

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

24/25

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CRIMINAL APPEAL NO.80 OF 2023

(Against the judgment dated 10.04.2018
passed by Lahore High Court, Multan Bench
in M.R.5/13 and Crl.Appeal No.863/12).

Munir Ahmad.

...Appellant (s)

VERSUS

The State etc

...Respondent(s)

For the Appellant (s):

Syed Rifaqat Hussain Shah, ASC.

For the State:

Mr. Tarique Siddique, Additional
Prosecutor General Punjab.

For the Complainant.

Nemo

Date of hearing:

25.02.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Appellant Munir Ahmad, booked in case FIR No. 648/2011 dated 15.10.2011 under sections 302, 324 & 109 of Pakistan Penal Code, 1860 ('PPC'), registered at Police Station City Lodhran, was tried by the learned Additional Sessions Judge, Lodhran ("Trial Court") for committing *Qatl-e-Amd* of his father Abdul Hameed and brother Tanveer Ahmad, the deceased, respectively, with .30 bore pistol. The learned trial vide judgment dated 30.11.2012 convicted the appellant under section 302(b) PPC and sentenced him to death on two counts as *Ta'azir* and to pay rupees five lac as compensation to legal heirs of the deceased in terms of section-544-A and in default thereof to further undergo six months simple imprisonment.

2. The appellant questioned his conviction and sentence before the learned Lahore High Court Multan Bench, Multan, through Cr. Appeal No. 863 of 2012 while the learned Trial Court sent Murder Reference No.05 of 2013 for confirmation of death sentence of the convict/appellant. The learned Lahore High Court Multan Bench Multan, while answering the Murder Reference in the affirmative dismissed the appeal of the appellant/convict vide judgment dated 10.04.2018 ("impugned judgment").

3. The appellant being dissatisfied from his conviction and sentence recorded by the two courts below, filed Jail Petition Nos.439 of 2018 before this Court and vide order dated 16.01.2023 leave was granted, *inter alia*, to examine the entire evidence on record in the interest of safe administration of criminal justice.

4. The prosecution's is that on 15.10.2011 complainant Muhammad Yaseen Sultan (PW.1) along with his father-in-law Abdul Hameed and brother-in-law Tanveer Ahmad ("deceased") was present in the house of his in-laws situated in *Qabool Wala* when at 13.30 AM, Munir Ahmad appellant, duly armed with .30 bore pistol came there and opened fire at his father Abdul Hameed, as a result, he got hit on various parts of his body. When Tanveer Ahmad intervened, the appellant also fired at him with which he too got hit. After commission of offence the appellant fled away from the crime spot towards main Bazaar on a bicycle. The complainant started chasing him on motorcycle and the appellant when noticed the complainant following him, he also started firing him, and as a result, one Muhammad Hashim got hit and sustained injuries. In the meantime Muhammad Hashim Shah, Muhammad Aslam, Falak Sher and Baqir Hussain Shah arrived at the spot, out of them when Hashim Shah and Muhammad Aslam tried to apprehend the appellant, the appellant resorted to firing at them, resultantly; both got hit and sustained injuries. All the injured were immediately rushed to DHQ Hospital, Lodhran wherefrom injured Muhammad Hashim was referred to BVH Hospital, Bahawalpur, but he succumbed to the injuries. Motive

behind the occurrence was advanced annoyance of appellant on domestic matters and a dispute over landed property with his deceased father and brother. On the written report (Ex. PA) of the complainant FIR Exh.PA/2 was registered against the appellant. After facing regular trial, the appellant was convicted and sentenced under section 302(b) PPC to death on two counts by the learned Trial Court which sentence of the appellant was confirmed by the learned High Court by dismissing his appeal and the murder reference was answered in the affirmative through the impugned judgment.

5. We have heard the arguments advanced at the bar from either side and perused the evidence and record available on file.

6. The unfortunate incident in which a father, namely, Abdul Hameed and son, namely, Tanveer have lost their lives took place on 15.10.2011 at 12:30 PM inside the house of the two deceased which has been reported by Muhammad Yaseen Sultan complainant (PW.1) with promptitude at 12.50 PM eliminating the possibility of consultation and deliberation on the part of the complainant in making the report. In the report, the complainant has directly and singularly charged Munir Ahmad appellant for committing the murder of his father and brother. Abdul Hameed deceased was father-in-law and Tanveer Ahmad deceased was the brother-in-law of complainant Muhammad Yaseen Sultan and eyewitness Muhammad Nawaz. Complainant (PW.1) and Muhammad Nawaz (PW.2) have furnished ocular account of the occurrence. The former while appearing in the witness box as PW.1 before the learned Trial Court has reiterated the same story as set forth by him in the initial report by deposing that on the eventful day he was present in the house of his father-in-law Abdul Hameed deceased and brother-in-law Tanveer Ahmad deceased when in the meantime, the appellant duly armed with .30 bore pistol came there and started firing at the deceased, as a result, his deceased father-in-law and brother-in-law got hit and died on the spot. He has further deposed that that on hue and cry, Muhammad Nawaz (PW.2) also attracted to the spot and witnessed the incident. Eyewitness

Muhammad Nawaz has appeared in the witness box as PW.2. In his statement he while narrating minute details of the occurrence has directly and singularly charged the appellant for murder of the two deceased. Both the eyewitnesses are consistent with each other on all material particulars of the occurrence such as the day, date, time and place of occurrence as well as the mode and manner in which the occurrence took place. The eyewitnesses have been subjected to lengthy and taxing cross-examination, but nothing favourable to the defence or adverse to the prosecution could be extracted from them. Both have plausibly explained purpose of their presence in the house of the deceased at the time of occurrence and have made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by them is reliable, straightforward and confidence inspiring. The eyewitnesses had no enmity or ill-will with the appellant to falsely depose against him. It is not appealable to a prudent mind that eyewitnesses Muhammad Yaseen Sultan and Muhammad Nawaz, would charge their innocent brother-in-law/appellant for the two murders. After committing murder of his deceased father and brother when the appellant was fleeing away from the spot, he was chased by the complainant and during said chase the appellant also fired at the complainant but luckily he remained unscathed whereas one Muhammad Hashim received fire shots and died. Similarly, the appellant also attempted at the lives of Falak Sher, Muhammad Aslam and Muhammad Hashim Shah in the second episode of his chase for which separate FIR No.664 of 2011 dated 19.10.2011, under sections 302, 324, 449 PPC, has been registered at Police Station City Lodhran. The injured of the FIR (*ibid*), have not been cited as eyewitnesses in the instant case by the prosecution and rightly so because none of them was the eyewitness of the murder incident taken place inside the house of the two deceased. It does not appeal to a prudent mind that the eyewitnesses in whose presence their father-in-law and brother-in-law were done to death would spare and let off the

real culprit(s) and will charge the appellant. We are fully convinced that the eyewitnesses have established their presence at the spot at the time of occurrence and they have furnished straightforward, confidence inspiring and truthful ocular account of the incident. As per the dictum laid down by this Court in cases titled, “Asfandiyar vs. The State and other”¹ and “Muhammad Abbas & another vs. The State”² substitution of real culprits, especially in cases where the eye witnesses lost their kith and kin before their own eyes is a rare phenomenon. Admittedly, the eyewitnesses are the close relatives of the deceased but it is equally true that they are on the same footing in relation with the appellant. By now it is settled law that an interested witness is one who is interested in the conviction of an accused for some ulterior motive which is not the status of the eyewitnesses in this case. In cases titled, Aman Ullah v. the State³ and ‘Imran Mehmood v. the State’⁴ this Court has held that in absence of any ulterior motive/animus for false implication of an accused, the confidence inspiring testimony of an eyewitness, whose presence with the deceased at the time and place of occurrence is established, cannot be discarded merely due to his relationship with the deceased. Learned counsel for the appellant could not point out any major contradiction or discrepancy in the statements of the witnesses, which could shatter the basic fabric of the prosecution’s case. No doubt, there are some minor discrepancies in the testimony of the eyewitnesses but the same being of trivial nature are not sufficient to damage the prosecution’s case. In the deposition of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time etc. Material discrepancies are those which are not normal and not expected for a normal person. This Court in case titled, “Allah Bakhshvs Ahmad Din”⁵ has held that

¹ 2021 SCMR 2009

² 2023 SCMR 487

³ 2023 SCMR 723

⁴ 2023 SCMR 795.

⁵ 1971 SCMR 462

minor discrepancies in the deposition of prosecution's witnesses of inconsequential nature cannot reasonably be considered as good grounds in disbelieving independent and disinterested witnesses. If importance be given to such insignificant inconsistencies there can hardly be any conviction, for, seldom is there a witness whose evidence does not suffer from such inconsistencies. When a witness is examined at length and after a long passage of time it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. While appreciating the evidence of a witness the Court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. It is normal court of the human conduct that while narrating a particular incident where may occur minor discrepancies. Parrot-like statements are always discredited by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amount to contradiction, regard is required to be made to the circumstances of the case. There are always normal discrepancies. Material discrepancies are those which are not normal and not expected of a normal person.

7. Three crime empties were taken into possession by Mashooq Ali S.I (PW-8), during spot inspection vide recovery memo (EX PD) and sent to FSL Punjab. Similarly, on the pointation of the appellant a .30 bore pistol was recovered by Mashooq Ali SI vide recovery memo Exh.PL. The pistol and the empties were sent to the FSL Punjab for comparison report whereof Exh.PP, reveals that the three crime empties recovered from the spot were of 30-bore pistol and fired from the pistol recovered from the appellant. This strong circumstantial

piece of evidence corroborates the ocular account of the prosecution's case.

8. Medical evidence furnished by Dr. Qurban Hussain (PW-04), who conducted autopsy on the dead body of Abdul Hameed deceased and Tanveer Ahmad deceased also supports the ocular account of the prosecution's case. As per his statement both the deceased met their unnatural death due to firearm injuries.

9. The prosecution's has proved guilt of the appellant through cogent and confidence inspiring direct evidence corroborated by strong circumstantial evidence and supported by medical evidence. In such view of the matter both the courts below while appreciating the evidence on record in its true perspective have arrived at a right conclusion by holding the appellant guilty of committing murder of his father and brother to which no exception can be taken.

10. So far as the sentence of death awarded to the appellant by the two courts below is concerned, the learned Trial Court has categorically held that the prosecution has not proved the motive. Relevant paragraph of the judgment of the trial Court read as under:-

"No detail has been given by the witnesses with whom the accused had dispute of property either with father or with brother or with both. The evidence on the motive part is scanty, no head or tail of the dispute can be made from the statements given by the witnesses about the motive."

The learned High Court has also concurred with the learned trial Court on the point of non-proof of motive, but despite that awarded death penalty to the appellant. In case titled, "*Ghulam Muhammad and another vs the State*"⁶, this court has held that:-

"It is well settled by now that once the prosecution alleges a motive and fails to prove the same during the trial, the same can be taken as a mitigating circumstance while deciding the quantum of sentence of the convict. Therefore, Criminal Appeal No.73-L of 2009 is partly allowed and the sentence of

⁶ 2017 SCMR 2048

death awarded to Wazir Ali appellant is altered to imprisonment for life”.

Similar is the view of this Court in cases titled, “Haq Nawaz vs the State”⁷:-

“After hearing the learned counsel for the parties and going through the record we have observed that the High Court had categorically concluded that the motive set up by the prosecution had not been proved by it. The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder.....

For what has been discussed above this appeal is dismissed to the extent of appellant’s conviction for the offence under section 302 (b) PPC, but the same is partly allowed to the extent of his sentence of death on the charge of murder which **sentence is reduced to imprisonment for life”.**

Further reliance in this regard may also be placed on the cases titled, “Amir Muhammad Khan versus The State” (2023 SCMR 566), “Tajamal Hussain Shah versus The State and another” (2022 SCMR 1567), “Liaqat Ali and another versus The State and others” (2021 SCMR 780), “Najaf Ali Shah versus The State” (2021 SCMR 736), and “Khalid Mehmood and others versus The State and others” (2021 SCMR 810).

11. Apart from non-proof of motive, we have also noticed some minor inconsistencies in the prosecution’s evidence, which though in our view are not sufficient for acquittal of the appellant, however, the same can be considered as mitigating circumstance in the matter of sentence as held by this Court in Ansar Ahmad Khan Barki’s case⁸:-

“Inconsistencies of a minor dimension in prosecution evidence throw up doubts about prosecution version but do not qualify for acquittal. They present merely a mitigating circumstance capable of affecting no more than quantum of

⁷ 2018 SCMR 21

⁸ 1993 SCMR 1660

sentence. Such inconsistencies may create dilution of prosecution version but not its complete negation.”

12. For the reasons stated above, this appeal is partly allowed. Conviction of the appellant under section 302(b) PPC is maintained, however, his sentence of death on two counts is converted into rigorous imprisonment on two counts. The amount of compensation and consequences in default of payment thereof to be faced by the appellant shall remain intact. Both the sentences of imprisonment for life shall run concurrently. Benefit of Section 382-B Cr.P.C. is extended to the appellant.

Announced in open Court at Islamabad on 9th April 2025

Approved for reporting
M. Siraj Afridi, PS