

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE MUHAMMAD ALI MAZHAR

**CRIMINAL PETITION NOS. 1710-L & 1329 OF 2017**

(Against the judgment dated 14.11.2017 passed by the Lahore High Court, Lahore in Murder Reference No. 414/2014 and Criminal Appeal No. 2278/2014)

Maqsood Alam

(In Cr.P. 1710-L/2017)

Mukhtar Ahmed, complainant

(In Cr.P. 1329/2017)

...Petitioner(s)

**VERSUS**

The State etc

(In Cr.P. 1710-L/2017)

Maqsood Alam etc

(In Cr.P. 1329/2017)

...Respondent(s)

For the Petitioner(s):

Sardar Muhammad Latif Khan Khosa, Sr. ASC  
(In Cr.P. 1710-L/2017)

Mr. Aftab Ahmed Bajwa, ASC  
Sh. Mahmood Ahmad, AOR  
(In Cr.P. 1329/2017)

For the State:

Mirza Abid Majeed, DPG

Date of Hearing:

12.10.2023

**JUDGMENT**

**CRIMINAL PETITION NO. 1710-L OF 2017**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Petitioner Maqsood Alam along with four co-accused was tried by the learned Additional Sessions Judge, Khushab, in a private complaint lodged under Sections 302/109/34 PPC. The private complaint was instituted being dissatisfied with the investigation conducted by the Police in case registered vide FIR No. 102 dated 01.12.2011 under Sections 302/109/34 PPC at Police Station Noshehra District Khushab for committing murder of Muhammad Munir and Muhammad Anwaar, maternal uncle and brother of the complainant. The learned Trial Court vide its judgment dated 20.12.2014 while

acquitting the co-accused of the petitioner, convicted the petitioner under Section 302(b) and sentenced him to death on two counts. He was also directed to pay Rs.100,000/- on two counts as compensation to the legal heirs of each deceased or in default whereof to further undergo SI for six months. In appeal the learned High Court while maintaining the conviction of the petitioner Maqsood Alam, altered the sentence of death into imprisonment for life on two counts. The amount of compensation and the sentence in default thereof was also maintained. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner.

2. The prosecution story as given in the judgment of the learned High Court reads as under:-

"2. Prosecution story, as set out in the FIR (Ex.PJ) registered on the statement of Mukhtar Ahmad, complainant (PW.7) is that he was employed in Atomic Energy, Chowk Grot Jauharabad. Muhammad Munir maternal uncle (*mamoon*) of complainant was Deputy Manager in PASCO Department at Sargodha. On 01.12.2011 at around 2.20 p.m. the complainant along with his maternal uncle Muhammad Munir came to their native village Mauza Dhadhar for offering *fateha khawani* of their forefathers. Muhammad Munir and Muhammad Anwaar brother of complainant went to graveyard of Mauza Dhadhar for offering fateha khawani. Subsequently, the complainant, his cousin (khalazad) Elahi Bakhsh and Sarwar Noor proceeded towards graveyard. When maternal uncle and brother of complainant were offering fateha khawani, all of a sudden, Maqsood Alam (appellant) armed with rifle and an unknown co-accused armed with pistol 30 bore arrived at graveyard and raised lalkara that they would not spare them (maternal uncle and brother of complainant). Then Maqsood Alam (appellant) fired at maternal uncle of complainant which landed on right side of his chest. Second fire made by Maqsood Alam also hit him on upper outer left side of chest. Maqsood Alam fired third shot which landed on back side of right elbow of complainant's maternal uncle. Fourth fire made by the appellant hit maternal uncle of complainant underneath his right buttock, who fell down. Unknown co-accused fired with pistol at Muhammad Anwaar brother of complainant hitting him on left outer side of chest below armpit. Then Maqsood Alam (appellant) made another fire shot which landed on abdomen of maternal uncle of complainant. Both the injured fell on the ground. On seeing the complainant party, Maqsood Alam and unknown co-accused decamped from the spot. The complainant party reached the spot but Muhammad Munir and Muhammad Anwaar succumbed to the injuries.

Motive behind the occurrence as alleged in the FIR was that disputes regarding rishta were going on between the complainant party and Maqsood Alam (appellant) etc. It was further alleged that the occurrence was committed by Maqsood Alam etc. on the abetment of Mehboob Elahi, Bashir Alam and Amir Karim, which occurrence was

witnessed by the complainant, his khalazad Elahi Bakhsh and Sarwar Noor. Dead bodies of both the deceased were taken to Civil Hospital, Noshehra on separate private vehicles. The unknown co-accused of the appellant was nominated as Fawad Alam by the complainant through supplementary statement on 17.12.2011."

3. The conviction of the petitioner was recorded in a private complaint. The complainant produced cursory statements whereafter the formal charge was framed against the petitioner. In order to prove its case the prosecution produced eight PWs and six CWs. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. He did not make his statement on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against him. However, he produced some documentary evidence in his defence.

4. At the very outset, learned counsel for the petitioner argued that the witnesses of the ocular account were chance and related witnesses and there are glaring contradictions and dishonest improvements in their statements, which escaped the notice of the learned courts below. Contends that the prosecution story is negated by the medical evidence, therefore, the same has lost its sanctity and the conviction cannot be based upon it. Contends that the recoveries and the motive have been disbelieved by the learned courts below, which causes a doubt in the prosecution case. Contends that on the same set of evidence, the co-accused of the petitioner namely Fawad Alam, who was ascribed the similar role has been acquitted but the petitioner has been convicted without any further corroboration. Lastly contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer assisted by learned counsel for the complainant vehemently opposed this petition on the ground that prosecution witnesses had no enmity with the petitioner to

falsely implicate him in this case. It has been contended that to sustain conviction of the petitioner, the prosecution has placed on record trustworthy and reliable evidence, therefore, the petitioner does not deserve any leniency from this Court, rather his sentence may be enhanced.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

7. A bare perusal of the record reflects that the unfortunate incident wherein two persons lost their lives took place on 01.12.2011 at about 02:20 pm in the graveyard of Mauza Dhadhar, District Khushab. Initially, the petitioner Maqsood Alam and one unknown person were nominated to have committed the crime. The petitioner Maqsood Alam was ascribed the role of causing injuries with rifle to Muhammad Munir, maternal uncle of the complainant, while the unknown accused was ascribed the role of causing firearm injuries with pistol at the body of Muhammad Anwaar, brother of the complainant. The complainant Mukhtar Ahmed (PW-7) and Elahi Bakhsh (PW-8) were said to have witnessed the whole occurrence. The complainant firstly disclosed the name of the co-accused as Fawad Alam on 17.12.2011 through his supplementary statement. However, the said Fawad Alam was acquitted by the learned Trial Court mainly on the ground that it was broad day occurrence whereas the PWs and the accused persons were residents of the same village Dhadhar. There is nothing on the record that Fawad Alam was not resident of the same village rather he had studied in High School at Noshehra, which clearly reflects that he had been living in the same village till attaining the age of puberty. There is no denial to this fact that the eye-witnesses are closely related to each other and even the relationship with the accused is not denied, which has been admitted by them. The PWs were acquainted with the accused being the co-villagers. In view of the fact that the parties were known to each other, non-mentioning the name of the co-accused Fawad Alam in the crime report

shifted the burden on the shoulder of the prosecution to assign justifiable reasons for non-identification of Fawad Alam at the time of occurrence viz a viz the non-mentioning of his name in the crime report, especially when it is an admitted fact that it is not the case of prosecution that the accused committed the crime with muffled faces. According to Ghulam Bahoo (PW-5) and Ahmad Nawaz (PW-6), two days prior to the occurrence i.e. on 29.11.2011, they were present in the graveyard in connection with the funeral ceremony of one Ahmad Khan wherein they overheard petitioner Maqsood Alam showing his inclination regarding the instant occurrence. The learned Trial Court while acquitting co-accused Fawad Alam rightly observed that when the PWs had overheard the malicious intent of petitioner Maqsood Alam with the allegiance of Fawad Alam on 29.11.2011 then it was obligatory for them to disclose the same with particulars of Fawad Alam to the complainant as well as while making statements under Section 161 Cr.P.C. Although the complainant challenged the acquittal of said Fawad Alam before the learned High Court by filing a petition against acquittal but later on withdrew the same, which means that the findings of the learned Trial Court regarding the acquittal attained finality and the prosecution case to the extent of murder of Muhammad Anwaar has been disbelieved. In these circumstances, more caution was needed to decide the case of the petitioner Maqsood Alam. We have noted that the complainant was employee of Pakistan Atomic Energy Commission, Jauharabad, which was at a distance of 100 kilometers from the place of occurrence. During the course of proceedings before the Trial Court, an attested copy of attendance register (Ex.DM) was placed on record, which shows that on the day of occurrence the complainant was present in his office. We have also noted that according to the witnesses, the accused fired at the deceased from a distance of 3/4 karams but the medical record shows that there was blackening and charring around the wounds, which suggests that the injuries were caused from a close range, which further negates the ocular account. There were only two eye-witnesses of the occurrence, who admittedly, have been disbelieved to the extent of co-accused of the petitioner. We have noted

that the recovery from the petitioner Maqsood Alam is inconsequential because admittedly no crime empty was collected from the place of occurrence. Motive has also rightly been disbelieved by the learned High Court by holding that it is a vaguely formulated motive and no evidence in support of the same has been placed on record. When the ocular account of the two eye-witnesses had been disbelieved by the learned Trial Court against the acquitted co-accused, who was alleged to have played a similar role in the occurrence, then the same evidence could not be relied upon to convict the petitioner on capital punishment unless there was an independent corroboration and some strong incriminating evidence to the extent of his involvement in commission of the offence but as discussed above the same is lacking in the instant case. In the case of Niaz Vs. The State (PLD 1960 SC 387) B.Z. Kaikaus, J. speaking for the Court held as under:-

“if the Court finds that the number mentioned by interested persons may have been exaggerated their word cannot be made the basis of conviction and the Court will have to look for some additional circumstance which corroborates their testimony. This circumstance need not be such that it can of its own probative force bring home the charge to the accused. It should, however, be a circumstance which points to the inference that the particular accused whose case is being considered did participate in the commission of the offence. The force that such circumstance should possess in order that it may be sufficient as corroboration must depend on the particular circumstance of each case. However, the circumstance itself must be proved beyond all reasonable doubt.”

8. In Nazir Vs. The State (PLD 1962 SC 269) this Court explained the Niaz supra judgment in the following terms:-

“There cannot be an inflexible rule that the statement of an “interested” witness can never be accepted without corroboration. By what was said in Niaz Vs. The State (PLD 1960 SC 387) it was not meant to lay down any rule of law though it explained for the guidance of Courts the Supreme Court’s approach to the problem that generally confronts the Courts in cases of crime by violence.

There may be an interested witness whom the Court regards as incapable of falsely implicating an innocent person. But he will be an exceptional witness and, so far as an ordinary interested witness

is concerned, it cannot be said that it is safe to rely upon his testimony in respect of every person against whom he deposes. In order, therefore, to be satisfied that no innocent persons are being implicated along with the guilty, the Court will in the case of an ordinary interested witness look for some circumstance that gives sufficient support to his statement so as to create that degree of probability which can be made the basis of conviction. This is what is meant by saying that the statement of an interested witness ordinarily needs corroboration."

9. It is settled principle of law that the conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable doubt. It is also an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the petitioner benefit of the doubt not as a matter of grace and concession but as of right. For the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. Reliance is placed on Mst. Asia Bibi Vs. The State (PLD 2019 SC 64), Tariq Pervaiz v. The State (1995 SCMR 1345), Ayub Masih v. The State (PLD 2002 SC 1048) and Abdul Jabbar vs. State (2019 SCMR 129).

10. For what has been discussed above, this petition is converted into appeal, allowed and the impugned judgment is set aside. The petitioner is acquitted of the charge. He shall be released from jail unless detained/required in any other case.

#### **CRIMINAL PETITION NO. 1329 OF 2017**

11. In view of the judgment passed in the connected Criminal Petition No. 1710-L/2017, this petition seeking enhancement of the sentence awarded to the petitioner/convict Maqsood Alam has become infructuous and the same is dismissed accordingly.

12. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the  
12<sup>th</sup> of October, 2023  
Approved For Reporting  
Khurram