

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

BENCH-VIII.

PRESENT:

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

CRIMINAL APPEALS NO. 438 AND 439 OF 2023

*(on appeal against the judgment dated 19.10.2016
& 18.02.2020 passed by the Lahore High Court,
Rawalpindi Bench, Rawalpindi, in Crl. Appeals
No.156/2012 and 347/2019, respectively)*

Manzar Abbas.
(In Cr.A.438/23)

Ali Afzal @ Machhi.
(In Cr.A.439/23)

...Appellants

Versus

The State.
(In both cases)

...Respondent

For the Appellant:

Mr. Muhammad Amin Khan, ASC.
(in Crl. Appeal No.438/2023)

Mr. Ansar Nawaz Mirza, ASC.
(in Crl. Appeal No.439/2023)

For the State:

Ms. Memoona Ihsan-ul-Haq,
Deputy Prosecutor-General, Punjab.

For the Complainant:

Nemo.

Date of Hearing:

13.03.2025.

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this common judgment, we propose to decide the instant Criminal Appeal No.438 of 2023 and Criminal Appeal No.439 of 2023, as both pertain to one and the same FIR No.72 dated 08.06.2009, under Sections 302 & 34 PPC registered

at Police Station Dhudial District Chakwal, wherein appellants, namely, Manzar Abbas and Ali Afzal alias Machi are charged for committing murder of Lal Hussain deceased with firearm.

2. The prosecution's case as portrayed in the FIR is that on 06.08.2009 complainant Fida Hussain (PW.8) along with his wife Mst. Musarrat Jabeen (PW.7) was present in the house of his father-in-law, namely, Lal Hussain deceased. At about 06.00 a.m. Mst. Musarrat Jabeen brought her father Lal Hussain downstairs from *Chobara* and seated him on a Cot in the courtyard while she herself started preparing breakfast. Meanwhile, the complainant was untying an Ox when two motorcycles stopped in the street. Afzal alias Machi (appellant), duly armed with Kalashnikov entered the house of the deceased and told the complainant that he has brought some legal documents of higher court for service upon Lal Hussain deceased. Shortly after, Manzar Abbas (appellant), also duly armed with Kalashnikov entered the house of the deceased and both of them opened fire at Lal Hussain deceased, who sustained multiple gunshots on different parts of his body and succumbed to injuries on the spot. Upon hearing the gunshots, PW Muhammad Banaras (given up) attracted to the spot and witnessed the occurrence. After commission of the offence, the appellant made their escape good from the spot on motorcycles with the help of co-accused Azhar Hussain and Muhammad Nawaz. The motive behind the occurrence was alleged to be a longstanding blood feud between the parties. On the report of the complainant FIR No.72 dated 08.06.2009, under Sections 302 and 34 PPC was registered at Police Station Dhudial District Chakwal against the accused including the appellants. Previous blood feud between the appellants and the deceased advanced as a motive behind the occurrence.

3. Following arrest of appellant Manzar Abbas and completion of investigation, he being a juvenile, *challan* under the Juvenile Justice System Ordinance, 2000 was submitted against him before the learned SJ/Judge Juvenile Court Chakwal. After facing regular trial, appellant Manzar Abbas was convicted under section 302(b) PPC and sentenced to imprisonment for life as *Taázir* and to pay Rs.1,00,000/- as compensation to legal heirs of Lal Hussain deceased and in default thereof to further undergo 06 months simple imprisonment. Benefit of section 382-B Cr.P.C. was extended to him vide judgment dated 24.03.2012. The learned Lahore High Court Lahore Rawalpindi Bench Rawalpindi while dismissing Cr.A. No.156 of 2012 of appellant Manzar Abbas, upheld his conviction and

sentence. Feeling aggrieved, he filed Jail Petition No.649 of 2016 before this Court.

4. Upon arrest of appellant Ali Afzal alias Machi, report under section 173 Cr.P.C. was submitted against him before the learned Sessions Judge, Chakwal. Following regular trial, he was convicted under section 302(b) PPC and sentenced to undergo imprisonment for life as *Ta'azir* and to pay rupees three lac as compensation to legal heirs of the deceased and in default thereof to further undergo six months simple imprisonment. He was, however, extended benefit of section 382-B Cr.P.C. vide judgment dated 28.03.2019. The learned Lahore High Court Lahore Rawalpindi Bench Rawalpindi while dismissing Cr.A. No.347 of 2019 of appellant Ali Afzal alias Machi, maintained his conviction and sentence vide judgment dated 18.02.2020, against which the appellant filed Jail Petition No.176 of 2020.

5. In both the petitions leave to appeal was granted by this court through a single order dated 29.05.2023.

6. Learned counsel for the appellants argued that presence of both the eyewitnesses at 06.00 a.m. in the house of the deceased, was improbable, as they live a kilometer away where their other children were also living; that according to the prosecution, the occurrence took place at 06.00 a.m. whereas the doctor during cross-examination admitted that the death of the deceased could be caused at 04.00 a.m.; that the postmortem was conducted with an unexplained delay at 0.30 p.m. although, according to the prosecution the FIR was chalked out at 09.30 a.m.; that one witness, namely, Banaras who is real maternal uncle of Mst. Musarrat Jabeen (PW.7) was not produced by the prosecution and, on the other hand, he had given an affidavit confirming the non-presence of the eyewitnesses at the place of occurrence. He lastly submitted that Investigating Officer has admitted that the version put forward by the petitioner Manzar Abbas was correct one.

7. Learned DPG appearing on behalf of the State contended that prosecution has proved guilt of the appellants through cogent and confidence inspiring evidence, corroborated by circumstantial evidence and supported by medical evidence. She while supporting the impugned judgments of the courts below requested for dismissal of the appeals.

8. We have given our anxious consideration to the arguments advanced at the bar from both sides and perused the record and evidence.

9. As per version of the prosecution occurrence in this case took place on 08.06.2009 at 06.00 a.m. inside the house of Lal Hussain deceased, situated in village *Lohaisar* which was reported by complainant Fida Hussain (PW.8) at 09.15 a.m i.e. after a delay of 03 hours and 15 minutes to Mushtaq Ahmad SI (PW.10) at the spot. The complainant neither in his report nor in his court's statement has furnished any explanation, much less plausible, as to what caused delay in reporting the incident. Statement of Mushtaq Ahmad SI (PW.10), author of the report of complainant, shows that deliberation and consultation as to who should be the complainant of the case, caused delay in reporting the incident. Relevant part of his cross-examination is reproduced below for ready reference.

"I do not exactly remember the time as to when I received the information of occurrence. **It might be 06.30/7.00 a.m.** I do not remember the time as to when I first reached Police Station Dhudial after receipt of information. It had taken me half an hour to reach PS Dhudial from Parade ground. I hardly stayed at PS for 15 minutes and then reached village Lohaisar approximately in 25 minutes. **It took us an hour or so in determining as to who should be the complainant of the case. After it was settled that Fida would be the complainant, it hardly took 25 minutes to complete the proceedings at the spot.** "

In absence of any explanation furnished by the complainant and Mst. Musarrat Jabeen (PW.7) as well as any other piece of evidence in rebuttal, the testimony of Mushtaq Ahmad SI (PW.10) is sufficient to prove that time consumed on consultation and deliberation caused delay in lodging FIR. If the complainant and his wife Mst. Musarrat Jabeen were present at the spot and had witnessed the incident, there was no reason for them to make consultation and deliberation as to who should be the complainant of the case, rather on arrival of the police they could straightaway narrate the occurrence and charged the accused. It is settled law that unexplained delay in lodging FIR creates doubt in the prosecution's case, favoring the accused. In case titled, **Mst. Asia Bibi Vs The State and others (P L D 2019 Supreme Court 64)**, it has been 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's 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 raises doubt about the occurrence of the incident as projected by the prosecution. Such delay often indicates that the time was consumed in

constructing a coherent version of the events, which ultimately weakens the prosecution's case. This position has been reaffirmed in case titled **Muhammad Fiaz Khan v. Ajmer Khan (2010 SCMR 105).**

10. We have further noted that the delay was not limited to the FIR, even the postmortem examination of the deceased was conducted after an unjustifiable lapse of time. The prosecution has failed to provide any explanation for this delay. The time of occurrence is given as 06.00 a.m. and time of report as 09.15 a.m in the FIR, whereas, according to statement of Dr. Shakeel Ahmad (PW.6) he conducted autopsy on the dead body of the deceased at 01.30 p.m. viz after a delay of 04 hours and 15 minutes if counted from the time of report. In such eventuality the most natural inference would be that the delay so caused was for preliminary investigation and prior consultation to nominate the accused and plant eyewitnesses of the occurrence. Reliance is placed on case titled, **"Muhammad Rafique alias Feeqa Vs the State" (2019 SCMR 1068).** Similarly, in case titled, **"Irshad Ahmad vs the State" (2011 SCMR 1190)** this court has observed that noticeable delay in postmortem examination on the dead body of the deceased is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eyewitnesses before preparing police papers necessary for the same. Same is the view of this court in cases titled, **Ülfat Hussain vs the State (2018 SCMR 313), Muhammad Yaseen vs Muhammad Afzal and another (2018 SCMR 1549), Muhammad Rafique Vs the State (2014 SCMR 1698), Muhammad Ashraf vs the State (2012 SCMR 419) and Khalid alias Khalidi and 2 others vs the State (2012 SCMR 327).**

11. Complainant Fida Hussain (PW.8) in both his report as well as in his testimony, attributed the motive behind the occurrence to a longstanding blood feud between the parties. Relevant part of his statement is referred below in verbatim:-

"Motive behind the occurrence was enmity of murder between the accused and deceased. Two sons, one daughter and one granddaughter of Lal Hussain were murdered by Abid Hussain etc and the deceased was the complainant of that case.

Mst. Musarrat Jabeen (PW.7) daughter of the deceased has also advanced the same motive by stating that:-

"Motive behind the occurrence was enmity of murder between us and accused persons.

In cross-examination, the complainant as well as his wife PW Mst. Musarrat Jabeen, have admitted that they had a separate house which is situated at a distance of about one mile from the house of the deceased. Given this distance, the complainant as well as Mst. Musarrat Jabeen was the chance witnesses but their presence at the crime scene in the early hours of the morning remains unsubstantiated by any strong independent evidence. Further, the alleged eyewitnesses took approximately three hours and fifteen minutes to shift the deceased's body to the police station or hospital. Additionally, one hour was spent on deliberating who should act as a complainant. The absence of any injuries to them, their Ox or their belongings, despite the appellants being armed with deadly weapons, casts significant doubt on their presence at the relevant time.

12. Yet there is another aspect of the prosecution's case which also makes the presence of the alleged eyewitnesses highly doubtful. One Muhammad Banaras is also named as an eyewitness of the occurrence in the FIR. He is maternal uncle of Mst. Musarrat Jabeen. According to Mst. Musarrat Jabeen, there had never been any quarrel or dispute between them and Muhammad Banaras rather Banaras was considering and treating them like his own children. Haider Abbas SI (PW.14) in cross-examination has categorically stated that according to PW Muhammad Banaras the occurrence was initiated by two unknown culprits and the accused charged in the FIR were not the real culprits. Relevant part of his statement is reproduced below:-

"It is correct that Muhammad Banaras, the alleged eyewitness named in the FIR appeared before me and joined investigation. On 28.10.2009, Muhammad Banaras above named produced before me affidavit Exh.DA which is thumb marked as well as signed by Muhammad Banaras and as a counter check, copy of his NIC was also taken which is annexed with Exh.DA. **It is correct that Muhammad Banaras stated before me as well as in his affidavit that occurrence was committed in fact by two unknown person who came on motorcycle in his presence and none from the accused named in the FIR was there.**"

PW Muhammad Banaras has been abandoned by the prosecution as such an adverse inference within the meaning of Article 129(g) of the Qanun-e-Shahadat Order, 1984 would be drawn that had he been produced in the witness box he would not have supported the prosecution's version.

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)**.

13. Statement of Dr. Shakeel Ahmad (PW.4), particularly, his cross-examination is a significant blow to the prosecution's case. He has stated that:-

"It is correct that rigor mortis was fully developed. Month of June is amongst the hottest days of the season in our area. It is correct that rigor mortis develops slowly in hot conditions. In summer season, as compared to winter. It is also correct that in older person, development of rigor mortis is further retarded due to less fatty tissue and weaker musculature. In winter season a deceased of given age would take 04/07 hours for complete development of rigor mortis. In the present case rigor mortis could have taken 09/10 hours in its completion. It is correct that in the autopsy report there is no mention of setting in the reversion of rigor mortis. Had it been there, I would have mentioned the same. **In the present case, given the above observations, the deceased might have met his homicidal death at about 04.00 PM.**"

14. In view of what has been discussed above we are firm in our view that the occurrence has not taken place in the mode and manner as alleged by the complainant and PW Mst. Musarrat Jabeen. Both the alleged eyewitnesses being close relative of the deceased are procured witnesses, thus false implication of the appellant on the basis of motive of previous blood feud cannot be ruled out. It would be highly relevant to mention here that 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 cases of **Noor Elah Vs Zafrul Haque (PLD 1976 SC 557)**, **Al,lah Bakhsh vs the State (PLD 1978SC 171)**, **Khadim Hussain Vs the State (2010 SCMR 1090)**, **Tahir Khan Vs the State (2011 SCMR 646)**, **Tariq Vs the State 2017 SCMR 1672)** and **Muhammad Ashraf alias Acchu vs the State (2019 SCMR 652)**.

15. The above discussed infirmities, glaring omissions and contradictions in the prosecution's case led us to an irresistible conclusion that the prosecution has failed to prove the charge against the appellants beyond

reasonable doubt. It is settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather 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).**

16. Accordingly, both the appeals are allowed. Conviction and sentences of the appellants recorded by the two courts below through the impugned judgments are hereby set aside and they are acquitted from the charge levelled against them in the instant case. They be released forthwith if not confined in any other case.

17. Above are the reasons for short order of even date, which is reproduced below:-

“For reasons to be recorded later, we allow both the appeals, the conviction and sentences of the appellants recorded vide impugned judgments dated 19.10.2016 and 18.02.2020 passed by Lahore High Court, Rawalpindi Bench, Rawalpindi, in Crl. Appeals No.156/2012 and 347/2019, respectively are set aside and the appellants are acquitted of the charges leveled against them. The appellants be released forthwith if not required in any other case.

Islamabad:
13th March, 2025
M.Siraj Afridi PS

Approved for reporting.