's case. In his testimony, the medical officer stated that he observed ten firearm injuries on various parts of the deceased's body, five of which were exit wounds. These firearm injuries caused extensive damage to the vital organs and structures, including the chest, lungs, brain, blood vessels, chest wall, sternum, cartilages, ribs, pleurae, and upper limb of the deceased. The cumulative effect of these injuries led to the deceased's unnatural death.

7. The contention raised by the learned counsel for the appellant that since co-accused Manzoor Hussain, who was charged with causing a firearm injury to the deceased on the left upper arm, has been acquitted by a court of competent jurisdiction and his acquittal has attained finality, therefore, the conviction and sentence of the appellant based on the same set of evidence is contrary to the settled principles of appreciation of evidence, is misconceived and devoid of

merit. The appellant was specifically assigned the role of having committed burst fire with a Kalashnikov, as a result of which the deceased sustained multiple injuries on various parts of his body and fell to the ground. Conversely, co-accused Manzoor Hussain was assigned role of single fire shot which hit the deceased on his left arm. However, neither any crime empty of a 30 bore pistol was recovered from the spot nor was any such pistol recovered from the possession or on the pointation of co-accused Manzoor Hussain. It is pertinent to note that the acquittal of accused Manzoor Hussain was not based on discrediting the ocular account of the prosecution witnesses as is manifest from the impugned judgment of the High Court. The High Court in the impugned judgment has observed that co-accused Manzoor Hussain was independently tried and the learned Trial Court observed that in the absence of recovery of any empty of 30 bore from the spot, the injury on the left arm of the deceased could not be conclusively attributed to the co-accused Manzoor Hussain and might plausibly have been caused as a result of burst firing attributed to the appellant. Thus, the acquittal of the co-accused does not in any way undermine the prosecution's case against the appellant, whose role was categorically established through cogent and reliable evidence. This court in its judgment dated 25.02.2025, rendered in **Criminal Appeal Nos.229 & 230 of 2021 titled, "Sher Afzal vs the State"** held that the application of "*falsus in uno, falsus in omnibus*" does not render the principle "*to sift the grain out of the chaff*" redundant, since the judge now still has to sift the grain out of chaff whilst he differentiates between the materiality of the fact in appraisal of evidence. Relevant part of the judgment (ibid) is reproduced below for ready reference:-

"The doctrinal principles applied in west cannot *strict sensu* be applied in Pakistan for multiple reasons which I shall discuss hereafter, a prime example is that "*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 circumstances of the subcontinent, the rule's application has been modified by this court in the Khizar Hayat case (PLJ SC (Cr C) 265) 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 the judge now still has to sift the grain out of chaff whilst he differentiates between the materiality of the fact**

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 chaff e.g. in the Khadim Hussain case (2010 SCMR 1090), Muhammad Afzal case (2017 SCMR 1645) and Munir Ahmad case (2019 SCMR 79) and one shall not lose sight that the criminal case is to be decided in its totality of its circumstances as held in the case of Muhammad Kakki (2021 SCMR 1672) and recently in Sadaruddin case (Criminal Jail appeal No.S-26 of 2019).”

8. For the foregoing reasons, we have arrived at the irresistible conclusion that the learned courts below, upon proper appraisal and evaluation of the evidence available on record, rightly concurred in holding that the prosecution had successfully proved the charge of murder against the appellant, to the extent of causing the death of Muhammad Ashfaq deceased. As regards the injury caused to injured Muhammad Yasin, the specific role of firing at him was attributed to the absconding co-accused Sajid Ali. Therefore, the conviction of the appellant under Section 324 PPC is not sustainable in law. Consequently, this appeal is partly allowed; the conviction and sentence of the appellant under Section 324, PPC are set aside, while his conviction and sentence under Section 302(b), PPC recorded by the High Court are upheld and maintained.

Announced in open Court at Islamabad on 7 May 2025

Approved for reporting.
M.Siraj Afridi PS