

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

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

Jail Petition No.452/2022 & Criminal Petition No.1625-L/2022

(Against the judgment dated 26.09.2022, passed by the Lahore High Court, Lahore in Criminal Appeal No.134572 of 2018 and Murder Reference No.151 of 2018)

Nazim Ali
(in JP No.452 of 2022)

Muhammad Yasin
(in CrI.P. No.1625-L/2022)

...Petitioner(s)

VERSUS

The State etc
(In both cases)

...Respondent(s)

For the Petitioner(s):	Mr. Jalees Ahmad Meer, ASC & Mr. Tallat Mehmood Zaidi, ASC (in JP No.452 of 2022)
	Mr. Aftab Alam Yasir, ASC & Mr. Mazhar Iqbal Sidhu a/w petitioner (in CrI.P No.1625-L/2022)
For the State:	Mirza Abid Majeed, Deputy Prosecutor General, Punjab (in both cases)
Date of hearing:	28.08.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- The prosecution's case, in brief, as set out in First Information Report (FIR) Exh. PA/1, registered on the complaint of Muhammad Yasin complainant (PW-1) is that on 12.05.2011 at about 8:30 a.m. he along with his two nephews, namely Muhammad Adnan (deceased) and Muhammad Sultan, as well as Allah Ditta Dogar, Muhammad Razaaq (not produced), and

Mehmood Ali (PW-2), was present in the fields of Allah Ditta Dogar situated in the area of Dharoke, Tehsil Nowshera Virkan. In the meantime, Nazim Ali, the petitioner, along with co-accused Muhammad Akram, Azmat Ali, Muhammad Aslam, Muhammad Nawaz, Zaka Ullah and Tayyab Ali, as well as two unknown accused persons, all duly armed with firearms, allegedly arrived at the spot. Co-accused Muhammad Akram and Muhammad Aslam allegedly raised a *lalkara* that they would forcibly take possession of the fields of the Dogars and that anyone who came forward would be killed. Thereafter, the accused allegedly opened fire upon the complainant party. The fire shot allegedly made by petitioner Nazim Ali with his rifle hit Muhammad Adnan (deceased) on the right side of his chest, as a result whereof he sustained injury and fell to the ground. All the accused allegedly continued firing and thereafter fled from the spot. Injured Muhammad Adnan succumbed to his injury while was being shifted to the hospital. The motive behind the occurrence, as alleged by the complainant, was a litigation between the parties in respect of land owned by the Auqaf Department, which was allegedly under the cultivation of Allah Ditta Dogar, whereas the accused were attempting to take forcible possession thereof. It was further alleged that, about a week prior to the occurrence, the accused party had forcibly cut and taken away the wheat crop cultivated by Allah Ditta Dogar on the said land. On the complaint of Muhammad Yasin, FIR No. 359 dated 12.05.2011, under Sections 302, 148 and 149, PPC, was registered against the above named accused at Police Station Nowshera Virkan, District Gujranwala. Subsequently, the complainant being dissatisfied with the investigation of the case, filed a private complaint under the same provisions of law against the above named accused including accused Zulfiqar and Muhammad Saddique, before the learned Additional Sessions Judge, Nowshera Virkan, Gujranwala (the "Trial Court").

2. Upon conclusion of the trial, the learned Trial Court, vide judgment dated 08.01.2018, while acquitting co-accused Muhammad Akram, Azmat Ali, Muhammad Aslam sons of Muhammad Saddique, Muhammad Aslam son of Allah Dad, Muhammad Nawaz, Zaka Ullah, Zulfiqar and Muhammad Saddique, convicted petitioner Nazim Ali under Section 302(b), PPC, and

sentenced him to death as *Ta'zir*, with a direction to pay compensation of Rs. 100,000/- under Section 544-A, Cr.P.C., to the legal heirs of Muhammad Adnan (deceased), and, in default thereof, to further undergo six months simple imprisonment. Co-accused Tayyab Ali was convicted under Sections 148/149 PPC, and sentenced to three years rigorous imprisonment and to pay a fine of Rs. 50,000/-, and, in default of payment thereof, to further undergo three months' simple imprisonment.

3. The Lahore High Court, Lahore (the "High Court"), while deciding the Criminal Appeal filed by petitioner-convict Nazim Ali and co-convict Tayyab Ali, vide judgment dated 26.09.2022, set aside the conviction and sentence of convict Tayyab Ali and acquitted him of the charge. Through the same judgment, the conviction of petitioner Nazim Ali under section 302(b) PPC was maintained; however, his sentence of death was commuted to imprisonment for life. Consequently, Murder Reference No. 151 of 2018, forwarded by the Trial Court, for confirmation or otherwise of the death sentence, was answered in the negative.

4. Through the instant Jail Petition, petitioner Nazim Ali seeks leave to appeal against the impugned judgment of the High Court. Conversely, complainant Muhammad Yasin has filed Criminal Petition No. 1625-L of 2022 seeking enhancement of the sentence awarded to respondent-convict Nazim Ali.

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

6. Occurrence in the instant case took place on 12.05.2011 at about 8:30 a.m. in the area of Dharoke, Tehsil Nowshera Virkan. Complainant Muhammad Yasin (PW.1) and Mehmood Ali (PW.2), have furnished ocular account. As per their statements, at the first instance, all the ten accused including the petitioner-convict opened indiscriminate firing at them, the deceased Muhammad Adnan as well as Muhammad Sultan, Allah Ditta Dogar and Muhammad Razzaq (not produced), which proved ineffective; that thereafter

petitioner-convict fired at the deceased with a rifle, as a result, he got hit on right side of his chest, fell to the ground and later succumbed to injury. Initially co-accused Muhammad Akram, Azmat Ali, Muhammad Aslam sons of Muhammad Saddique, Muhammad Nawaz, Muhammad Aslam son of Allah Dad, Zaka Ullah, Zulfiqar and Muhammad Saddique, were acquitted by the learned Trial Court and subsequently, co-accused Tayyab Ali was acquitted by the learned High Court. The only evidence which weighed with the learned High Court while maintaining the conviction of the petitioner-convict was the statements of the complainant (PW.1) and Mehmood Ali (PW.2), as they had assigned the role of effective fire shot on the person of the deceased to the petitioner-convict. No doubt, the role of the petitioner-convict is distinguishable from the acquitted co-accused, however, we are unable to subscribe to the view taken by the learned High Court as no independent evidence has been brought on record by the prosecution to corroborate and substantiate the ocular account to the extent of the role assigned to the petitioner-convict. No crime empty has been shown recovered from the place of the petitioner-convict, whereas, a Kalashnikov allegedly recovered on his pointation as per PFSA, Lahore report does not match with any crime empty recovered from the spot. We have also serious doubts about the presence of the alleged eyewitnesses at the crime spot at the relevant time for so many reasons. Firstly, both during their cross-examination, admitted that they were residents of City Sheikhupura whereas the place of occurrence is in Dharoke Tehsil Nowshera Virkan, hence, they were chance witnesses, yet they have failed to bring on record even an iota of evidence to satisfactorily explain or justify their presence at the crime spot at the relevant time. There is yet another circumstance which cannot be lost sight of. According to the alleged eyewitnesses, at first instance as many as ten accused persons, armed with sophisticated weapons, surrounded the complainant party including them, from all four sides, resorted to indiscriminate firing which proved ineffective. Astonishingly, despite the indiscriminate firing, neither of the alleged eyewitnesses nor their other companions, namely, Allah Ditta Dogar, Muhammad Razzaq and Muhammad Sultan, being won over, sustained even a scratch. The material available on record,

viewed in its entirety, suggest that the occurrence may have taken place in some manner other than that advanced by the prosecution.

7. We have also noticed that in the site plan Exh.PF, petitioner-convict Nazim Ali is shown at point “D”, whereas Muhammad Adnan deceased at point “A”, where he allegedly received the effective fire shot. No crime empty of any bore has been shown recovered from point “D”. Likewise, from point No.C all the accused including the petitioner-convict are shown to have fired upon the deceased at point No.4; however, such firing has not caused any injury to the deceased or any other member of the complainant party. It is not clarified in the site plan as to how the petitioner-convict moved from point No.C to point No.D. Some empties of .44 bore are shown to have been recovered from point “C”. Vide recovery memo Exh.PG, a Kalashnikov was allegedly recovered on the pointation of petitioner-convict from a residential room of his house which as per PFSA, Lahore report Exh.PM did not match with any empty of 7.62 bore. Astonishingly, in the PFSA, Lahore report Exh.PM, it is mentioned that a .44 bore rifle was recovered from petitioner-convict Kazim Ali and the empties of .44 bore, marked as C.84 to C.93, were opined to have been fired from the said .44 bore rifle. When admittedly no .44 bore rifle was recovered from petitioner-convict Nazim Ali, the report of PFSA, Lahore, Exh.PM, to the extent it relates to the said .44 bore empties, loses its evidentiary significance rather it seems to be manipulation or otherwise on the part of the prosecution for the reason that as per recovery memo Exh.PH the said .44 bore rifle had been shown recovered on the pointation of co-accused Tayyab Ali, who had not been assigned the role of making the effective fire upon the deceased. The said co-accused has already been acquitted by the learned High Court and his acquittal has neither been challenged by the complainant nor by the State before this Court. In these circumstances, the recovery of the .44 bore rifle at the pointation of an accused who has subsequently been acquitted cannot, by itself, be pressed into service to connect petitioner-convict Nazim Ali with the crime, particularly when the prosecution has failed to establish the recovery of any such weapon from his possession.

8. The learned High Court has rightly disbelieved the motive set up by the prosecution by holding that Allah Ditta Dogar, who was the most material witness with regard to the alleged motive, had been abandoned by the prosecution being won over, which amounted to withholding the best available evidence. The High Court further rightly observed that FIR, if any lodged by the said Allah Ditta Dogar in respect of the incident concerning the wheat crop was not produced by the prosecution, that the site plan Exh.PF, also does not lend support to the prosecution's version regarding the motive, as the place of occurrence is shown therein to be land belonging to one Chirag and that no documentary evidence was brought on record by the prosecution to establish that the said land had been allotted by the Auqaf Department to Allah Ditta Dogar.

9. The prosecution evidence, when examined as a whole, is found to be fraught with material doubts and infirmities. It is by now a settled proposition of law that even a single reasonable doubt arising in the prosecution case is sufficient to entitle an accused to its benefit as a matter of right and not of grace. In the present case, the doubts emerging from the evidence are not fanciful or imaginary but are founded upon circumstances appearing from the record itself. The petitioner-convict is, therefore, entitled to the benefit of doubt in accordance with the golden principle of criminal justice.

10. For what has been discussed above, Jail Petition No.452/2022 is converted into an appeal and is allowed. The conviction and sentence of the appellant, Nazim Ali, recorded by the learned Courts below are set aside. By extending to him the benefit of doubt, he is acquitted of the charge. He shall be released forthwith, if not required in any other case.

11. In view of the acquittal of the respondent-convict, Criminal Petition No.1625-L of 2022 has been rendered infructuous and is, accordingly, dismissed.

12. These are the reasons of our short order of even date which is reproduced below:

“For the reasons to be recorded later on, this petition is converted into an appeal and the same is allowed by setting aside the impugned judgment. The petitioner-convict Nazim

Ali is acquitted of the charges levelled against him. He is ordered to be released forthwith if not required to be detained in any other case. Consequently, Criminal Petition No.1625-L/2022 filed for enhancement of sentence of the convict is dismissed.”

Judge

Judge

Judge

Islamabad the
28th August, 2026
Not Approved for Reporting
M.Siraj Afridi PS