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21/25

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE ATHAR MINALLAH  
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN  
MR. JUSTICE SHAKEEL AHMAD

**Crl.P.L.A No.790 of 2017 &**  
**Jail Petition No.527 of 2017**

*(On appeal against the judgments dated 17.04.2017 passed by the Lahore High Court, Lahore in Criminal Appeal No.176/2015, as well as, Criminal Appeal No.175/2015 & Capital Sentence Reference No.07-T/2015 respectively)*

Abdullah alias Muhammad alias Masab (Petitioner in Crl.P.790/2017)

Muhammad Muavia alias Muaz  
alias Asmat-Ullah (Petitioner in JP-527/2017)

**Versus**

The State (Respondent in both cases)

For the Petitioners: Mr. Zulfiqar Khalid Maluka, ASC  
Mr. Adil Aziz Qazi, ASC

For the State: Mirza Abid Majeed, DPG Punjab

For the Complainant: Nemo

Date of Hearing: 13.03.2025

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**JUDGMENT**

**MALIK SHAHZAD AHMAD KHAN, J.-** Abdullah alias Muhammad alias Masab and Muhammad Muavia alias Muaz alias Asmat-Ullah, petitioners were tried separately by the learned Judge Anti-Terrorism Court No.1, Lahore, pursuant to a case registered vide FIR No.206/2010 dated 28.05.2010, under Sections 302/324/353/186/148/149/120-B/109/337 PPC, read with section 7 of the Anti Terrorism Act, 1997, sections 3/4 of the Explosive Substances Act and Section 13 of the Arms Ordinance XX of 1965, at Police Station Model Town, Lahore. The learned

Trial Court vide its judgments of even date (17.01.2015), convicted and sentenced the petitioners as under:-

**Abdullah alias Muhammad alias Masab**

**Under Section 302(b) PPC**

Imprisonment for life on 03 counts and to pay Rs.5,00,000/- on 03 counts as compensation under section 544-A Cr.P.C, to the legal heirs of deceased namely Munir Umair, Noor Amin and Muhammad Ashraf and in default thereof to further undergo 06 months SI on 03 counts.

**Under Section 7(i)(a) of the Anti-Terrorism Act, 1997**

Imprisonment for life on 03 counts with fine of Rs.5,00,000/- on 03 counts and in default thereof to further undergo simple imprisonment for six months on 03 counts

**Under Section 449 PPC**

Imprisonment for life with fine of Rs.2,00,000/- and in default thereof to further undergo simple imprisonment for four months.

**Under Section 3-ESA**

Imprisonment for life.

**Under Section 4-ESA**

Imprisonment for life.

**Under Section 13-Arms Ordinance XX 1965**

Seven years simple imprisonment with fine of Rs.1,00,000/- and in default thereof to further undergo simple imprisonment for three months.

The amounts of compensation shall be recovered as an arrear of land revenue. If recovered, then legal heirs of each deceased shall be entitled to receive the same as per their legal shares. All the sentences of imprisonment were ordered to run concurrently. Benefit of section 382-B Cr.P.C was given to the petitioner.

**Muhammad Muavia alias Muaz alias Asmat-Ullah**

**Under Section 302(b) PPC**

Death sentence as Ta'zir on 03 counts and to pay Rs.5,00,000/- each as compensation under section 544-A Cr.P.C, to the legal heirs of each deceased namely Munir Umair, Noor Amin and Muhammad Ashraf and in default thereof to further undergo 06 months SI on 03 counts.



**Under Section 7(i)(a) of the Anti-Terrorism Act, 1997**

Death sentence as Ta'zir on 03 counts with fine of Rs.5,00,000/- on 03 counts and in default whereof to further undergo simple imprisonment for six months on 03 counts

**Under Section 449 PPC**

Imprisonment for life with fine of Rs.2,00,000/- and in default whereof to further undergo simple imprisonment for four months.

**Under Section 3-ESA**

Death sentence as Ta'zir.

**Under Section 4-ESA**

Imprisonment for life as Ta'zir.

**Under Section 13-Arms Ordinance XX 1965**

Seven years rigorous imprisonment with fine of Rs.1,00,000/- and in default whereof to further undergo simple imprisonment for three months.

Amounts of compensation were ordered to be recovered as arrear of land revenue. If recovered, then legal heirs of each deceased shall be entitled to receive the same as per their legal shares. All the sentences of imprisonment were ordered to run concurrently. Benefit of section 382-B Cr.P.C was given to the petitioner.

The appeals filed by the petitioners were dismissed by the learned High Court while maintaining the convictions and sentences awarded to the petitioners.

2. Arguments heard. Record perused.

3. FIR (Ex.PCC/2), was lodged by Col. Munawar Ahmed Khan. He stated that on 28.05.2010, at 1.35 p.m, he was present on his duty at the ladies gate of the worship place of Ahamdia Sect i.e., Bait-ul-Noor, situated at Model Town, C-Block, Lahore. In the meanwhile, he heard the report of firing and saw two terrorists, who were carrying a bag and riding on a motorcycle reached at the spot. They left their motorcycle in the Chowk, which exploded after

ten (10) minutes. They forcibly entered into the abovementioned worship place and started firing at the people present inside the abovementioned building. They also threw hand-grenades during the occurrence. On account of above-said acts of the aforementioned accused, total twenty (26) people died at the spot, whereas many were injured. The people present at the spot, however managed to capture the said accused along with ammunition and suicide jackets. The police reached at the spot after some time and the accused were handed over to the police, hence the FIR of this case.

4. Learned counsel for the petitioners has argued that the petitioners have been made a scapegoat in this case and they were neither named in the FIR, nor arrested at the spot and in-fact they did not play any role during the occurrence.

5. We have noted that neither Col. Munawar Ahmad Khan complainant nor any injured of this case appeared in the witness box to state that the petitioners committed the occurrence of this case. Even no one from the management of the abovementioned worship place i.e., "*Bait-ul-Noor*", appeared in the witness-box and deposed against the petitioners. It is also noteworthy that in the written application moved by Col. Munawar Ahmed Khan complainant, on the basis of which the formal FIR (Ex.PCC/2), was lodged, the names of the petitioners were not mentioned. Even in the police *Kawari* mentioned in the FIR, the names of the petitioners were not mentioned, though it was stated therein that on receiving information of the occurrence, the police reached at the spot and captured two terrorists. It is not understandable that if the petitioners were apprehended by the complainant and other



PWs at the spot and they were handed over to the police by the complainant party then as to why their names were not mentioned in the application moved by Col. Munawar Ahmad Khan complainant or in the police *Karwari* mentioned at the bottom of the FIR, which was carried out after handing over of the captured terrorists to the police at the place of occurrence.

The star-witness of the prosecution in this case was Col. Munawar Ahmad Khan complainant. The said witness was statedly present at the spot at the time of occurrence and he had witnessed the occurrence, as well as, the apprehension of the terrorists by the people present at the spot but as mentioned earlier, he did not appear in the witness box.

6. The prosecution in order to prove its case has relied upon the evidence of Muhammad Javed Inspector (PW-13), who stated that on the day of occurrence, on hearing the report of firing, he reached at the spot and saw the the petitioners while committing the occurrence but his name as an eye-witness was not mentioned by Col. Munawar Ahmad Khan complainant of this case. The complainant has mentioned the names of the witnesses in the FIR as eye-witnesses namely Uzair Ahmed, Sarfraz Ahmad and Ahmad Sher but none from the said eye-witnesses mentioned in the FIR, appeared in the witness box. He (PW-13) also stated that he recovered one suicide explosive jacket each, apart from other ammunition from the possession of each petitioner but admittedly he was not a member of Bomb Disposal Squad, therefore, it is not understandable that as to how he managed to remove the suicide explosive jackets from the petitioners because there was strong possibility of blowing off the said jackets.



It is further noteworthy that as per contents of the FIR , the unknown accused were apprehended by private persons present in the above-mentioned worship place and it was also stated that the unknown accused were apprehended along with suicide explosive jackets and ammunition but Muhammad Javed Inspector (PW-13), claimed that he recovered suicide explosive jackets and other ammunition from the possession of the petitioners.

It is also noteworthy that the learned Law Officer during examination-in-chief of Muhammad Javed Inspector (PW-13), requested the Court that the said witness be declared hostile as he was suppressing material facts from the Court, therefore, he (Public Prosecutor) may be allowed to cross-examine the said witness. Although his abovementioned request was turned down by the learned trial Court but the fact remains that the prosecution itself has expressed his distrust on the abovementioned witness. Neither the name of the abovementioned witness was mentioned in the FIR or police *Karwai* mentioned in the FIR (Ex.PCC/2) nor his name was mentioned in the site plan of the place of occurrence (Ex.PXX). This Court has mostly disbelieved the evidence of an eye-witness whose name was not mentioned in the FIR or his presence was not shown in the site plan of the place of occurrence. Reference in this context may be made to the judgment reported as "Khial Muhammad v. The State" (2024 SCMR 1490).

7. The prosecution has also produced Muhammad Iqbal Head-Constable (PW-12) and Allah Ditta Constable (PW-16), in order to prove its case against the petitioners. Muhammad Iqbal Head-Constable (PW-12), stated that he also reached at the spot on the day of occurrence and the petitioners were apprehended by the



worshippers. He added that suicide jackets along with other ammunition were recovered from the petitioners, which were taken into possession through recovery memo but he has not stated that that Muhammad Javed Inspector (PW-13), was also present at the abovementioned place and time. Though he stated that the Investigating Officer took into possession the suicide jackets and other ammunition recovered from the possession of the petitioners through recovery memos but no recovery memo was exhibited during his evidence. Likewise, Allah Ditta Constable (PW-16), also stated that suicide explosive jackets and other ammunition were recovered from the petitioners but he has not stated that Muhammad Javed Inspector (PW-13) or Muhammad Iqbal Head-Constable (PW-12), were present at the time of alleged recoveries. Under the circumstances, there are glaring contradictions in the prosecution case qua the abovementioned recoveries.

It is further noteworthy that Allah Ditta Constable (PW-16), stated during his cross-examination that rough site plan was prepared by the Investigating Officer on his pointation. It is also noteworthy that Allah Ditta Constable (PW-16), has not claimed that he was an eye-witness of the occurrence and he was only a witness of alleged recovery of suicide jackets and ammunition from the possession of the petitioners, therefore, it is not understandable that as to how the rough site plan of the place of occurrence was prepared by the Investigating Officer at the pointation of the said witness.

8. We have further noted that according to the evidence of Azhar Saqib (PW-18), who was Investigating Officer of this case, Muhammad Muavia alias Muaz alias Asmat Ullah (petitioner), was

handed over to him in injured condition, who was sent to Jinnah Hospital but it was not mentioned in the FIR by the complainant that any unknown accused of this case was also injured during the occurrence. Likewise, no other witness stated that Muhammad Muavia alias Muaz alias Asmat Ullah (petitioner), was injured, when he was apprehended at the spot. No Medical Officer appeared in the witness box to support the abovementioned claim of the Investigating Officer namely Azhar Saqib Inspector (PW-18). It is not understandable that if Muhammad Muavia alias Muaz alias Asmat Ullah (petitioner), was apprehended on the day of occurrence in injured condition and medical treatment was provided to him at the Jinnah Hospital then as to why his medico legal report was not produced in evidence. The said fact supports the claim of the petitioners that they were earlier apprehended by the police and kept in illegal confinement during which they were physically tortured and they have been made scapegoats in this case because the duration of injuries in the medico legal report of Muhammad Muavia alias Muaz alias Asmat Ullah (petitioner), showed that he was having injuries, which were caused 4/5 days earlier to the date of present occurrence. The abovementioned fact has created further dent in the prosecution story.

As the medico legal report of the abovementioned petitioner which was the best evidence to show the presence of the petitioner at the time of present occurrence has not been produced in the prosecution evidence, therefore, an adverse inference under Article 129(g) of Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution that had the said MLR been produced in the evidence, the same would not have supported the prosecution



case. Reference in this context may be made to the judgments reported as "Lal Khan v. The State" (2006 SCMR 1846), "Riaz Ahmed v. The State" (2010 SMCR 846), "Abdul Qadeer v. The State" (2024 SCMR 1146) and "Riasat Ali v. The State" (2024 SCMR 1224).

9. We have also gone through the evidence of Allah Yar (PW-7), who was Bomb Disposal Commander and who has given his report (Ex.PGG), regarding explosive and other material recovered in this case. He stated during his cross-examination as under:-

*"I am not chemical expert. I do not have any educational qualification for chemical analysis of any explosive substance....."*

In the light of abovementioned admission of Allah Yar (PW-7), during his cross-examination, it is evident that neither the said witness has any educational qualification to analysis any explosive substance nor he was Chemical Expert, therefore, no reliance can be place on the evidence of said witness/expert.

10. Keeping in view all the above-mentioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the petitioners beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as "Tariq Pervez Vs The State" (1995 SCMR 1345) and "Muhammad Akram Vs The State" (2009 SCMR 230). Consequently, these petitions are converted into appeals and

allowed. The impugned judgments are set aside. The petitioners are acquitted of all the charges while giving them the benefit of doubt. They shall be released from the jail forthwith unless required to be detained in any other case.

Islamabad, the  
13<sup>th</sup> of March, 2025  
Not Approved For Reporting  
Ahtzaz