

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

24/25

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI
MR. JUSTICE ISHTIAQ IBRAHIM

AFR
AD

JAIL PETITION NO.539 OF 2017

(Against the judgment dated 10.04.2017 of
the learned Lahore High Court Lahore in
Criminal Appeal No.224-J of 2012 &
Murder Reference No.219 of 2012)

Waqas Ahmad

...Petitioner

VERSUS

The State

...Respondents

For the Petitioner:

Ms. Ruqia Samee, ASC

For the complainant:

Nemo

For the State:

Ms. Memoona Ihsan-ul-Haq, DPG.

Date of hearing:

10.03.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Waqas Ahmad, the petitioner, charged for committing *Qatl-e-Amd* of his paternal uncle, namely, Ijaz Ahmad deceased in case FIR No.333 dated 03.07.2009, under Section 302 of Pakistan Penal Code, 1860 ('PPC'), registered at Police Station Sahianwala, District Faisalabad, was tried by the learned Additional Sessions Judge, Faisalabad ('Trial Court'). On conclusion of trial, the learned Trial Court having the petitioner found guilty of committing the said murder convicted him under section 302(b) PPC and sentenced to death as *Ta'azir* and to pay rupees two lacs as compensation to the legal heirs of the deceased in terms of Section 544-A Cr.P.C. and in default thereof to further undergo 06 months simple imprisonment vide judgment dated 11.04.2012. Benefit of Section 382-B Cr.P.C. was extended to the petitioner/convict.

2. The learned Lahore High Court Lahore, while answering the Murder Reference No.219 of 2012 sent by the learned Trial Court for confirmation of death sentence of the convict in the negative and dismissing the Criminal Appeal No.224-J of 2012 of the petitioner/convict, maintained the conviction of petitioner under Section 302(b) PPC, however, converted his death sentence into imprisonment for life as *Ta'azir* vide judgment dated 10.04.2017 ('impugned judgment'). Benefit of Section 382-B Cr.P.C. was extended to the petitioner.

3. Through the instant constitutional petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, the petitioner/convict seeks leave to appeal against the impugned judgment.

4. According to written complaint Exh.PE on 03.07.2009 at 3.00/4.00 AM, Ijaz Ahmad deceased (son) and Waqas Ahmad petitioner (grandson) of the complainant Muhammad Ali (PW.7) were sleeping in his cattle pen whereas the complainant along with Khalid Mahmood and Tariq Mehmood was sleeping in the said cattle pen at a distance of 15 Karam from the deceased and the petitioner. On dogs' barking when complainant woke up he saw his grandson Waqas Ahmad petitioner having an iron *Darat* in his hand, accompanied by an unknown co-accused armed with a gun, standing near the bed/Cot in which the deceased was sleeping. The petitioner inflicted successive blows with the Iron *Darat* on the right side of head and left side of neck of the deceased; however, the complainant kept mum and did not react due to fear. The accused then picked up the dead body of the deceased and threw it in a field of *charri* crop. The complainant along with his companions followed the accused but they threw the deceased in *Charri* crop and fled away. Motive behind the occurrence is stated to be the annoyance of the petitioner who was advised by the deceased to avoid addiction/taking heroin. The complainant left the dead body of the deceased under the supervision of his companions and he himself rushed for lodging report which was recorded as Exh.PE/2 and was culminated into FIR Exhd.PE/1.

5. Both the courts below while believing the ocular account furnished by the complainant coupled with circumstantial evidence in the shape of

recovery of blood from the spot, the last worn bloodstained garments of the deceased and medical evidence recorded conviction of the petitioner.

6. Arguments heard. Record and evidence perused.

7. In this case the occurrence took place on 03.07.2009 at about 3.00/4.00 AM which has been reported by complainant Muhammad Ali (PW.7) at 07.00 AM, after a delay of 04 hours, if counted from 04.00 AM or 03:00 AM respectively. No explanation, much less plausible, has been furnished by the complainant for the said delay. It is settled law that unexplained delay in lodging FIR creates a doubt in the prosecution's case and its benefit has to be extended and construed in favour of the accused. In case titled, Mst. Asia Bibi Vs The State and others (P L D 2019 Supreme Court 64), this Court has held that in absence of any plausible explanation, delay in lodging of FIR is always considered to be fatal as it casts suspicion on the prosecution story. In case of Zeeshan @ Shani v. The State (2012 SCMR 428) this Court has observed that delay of more than one hour in lodging the FIR give rise to the inference that occurrence did not take place in the manner projected by prosecution and the time was consumed in making effort to give a coherent attire to the prosecution's case, which hardly proved successful. Same is the view of this Court in case in case of Muhammad Fiaz Khan v. Ajmer Khan (2010 SCMR 105).

8. Postmortem examination on the dead body of the deceased was conducted on 03.07.2009 by Dr. Nasir Mehmood (PW.1) at 10.30 AM i.e. after 3 hours and 30 minutes of the time of report, for which too, no explanation, much less plausible, has been advanced by the Medical Officer or by the complainant or by any other prosecution's witness. This Court in case of 'Muhammad Ilyas Vs Muhammad Abid alias Billa and others' (2017 SCMR 54), has held that delay in conducting the postmortem examination suggests that the eyewitnesses were not present at the spot at the time of occurrence, therefore, the said time was consumed in procuring the attendance of procured eyewitnesses. Further reliance may also be placed on the

cases of "*Khalid alias Khalidi and two others vs. The State*" (2012 SCM 327), "*Sufyan Nawaz and another vs. The State and others*" (2020 SCMR 192), "*Zafar vs. The State and others*" (2018 SCMR 326) and "*Muhammad Ashraf vs. The State*" (2012 SCMR 419).

9. Yet there is another crucial aspect which also creates doubt in the prosecution's case. Dr. Nasir Mehmood (PW.1), during autopsy on the dead body of the deceased at 10.30 AM noticed mouth and eyes of the deceased semi opened and rigor mortis all over his body. He also noticed semi-digested food in the stomach of the deceased. The time of occurrence is 4.00 AM. The presence of semi-digested contents in the stomach of the deceased and presence of rigor mortis belies the time of occurrence as given by the complainant; rather it suggests that the occurrence had taken place in some early hours of night. Semi open eyes and mouth of the deceased at the time of the postmortem reflects that the dead body of the deceased remained unattended at the spot. Had the complainant been present at the spot, he would have managed to close the mouth and eyes of his deceased son.

10. Complainant Muhammad Ali (PW.7) has furnished ocular account of the occurrence but he in his very examination-in-chief has made dishonest improvements. He was confronted with his earlier version mentioned in Exh.PE by the learned defence counsel during cross-examination and the said dishonest improved versions were got confirmed through him. For ready reference relevant part of his cross-examination relating to dishonest improvements is reproduced below:-

"I got recorded in my statement Exh.PE that I along with Tariq Mehmood and Khalid Mehmood PWs were sleeping at a distance of 5/10 Karms away from the place of sleeping of Ijaz Ahmad deceased and Waqas accused, confronted with Exhd.PE wherein intervening distance is mentioned as 15 Karams. I got recorded in Exhd.PE that accused Waqas made two successive blows of Darat which landed on the neck of the deceased, confronted with Exh.PE where the number of blows is not mentioned. I got recorded in Exh.PE that deceased Ijaz tried to stand up and

accused Waqas made to more successive blows of Darat on the head of deceased Ijaz Ahmad, confronted with Exhd.PE where not so recorded. I got recorded in Exh.PE that at the time of occurrence bulb and fan were on, confronted with Exh.PE where not so recorded. I got recorded in Exh.PE that the accused shifted the dead body of the deceased Ijaz Ahmad on a cot towards Charri crop and thereafter dragged the dead body of the deceased for a distance of about one acre, confronted with Exhd.PE where not so recorded. I got recorded in Exh.PE that accused Waqas Ahamd was heroin addict, confronted with Exh.PE where word 'heroin' is not mentioned. I got recorded in Exh.PE that accused Waqas is my grandson, confronted with Exh.PE where not so recorded".

11. In case titled, "Muhammad Jahangir Vs the State" (2024 SCMR 1741) this court has held that it is unsafe to place reliance on the testimony of a witness which is suffering from dishonest improvements. Such dishonest improvements would erode the probative value of the witness. In the case reported as "Irfan Ali..vs..The State (2015 SCMR 840)" it was observed that:-

"To award capital punishment in a murder crime, it is imperative for the prosecution to lead unimpeachable evidence of a first degree, which ordinarily must get strong corroboration from other independent evidence."

12. Apart from the above referred dishonest improvements, the complainant has not stated a single word in crime report Exh.PE about availability of any source of light either natural such as moon or artificial such as electric bulb etc in which he identified the petitioner at the spot. As per version of the complainant, the occurrence took place at the dark hours of night (wee hours). No source of light i.e bulb has been taken into possession by the I.O. nor has any source of electricity been established by the prosecution in order to imply that the bulb was lit at the time of the occurrence. In this view of the matter, identification of the assailant(s) in the dark hours is highly doubtful. Even otherwise, the conduct of the

complainant appears to be unnatural as he kept mum at the spot due to fear like a silent spectator and did not react to rescue his son from his grandson. A father or grandfather cannot be expected to react in such a way as demonstrated by the complainant. This circumstance cast serious doubt about the presence of the complainant at the spot. The site plan also belies the version of the complainant. The Investigating Officer has secured blood from beneath the bed/Cot of the deceased, however, he did not reflect any trail of blood from the place of Cot of the deceased till the place where the dead body of the deceased was thrown in a field. According to statement of complainant when the dead body of the deceased was thrown in the field, the petitioner dragged his dead body for a distance of one acre. No blood has also been shown in the site plan or recovered by the I.O. from the said area of one acre. No scratch, bruise and abrasion have been noted by Dr. Nasir Mehmood (PW.1), who conducted autopsy on the dead body of the deceased so as to substantiate the version of complainant in respect of dragging the dead body of the deceased. Moreso, the statement of the complainant is suffering from material contradictions which create serious doubt about his presence at the spot at the time of occurrence as well as veracity of his statement. Let alone, his statement is not corroborated by tangible substance; therefore, his testimony cannot be based for recording conviction for the offence entailing capital punishment. Reliance is placed on the case of "Muhammad Riaz Vs the State" (2024 SCMR 1839).

13. Khalid Mehmood and Tariq Mehmood, who according to the complainant had also witnessed the occurrence have been abandoned by the prosecution for no good reason. In such eventuality, an adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above named witnesses been produced by the prosecution, they would not have supported the prosecution's case. Reliance is placed on the case of "Mst. Saima Noreen Vs the State" (2004 SCMR 1310). Further reliance may also be placed on cases reported as (PLD 2011 SC 554, 2020 SCMR 1493, 2021 SCMR 387).

14. The above infirmities, glaring omissions and contradictions in the prosecution's case lead us to an irresistible conclusion that the prosecution has failed to prove the charge against the petitioner/convict beyond reasonable doubt. It is a settled principle of law that for giving the benefit

of the doubt it is not necessary that there should be so many circumstances rather if a single circumstance creating reasonable doubt in a prudent mind is sufficient for extending its benefit to an accused not as a matter of concession but as of right. Reliance is placed on the cases of "Muhammad Mansha Vs. The State" (2018 SCMR 772) and "Najaf Ali Shah Vs. the State" (2021 SCMR 736). As a corollary to the foregoing, the impugned judgments of the courts below are the result of misreading and non-reading of evidence, hence, not sustainable in the eye of law.

15. Accordingly, the instant petition is converted into appeal and is allowed, consequently, the conviction and sentences of the petitioner/appellant Waqas Ahmad under section 302(b) PPC are hereby set aside and he is acquitted from the charge in the instant case. He be set at liberty forthwith if not confined in any other cas

Announced in open Court at Islamabad // 9th April 2025

Approved for reporting.

M. Siraj Afridi PS
Tayyaba Munir LC

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