

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

**PRESENT:**

Ms. Justice Musarrat Hilali  
Mr. Justice Salahuddin Panhwar  
Mr. Justice Ishtiaq Ibrahim

**Criminal Appeal No. 34 of 2023** *out of J.P.* **No.285 of 2017**  
(Against the judgment dated 02.10.2013 passed by the Lahore High Court,  
Lahore in Criminal Appeal No.241-J of 2009 and Murder Reference No.  
256 of 2009)

***Muhammad Khan alias Mithu***

...Appellant(s)

***versus***

***The State, etc.***

...Respondent(s)

For the appellant:	Mr. Rizwan Ejaz, ASC
For the complainant:	Mr. Azhar Iqbal, ASC
For the State:	Mr. Irfan Zia, APG
Date of hearing:	17.02.2025

**JUDGMENT**

**Ishtiaq Ibrahim, J.-** Muhammad Khan alias Mithu, the appellant, was tried by the learned Additional Sessions Judge Pindi Bhattian (“**Trial Court**”), in case FIR No.197/2005, dated 14.04.2005, under Section 302 PPC, registered at Police Station Pindi Bhattian, District Hafizabad, for committing *Qatl-e-Amd* of Feroze, Mst. Kausar Bibi and minor Fazaila aged 01 year, the deceased, respectively. The learned Trial Court vide judgment dated 30.05.2009 (“**impugned judgment**”) convicted and sentenced the appellant as under:-

**Under Section 302(b) PPC:-**

Death on three counts as *Tazir* with the direction to pay  
Rs.50,000/- as compensation to the legal heirs of each

deceased, as envisaged under section 544-A Cr.P.C and in default of said accumulated compensation i.e. Rs.1,50,000/- or compensation on each count, to further undergo 06 months SI.

2. — The learned Lahore High Court, Lahore, while dismissing Cr.A. No.241-J of 2009 of the appellant, maintained his conviction and sentence awarded to him by the learned trial Court and answered the Murder Reference No.256 of 2009 sent by the learned trial Court for confirmation or otherwise of the death sentence of the appellant, in the affirmative vide judgment dated 02.10.2013 (“**impugned judgment**”).

3. Feeling aggrieved of his conviction and sentence, the convict filed Jail Petition No.285 of 2017 before this Court, which was allowed and leave to appeal was granted, inter alia, to examine the entire evidence available on record in the interest of safe administration of criminal justice vide order dated 16.01.2023.

4. Briefly, the prosecution’s story as per First Information Report (“**FIR**”) Exh.PA/1, registered on the written application Exh.PA of complainant Saif Ullah (PW.1) is that, on the fateful day i.e. 14.04.2005 complainant along with his wife, namely, Mst. Kausar Bibi, who had in her lap a minor daughter, namely, Mst. Fazaila, brother, namely, Feroze and Liaqat (PW.2) as well as Asghar, was returning from Pindi Battian to their home situated in village Lundianwala and at 6.00 hours when they were about 5/6 acres away from their home, Muhammad Khan alias Mithu, the appellant, duly armed with Repeater gun present in a watercourse on the way, opened fire at Feroze, as a result, he got hit on backside of his head, fell on the ground and succumbed to injury; that Mst. Kausar Bibi along with her minor



daughter tried to save her life but the appellant then opened fire at them, with which both got hit and died at the spot. To save their skins, complainant Saif Ullah and PWs Liaqat and Asghar ran away from the spot. Motive behind the occurrence was that the appellant was unhappy on the marriage of his sister Mst. Kausar Bibi with complainant Saif Ullah.

5. The appellant was arrested on 11.08.2005. After completion of investigation report under section 173 Cr.P.C. was submitted against the appellant before the learned trial Court, where he was formally charge sheeted under section 302 PPC to which he pleaded not guilty and claimed trial. To prove guilty of the appellant, the prosecution examined as many as twelve witnesses. After closure of the prosecution's evidence, statement of the appellant was recorded under section 342 Cr.P.C., wherein he denied the prosecution's allegation and professed his innocence. He, however, neither wished to be examined on oath under section 340(2) Cr.P.C., nor opted to produce evidence in rebuttal of the charge against him. The learned trial Court, on conclusion of trial, convicted the appellant under section 302(b) PPC and sentenced him to death on three counts, against which the appellant preferred an appeal before the Lahore High Court, Lahore, but the same was dismissed and Murder Reference sent by the learned trial Court for confirmation or otherwise of the death sentence of the appellant/convict was answered in the affirmative vide judgment dated 02.10.2023 ("**impugned judgment**").

6. Along with Jail Petition No.285 of 2017, the appellant has also filed Cr.Misc. Application No.238 of 2017 for condonation of delay in

filing appeal. Leave to appeal was granted vide order dated 16.01.2023, however, application for condonation of delay is still pending, therefore, first we are taking the same for decision.

7. It may be noted that appeal of the appellant was dismissed by the worthy Lahore High Court Lahore vide judgment dated 02.10.2013, while the instant appeal has been filed on 27.03.2017 which is hopelessly time barred. The explanation furnished by the appellant in the application for condonation of delay is that he being confined in the Jail as soon as received copy of the judgment through Superintendent concerned Jail, preferred the instant appeal.

8. We have noticed that Superintendent of the Jail where the appellant is confined has not preferred an appeal on behalf of the appellant-convict despite that the appellant being confined in the jail was under his supervision. Under Rule 90 of the Pakistan Prisons Rules, 1894, it was the duty of the Superintendent Jail concerned to facilitate the appellant in filing appeal within the prescribed period of limitation. Rule 90 of the Rules (ibid) provides the facilities to prisoners for filing appeal while rule 91 of the Rules (ibid) provides different period of limitation for filing appeal against different sentences. For ready reference both rules 90 and 91 are reproduced below:-

**“Rule 90. Facilities to prisoners for filing Appeals:-**

The Superintendent shall inform every convicted prisoner, on first admission to prison, of the period within which an appeal from the order under which he has been committed to prison may be filed, if the prisoner desires to appeal, every facility shall be given



to him for the purpose. A request for appeal, made with the period allowed, shall be attended to forthwith.

**Limitation for appeals:**

Rule 91..(i) The period allowed for appealing are as follows:-

- (a) ....
- (b) Appeal to Sessions Judge.....30 days
- (c) Appeal to High Court against sentence of death: 07 days
- (d) Appeal to High Court in all other cases...60 days
- (e) **Petition for special leave to appeal to Supreme Court: ..30 days.**

(ii) The presentation of a petition of appeal by a convicted prisoner to the Superintendent shall for the purpose of the Limitation Act, 1908, be equivalent to presentation to the Court.

(iii) The Superintendent shall not withhold the appeal of any convicted prisoner, even though it be apparently barred by limitation.

We see nothing in black & white on file to show that the Superintendent Jail has informed the appellant about filing leave to appeal or appeal against his conviction and sentence and his desire to file or not to file appeal against his conviction and sentence has also not been obtained. The appellant being a layman is not expected to be acquainted with the law, its legal technicalities and consequences. Besides, he was in death cell. The question of condonation of delay in filing appeal against conviction beyond the period of limitation has been dealt with by this Court in case titled, **“Muhammad Bakhsh alias Muhammadi vs the State” (1985 SCMR 72)**, wherein delay of 680 days had been condoned in view of long sentence of life imprisonment of the convict and the appeal was heard on merit. Similarly, in case titled, **“Muhammad Nawaz vs the State” (PLD 2002 Supreme Court 287)**, this Court has condoned delay of 145 days in filing petition for leave to

appeal by a convict. Admittedly, the appellant was been in the jail for a period of more than thirteen years before filing of the the instant appeal. The Superintendent Jail should have obtained and forwarded appeal as he was under obligation to facilitate the appellant in filing appeal within period of limitation as prescribed under Rule 91 of the Pakistan Prisons Rules, 1894. The technicalities should not hamper the court of justice and the powers regarding condonation under Section 5 of the Limitation Act, 1908, should be liberally exercised to ensure administration of justice in its true spirit as held by this court in case titled, "Mian Muhammad Nawaz Sharif Vs the State (PLD 2009 SC 814).

9. In view of the law settled by this court coupled with the sentence of death on three counts awarded to the appellant, we are convinced to decide this appeal on merit. Accordingly, the application for condonation of dealy is allowed and delay caused in filing appeal is hereby condoned, resultantly, the appeal is taken up for hearing on merit.

10. Learned counsel for the appellant contended that it is a blind murder case as the unnatural conduct of complainant Saif Ullah and PW Liaqat, who left the dead bodies of their beloveds at the spot, is a strong circumstance which proves their non-availability at the spot at the time of occurrence; that let off the complainant by the appellant with whom he had direct motive is yet another strong circumstance about absence of the complainant at the spot at the time of occurrence. He next contended that factum of non-



availability of the alleged eyewitness can also be gathered from injury sheets and inquest report, wherein their names are not mentioned as identifiers of the dead bodies of the deceased; that occurrence has taken place on 14.04.2005 at 06.00 PM which has been reported on 07.20 PM, but astonishingly, postmortem on the dead bodies of the deceased has been conducted on the next day i.e. 15.04.2005 for which no explanation has been furnished by the prosecution; that medical evidence contradicts the ocular account; that prosecution has also failed to prove motive as alleged. He lastly submitted that if this Court is convinced and satisfied about the guilt of appellant on the available evidence, then keeping in view the long incarceration of the appellant since his arrest on 11.08.2005 till date coupled with non-proof of the motive as well as the discrepancies in the prosecution's evidence, the sentence of the appellant may be reduced from death to imprisonment for life.

**11.** Contrary, the learned Law Officer assisted by learned counsel for the complainant strongly opposed the arguments of learned counsel for the appellant by contending that appellant is directly and singularly charged by complainant in a promptly lodged FIR for committing murder of his wife, minor daughter and brother; that nothing is available on file to suggest false implication of the appellant; that eyewitnesses Saif Ullah and Liaqat have established their presence at the spot at the time of occurrence and both have furnished truthful account of the occurrence which has been corroborated by strong circumstantial evidence and supported by medical evidence; that mere delay in conducting autopsy on the dead

body of the deceased would not damage the prosecution's case; that prosecution has also proved motive. They while supporting the impugned judgments of the courts below lastly submitted that there is no mitigating circumstance so as to warrant leniency in the sentence of the appellant, thus sought dismissal of the appeal.

12. We have given our anxious consideration to the submissions advanced at the bar from both sides and have perused the evidence and record available on file.

13. The untoward incident in which Feroze, Mst. Kausar Bibi and minor Fazaila aged 01 year, lost their lives took place on 14.04.2005 at 06.00 PM, in the limits of village Ludianwala, which was reported by Saif Ullah complainant (PW.1) on the same day at 07.20 P.M. in the shape of written application, on the basis of which FIR Exh.PA was registered at Police Station Pindi Bhattian District Hafizabad against the appellant. Complainant Saif Ullah (PW.1) is husband of Mst. Kausar Bibi, father of minor Fazaila and brother of Feroze deceased respectively. Appellant is the brother of Mst. Kausar Bibi deceased. In the initial report, the complainant has directly and singularly charged the appellant with specific role of firing at the three deceased on a motive that Mst. Kausar Bibi deceased, sister of the appellant, had contracted love marriage with him (complainant) on which the appellant was annoyed. Complainant Saif Ullah and Liaqat (PW.2) are named as eyewitnesses of the incident in the FIR. Both while appearing as PW.1 and PW.2, respectively, in the witness box before the learned trial Court have furnished ocular account of the occurrence.



According to their statements, on the fateful day after purchasing house hold articles and clothes in Bhattian they along with the deceased were returning their village and when at 06.00 PM they reached the crime spot, the appellant duly armed with repeater already present there opened fire at Feroze deceased, as a result, he got hit on backside of his head and died at the spot; that the appellant then resorted to firing at Mst. Kausar Bibi deceased who was having a minor daughter of one year in her lap, with which both got hit and succumbed to injuries at the spot. As per their version Mst. Kausar Bibi deceased had contracted love marriage with complainant Saif Ullah on which her brother/appellant was unhappy. Both the eyewitnesses have been subjected to lengthy and taxing cross-examination by the defence but nothing favourable to the appellant or adverse to the prosecution could be extracted from them except minor discrepancies of trivial nature. Both have given all crucial details of the incident such as the day, date, time and place of occurrence, mode and manner of occurrence, kind of weapon used by the appellant in the occurrence, the locale of injuries on the person of the three deceased and the motive behind the occurrence. Both have remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished them is reliable, straightforward and confidence inspiring. The eyewitnesses had no enmity or ill-

will against the appellant to falsely involve him in the case. Even otherwise, it does not appeal to a prudent mind that complainant who lost his wife, minor daughter and brother in the incident, would spare and let off the real culprit(s) and will charge his innocent brother-in-law. No reason and circumstance has been brought on record by the defence so as to remotely suggest substitution and false implication of the appellant. Admittedly, substitution of real culprit charged directly and singularly in a murder charge is a rare phenomenon in the system of criminal justice as held by this court in case, **“Allah Ditta Vs the State” (PLD 2002 Supreme Court 52)** and case titled, **“Muhammad Iqbal Vs the State” (PLD 2001 Supreme Court 222)**. Both the eyewitnesses have plausibly explained their presence with the deceased at the spot at the time of occurrence. Presence of complainant Saif Ullah with the three deceased out of whom Feroze was his brother, Mst. Kausar Bibi and Mst. Fazila was his wife and daughter, respectively, is quite natural and appealable as in villages such close relatives do associate and accompany each other to market/Bazaar for purchase of household articles. Substitution of real culprits especially in cases where the eye witnesses lost their kith and kin before their own eyes is a rare phenomenon. Reliance may be placed on **“Asfandiyar vs. The State and other” (2021 SCMR 2009)** and **“Muhammad Abbas & another vs. The State” (2023 SCMR 487)**.

**14.** One of the argument of learned counsel for the appellant was that the ocular account in this case has been furnished by



related and interested witnesses, however, he could not controvert that the law has been well-settled by now that an interested witness is one who is interested in the conviction of an accused for some ulterior motive, but in this case, the defence could not bring on record any ulterior motive of the complainant or PW Laiqat to falsely implicate the appellant. Reliance in this regard may be placed on the cases titled as “Azhar Hussain and another vs. The State and others” (2022 SCMR 1907) and “Shamsher Ahmad and another vs. The State and others” (2022 SCMR 1931). We are of the unanimous view that due to close relation of complainant and PW Liaqat with the deceased persons, they were in fact not likely to let off the actual perpetrator of the offence by falsely implicating the appellant, against whom they admittedly had no previous malice, ill-will, animosity or grudge. In absence of any ulterior motive/animus for false implication of an accused, the confidence inspiring testimony of an eye witness, 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 as held by this Court in case ‘AmanUllah v. the State’ (2023 SCMR 723) and ‘Imran Mehmood v. the State’ (2023 SCMR 795). Learned counsel for the appellant could not point out any reason as to why the complainant has falsely involved the appellant in the present

case and let off the real culprit, who has murdered his wife, daughter and brother. He also could not point out any major contradiction or discrepancy in the statement of the witnesses, which could shatter the basic fabric of the prosecution case in its entirety.

**15.** Medical evidence available on the record supports the ocular account so far as the nature, time, locale and impact of the injuries on the persons of the deceased is concerned. The argument of learned counsel for the appellant that postmortem report on the dead bodies of the deceased has been conducted on the next day of occurrence creates serious doubt in the prosecution's case, particularly, about the presence of the eyewitnesses, is not tenable, as by now it is well settled law 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. Reference in this regard may be made to the judgments 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)*.

**16.** So far as motive part of the prosecution's case is concerned, we have observed that the same has not been established by the



prosecution through cogent and confidence inspiring evidence. Rather, complainant in his statement has stated that compromise had effected between him and the appellant and he used to visit the house of the appellant along with his wife and children. Relevant part of the statement of the complainant is reproduced below:-

“I oftenly visited the house of my in-laws with my wife and children and Muhammad Khan accused also visited out house. It is correct that no unpleasant occurrence took place. It is also correct that we oftenly stay at night in the house of my in-laws.”

In view of the above referred statement of complainant, we are in agreement with the findings of the learned Lahore High Court, Lahore that prosecution has not proved the motive. It is by now well settled that once the motive is setup by the prosecution, but thereafter fails to prove the same, then prosecution must suffer the consequences and not the defence. Reliance is placed on **“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).**

17. Besides, there are some minor inconsistencies in the prosecution 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 case (1993 SCMR 1660)* and *Falak Sher's case (NLR 2000 Criminal 188)* that:

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

18. Crux of the above discussion is that conviction of the appellant recorded by the two courts below under section 302(b) PPC is maintained, however, keeping in view failure of the prosecution to prove the motive, minor inconsistencies in the prosecution's evidence coupled with long incarceration of the appellant since his arrest on 11.08.2005 till date which also includes his period in the death cell, his sentence is converted from death on three counts to imprisonment for life on three counts as *Ta'azir*. The substantive sentence of life imprisonment under each count, shall run concurrently. The amount of compensation in terms of section 544-A Cr.P.C to be paid by the appellant to the legal heirs of the deceased and consequences in default of payment thereof, are



maintained. Benefit of section 382-B Cr.P.C. is extended to the appellant.

19. With the above modification in the sentence of the appellant, this appeal is partially allowed.

20. These are the reasons of our short order of even date.

Islamabad  
17.02.2025  
Approved for reporting.  
M.Siraj Afridi PS