

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

**Present:**

Mr. Justice Athar Minallah  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Malik Shahzad Ahmad Khan

**Criminal Appeal No. 29 of 2023**

Against the judgment dated 26.07.2018  
of the Peshawar High Court, Abbottabad  
Bench passed in Cr. A. 106-A of 2011,  
MR 7-A/2011

Tariq Mehmood

...Petitioner(s)

**VERSUS**

The State

...Respondent(s)

For the Petitioner(s):	Mr. Sagheer Ahmed Qadri, ASC
For the State:	Syed Kausar Ali Shah, Addl. AG
For Complainant:	Dr. Babar Awan, Sr. ASC a/w Majid brother of complainant
Date of Hearing:	24.02.2025

**ORDER**

**Irfan Saadat Khan, J.-** This criminal appeal has been filed against the judgment dated 26.07.2018 whereby Criminal Appeal No. 106-A of 2011 was dismissed and Murder Reference No. 07-A of 2011 sent by the Sessions Judge, Haripur under Section 374 of the Cr. P.C, for confirmation of death sentence awarded to the appellant Tariq Mehmood was answered in affirmative by the Peshawar High Court, Abbottabad Bench.

2. Leave to appeal was granted by this Court vide: order dated 12.01.2023 which is reproduced hereinbelow:

*"The learned counsel for the petitioner submits that it was an unseen occurrence; except for the judicial confession of the accused, there was no independent evidence corroborating*



*such confession. He maintains that the accused/petitioner was arrested on 25<sup>th</sup> June, 2004; on the same day recovery was effected from him and on 26<sup>th</sup> June 2004 he had recorded his confession. Further, that such confession was recorded under dubious circumstances. He further maintains that the confessional statement could not have been read in evidence in view of the fact that it had not been recorded by the concerned Magistrate himself but it is in a cyclostyled printed form and does not appear to be in the handwriting of the Magistrate as required under Section 364 Cr. P.C. He argues that if the Magistrate was for some reasons unable to record the confession in his own handwriting, he was required to give a certificate to that effect which is missing. The points raised need consideration. Leave to appeal is granted, inter alia, to examine the afore-noted points and for reappraisal of entire evidence in the interest of safe administration of criminal justice. Let the appeal be listed for hearing at an early date."*

3. Briefly stating the facts, as narrated in the FIR lodged by the complainant Fida Muhammad that, he was informed via telephone on 13.06.2004 about an incident after which he immediately rushed to the hospital and found his nephew Yasir Amin, with serious firearms injuries to his face, rendering him unable to speak, which ultimately led to his death. He also found the dead body of his other nephew Nasir Amin, who was allegedly shot to death by some unknown person. The present appellant was arrested on 25.06.2004 by the SHO of the Police Station City, Haripur, who then informed the police about the murder of the above-named brothers. The SHO then led a police search party to a plot located in Kangra Colony, Haripur, from where, upon the pointation of the accused, the police recovered a 30-bore pistol having one live bullet in its chamber and two live bullets in its magazine, which was hidden behind the bushes. Thereafter, the said empties and the weapon recovered were sent to the Forensic Science Laboratory (hereinafter



**FSL**) for Forensic test and the FSL report came out positive. The matter then proceeded before the learned Additional Sessions Judge, Ghazi Camp Court, Haripur, where the prosecution produced as many as eight witnesses, who were duly examined and cross-examined by the Trial Court vide: order dated 16.07.2011, the accused-appellant was found to be guilty of murder on two counts of the above-named brothers and under section 302(b) PPC was sentenced to death, subject to confirmation by the High Court. The High Court then vide: the impugned judgment dated 26.07.2018, answered the death sentence in affirmative, against which the present appeal has been filed before this Court by the appellant.

4. Mr. Sagheer Ahmed Qadri, ASC has appeared on behalf of the accused-appellant and stated that the appellant was not specifically nominated in the FIR and has wrongly been roped in the instant matter. Building upon this line of argument, he explained that the FIR was lodged against some unknown person and that although, it is averred by the prosecution that the crime weapon recovered on the pointation of the accused has matched with the empties recovered from the occurrence and that the accused has confessed his guilt before the Magistrate, but a deeper examination of the record would reveal that the manner and method in which the crime weapon was recovered and the confession recorded before the Judicial Magistrate did not fulfil the legal and codal formalities, as prescribed under the law. He further argued that the accused lacked motive to commit the murders and that the same has not been proved by the prosecution. He further argued that the complainant was not an eye witness to the incident and that the depositions of certain PWs suffered from improvements, contradictions and do not corroborate with the material available on the record. He finally submitted that in view of these defects/shortcomings the benefit of doubt may be extended to the accused and



he may be acquitted from the charges levelled against him and be released forthwith, if not required in any other case.

5. Dr. Babar Awan, Sr. ASC, alongwith the brother of the complainant namely Majid, have appeared on behalf of the complainant and submitted that the orders of the two Courts below are well reasoned and have dealt with the issue in a quite comprehensive manner. The learned counsel stated that it was on the pointation of the accused that the crime weapon was recovered, which has matched with the crime empties recovered from the spot and that the accused has even admitted his guilt before the Judicial Magistrate, who has recorded a proper statement under section 364 Cr. P.C. in accordance with the law. He submitted that the depositions of the PWs have remained unshaken and do not suffer from contradictions. He, therefore, has prayed that the orders of the two Courts below may be affirmed and death sentence awarded to the accused may be answered in affirmative, by dismissing the instant appeal.

6. Syed Kausar Ali Shah, Additional Advocate General, KPK (hereinafter referred to as "**AAG**") has appeared on behalf of the State and has adopted the arguments of Dr. Babar Awan, Sr. ASC with some additions. He argued that the two Courts below have threshed out the matter in detail and through their elaborate judgments have found the accused guilty of the offence committed by him and that the accused does not deserve any leniency in this regard. The learned AAG in support of this contentions has also read out some portions of the orders of the two Courts below. He, in view of the above submissions, has finally submitted that the orders may be upheld by answering the murder reference in "**AFFIRMATIVE**".



7. We have heard the learned counsel for the parties at length and have gone through the judgments of the two Courts below and have also perused the available record with their assistance.

8. At the very outset, we would like to highlight, that it is an admitted fact that the FIR was registered against some unknown person and it was only during investigation of the case that the present accused was arrested on 25.06.2004. The record is silent as to what prompted the SHO to arrest the accused, when it is an admitted fact that the FIR was against someone unknown person. Though, it was averred by the prosecution that after arrest, the accused led the police party to the designated place from-where the crime weapon, matching with the empties recovered from the crime spot, however, equal true is the fact that the empties and the crime weapon were sent together to the FSL, which is contrary to the law.

9. It is also an admitted position that though the confessional statement was recorded before the Judicial Magistrate on 26.06.2004 however, the replies in the memorandum were recorded without giving any extra time to the accused to think over the matter before confessing his guilt. It is also an admitted position that Muhammad Asif Khan, Additional Sessions Judge, who recorded the confession statement of the accused did not examine the accused physically to check whether he was tortured by the police or not. It is also an admitted position that the Additional Sessions Judge has not gone through the statement of the accused recorded by the Police under section 161 Cr. P.C.

10. We would also like to highlight that Muhammad Iqbal (PW.7) a relative of the accused has categorically stated that the accused did not make any statement before the police in his presence but has averred that the accused confessed before him while he was travelling in the vehicle alongwith him in respect of crime committed by him. Moreover, he has also admitted that the



articles mentioned as (Ex.PW 7/4) were neither packed nor sealed into a parcel before him and has also stated that no bloodstained cloths were alleged to have been recovered from the accused. The statement of Raja Salabat (PW.6) would also reveal several defects as he has claimed to have called the police regarding the incident as it happened but it is an admitted position on his part that he himself was not an eye witness to the incident, rather he explained that his servant Noroze had heard some noises from outside of his shop and thereafter informed him that there is a mob in front of the PCO shop of the deceased brothers. Moreover, the said Noroze also informed him that he heard from someone, whose name has not been mentioned, that a person with *Romal* on his head was found fleeing away from the place of occurrence without detailing any further description of the said person. The said Noroze also disclosed to him that he himself has not seen anybody running away from the spot but the people present at the spot had informed him about the happening of the event. Raja Salabat (PW.6) has also admitted in his deposition that he himself has not seen any person running from the spot having pistol in his hand and *Romal* on his head and that the said statement has incorrectly been recorded by the police. In our view, since the prosecution has never brought Noroze as a witness in the instant matter, the statement given by Raja Salabat appears to be hearsay. It is also interesting to note that though Raja Salabat (PW.6) went to the spot of the incident, after it occurred, but according to him, the police neither prepared any report on the spot nor recorded or inquired from him about the said occurrence, and that it was only after a few days, that he was summoned by the concerned S.P and was enquired about the occurrence of the said incident. He has also stated that the police has incorrectly recorded in his statement that empties/blood were packed and sealed into a parcel and that it was also incorrectly recorded in his statement, as well as in the recovery memo, that one pistol was taken into possession and was packed and sealed into a parcel. Similar type of divergent averment were



made by Muhammad Iqbal (PW.7) with regard to non-sealing of the items in his presence.

11. The most crucial aspect of the case, in our view, being that the prosecution has miserably failed to prove any motive in the instant matter. It has nowhere been stated as to what prompted the accused to kill the two brothers as neither was there any enmity alleged to be between the parties nor there was any report with regard to any scuffle which took place between them prior to the incident. This Court in the case of **Muhammad Hassan versus State** (2024 SCMR 1427) held as under:

*“11. The motive behind the occurrence, according to the contents of the FIR and the Private Complaint, was that the present incident stemmed from an enmity that began approximately five years ago. The Complainant (PW-1) further alleged that two years before the present incident the accused persons murdered his maternal uncle, Muhammad Sadiq, whose case was pending in court at that time.*

*Regarding motive, the Deputy Prosecutor General, Punjab submitted before the learned appellate Court that the present petitioner was not an accused in the murder of Muhammad Sadiq, the maternal uncle of the complainant (PW-1). This fact was also confirmed by the complainant (PW-1) during his cross-examination before the trial Court. It would be highly relevant to mention here that the motive is a double-edged weapon, which can be used either way and by either side i.e. for real or false involvement. Reference in this regard may be made to the cases of Noor Elah v. Zafarul Haque (PLD 1976 SC 557); Allh Bakhsh Vs. The state (PLD 1978 SC 171); Khadim Hussain Vs. The State (2010 SCMR 1090); Tahir Khan Vs. the State (2011 SCMR 646); Tariq versus the State (2017 SCMR 1672); and Muhammad Ashraf alias Acchu versus the state (2019 SCMR 652). So, the motive asserted by the prosecution indicates that there was an enmity of murder between the parties and the said motive, being double*



edge, could be the reason for the false implication of the petitioner. Admittedly, the complainant (PW-1) has no relation with the deceased, Abdul Malik, yet he is vigilantly pursuing the case by filing a private complaint even after the accused was found innocent by the local police. Ordinarily, an individual with no direct relation to the victim might report a crime if witnessed, but would not usually remain actively involved beyond that initial action. The fact that the complainant (PW-1) is so invested in this case, despite having no apparent reason to be, raises questions about the motives behind his actions and, by extension, casts doubt over the prosecution's case.

Given the above circumstance, the evidence of motive was rightly not believed by the learned appellate court for valid reasons which are not open to any exception upon our independent reappraisal of evidence.”

12. In light of the above observations, we are of the view that the instant matter is shrouded with doubts and in such eventuality, it would be legally and factually justified not to confirm the death sentence awarded by the two Courts below. Hence, in view of the above facts and depositions of the PWs, this appears to be a fit case of acquittal on the ground of extending benefit of doubt to the said accused. This Court in the afore-cited judgment has also held as under:

“We are of the considered view that this approach of the learned appellate court is a complete departure from the principles settled for the administration of justice in criminal cases. According to these principles, once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. Reference in this regard may be made to the cases of Daniel Boyd (Muslim Name Saifullah) and another versus the State (1992 SCMR 196); Gul Dast Khan versus the State (2009 SCMR 431); Muhammad Ashraf alias Acchu versus the State



*(2019 SCMR 652); Abdul Jabbar and another versus the State (2019 SCMR 129); Mst. Asia Bibi versus the State and others (PLD 2019 SC 64); and Muhammad Imran versus the State (2020 SCMR 857).*

*Given the above, facts and circumstances, we are of the considered view that the prosecution case against the petitioner Muhammad Hassan is doubtful; therefore, he is acquitted of the charge. He is in jail and is ordered to be released forthwith, if not required to be detained in any other case."*

13. In view of what has been discussed above, the instant appeal is allowed and the judgments of the High Court and the Trial Court are hereby set aside by extending the benefit of doubt to the appellant. He therefore, stands acquitted of the charges levelled against him and if he is not incarcerated in any other matter, he shall be released forthwith.

These are the reasons of our short order dated 24.02.2025.

ISLAMABAD  
24.02.2025  
Naseer

*"Approved for Reporting"*