

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SYED HASAN AZHAR RIZVI
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Jail Petition No.276 of 2019

(On appeal against the judgment dated 08.03.2019 passed by the Lahore High Court, Lahore in Criminal Appeal No.2072/2016)

1. Sardar Khan
2. Amjad Ali

...Petitioners

Versus

The State

...Respondent

For the Petitioners: Syeda B.H. Shah ASC

For the State: Mr. Sajjad Hussain Bhatti, DPG, Punjab

Assisted by: Mr. Ghulam Muhammad Adnan, Law Clerk

Date of Hearing: 04.09.2025

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JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Sardar Khan and Amjad

Ali, petitioners, were tried by the learned Additional Sessions Judge, Depalpur, pursuant to a case FIR No.08/2014, dated 05.01.2014, under sections 302, 109, 148 and 149 PPC, registered at police station Mandi Ahmad-abad, Tehsil Depalpur, District Okara. The learned Trial Court vide its judgment dated 24.10.2016, convicted the petitioners under Section 302(b) PPC and sentenced each of them to imprisonment for life. They were also directed to pay compensation amounting to Rs.2,00,000/- each to the legal heirs of the deceased as envisaged under section 544-A Cr.P.C and in default whereof to further undergo six (06) months simple imprisonment each. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioners. However, vide the same judgment the learned trial Court acquitted Gohar Ali (co-accused), from the charge while extending him the benefit of doubt. In appeal, the

learned High Court while maintaining the conviction and sentence of the petitioners under Section 302(b) PPC, dismissed the appeal filed by the petitioners vide impugned judgment dated 08.03.2019.

2. Arguments heard. Record perused.

3. As per contents of the FIR, on 05.01.2014, at 4.30 p.m, Sardar Khan and Amjad Ali (petitioners) along with Muhammad Sarwar (co-accused since not tried being declared innocent by the police) and Rehmat Ullah (co-accused since P.O), while armed with firearms and hatchets launched an attack upon Muhammad Boota (deceased) and committed his murder. The role of causing firearm injuries on the body of Muhammad Boota (deceased), was attributed to both the petitioners, whereas the role of inflicting hatchet blows on the body of the deceased was assigned to the abovementioned Muhammad Sarwar (co-accused since not tried being declared innocent) and Rehmat Ullah (co-accused since P.O), hence the FIR of this case.

4. We have noted that for single deceased of this case namely Muhammad Boota, the complainant has named four (04) accused in the FIR, whereas one (01) additional accused namely Gohar Ali (since acquitted) was subsequently implicated in this case on the basis of supplementary statement of the complainant with the allegation of abetment and as such total five (05) accused persons have been implicated in this case for one deceased.

5. We have further noted that the occurrence in this case took place on 05.01.2014, at about 4.30 p.m but the FIR was lodged on the same day at 8.30 p.m and as such there was a delay of about four (04) hours in reporting the matter to the police. According to the prosecution evidence, Muhammad Boota (deceased), was first taken to the Rural Health Center, Mandi Ahmadabad in injured condition, where-from he

was referred to Jinnah Hospital, Lahore. Learned DPG has argued that alleged delay in lodging the FIR has been occurred as Muhammad Boota (deceased), was taken to the Jinnah Hospital, Lahore but admittedly Muhammad Boota (deceased), was first taken to the Rural Health Center, Mandi Ahmad-abad, where he was medically examined at 6.30 p.m and at that time, the police also reached at the abovementioned hospital/Rural Health Center. The said fact was admitted by one of the eye-witness produced in this case namely Taj Muhammad (PW-2), in his examination-in-chief, as well as during his cross-examination. Relevant parts of his statement in this respect are reproduced hereunder for ready reference:-

*".....We took Boota in injured condition to RHC Mandi Ahmad-abad. I.O came at Hospital, prepared injury statement and the way to Jinnah Hospital Boota died due to the said injuries.....
XXXXXXXXXX.....Police visited the hospital when the injured was there. When local police visited the hospital we informed the local police about the occurrence.....
....."*

It is, therefore, clear that the police reached at the Rural Health Center, Mandi Ahmad-abad, where Muhammad Boota (deceased), was first medically examined in injured condition at 6.30 p.m but even then the FIR was not lodged at that time rather the same was lodged at 8.30 p.m. The abovementioned gross delay in lodging the FIR has created doubt regarding the truthfulness of the prosecution story and it shows that the prosecution eye-witnesses were not present at the spot at the relevant time and the FIR was lodged after due deliberations and consultations. Reference in this context may be made to the judgments reported as "State through Advocate General Sindh v. Farman Hussain and others" (PLD 1995 Supreme Court 1), "Mehmood Ahmed & others

v. The State and another” (1995 SCMR 127) and “Shaukat Hussain v. The State through PG Punjab and another” (2024 SCMR 929).

6. The ocular account of the prosecution has been brought on the record through Mst. Asma Bibi complainant (PW-1), Taj Muhammad (PW-2) and Muhammad Ashraf (PW-3). The occurrence in this case took place in the fields of village Amli-Ka Athar Shah. All the abovementioned eye-witnesses were not resident of the said village rather they were residents of village Qadar-abad, Hujra Shah Muqem. The said eye-witnesses being residents of a different village were chance witnesses, therefore, they were bound to prove the reason of their presence at the relevant time at the spot, which was situated in a different village but the prosecution eye-witnesses could not prove their presence at the spot at the relevant time through any valid reason, therefore, they are chance witnesses and as such their evidence is not free from doubt as observed in the cases reported as “Mst. Sughra Begum and another Vs. Qaiser Pervez and others” (2015 SCMR 1142) & “Muhammad Irshad Vs. Allah Ditta and others” (2017 SCMR 142).

7. We have further noted that in the contents of the FIR, it was alleged that the fire shot made by Sardar Khan (petitioner), landed on the left thigh behind the knee of Muhammad Boota (deceased) but while appearing in the witness box, Taj Muhammad (PW-2), stated that the fire shot made by Sardar Khan (petitioner), landed on the right leg of the deceased. Likewise, in the contents of the FIR, it was alleged that Amjad Ali (petitioner), made a fire shot, which landed on the right ankle of Muhammad Boota (deceased) but Taj Muhammad (PW-2), stated before the learned trial Court that the fire shot made by Amjad Ali (petitioner), landed on the left leg of the deceased. Similar statements were made by Mst. Asma Bibi complainant (PW-1) and Muhammad

Ashraf (PW-3), before the learned trial Court qua the roles of the petitioners while assigning a firearm injury on the right leg of the deceased to Sardar Khan (petitioner) and attributing a firearm injury on the left leg of the deceased to Amjad Ali (petitioner). Their statements before the Court were in conflict with the story narrated by the prosecution in the contents of the FIR.

8. It is further noteworthy that in the contents of the FIR, it was only alleged that both the petitioners were armed with firearms and it was not clarified that the petitioners were carrying 12-bore guns, pistols, Kalashnikovs or rifles. Taj Muhammad (PW-2) and Muhammad Ashraf (PW-3), both stated before the learned trial Court that both the petitioners were armed with rifles, whereas, Mst. Asma Bibi complainant (PW-1), stated that Sardar Ali (petitioner), was armed with pump action and Amjad Ali (petitioner), was armed with rifle, at the time of occurrence. It is also noteworthy that only two empties of 12 bore gun were recovered from the spot and no empty of rifle was recovered in this case. Although a 12-bore gun has been recovered from Sardar Khan (petitioner) but as per statement of the prosecution eye-witnesses namely Taj Muhammad (PW-2) and Muhammad Ashraf (PW-3), the said petitioner was not carrying a 12-bore gun rather he was carrying a rifle. On the other hand, a rifle has allegedly been recovered from the possession of Amjad Ali (petitioner) but as mentioned earlier, no empty of the rifle was recovered from the spot and two (02) empties of 12-bore gun were recovered from the place of occurrence. Moreover, according to the report of PFSA (Ex.PR), sufficient data was not available on two (02) empties, recovered from the spot, therefore, the abovementioned alleged recoveries of the weapons are of no avail to the prosecution to connect the petitioners with the offence and the learned High Court has

rightly observed in paragraph No.10, of the impugned judgment that alleged recovery of weapons of offence are inconsequential for the prosecution in this case.

9. According to the prosecution case, the motive behind the occurrence was that prior to the occurrence, the brother of Muhammad Boota (deceased) namely Muhammad Azam, contracted runaway marriage with the daughter of Sardar Khan (petitioner) namely Mst. Asia Bibi and due to the said grudge, the accused committed the occurrence of this case. In this respect, we have noted that Taj Muhammad (PW-2), had admitted during his cross-examination that Sardar Khan (petitioner), had not lodged any criminal case regarding runaway marriage of his daughter. In order to prove the abovementioned alleged motive, the brother of the deceased namely Muhammad Azam and his wife namely Mst. Asia Bibi were the best witnesses but they were not produced in the witness box. Even their Nikah-Nama was not produced in the evidence by the prosecution to show that Sardar Khan (petitioner) or his family members were not signatory of the said Nikah-Nama and the abovementioned Mst. Asia Bibi contracted marriage with the brother of the deceased without consent and participation of the accused party in their wedding ceremony. The said fact has also created another dent in the prosecution story because the prosecution has withheld the best 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 above-mentioned witnesses and Nikah-Nama been produced in the evidence, then the said evidence 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). We are, therefore, of the view that the motive as alleged by the prosecution has not been proved in this case.

10. Keeping in view all the aforementioned 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, this petition is converted into an appeal and allowed. The judgments of the High Court dated 08.03.2019 and the Trial Court dated 24.10.2016, are hereby, set-aside. The petitioners are acquitted of the charge while giving them the benefit of doubt. They shall be released from the jail forthwith unless required to be detained in any other case.

JUDGE

JUDGE

Islamabad, the
04th of September, 2025
Not Approved For Reporting
Aitzaz