

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:** Justice Muhammad Hashim Khan Kakar  
Justice Muhammad Shafi Siddiqui  
Justice Ishtiaq Ibrahim

22/25

AFR  
AD

**Criminal Appeal No. 23/2020**

(Against the order/judgment dated 02.06.2015 passed by the Lahore High Court, Bahawalpur Bench, in Cr. As. No. 281, 303, 320, 321, 367/2012 and M.R. No.47 /2012)

Ghulam Mustafa

Appellant(s)

Versus

The State

Respondent(s)

For the Appellant(s):

Mr. Zulfikar Khalid Maluka, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State:

Ms. Memoona Ihsan-ul-Haq, DPG

Date of Hearing:

13.03.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar, J.** The appellant, Ghulam Mustafa, was convicted under section 302(b) PPC and sentenced to death alongwith an order to pay compensation of Rs.200,000/- to the legal heirs of the deceased, Faiz Ahmed, under section 544 Cr.P.C. and in default thereof to further undergo SI for six month. He was also convicted and sentenced under sections 149, 324, 337, and 452 PPC. Being dissatisfied, the appellant filed Criminal Appeal No. 281/2012 before the Lahore High Court, Bahawalpur Bench, which was dismissed by means of the impugned judgment whereby his conviction under section 302(b) PPC was maintained, however, his sentence was altered from death to imprisonment of life.

2. According to the prosecution, on the fateful day at about 8/9 p.m. the complainant, Mumtaz Ahmed, alongwith his brother, Faiz Ahmed, and sons, Mazhar Abbas, Fayyaz, Riaz, and nephew, Mushtaq, was present in his house. Accused Sahib Yar and his companions, equipped with hatchets and sticks, in collusion with each other entered his house and started to beat the complainant party. Consequently, brother of



complainant, namely, Faiz Ahmed, fell down due to severe injuries. The motive behind the occurrence was land dispute. With these allegations the appellant and his co-accused were booked in case FIR No. 549/2009, registered at police station Liaquatpur, District Rahim Yarkhan.

3. 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.

4. After hearing the learned counsel for the parties and going through the record, we have observed that the occurrence in this case had taken place after dark and no independent proof had been produced by the prosecution regarding availability of electric light at the spot. In the FIR, 13 culprits, including the present appellant, had been nominated whereas 7/8 other culprits had been described as unknown. The motive set up by the prosecution was based upon land dispute between the parties and, thus, the said motive cut both ways. If the said background could provide a motive to the accused party to launch such a horrific attack on the complainant party, then the same motive could equally push the complainant party to spread the net very wide so as to falsely trap some innocent members of the accused party. The upsetting part of the ocular account is that on the basis of same statements made by the eyewitnesses, co-accused Muhammad Iqbal, Imtiaz, Riaz Ahmed, Sahib Yar, Shabir Ahmed, Muhammad Sadiq, Muhammad Nawaz, Abdul Sattar, Muhammad Ajmal, Shaukat Ali had been acquitted by the courts below despite the fact that the abovementioned eyewitnesses had tarnished the said co-accused with the same brush. When 12 co-accused attributed the role of causing injuries to the deceased and other members of the complainant party had been acquitted in this case, it was incumbent upon the courts below to look for independent corroboration to the ocular account before convicting and sentencing the present appellant. In this regard we note that the appellant was allegedly armed with 'Sota' at the time of occurrence and caused injury on the skull of the deceased with the said 'Sota' and the same had also been recovered from his possession but it is astonishing and disturbing to observe that the appellant was not confronted with the said piece of evidence at the time of recording his statement under section 342 Cr.P.C. rather the record shows that the following question was asked:



“It is further in the prosecution evidence that while in police custody, you himself brought out the crime weapon i.e. hatchet P.3, and presented to the I.O who took into possession vide recovery memo Ex.P.D in presence of the recovery witnesses. The PWs then proved the same against you in the witness-box. What do you say in this respect?”

The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under section 342 Cr.P.C. then the same cannot be considered against him for the purpose of recording his conviction.

5. The High Court observed that the complainant party had falsely implicated numerous innocent individuals in the current case. Consequently, in the absence of any independent corroboration or confirmation of the allegations leveled against the appellant, particularly when some co-accused who were attributed the same roles have already been acquitted by the courts below, we are compelled to observe that the complainant party had no regard for the truth and the eyewitnesses produced by it had been established to be untruthful regarding many innocent persons who had been implicated by them and who had subsequently been acquitted. In the case of *Khizar Hayat v State* (PLD 2019 SC 527) this Court has determined that witnesses found to be false in a material aspect are not to be trusted regarding other aspects they have deposed about.

6. For the aforesaid discussion, the convictions and sentences of appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge by extending him the benefit of doubt. The appellant is on bail, therefore, his bail bonds stand discharged.

ISLAMABAD  
13.03.2025  
(Farrukh)

Approved for Reporting