

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

Jail Petition No.501/2020 & Crl.Petition No.1488-L/2020

(Against the judgment dated 26.11.2020, passed by the Lahore High Court, Lahore in Criminal Appeal No.15-J of 2017 and Criminal Revision No.455 of 2017)

Umar Hayat
(in JP No.501/2020)

Ayesha Bibi
(in Crl.P. No.1488-L/2020)

...Petitioner(s)

VERSUS

The State
(in JP No.501/2020)

Muhammad Zaman @ Adnan, etc
(in Crl.P No.1488-L/2020)

...Respondent(s)

For the Petitioner(s): Mr. Mushtaq Ahmed Mohal, ASC
(in JP No.501/2020)

Rai Zamir ul Hassan, ASC
(in Crl.P No.1488-L/2020)

For the State: Mr. Tariq Siddique, Addl. PG, Punjab
(in both matters)

Date of hearing: 13.08.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- The prosecution case, as portrayed in the First Information Report ('FIR') No. 108 of 2015 dated 24.05.2015, registered at Police Station Kaleke Mandi, District Hafizabad, under Sections 302, 109, 148 and 149, PPC, on the complaint of complainant Mst. Ayesha Bibi (PW-12), is that on 24.05.2015 at about 6:30 a.m., her sons, namely, Shabbir Hussain (deceased) and

Tanvir Hussain (PW-13), were cutting fodder for cattle at a distance of about three acres from their cattle haveli while she was proceeding towards them to provide breakfast when, in the meantime, accused Muhammad Zaman alias Adnan, Muhammad Umar alias Umar Hayat (petitioner), both armed with a Kalashnikov and Altaf Hussain, armed with a repeater gun, riding on one motorcycle while three other accused, whose faces were muffled duly armed, riding on another motorcycle crossed her. The latter three accused stopped their motorcycle near the cattle haveli and remained standing there, whereas the three former accused proceeded towards her sons. She followed them and reached the place of occurrence shortly where accused Muhammad Zaman alias Adnan after raising lalkara fired a burst from his Kalashnikov at Shabbir Hussain deceased. Then petitioner Muhammad Umar alias Umar Hayat, fired another burst from his Kalashnikov, with which Shabbir Hussain deceased got hit on his both thighs and below the umbilicus. Accused Altaf Hussain then fired at the deceased, causing an injury to the thumb of his left hand. Tanvir Hussain (PW-13), who was present at the spot, saved himself by taking shelter in a watercourse. Shabbir Hussain deceased fell to the ground and succumbed to injuries at the spot. The motive attributed to the occurrence was a quarrel between the deceased and the accused persons six or seven days prior to the occurrence which allegedly resulted in a grudge against the deceased. It was further alleged by the complainant that the occurrence was committed with the abetment of accused Riaz and Zulfiqar Ali. Subsequently, the muffled accused were nominated as Muhammad Nawaz, Imran and Imtiaz in the case.

2. All the accused named above, were arrested and, upon completion of the investigation, report under Section 173, Cr.P.C. was submitted against them before the learned Additional Sessions Judge, Hafizabad ('Trial Court'). Upon conclusion of the trial, the learned Trial Court, vide judgment dated 31.01.2017, acquitted co-accused Riaz, Zulfiqar Ali, Muhammad Nawaz, Imran and Imtiaz, whereas convicted the petitioner Umar Hayat and co-accused Muhammad Zaman alias Adnan and Altaf Hussain under Section

302 read with Section 34, PPC, and sentenced each of them to imprisonment for life. They were also directed to pay compensation of Rs.500,000/- each to the legal heirs of the deceased under Section 544-A, Cr.P.C.; in default of payment thereof, each was to further undergo simple imprisonment for six months. The benefit of Section 382-B, Cr.P.C. was extended to them.

3. Feeling aggrieved, the petitioner-convict Umar Hayat, along with co-convicts Muhammad Zaman alias Adnan and Altaf Hussain, preferred Criminal Appeal No.15-J of 2017 before the learned Lahore High Court, Lahore ('the High Court'), challenging their conviction and sentence. The complainant Mst. Ayesha Bibi, also filed Criminal Revision No.455 of 2017 seeking enhancement of the sentence awarded to the convicts under Section 302 PPC. The learned High Court, vide consolidated judgment dated 26.11.2020, dismissed the criminal revision petition filed by the complainant and partly allowed the criminal appeal. Consequently, conviction and sentence of the co-convicts Muhammad Zaman alias Adnan and Altaf Hussain, recorded by the Trial Court were set-aside and they were acquitted of the charge, whereas the appeal to the extent of the petitioner-convict Umar Hayat was dismissed and his conviction and sentence recorded by the Trial Court were maintained.

4. Through the instant Jail Petition No.501 of 2020, the petitioner-convict Umar Hayat has called in question his conviction and sentence before this Court. On the other hand, the complainant has filed Criminal Petition No.1488-L of 2020, assailing the acquittal of accused-respondents Muhammad Zaman alias Adnan and Altaf Hussain.

5. We have heard the arguments of learned counsel for the parties as well as the learned Additional Prosecutor General, Punjab, representing the State and perused the record, evidence and the judgments of the Courts below with their able assistance.

6. It appears from the record that for murder of Shabbir Hussain deceased, the complainant Mst. Ayesha Bibi (PW-12) had nominated

a total of eight accused. Out of them, accused Riaz and Zulfiqar Ali were not shown to be present at the place of occurrence and were attributed the role of abetment. Both the above-named accused were acquitted by the learned Trial Court, and their acquittal was not challenged either by the State or the complainant before the High Court. Likewise, three muffled-faced accused were though shown to be present at the place of occurrence; however, no specific role of firing upon the deceased was attributed to them. Subsequently, these muffled accused were identified and nominated as accused Muhammad Nawaz, Imran and Imtiaz, who were also acquitted by the learned Trial Court and their acquittal was also not assailed by either the State or the complainant before the Appellate Court. We have noted that in the FIR, the specific role of firing upon the deceased was attributed by the complainant Mst. Ayesha Bibi to accused Muhammad Zaman alias Adnan, Altaf Hussain and the petitioner-convict Muhammad Umar alias Umar Hayat. Of these three accused, accused Muhammad Zaman alias Adnan and Altaf Hussain were acquitted by the learned High Court through the impugned judgment. The reasons recorded by the learned High Court for extending the benefit of doubt to accused Muhammad Zaman alias Adnan were, inter alia, that according to the version contained in the FIR, although the first burst fired with Kalashnikov at the deceased had been attributed to him by the complainant but she had not stated therein that any of the shots so fired had hit the deceased on any part of his body. The learned High Court further observed that complainant while in her Court statement making dishonest improvement stated that with the burst of accused Muhammad Zaman alias Adnan, the deceased got hit on his both thigh and leg. The learned High Court also found contradiction between the statements of the complainant and Tanvir Hussain (PW-13), with regard to the role attributed to accused Muhammad Zaman alias Adnan. According to version of the complainant in the FIR, the fire burst attributed to Muhammad Zaman alias Adnan did not cause any injury to the deceased, whereas PW Tanvir Hussain stated that the shots fired by accused Muhammad Zaman alias Adnan had hit the deceased on his both thighs and below the

umbilicus. Contrary, as per statement of the complainant, the fire shots attributed to the petitioner Muhammad Umar alias Umar Hayat had hit the deceased on the umbilicus. Similarly, the learned High Court found that the only firearm injury attributed to accused Altaf Hussain was on the left thumb of the deceased which was opined by Dr. Asim Iftikhar (PW-1), as grazing wound and could have been caused by falling. The learned High Court further observed that the Kalashnikov Exh.P.6 and 12 bore gun Exh.P.4, recovered from possession of accused Muhammad Zaman alias Adnan and Altaf Hussain, respectively, did not match with the empties recovered from the spot as per report of the Punjab Forensic Science Agency, Lahore. In view of these material contradictions in the ocular account regarding the role and impact of the fire attributed to Muhammad Zaman alias Adnan and Altaf Hussain the learned High Court extended the benefit of doubt to them and acquitted them of the charge. The findings of the learned High Court qua the acquittal of the above-named accused are based on proper appreciation of evidence to which no exception can be taken.

7. We are astonished to note that, on the same set of evidence which was disbelieved against co-accused Muhammad Zaman alias Adnan and Altaf Hussain, the learned High Court maintained the conviction of the petitioner-convict Umar Hayat. The learned High Court itself observed in the impugned judgment that no weapon of offence was recovered either from the possession of the petitioner-convict or on his pointation. Likewise, the motive alleged by the prosecution was also disbelieved qua all the accused. We are also unable to agree with the approach of the learned High Court in maintaining the conviction of the petitioner-convict for the reason that despite noticing contradictions in the statements of the alleged eyewitnesses regarding the role attributed to the petitioner-convict and the same were held of trivial nature. In our view, these contradictions are of the same nature as those which led the learned High Court to extend the benefit of doubt to co-accused Muhammad Zaman alias Adnan. Perusal of record transpires that in the FIR, complainant stated that the burst fired by the petitioner-convict

Umar Hayat from his Kalashnikov had hit the deceased on his left thigh and below the umbilicus. However, in her statement before the learned Trial Court, she did not state that any shot fired by the petitioner-convict had hit the deceased on his left thigh; rather, she stated that the fire shot of the petitioner had hit the deceased on his umbilicus. Similarly, alleged eyewitness Tanvir Hussain (PW.13) stated that the fire shot fired by the petitioner had hit the deceased on the umbilicus and did not attribute any injury to the deceased's thigh or leg. Thus, there is a material contradiction between the versions of the complainant, one given by her in the FIR and another in her statement before the Court. Similarly, her version is also contradictory with the version of the alleged eyewitness Tanvir Hussain with regard to the fire shots of the petitioner-convict, which allegedly hit the deceased. Such contradictions, in the circumstances of the case, cannot be treated as minor or inconsequential. It is also significant that no other evidence has been produced by the prosecution to corroborate the role assigned to the petitioner-convict or to distinguish his case from that of acquitted co-accused, particularly, Muhammad Zaman alias Adnan. In the absence of any corroborative evidence to the extent of the role of the petitioner-convict, his conviction could not safely be maintained on the basis of mere ocular account which is suffering from material contradictions. In these circumstances, the learned High Court erred in maintaining the conviction of the petitioner. The principle of separating the grain from the chaff is also not applicable in the present case because the prosecution evidence, when examined as a whole, is not of such a nature that the reliable part against the petitioner can safely be separated from the doubtful part. The prosecution has, therefore, failed to produce trustworthy and confidence-inspiring evidence sufficient to establish the guilt of the petitioner-convict Umar Hayat beyond reasonable doubt. It is a settled principle of criminal law that even a single circumstance creating reasonable doubt in the prosecution case is sufficient to entitle an accused to the benefit of doubt as a matter of right and not as a matter of concession.

8. For what has been discussed above, Jail Petition No.501 of 2020 is converted into an appeal and is allowed. The conviction and sentence of the appellant Umar Hayat recorded by the learned Courts below are set aside. He is acquitted of the charge by extending to him the benefit of doubt. He shall be released forthwith, if not required in any other case.

9. As regards Criminal Petition No.1488-L of 2020, we find no convincing and legally sustainable ground warranting interference with the acquittal of the respondents-accused recorded by the learned High Court. The impugned acquittal, therefore, does not call for any interference by this Court. Consequently, Criminal Petition No.1488-L of 2020 is dismissed and leave to appeal is refused.

Judge

Judge

Judge

Announced in open Court at Islamabad on **24th September, 2026.**

Judge

Not Approved for Reporting
M.Siraj Afridi PS