

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

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

JAIL PETITION NO. 868 OF 2017

(On appeal against the judgment dated 03.10.2017 of the Lahore High Court, Lahore passed in Cr. Appeal No. 375-J/2014 and Murder Reference No. 318/2014)

Muhammad Asghar

...Petitioner

Versus

The State

...Respondent

For the Petitioner: Sh. Ahsan-ud-Din, ASC

For the Complainant: Mr. Aftab Alam Yasir, ASC

For the State: Mirza Abid Majeed, DPG

Date of Hearing: 22.04.2025

JUDGMENT

Irfan Saadat Khan, J.- The instant jail petition is directed against the judgment dated 03.10.2017 passed by the Lahore High Court, whereby the convictions of the petitioner, Muhammad Asghar, for offences under sections 302, 354 and 452 of the Pakistan Penal Code, 1860 ("**PPC**") were maintained, as recorded by the Trial Court *vide* judgment dated 26.06.2014. However, the sentence for the offence under section 302(b) PPC was altered from death to life imprisonment, while the remaining sentences were upheld.

2. Briefly stated, the facts of the case, as narrated in the FIR (Ex.PC/2) lodged on the application (Ex.PC) of Mst. Bashiran Bibi (**Complainant/PW-**

3), are that on 19.07.2012 at about 1:15 p.m., Muhammad Aslam (**Deceased**) as well as Shakil and Abdul Rauf were present at the shop of an ice-seller known as "Kala Baraf Wala", situated in Randhir Bagrian. At that moment, Muhammad Asghar (**petitioner**), armed with a *Danda*, accosted them and immediately inflicted a blow on the head of Muhammad Aslam, causing him to fall over unconscious. As Muhammad Aslam lay fallen, the petitioner continued to assault him with further *Danda* blows. When Shakil and Abdul Rauf intervened to rescue Muhammad Aslam, the petitioner along with his companions, proceeded towards the house of Mst. Bashiran Bibi, the Complainant, where he subjected her and her daughter, Mst. Tahira Bibi, to physical assault and tore their clothes, in an attempt to outrage their modesty. The Complainant raised hue and cry upon which Shakil and Abdul Rauf intervened again and came to their rescue. The motive behind the occurrence, as alleged in the FIR, was a dispute regarding a house. Muhammad Aslam, unconscious and having sustained critical injuries, was initially shifted to the Rural Health Centre (RHC) Begowala. Upon medical advice, he was referred to Civil Hospital, Sambrial, then to Civil Hospital, Sialkot, and finally to General Hospital, Lahore, in view of the seriousness of his injuries – he remained unconscious throughout.

3. The initial application was registered under sections 324, 354 and 452 of the PPC on 20.07.2012 at 2:40 a.m., thirteen hours and twenty minutes after the occurrence. It is significant to note that on 20.07.2012, the Complainant also moved a supplementary application (Ex.PD) to the SHO, wherein she clarified that due to the panic she had felt on account of her husband's injuries and while being occupied with rushing him to the

hospital, she had inadvertently omitted to mention the names of Muhammad Akram (PW-4) and Bashir Ahmed (PW-5), who were also present at the place of occurrence and had witnessed the incident. It was during the course of his treatment at General Hospital, Lahore, that Muhammad Aslam succumbed to his injuries on 22.07.2012, whereafter section 302 PPC was added to the offences originally mentioned.

4. The petitioner was present in court on 24.07.2012 and was arrested therefrom. On the next day, i.e., 25.07.2012, the petitioner disclosed the whereabouts of the alleged weapon of offence — a *Danda* — which was recovered, *vide* recovery memo Ex.P.E. The police investigation continued and eventually concluded with the submission of a report under section 173 of the Code of Criminal Procedure, 1898, before the Additional Sessions Judge, Sambrial, District Sialkot (*trial Court*). Thereafter, formal charges were framed against the petitioner under sections 302, 452, and 354 of the PPC on 03.10.2012, to which he pleaded not guilty and claimed trial. During the course of proceedings, the prosecution produced Mst. Bashiran Bibi (PW-3), Muhammad Akram (PW-4) and Bashir Ahmed (PW-5) etc. to support the ocular account of the occurrence, all of whom corroborated the sequence of events narrated in the FIR and supplementary statement. Thus, the prosecution sought to establish a continuous chain of events beginning with the assault at the shop, the assault and outraging of modesty at the complainant's house, and culminating in the death of Muhammad Aslam. After completing all codal and legal formalities, the trial Court convicted the petitioner and sentenced him in the following terms, *vide* judgment dated 26.05.2014:

"In the light of above facts, prosecution has proved its case against Accused Muhammad Asghar beyond any reasonable shadow of doubt by producing cogent and confident inspiring evidence, therefore, Accused Muhammad Asghar s/o Taalib Hussain, caste Jatt Warraich, r/o Randhir Bagrian, tehsil Sambrial, District Sialkot is hereby convicted u/s.302 (b) of Pakistan Penal Code and is sentence to death. He be hanged by his neck till he is dead. He is also directed to pay compensation of Rs.1,00,000/- (one lac rupees) u/s.544-A of Cr.P.C to the legal heirs of deceased Muhammad Aslam: In default of payment of compensation, convict shall suffer simple imprisonment for six months. The compensation, if recovered, shall be paid to the legal heirs of deceased. The above sentence of death, of course, be subject to confirmation by Hon'ble Lahore High Court, Lahore and separate reference in terms of section 374 of Cr.P.C shall be submitted in due course. Accused Muhammad Asghar is also convicted in Offence u/ s.452 PPC and is sentenced to R.I for two years alongwith fine of Rs.5000/- and in case of default in payment of fine, he shall further undergo S.S.I for one month. He is further convicted in offence u/s.354 PPC and is sentenced to R.I for two years alongwith fine of Rs.5000/- and in case of default in payment of fine, he shall further undergo S.I for one month. Accused is extended benefit of section 382-B Cr.P.C. All the sentences shall run concurrently."

5. Aggrieved by the findings recorded by the trial Court, the petitioner preferred an appeal before the Lahore High Court, Lahore (*High Court*) which disposed of the said appeal and corresponding murder reference by upholding the convictions as handed down by the trial Court. The sentence for the offence under section 302 (b) PPC, however, was modified from death to life imprisonment, while the remaining sentences were maintained. The relevant portion of the High Court's judgment dated 03.10.2017 is reproduced below for ease of reference:

"Therefore, while maintaining the conviction under Section 302(b) PPC, we alter the sentence of Muhammad Asghar (appellant) from death to imprisonment for life. The amount of compensation and the punishment in default whereof, as ordered by the learned trial court, are maintained. The convictions/sentences under Sections 354 and 452 PPC and the amounts of fine as ordered by the learned trial court are also maintained. All the sentences shall run concurrently. Benefit of Section 382-B, Code of Criminal Procedure is extended to the appellant."

6. Still aggrieved, the petitioner has preferred the instant jail petition, bringing us to the arguments canvassed by the learned counsels.

7. Mr. Sh. Ahsan-ud-Din, ASC, appeared on behalf of the petitioner and stated that the petitioner has been falsely implicated in this case owing to previous civil litigation and political rivalry between the parties. It was submitted that there was an unexplained delay of thirteen hours and twenty minutes in the lodging of the FIR, which cast serious doubt upon the veracity of the prosecution version, especially when no plausible or convincing explanation was offered for such delay at the time of the initial reporting. It was further argued that the Complainant, Mst. Bashiran Bibi (PW-3), was not an eyewitness of the occurrence and her testimony regarding the events at the shop was based on hearsay. It was contended that Muhammad Akram (PW-4) and Bashir Ahmad (PW-5), presented as eyewitnesses, were introduced belatedly through a supplementary statement (Ex.PD), which raised serious doubts regarding their presence at the spot at the relevant time. The learned counsel emphasized that if these witnesses were truly present, their names would have been immediately disclosed in the original application (Ex.PC) lodged by the complainant. He pointed out that the motive alleged by the prosecution was vague, unsubstantiated and unsupported by any independent evidence. It was further argued that the ocular account presented by the prosecution was not in consonance with the medical evidence, in that there were material discrepancies regarding the nature and the number of injuries and the manner in which they were caused. In this regard, the learned counsel has highlighted that the Medico-Legal Report ("**MLR**") submitted by the doctor

administering first aid to the Deceased at Civil Hospital, Sambrial only mentioned a bruise on the leg of the Deceased, in fact, the MLR specifically stated that there was no other injury on the head or other body parts of the Deceased. According to him, this MLR outweighs any evidence furnished by the prosecution. Moreover, it was submitted that the alleged recovery of the *Danda* (P-4) at the instance of the petitioner was inconsequential. The *Danda* was neither stained with blood nor was it subjected to any forensic or chemical examination and thus, its evidentiary value was negligible. It was also highlighted that the absence of a report from the Chemical Examiner or Serologist further weakened the prosecution's case on this point. The learned counsel for the petitioner stressed that although it was claimed that the Complainant and her daughter were assaulted and their clothes were torn, no medico-legal examination was conducted to substantiate these allegations. Moreover, it was argued that the failure to produce any medical evidence in this regard casts serious doubt upon the veracity of the prosecution's claim concerning the alleged house trespass and outraging the modesty of the ladies. To sum up, the petitioner's counsel stated that in view of these glaring deficiencies, contradictions and the overall doubtful nature of the prosecution's case, there are sufficient grounds for setting aside the High Court's impugned judgment and acquitting the petitioner.

8. Mr. Aftab Alam Yasir, ASC, and Mr. Mirza Abid Majeed, Deputy Prosecutor General for the province of Punjab, have appeared on behalf of the Complainant and the State respectively. They stated that the prosecution had successfully established its case against the petitioner through trustworthy and confidence-inspiring evidences. It was argued

that the ocular account furnished by Muhammad Akram (PW-4) and Bashir Ahmad (PW-5) was consistent, natural, and free from material contradictions, and that both witnesses had no prior enmity or ill will against the petitioner to falsely implicate him in this heinous crime. It was further argued that given the locality and timing of the incident, the presence of the eyewitnesses at the place of occurrence had been reasonably explained. The learned counsel emphasized that the supplementary statement (Ex.PD) moved by the Complainant merely elaborated upon the factual situation by mentioning additional eyewitnesses and that the initial omission was reasonably explained by the state of urgency in securing medical attention for the injured Muhammad Aslam. They also contended that there was no conscious or deliberate delay in the lodging of the FIR, as the prime concern of the family members was to seek immediate medical treatment for the critically injured Muhammad Aslam, who was taken to multiple hospitals. It was submitted that in such circumstances, the delay in reporting the matter to the police was natural and ought not to affect the credibility of the prosecution's case. In this regard, emphasis was laid on the consistency between the ocular account and the medical evidence. Moreover, it was argued that the injuries sustained by Muhammad Aslam, as documented in the post-mortem report, corroborated the prosecution's assertion that a hard and blunt weapon, namely a *Danda*, was used to inflict fatal injuries upon him. The discovery of the *Danda* (P-4) at the instance of the petitioner was further relied upon as corroborative evidence linking the petitioner to the commission of the offence. Lastly, the learned counsel argued that the prosecution had proved its case against the petitioner to the hilt, leaving

no room for reasonable doubt, and they consequently prayed that the High Court's impugned judgment may be upheld.

9. We have heard all the learned counsel and have perused the record with their able assistance.

10. Marshalling the evidence in accordance with the sequence of events that unfolded on 19.07.2012 is most suitable in the instant case. In line with that, the prosecution's account is that on 19.07.2012, Muhammad Asghar, armed with a *Danda*, assaulted Muhammad Aslam at a local shop in Randhir Bagrian, striking his head and continuing the attack even after he fell unconscious. The injured Muhammad Aslam was rescued by Shakil, Abdul Rauf, Muhammad Akram and Bashir Ahmed but shortly thereafter, the petitioner, along with others, trespassed into the complainant's house, assaulted Mst. Bashiran Bibi and her daughter Mst. Tahira Bibi, and tore apart their clothes. Upon hearing the Complainant's hue and cry, Shakil, Abdul Rauf, Muhammad Akram and Bashir Ahmed again intervened, rescuing the Complainant and her daughter.

11. At the very outset, it is important to note that the Complainant's initial application to the police mentions that after beating Muhammad Aslam, the petitioner proceeded towards the Complainant's house accompanied by his fellows. Interestingly, however, none of the other prosecution witnesses mentioned that the petitioner was accompanied by other persons or that he went towards the Complainant's house alongside some accomplices. In this regard, no other person has been implicated or arrested and yet the prosecution has contented itself with the assumption that the petitioner acted alone, despite the Complainant's express

statement to the contrary. Again, the Complainant's subsequent testimony omits any mention of other persons. This fact in and of itself creates a doubt in the prudent mind regarding the petitioner's guilt.

12. Furthermore, the record reflects that in the FIR *supra*, it was alleged that on 19.07.2012 at about 1:15 p.m. the petitioner initiated his assault on the Deceased and subsequently assaulted the Complainant and her daughter. Admittedly though, the FIR was lodged on 20.07.2012 at 2:40 a.m. – an alarming thirteen hours and twenty-five minutes after the occurrence. The Complainant had sought to explain the delay by arguing that she was preoccupied rushing her injured husband from hospital to hospital; however, it was also acknowledged that he was taken by ambulance to RHC Begowala shortly after the occurrence. From RHC Begowala, the Deceased was referred to Civil Hospital, Sambrial, where he arrived at 11:45 p.m. on 19.07.2012 and was administered first aid. Whilst we are mindful that the foremost priority of the family members, as complainants, would be to secure treatment for their relative and attending to them – during the time between the occurrence and the administration of first aid, the Deceased was only shifted from one hospital to the other. After the arrival at the second hospital a further three hours elapsed before the FIR was ultimately lodged. Clearly then, there was ample opportunity to submit the report before the actual time of registration. Despite this fact, no plausible explanation for the delay has been provided by the Complainant.

13. The record also reveals that in the FIR *supra*, PWs Muhammad Akram and Bashir Ahmed were not mentioned as eyewitnesses to the alleged occurrence during which the petitioner inflicted fatal harm upon

the Deceased, rather, they were included as witnesses through a supplementary statement submitted by the Complainant later on the same day, i.e., 20.07.2012, when the crime was reported. This subsequent inclusion of the PWs Muhammad Akram and Bashir Ahmed merits special scrutiny since the prosecution "gave up" the other alleged eyewitnesses Shakil and Abdul Rauf, as well as the Complainant's injured daughter, who were actually mentioned in the FIR *supra*, preferring to rely only on the testimony of the former two. The Complainant has sought to explain this belated inclusion of alleged eyewitnesses Muhammad Akram and Bashir Ahmed by stating that she was in a panicked and confused state of mind owing to her husband's critical condition. This plea does not, however, persuade considering that Muhammad Akram and Bashir Ahmed were not only alleged eyewitnesses credited with having intervened in an attempt to rescue the Deceased but were also mentioned as the Complainant's saviours when she and her daughter were being subjected to assault. Moreover, the PWs Muhammad Akram and Bashir Ahmed were known to the Complainant, Muhammad Akram being her deceased husband's cousin, and Bashir her real brother. It is indeed alarming that the Complainant failed to recall these relatives among the four individuals who intervened on her behalf when she was registering her complaint.

14. Where the Complainant has stated that she was rescued by Shakil, Abdul Rauf, Muhammad Akram and Bashir Ahmed upon raising a hue and cry, Muhammad Akram's (PW-4) statement becomes relevant. He stated during his examination-in-chief that:

"We also followed the Accused and rescued the wife and daughter of the deceased."

He later stated during cross-examination that:

"We did not follow the Accused when he was going to the house of the deceased because we were not aware that Accused would also beaten to the daughter and wife of the deceased, therefore, we do not know the exact time how much time Accused remained in the house of deceased while his girl and wife."

The glaring contradiction — that at one place Muhammad Akram (PW-4) stated he followed the petitioner, and at another that he did not follow the petitioner — notwithstanding, the testimonies of the other witnesses reveal that they came to the Complainant's rescue only after hearing her hue and cry. There is thus a further contradiction that some witnesses claim to have followed and responded to the Complainant's cries whereas Muhammad Akram (PW-4) states that they followed the petitioner. This variance in the statements raises doubt not only about the credibility of the PWs' account but also their very presence at the scene.

15. Again, the record demonstrates that the petitioner was first alleged to have assaulted the Deceased, whereupon the PWs Shakil, Abdul Rauf, Muhammad Akram and Bashir Ahmed intervened. From there, the petitioner made his way to the Complainant's house where he assaulted her and her daughter, where once again the same PWs intervened to rescue the Complainant and her daughter. This, however, begs the question – if the party of four PWs was able to intervene both times and managed to restrain the petitioner from continuing his assault upon the Deceased and Complainant, how is it that he slipped through their fingers twice even though he was not armed with any formidable weapon. The conduct of the PWs in this regard was perplexing, since they were admittedly greater in number and although unarmed, they managed to intervene. This intervention naturally required the PWs to subdue the petitioner and yet he managed to escape. Further, the close blood relation the PWs had to the

Deceased and Complainant naturally would not permit them to let the petitioner escape in this way. The PWs may have argued that apprehending the petitioner was difficult given the crowd and confusion at the *Adda*, especially since there were multiple exits but their failure to apprehend the petitioner despite a second chance to do so at the Complainant's home confirms the unnatural manner in which they acted. It is thus evident that the conduct of the PWs was unnatural and raises serious doubt about their testimonies and presence at the scene especially in light of their belated inclusion as eyewitnesses and the abandonment of the other named eyewitnesses. In view thereof, it would be unsafe to rely upon statements furnished by Muhammad Akram and Bashir Ahmed, PWs 4 & 5 respectively. Reference in this regard may be made to the cases of "Liaqat Ali v. The State" (2008 SCMR 95), "Pathan v. The State" (2015 SCMR 315) and "Zafar v. The State and others" (2018 SCMR 326).

16. It is also noteworthy that although the prosecution alleged that the petitioner, after attacking the Deceased, entered the house of the Complainant and assaulted both her and her daughter, no medico-legal report was produced to substantiate the claim of physical assault or the alleged outraging of modesty. In cases where bodily harm or indignity is alleged, the securing of medical evidence serves as the most objective and reliable proof. The prosecution, however, remained content with oral assertions unsupported by any medical documentation. This omission assumes particular significance given the seriousness of the allegation and the failure to have either the Complainant or her daughter examined medically casts doubt upon whether such an incident occurred at all in the manner alleged. The absence of such evidence, where reasonably it ought

to have been secured, constitutes a material lacuna, which further weakens the prosecution's version and detracts from its overall credibility.

17. Most prominently, the recovery of the weapon of offence, a *Danda*, warrants our careful consideration. The *Danda* was said to have been recovered from the petitioner's residence upon his pointation and this recovery constitutes a foundational part of the prosecution's case. Here it is pertinent to reiterate the established principle of criminal jurisprudence that a recovery, in order to carry evidentiary value, must not only be legally secured but also supported by linking it to an accused and the offence, especially where it forms a critical link in the prosecution's case. In the present matter, neither was the recovered *Danda* found stained with blood nor was it subjected to any chemical or serological examination, so as to connect it with the injuries sustained by the deceased. It is rather surprising that despite the seriousness of the offence and the nature of the injury—which was to the head and ultimately proved fatal—the police remained content with a mere mechanical assertion of recovery without undertaking the essential step of forensic verification. No report of the Chemical Examiner or Serologist has been brought on the record. In such a situation, the recovery, stripped of scientific support, stands materially weakened and does not advance the prosecution's case in any meaningful way. This aspect of the case has also been noticed by the High Court with the following words:

“So far as the alleged recovery of danda (P4) at the instance of the appellant which was taken into possession vide recovery memo (Ex.PE) is concerned, the same is of no avail for the prosecution for the reasons that there is no mention in the recovery memo (Ex.PE) that the danda was stained with blood and that no reports of Chemical Examiner as well as Serologist with regard to the recovered danda are available on record.”

18. Notably also, we must examine the motive alleged by the prosecution, namely a dispute between the parties over a house. In this regard, no independent evidence was led to substantiate the existence or immediacy of such a dispute, nor was any document, litigation record, or corroborative testimony produced to establish that the petitioner bore such animosity as would propel him to commit a crime of this magnitude. The mere assertion of a vague motive, unsupported by credible material, cannot be treated as conclusive proof. In this backdrop, the motive sought to be ascribed to the petitioner appears to be speculative at best and, in our considered view, fails to advance the prosecution's case. This aspect has again been noticed by the High Court in the following terms:

"The motive as set out in the FIR was a dispute of house between the parties whereas before the learned trial court, it was stated that the complainant party purchased land from the appellant and also took over possession of said land but no documentary proof with regard to the said land was brought on record. Even no independent witness was associated during investigation nor produced in the witness box to prove this aspect of the case. In this view of the matter, we hold that the prosecution has not been able to substantiate motive part of the occurrence."

19. The law is obvious and trite that where the prosecution's case contains doubts such as those mentioned in the foregoing paragraphs, the benefit of such doubts accrues in the accused's favour. Furthermore, even a single doubt creating circumstance is sufficient to form the basis of an acquittal. Reliance in this regard may be placed upon the cases of "Muhammad Hassan versus State" (2024 SCMR 1427); "Tariq Parvez versus The State" (1995 SCMR 1345); "Muhammad Akram versus the

State” (2009 SCMR 230); “Muhammad Imran versus The State” (2020 SCMR 857).

20. In light of the cumulative effect of the doubtful features in the instant matter, we are of the view that the prosecution has failed to discharge its burden of proving the charges against the petitioner beyond reasonable doubt. The impugned judgment passed by the High Court is, therefore, set aside by extending the benefit of doubt to the petitioner. He is accordingly acquitted of all charges levelled against him. If he is not required to be incarcerated in any other matter, he shall be released forthwith.

21. These are the reasons for our short order dated 22.04.2025 which is reproduced below:

“For reasons to be recorded later, the petition is converted into appeal and allowed. The impugned judgment is set aside. The appellant is acquitted from the charges framed against him by extending the benefit of doubt. In case he is not required to be incarcerated in any other matter then he shall forthwith be released.”

Islamabad, the
22nd of April, 2025
Arshed/Mustafa Kundi L.C.

“Approved For Reporting”