

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

**PRESENT:**

Mr. Justice Manzoor Ahmad Malik  
Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.263-L of 2015 and  
Jail Petition No.407 of 2018**

*(Against the judgment dated 16.01.2015 passed by the  
Lahore High Court Lahore in Criminal Appeal No.  
1626/2010 with M.R. No.413/2010)*

***Ibrar Hussain***

*(in Cr.P. 263-L/2015)*

***Riaz Hussain***

*(in J.P. 407/2018)*

...Petitioner(s)

**Versus**

***The State***

*(in both cases)*

...Respondent(s)

For the Petitioner(s):

Mrs. Nighat Saeed Mughal, ASC

*(in Cr.P. 263-L/2015)*

N.R.

*(in J.P.407/2018)*

For the State:

Rana Abdul Majeed,  
Additional Prosecutor General Punjab

Date of hearing:

16.07.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Ibrar Hussain son of Zawar Hussain and Riaz Hussain son of Ashiq Hussain, petitioners herein, were tried by the learned Sessions Judge Mianwali for committing *Qatl-i-Amd* of Abdul Aleem, 35/36, on 14.10.2008 at 7:45 p.m, inside his home, located within the remit of Police Station Wan Bhachran, District Mianwali; they were returned a guilty verdict vide judgment dated 15.06.2010; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, both were sentenced to death, altered into imprisonment for life by the High Court vide impugned judgment dated 16.01.2015, *vires* whereof are being

separately assailed through Criminal Petition No.263-L of 2015 and Jail Petition No.407 of 2018; the latter barred by 1189 days; financial incapacity appears to have impeded Riaz Hussain's approach to this Court in time, in view whereof delay of 1189 days in filing of the petition is condoned in the interest of justice, additionally justifiable on account of con-convict's petition within the period of limitation; bound by a common thread, these are being decided through this single judgment.

2. Incident was reported by deceased's father Abdul Raheem, since dead, through statement Ex.PK, recorded by Muhammad Iqbal, Inspector (PW-12) at the police station situating 9-k.m. from the venue at 10:15 p.m. According to the complainant, deceased, a *Hakeem* by profession, was running a shop for last 12/13 years where he used to stay, off and on, and the complainant occasionally visited him as well. On the fateful night at 7:45 p.m, the deceased along with the complainant, Gul Muhammad and Haji Khalid Masood (PW-11) was sitting in the courtyard when the petitioners, armed with .12 caliber shotguns entered the home. Ibrar Hussain raised *Lalkara* and targeted the deceased on the left side of his chest followed by Riaz Hussain with a shot that landed on the pelvis; Ibrar Hussain repeated a shot hitting his left shin; upon hue and cry, they took to the heels. Witnesses claimed to have seen the incident in the bulb light. It is alleged that the deceased also attended his patients, including the females, at the residence and he objected over the petitioners' presence outside his dwelling that resulted into exchange of hot words, a rancor that prompted the petitioners to assault the deceased.

Autopsy was conducted following day at 7:00 a.m. Five entry wounds with multiple apertures surrounded by blackened margins, riddled mainly frontal parts of deceased's body. During inspection though blood, forensically opined as that of human origin, was secured, however, surprisingly no casing is shown or secured at the spot, nonetheless, the petitioners after their arrest on 6.3.2009, pursuant to disclosures, got recovered guns P-1 and P-3 on 11.03.2009.

3. Learned counsel for the petitioners contends that occurrence did not take place within the view of the witnesses nor at a point of time stated in the crime report; that the High Court disbelieved the motive and viewed recovery of guns as inconsequential and, thus, there was no occasion to maintain conviction on the statement of solitary chance witness; that autopsy was conducted with considerable delay and findings thereof were not in line with the details narrated in the First Information

Report; the conviction on such deficient evidence was not sustainable, concluded the learned counsel. Learned Law Officer has faithfully defended the impugned judgment.

4. Heard. Record perused.

5. Death intervened the complainant and Gul Muhammad PWs to enter the witness box, leaving behind Khalid Masood (PW-11), the sole narrator of the crime; fate of the case is inexorably linked with his deposition. Though, somehow related with the deceased, the witness, a fertilizer dealer running a shop nearby his house, located at a distance of 9 kilometer from the venue, his presence at the spot sans any purpose or justification on a Tuesday apparently after close of the day; argument that he was a chance witness cannot be summarily dismissed and in retrospect warrants a more cautious scrutiny of his statement. Similarly the position that occurrence took place much later in point of time than mentioned in the crime report merits serious consideration in view of observations recorded by the Medical Officer, who found that "*Stomach was perforated and damaged and it was full of partially digested food*" as it does not synchronize with the hypothesis of last intake to tally with the stated time of occurrence. Five entry wounds on different sides of chest, abdominal and pubic area, inner aspect of right thigh and back of right leg with multiple apertures also *prima facie* negate the story of three fire shots. Absence of any casing is yet another intriguing aspect of the case compounded by blackening that encircled the each wound. Source of light to establish identification of the assailants beyond doubt is yet another predicament confronting the prosecution. The prosecution has relied upon an electric bulb as the sole source of light to identify the petitioners, however, Khalid Masood (PW-11) admitted in his cross-examination that there was load shedding at the time of occurrence; he has tried to introduce a UPS (*Uninterrupted Power Supply*), an apparatus that does not figure anywhere on the record. In a sizzling hot season, presence of witnesses in the courtyard without any apparent purpose makes their presence all the more doubtful. With prosecution's multiple failures on motive, consequential recoveries, aggravated by a suspect source of light and delayed postmortem, solitary statement of a chance witness, may not be relied without potential risk of error as the circumstances cumulatively suggest a scenario other than what meets the eye. It would be unsafe to maintain the convictions, thus, Criminal Petition No.263-L of 2015 and Jail Petition No.407 of 2018 are converted into appeals and allowed;

impugned judgment dated 16.01.2015 is set aside; petitioners/appellants are acquitted of the charge and shall be released forthwith, if not required to be detained in any other case.

**Judge**

**Judge**

**Judge**

Lahore, the  
16<sup>th</sup> July, 2020  
Not approved for reporting  
*Azmat/-*