

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SHAKEEL AHMAD
MR. JUSTICE ISHTIAQ IBRAHIM

Criminal Petitions No.356-L and 417-L of 2016

(Against the judgment dated 01.03.2016, passed by the
Lahore High Court, Lahore in Criminal Appeal No.678 of 2012
and Murder Reference No.166 of 2012)

Mujahid alias Mujahidi etc
(in Criminal Petition No.356-L/2016)

Badar Zaman
(in Criminal Petition No.417-L/2016)

...Petitioner(s)

VERSUS

The State
(in Criminal Petition No.356-L/2016)

The State & 2 others
(in Criminal Petition No.417-L/2016)

...Respondent(s)

For the Petitioner(s): Mr. Rustam Nawab Lak, AHC
(in Criminal Petition No.356-L/2016)

Mr. Khawaja Awais Mushtaq, ASC
(in Criminal Petition No.417-L/2016)

For the State: Ms. Maimoona Mubashir, DPG, Punjab
(in both cases)

Date of hearing: 07.08.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.-The prosecution case, as per First Information Report ("FIR") No.139/2006 dated 12.03.2006, registered under Sections 302, 148, 149 and 109, P.P.C., at Police Station Sukheki, District Hafizabad, on the report of complainant Badar Zaman (PW-4), is that on 12.03.2006 at about 6:00 p.m., the complainant, his paternal uncle Walayat Hussain (deceased), Farhad Khushnood and Alam Sher (PW-5), after offering *Fateha* at

the graves of the parents of the deceased, were returning to their village and when reached near Dera Sohawa, petitioners Mujahid alias Mujahidi and Nadeem alias Deemi, along with co-accused Noor Muhammad (since PO), Saqlain alias Sakku, all armed with Kalashnikovs, and Sarfaraz alias Sarfu, armed with a .44-bore rifle, besides three unknown/unidentified accused, also armed with firearms, allegedly emerged from the Haveli of Muhammad Sarwar and Zulfiqar Ali. Accused Noor Muhammad (since PO), while raising a *lalkara*, opened fire with his Kalashnikov at the deceased, hitting him on his chest. Thereafter, petitioner Mujahid alias Mujahidi fired at the deceased, hitting him on the left side of his body. Petitioner Nadeem alias Deemi also fired at the deceased, as a result whereof he got hit on the right side of his chest. Likewise, co-accused Saqlain alias Sakku fired at him, hitting him on the left side of his chest. Then co-accused Sarfaraz alias Sarfu fired a shot from his .44-bore rifle, which hit the deceased above his right upper thigh, whereupon the deceased fell to the ground. Co-accused Noor Muhammad thereafter fired another shot at the deceased, which hit him below the navel. Thereafter all the accused made indiscriminate firing upon the deceased with their respective weapons, as a result whereof the deceased sustained multiple firearm injuries and succumbed to the same at the spot. The motive behind the occurrence as alleged by the complainant was previous enmity between the parties. According to the complainant, about seven years prior to the occurrence, a close relative of accused Noor Muhammad (since PO) had been murdered, in respect whereof an FIR had been registered against the deceased. It was further alleged that about four years prior to the occurrence, Mukhtar alias Mukhhi, paternal uncle of the complainant, had been murdered by accused Noor Muhammad (since PO), in respect whereof accused Noor Muhammad and his co-accused had been charged. Accused Nadeem was also stated to be a proclaimed offender in a case registered under Section 324, P.P.C. The complainant further alleged that the occurrence had been committed at the abetment of Muhammad Sarwar, Zulfiqar Ali and Sultan Ahmad.

2. Initially, accused Muhammad Sarwar, Zulfiqar Ali and Sultan Ahmad were arrested and, upon completion of investigation, a report

under Section 173, Cr.P.C. was submitted against them before the learned Trial Court. They were, however, acquitted by the learned Trial Court by invoking the provisions of Section 265-K, Cr.P.C. Subsequently, petitioners Mujahid alias Mujahidi and Nadeem alias Deemi were arrested and, after completion of investigation, a challan 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 29.03.2012, convicted both petitioners under Section 302(b), P.P.C. and sentenced petitioner Mujahid alias Mujahidi to death as Ta'zir and petitioner Nadeem alias Deemi to imprisonment for life as Ta'zir. Both petitioners were further directed to pay compensation of Rs.100,000/- each under Section 544-A, Cr.P.C. to the legal heirs of the deceased and, in default thereof, to further undergo simple imprisonment for six months each.

3. The petitioners-convicts assailed their conviction and sentences before the Lahore High Court, Lahore ("High Court"). The High Court, vide judgment dated 01.03.2016 ("impugned judgment"), maintained their conviction under Section 302(b), P.P.C., however, while considering the question of sentence, commuted the death sentence awarded to petitioner Mujahid alias Mujahidi to imprisonment for life. Consequently, Murder Reference No.166 of 2012, sent by the learned Trial Court for confirmation or otherwise of the death sentence, was answered in the negative. The sentence of petitioner Nadeem alias Deemi recorded by the Trial Court was maintained.

4. Aggrieved by the impugned judgment, the petitioners-convicts have filed Criminal Petition No.356-L of 2016, seeking leave to appeal. Conversely, complainant Badar Zaman has filed Criminal Petition No.417-L of 2016, seeking enhancement of the sentence awarded to the respondents-convicts from imprisonment for life to the normal penalty of death prescribed for the offence of murder.

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

6. The occurrence in the instant case took place on 12.03.2006 at about 6:00 p.m. near *Dera Sohawa, Bashmol Paar Lakhan*, within the territorial jurisdiction of Police Station Sukheki, District Hafizabad. The same was reported by complainant Badar Zaman (PW-4) at 8:10 p.m. Complainant Badar Zaman (PW-4) and Alam Sher (PW-5) claim to be the eyewitnesses of the occurrence. The complainant in his statement has candidly admitted that he was not a resident of Mouza Paar Lakhan and had no business there. Likewise, Alam Sher (PW.5), has also admitted that he had neither any business concern nor residence at or near the place of occurrence. In this view of the matter, both the alleged eyewitnesses had no ostensible reason to be present at the place where the occurrence took place. Their presence, therefore, was not in the ordinary course of their residence, business or daily affairs but was, by their own showing, wholly accidental. Thus, they squarely fall within the category of chance witnesses. A chance witness, in legal parlance, is a person who claims to have witnessed an occurrence at a place where, in the ordinary course of his residence, business, occupation or daily routine, he would not be expected to be present. It is a settled principle that the evidence of a chance witness, ordinarily, is not accorded implicit reliance unless the circumstances attending his presence at the crime scene are satisfactorily explained and such explanation inspires confidence and appeals to the judicial conscience.

7. We have carefully examined the testimony of the alleged eyewitnesses. According to their statements prior to the incident, they had visited the graves of the parents of deceased Walayat Hussain for offering *Fateha* and were returning therefrom along with the deceased when the occurrence took place. Apart from this assertion, no independent, reliable or confidence-inspiring material has been brought on record by the prosecution to establish the presence of the alleged eyewitnesses at the spot at the relevant time. The mere recital of having gone to offer *Fateha* at the graves of parents of the deceased, without any supporting evidence, cannot by itself be treated as proof of their presence, particularly, when the residence of both the alleged eyewitnesses is far away from the spot. Such a story, in the circumstances of the case, was an easy

explanation to furnish and could conveniently be introduced into the prosecution narrative to provide a plausible cover for their otherwise unexplained presence at the crime scene. The ocular account furnished by the said witnesses is, moreover, attended by circumstances which materially damage its credibility. They have nominated as many as eight accused, besides three unidentified accused, for the murder of Walayat Hussain deceased. Out of them, specific roles of firing have been attributed by them to five accused, namely the two petitioners-convicts, Noor Muhammad (since PO), Saqlain alias Sakku and Sarfaraz alias Sarfu. According to their account, on 12.03.2006 at about 6:00 p.m., they, along with the deceased and Farhad Khushnood, after offering *Fateha* at the graves of the parents of the deceased, were returning to their village when, upon reaching near Dera Sohawa, the petitioners-convicts and their co-accused, all armed with firearms, allegedly emerged from the Haveli of Muhammad Sarwar and Zulfiqar Ali (since acquitted); that accused Noor Muhammad (since PO), while raising a *lalkara*, opened fire with his Kalashnikov at the deceased, hitting him on his chest. Thereafter, petitioner Mujahid alias Mujahidi fired at the deceased, hitting him on the left side of his body. Petitioner Nadeem alias Deemi fired at the deceased, as a result whereof he got hit on the right side of his chest. Likewise, co-accused Saqlain alias Sakku fired at the deceased, hitting him on the left side of his chest. Then co-accused Sarfaraz alias Sarfu fired a shot from his .44-bore rifle, which hit the deceased above his right upper thigh, whereupon the deceased fell to the ground. Co-accused Noor Muhammad thereafter fired another shot at the deceased, which hit him below the navel. Thereafter all the accused made indiscriminate firing upon the deceased with their respective weapons, as a result whereof the deceased sustained multiple firearm injuries and succumbed to the same at the spot.

8. The question which naturally arises in a prudent mind is that whether, in the circumstances narrated by the alleged eyewitnesses, it was humanly possible for them to observe, retain and subsequently reproduce with such precision the individual role of each of the five accused, the sequence of their respective fire shots and, further, the particular part of the body of the deceased hit by

each fire shot. The accused were admittedly armed with formidable firearms, including Kalashnikovs and a .44-bore rifle. In such a situation, the minute detail of each individual fire shot to a particular accused and the identification of the precise part of the deceased's body hit by each such fire shot does not appear to be a natural account emanating from a witness observing a sudden and murderous assault. The deceased was the paternal uncle of complainant Badar Zaman. Keeping in view the factum of previous blood feud between the parties as alleged by the prosecution, it is difficult to comprehend why five-armed accused, allegedly determined to commit the murder of Walayat Hussain deceased, would deliberately leave his nephew (complainant) and PW Alam Sher alive, so as to enable them to become eyewitnesses against them. The alleged eyewitnesses have tried to establish their presence at the spot at the relevant time through the story of offering *Fateha*, which is unsupported by any independent or confidence-inspiring circumstance. The said explanation has been introduced merely to make their otherwise doubtful presence at the crime scene appear natural.

9. Since as many as five accused, including the petitioners-convicts, have been charged with specific roles of firing at the deceased, therefore, mere verbal assertion of the alleged eyewitnesses would not be sufficient, unless some independent and confidence-inspiring evidence corroborates the role of each accused. During inspection of the spot, the Investigating Officer allegedly recovered only five empties of 7.62-bore and two empties of .44-bore. The alleged eyewitnesses have not only attributed an individual fire shot to each of the five accused but have further alleged that, thereafter, all the accused resorted to indiscriminate firing upon the deceased with their respective weapons. If the occurrence had taken place in the manner narrated by the alleged eyewitnesses, involving repeated firing by five persons armed with firearms, including Kalashnikovs and a .44-bore rifle, the recovery of only five empties of 7.62-bore and two empties of .44-bore appears incompatible with the prosecution's account of extensive and indiscriminate firing. Although Kalashnikovs were shown allegedly recovered on the pointation of the petitioners-convicts but the same had not been

sent to the PFSA along with the crime empties for comparison and determination as to whether the empties had been fired from the respective recovered weapons.

10. Adverting to the medical evidence furnished by Dr. Khalid Mehmood Zafar (PW-1), who conducted the post-mortem examination of deceased Walayat Hussain, it transpires from his statement that he observed total twelve firearm entry wounds on different parts of the deceased's body, with corresponding exit wounds, besides certain grazing firearm injuries. The mere presence of multiple firearm injuries on the person of the deceased, however, cannot, by itself, furnish a safe basis for determining the participation or individual role of each of the petitioners-convicts. It is well settled that medical evidence is primarily confirmatory in nature and ordinarily serves to confirm the occurrence, the nature of the injuries and the cause of death; it does not, in the absence of reliable ocular or other substantive evidence, establish the identity of the assailant or the specific role attributed to him. In the present case, we have already found the testimony of the alleged eyewitnesses to be unworthy of reliance. Once the ocular account has failed to inspire confidence, the mere fact that the deceased sustained multiple firearm injuries cannot, in isolation, be employed as a yardstick for determining that each of the petitioners had participated in the occurrence in the manner alleged by the prosecution. The possibility of such multiple injuries by a single formidable weapon like Kalashnikov ejecting number of fire shots in seconds could not be ruled out. In these circumstances, the medical evidence merely confirms the factum of firearm injuries and the homicidal death of Walayat Hussain deceased. It does not independently connect either of the petitioners-convicts with the commission of the offence. Where the ocular account has already been disbelieved and no other independent, cogent and confidence-inspiring evidence is available to corroborate the specific role assigned to each petitioner-convict, the medical evidence cannot be elevated from corroborative evidence to substantive evidence of their participation.

11. The foregoing discussion, when examined cumulatively and in its proper perspective, renders the prosecution case highly doubtful.

The learned Courts below, while appreciating the evidence, failed to properly apply the settled principles governing the appreciation of evidence and thus reached to erroneous conclusion qua the guilt of the petitioners-convicts. It is settled law that where evidence gives rise to a reasonable doubt regarding the participation of an accused, the Court is under a legal obligation to resolve such doubt in his favour. Applying the above principle to the case in hand, the cumulative effect of the material discrepancies, unnatural features and infirmities appearing in the prosecution evidence is sufficient to create reasonable doubt regarding the participation of the petitioners-convicts in the commission of offence.

12. Accordingly, Criminal Petition No.356-L of 2016, is converted into an appeal and allowed. The conviction and sentences of the appellants Mujahid alias Mujahidi and Nadeem alias Deemi recorded by the Courts below are set aside and they are acquitted of the charge by extending them the benefit of doubt. They shall be released forthwith if not required to be detained in any other case.

Criminal Petition No.417-L of 2016

13. On acquittal of the respondents-convicts, this petition for enhancement of sentence has become infructuous which is hereby dismissed.

Judge

Judge

Judge

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

Judge

Approved for reporting
M.Siraj Afridi PS

