

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

32/25

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

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CRIMINAL APPEAL NO. 703 OF 2020

(Against the judgment dated 22.02.2016 in CrI.Appeal No.66-J of 2011 and Murder Reference No.73 of 201, passed by the Lahore High Court, Rawalpindi Bench Rawalpindi)

Iftikhar Kiyani alias Khara

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant:

Sardar Muhammad Ashfaq Abbasi, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the Complainant:

Mr. Muhammad Faiz Ahmad Cheema, ASC

For the State:

Mr. Tariq Siddique, APG, Punjab

Date of hearing:

28.04.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Appellant Iftikhar Kayani alias Khara along with co-accused Saqlain and Shafique (absconding) was nominated as accused in case FIR No. 203 dated 10.09.2010, registered under Sections 302 & 34 of the Pakistan Penal Code, 1860 (**'PPC'**), at Police Station Sohawa District Jhelum, for the murder of Haji Muhammad Mahfooz (**'deceased'**). On arrest of the appellant and conclusion of the investigation, he was sent to face trial before the learned Additional Sessions Judge, Jhelum (**'Trial Court'**). The learned Trial Court vide judgment dated 27.09.2011, found the appellant guilty of the charge under Section 302(b) PPC and, consequently, convicted and sentenced him to death as *Ta'azir*. He was further directed to pay a sum of Rs. 100,000/- as compensation to the legal heirs of the deceased in terms of Section 544-A of the Code of Criminal Procedure, 1898 (**'the Code'**). Murder Reference No. 73 of 2011 was forwarded to the Lahore High Court, Rawalpindi Bench, Rawalpindi, by the learned Trial Court for confirmation of the death sentence of the appellant as required under Section 374 of the Code. The appeal filed by the appellant against his conviction

and sentence was also heard concurrently. The Lahore High Court vide judgment dated 22.02.2016 (**'the impugned judgment'**), while answering the Murder Reference in the negative, declined to confirm the death sentence of the appellant. However, the conviction of the appellant was maintained, and the sentence of death was altered to imprisonment for life.

2. Feeling aggrieved, the appellant filed Jail Petition No. 158 of 2016 before this Court. Vide order dated 13.11.2020, leave to appeal was granted in order to examine the contentions advanced by the learned counsel for the appellant.

3. The prosecution's case, as set out in the First Information Report (FIR) registered on the basis of the written complaint (Exh. PJ) submitted by the complainant Muhammad Ayub (PW-10), is that the deceased Haji Muhammad Mahfooz, the younger brother of the complainant, was operating a boat in *Nulla Kansee*, situated adjacent to Mangla Dam. On the day of the occurrence at about 6:00 a.m., the complainant along with Anwar Ali (PW-9) arrived at *Nulla Kansee* with the intention to travel to *Sohawa* for Eid shopping. In the meantime, the appellant Iftikhar Ahmed alias Khara, armed with a rifle, appeared at the scene on a boat accompanied by his co-accused Saqlain and Shafique (absconding), approaching from the northern side of *Nulla Kansee*. The appellant raised a *lalkara* to teach the deceased a lesson for boarding passengers on his boat, and thereafter, opened fire upon him. As a result, the deceased sustained a firearm injury on his neck and succumbed to it at the spot. Besides the complainant, the occurrence was witnessed by Anser Ali and Mehmood Hussain.

4. Upon conclusion of the trial, the appellant was convicted under Section 302(b) PPC and sentenced to death by the learned Trial Court. In appeal, the learned High Court, while maintaining the conviction, altered the sentence from death to imprisonment for life by answering the Murder Reference in the negative through the impugned judgment.

5. We have heard the learned counsel for the parties at considerable length and have perused the record and evidence with their able assistance.

6. Perusal of the record reveals that the occurrence in the present case took place on 10.09.2010 at approximately 06:00 a.m. The ocular account of the incident has been furnished by complainant Muhammad Ayub (PW-10) and Anser Ali (PW-9). Their testimonies are consistent and corroborative with each other on all material particulars of the occurrence, including the date, time, place, and the *modus operandi* of the offence. Both the eyewitnesses unequivocally attributed the role of causing firearm injury on the person of the deceased to the appellant. As the occurrence took place in broad daylight and the appellant was previously

known to the eyewitnesses, the possibility of mistaken identity stands excluded. The presence of the eyewitnesses at the spot at the time of occurrence has been satisfactorily explained and appears natural. Both the eyewitnesses were subjected to lengthy and searching cross-examination, yet nothing material could be elicited to undermine their credibility or shake their evidence. No doubt, complainant is the real brother of the deceased and PW Anser Ali is a close relative but the defence failed to advance any plausible reason or motive for their alleged false implication of the appellant while sparing the actual perpetrator(s). The proposition of wrongful substitution, in such circumstances where close relatives have witnessed the murder of their kin, is inherently implausible and rarely encountered in criminal jurisprudence. This view finds support from the judgments of this Court in *Asfandiyar v. The State and others* **(2021 SCMR 2009)** and *Muhammad Abbas and another v. The State* **(2023 SCMR 487)**, wherein it was held that substitution of the actual culprit in place of an innocent person, particularly by the witnesses who have lost their loved ones before their eyes, is an extraordinary and improbable occurrence. The objection of learned counsel for the appellant that both the eyewitnesses are closely related to the deceased, therefore, are interested witnesses, is not tenable, for the reason that the mere fact of a witness being related to the deceased does not, in itself, render the testimony unreliable or tainted. It is by now a settled proposition of law that an "interested witness" is one who is motivated by some extraneous consideration or harbours an ulterior motive to falsely implicate an accused. In the instant case, the defence has not been able to bring on record any such motive that could suggest a false implication of the appellant. In the absence of any tangible material indicating enmity, malice, or ill-will, the testimony of related witnesses cannot be discarded solely on the ground of relationship. Reliance in this regard may be placed upon the view of this court expressed in cases titled, "*Azhar Hussain and another v. The State and others*" **(2022 SCMR 1907)** and "*Shamsher Ahmad and another v. The State and others*" **(2022 SCMR 1931)**, wherein this Court held that mere relationship of a witness with the deceased does not disqualify him from being relied upon, provided his evidence is otherwise credible and confidence inspiring.

7. Medical evidence furnished by Dr. Waheed Asghar (PW.1), who conducted autopsy on the dead body of the deceased fully supports the prosecution's case. According to his statement firearm injury rupturing the trachea of the deceased and causing severe bleeding resulted into the unnatural death of the deceased. The contention advanced by the learned counsel for the appellant that the statements of the eyewitnesses are riddled with material contradictions and discrepancies, does

not bear merit. Save for minor inconsistencies for instance, that the complainant in his report stated the firearm injury was sustained on the front of the neck by the deceased, whereas in his court testimony he deposed that the shot passed through and through, and that this assertion stands contradicted by the medical evidence which indicates the entry wound was on the upper part of the chest near the neck and the exit wound was located at the mid-back, the learned counsel was unable to point to any substantial contradiction capable of undermining the foundational structure of the prosecution's case. Even otherwise, we are fully convinced qua the presence of the eyewitnesses at the spot at the time of occurrence and their testimony is trustworthy and confidence inspiring, therefore, such minor inconsistencies in the testimony of the eyewitnesses with the medical evidence would not be sufficient for acquittal of the appellant. This Court in case titled, "Ali Taj and another Vs the State" (2023 SCMR 900), held that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. Same is the view of this Court in cases titled, Muhammad Iqbal vs the State (1996 SCMR 908), Naeem Akhtar Vs the State (PLD 2003 SC 396), Faisal Mehmood Vs the State (2010 SCMR 1025) and Muhammad Ilyas vs the State (2011 SCMR 460). It is by now a well-settled principle of criminal jurisprudence that minor discrepancies or omissions, which do not go to the root of the prosecution's case, are to be treated as inconsequential. Such discrepancies are inbuilt proof of truthfulness of witnesses as a human being cannot be expected to give tape-recorded statement. Courts are guided by the rule that if the core of the witness's testimony carries the ring of truth and inspires confidence, minor incongruities must not detract from its probative value. The test for the admissibility and reliability of a witness's evidence is not the mere presence of trivial inconsistencies but whether the testimony, taken as a whole, resonates with truth and credibility. Only those discrepancies which impinge upon the material aspects of the case, those which strike at the very heart of the prosecution's narrative may be taken advantage of by the defence. In adjudging the credibility of a witness, the courts are to assess the intrinsic worth of the evidence rather than apply rigid or mechanical standards based solely on the status or character of the witness. This Court in the case of "Abid Ali v. The State" (2011 SCMR 208), reaffirmed the principle that belief or disbelief in the testimony of a witness hinges upon the intrinsic value of the statement made. There exists no universal rule that interested witnesses are invariably to be disbelieved or that disinterested ones are to be believed without scrutiny. Each case must be decided with reference to prudence, reasonableness, and the surrounding circumstances to ascertain whether the

witness was present at the scene of occurrence and is narrating events truthfully. Furthermore, it must be borne in mind that under the cardinal principles of criminal law, the evidence of the prosecution is to be evaluated on the touchstone of quality rather than quantity. It is not the identity or status of the person testifying that determines the credibility of the evidence, but the content and coherence of the testimony itself. It is, therefore, the statement that is to be judged and not the person and it must be weighed on the scales of logic, consistency, and truthfulness.

8. Upon comprehensive appraisal of the evidence available on the record, the learned courts below have concurrently concluded that the prosecution has successfully established the guilt of the appellant beyond shadow of reasonable doubt. The arguments advanced by the learned counsel for the appellant have been duly considered and effectively addressed by both the trial and appellate courts with reference to the material on record. No instance of misreading or non-reading of evidences either specific or material has been pointed out before this Court that would warrant interference in the well-reasoned and lawful findings recorded by the courts below. It is manifest that the impugned judgment does not suffer from any legal infirmity or jurisdictional error. It may further be noted that the appellant has already been extended the benefit of leniency in the matter of sentence, in view of the mitigating circumstances duly taken into account by the learned High Court while converting the sentence of death to imprisonment for life. No further interference is called for by this Court.

9. Accordingly, this appeal is dismissed.

Crl.M.A No.1645 of 2024

On dismissal of appeal of the appellant, the instant petition for suspension of sentence of the appellant and his release on bail, has become infructuous, thus, is dismissed as such.

Islamabad

28.04.2025

Approved for reporting.

M.Siraj Afridi PS