THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Muhammad Hashim Khan Kakkar
Mr. Justice Salahuddin Panhwar
Mr. Justice Ishtiaq Ibrahim

J.P. 228 of 2022 & Crl.P.L.A 872-L of 2022
(against the Judgment dated 02.03.2022 passed by Lahore High Court, Lahore, in Crl. Appeal. 77712 of 2019)

Qaiser Mehmood (in J.P. 228/22)

Ishtiaq Ahmad (in Crl.P.L.A. 872-L/22)

…Petitioner(s)

VERSUS

The State & another

…Respondent(s)

For the Petitioner(s) : Mr. Aftab Alam Yasir, ASC
(in J.P. 228/22)
Syed Mansoor Ali Bukhari, ASC
(in Crl.P.L.A. 872-L/22)

For the State : Mr. Hamayoun Aslam, DPG Punjab

Assisted by : Ms. Tayyaba Munir, Law Clerk

Date of hearing : 30.09.2026

JUDGMENT

ISHTIAQ IBRAHIM, J. The petitioner, Qaiser Mehmood, was charged under Sections 302, 324, and 109 of the Pakistan Penal Code (PPC) in FIR No. 512, dated 18.11.2017, registered at Police Station Ladhay Wala Wairich, District Gujranwala, for committing the Qatl-e-Amd of Rana Liaqat Ali. Upon conclusion of the trial, the learned Additional Sessions Judge / MCTC, Gujranwala, vide judgment dated 06.12.2019, convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life as Tazir, along with compensation of Rs. 500,000/- payable to the legal heirs of the deceased under Section 544-A Cr.P.C., and in default thereof, to undergo simple imprisonment for six months with the benefit of Section 382-B Cr.P.C. Aggrieved thereby, the petitioner assailed his conviction and sentence before the learned High Court which through the impugned consolidated judgment dated 02.03.2022, dismissed the appeal, thereby maintaining the conviction and sentence

awarded by the learned trial court. It is against this judgment of the High Court that the petitioner has now approached this Court.

2. Briefly stated, the prosecution story as narrated by Ishtiaq Ahmed, complainant (PW-9) is that he is a resident of Dhariwal, District Gujranwala, who operates a sanitary fitting factory at Shahdara, Lahore and is also engaged in agriculture. On 18.11.2017 at about 05:30 p.m., while returning home after offering Maghrib prayers at the village mosque along with his father, Rana Liaqat Ali Khan (deceased), and his uncle, Rafaqat Ali (PW-10), the petitioner, Qaiser Mehmood, armed with a .30 bore pistol, intercepted them near the main entrance of their residence. The petitioner allegedly raised a *lalkara* to teach the deceased a lesson for preventing him from excavating a watercourse (*khal*) through their land. The petitioner then opened direct, consecutive fire upon Rana Liaqat Ali Khan, hitting him on his chest, belly, right arm, and left ear, causing him to collapse to the ground in a critical condition. Upon hearing the gunfire, Musarrat Bibi (PW-11), the wife of the deceased, rushed to the outer gate. The petitioner allegedly fired towards the witnesses as well who escaped unharmed by ducking behind an adjacent wall before fleeing the scene while firing in the air. The injured was shifted towards the hospital but succumbed to his injuries on the way. The motive assigned for the occurrence was a prior dispute and altercation between the deceased and the petitioner over the excavation of a watercourse from agricultural land, during which the petitioner had allegedly threatened the deceased with dire consequences.

3. Arguments heard, record perused.

4. The prosecution’s case primarily rests upon the ocular account furnished by Ishtiaq Ahmed (PW-9) and Rafaqat Ali (PW-10). It is pertinent to note that the prosecution initially cited and produced Mst. Musarrat Bibi (PW-11), the wife of the deceased, as an eye-witness to the occurrence. However, after her examination-in-chief was recorded, she was given up by the prosecution. We must express our strong disapproval of this practice. In words of John Henry Wigmore the cross-examination is beyond any doubt the greatest legal engine ever invented for the discovery of truth. [1] Cross-examination is a statutory right of the parties. The moment an examination-in-chief commences, the defence acquires a

[1] A Treatise on the System of Evidence in Trials at Common Law (1904–05)

vested statutory right to cross-examine the witness under Article 133 (1) of the *Qanun-e-Shahadat Order, 1984* reproduced below:

> "Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined."

It shows that examination-in-chief and cross-examination goes hand in hand and one cannot be separated from the other except when defense themselves do not want to exercise this right. We are of the view that a witness cannot be given up once the examination-in-chief begins. Several courts have made similar observations on this issue. Starting from courts in our country, the learned Peshawar High Court in judgement *Akhtar Ali v. Amir Hatim [2021 PCrLJ 1439]* expressed this concern in the following words:

> "…Once a witness comes into the dock and he opens his mouth with regard to facts of the case then in that eventuality he could not be abandoned by prosecution rather it is the duty of the Court to take the proceedings into its own hands…"

From the neighboring jurisdiction, the Madhya Pradesh High Court in case of *State of M.P. Vs. Ahmed Sayeed [2022]* [2] held that:

> "Given-up means that although a party had summoned a witness, but does not wish to examine him. Thus, a witness can be given-up without examining him. After the examination-in-chief begins, no witness can be given up."

The Kerala High Court have given similar observations in the case of *Lalitha v. Sarangadharan [1988 (2) KLT 394)]* and the relevant part is reproduced below:

> "…Once chief examination commences, the question of 'giving up' the witness does not arise. Apparently in some courts in the State there is a practice of the prosecution 'giving up' witnesses after the commencement of chief examination. This is a practice which is unhealthy, irregular and not warranted by any law. The practice of giving up witnesses after the commencement of chief examination is contrary to Section 138 of the Indian Evidence Act, which states that "witness shall be first examined in chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined". It is clear that once a witness is examined in chief, adverse party has a right of cross-examination and the party who called the witness cannot give up the witness so as to deprive the opposite party of the right of cross-examination…"

[2] State of M.P. Vs. Ahmed Sayeed (Cr.A. No. 456 of 2010)

We are of the opinion that a party asserting a fact is undeniably entitled to exercise its prerogative regarding which witnesses it chooses to call or refrain from calling, however, the question is that at what stage can the witness be given up. A witness can be given up before they enters the witness box. Witness can also be given up when they enter the witness box and the oath is administered. However, once the examination-in-chief commences and even a single word is uttered, the party who calls them cannot give up the witness and the opposing party's absolute right of cross-examination arises. The triggering event is not the completion of the entire examination-in-chief, it is the commencement of it. Once the witness is in the box, sworn, and begins to depose, the adverse party's right attaches. Hence, the right of cross-examination, being a substantive procedural right conferred by law, cannot be rendered illusory by permitting any party to abandon a witness at its discretion after recording examination-in-chief. Any such request must be scrutinized by the Court on its merits, with due regard to the circumstances and necessity of the case, so as to prevent arbitrary withdrawal of witnesses and safeguard the accused's right to a fair trial.

5. Having said the above, we find that giving up of the PW-11 subsequent to the chief examination - despite being a grave error - does not prove fatal to the prosecution case as the prosecution retains two other eye-witnesses. Even otherwise, remanding the case after a lapse of nine years would serve no useful purpose and would unnecessarily burden the prosecution, the defence, and the criminal justice system, thereby prolonging proceedings that have already remained pending for an inordinate period. Having meticulously scrutinized the testimony of these two eyewitnesses, we find that both are natural, straightforward, and believable witnesses. The occurrence took place directly outside the gate of the victim's residence at approximately 05:30 p.m. as the deceased, accompanied by PW-9 and PW-10, was returning home after offering Maghrib prayers. It is not unusual for family members to go together to offer congregational prayers at the mosque, particularly at Maghrib, when family members are ordinarily at home and often attend prayers together. Therefore, the eyewitnesses, being the son and brother of the deceased, returning together from the mosque at that hour is a natural and plausible circumstance and cannot, by itself, cast doubt upon their presence at the scene particularly given the fact that both resided in the same joint residential premises with the deceased.

Furthermore, the question of misidentification is completely ruled out as the incident occurred under adequate light of electric bulb, and the petitioner was well known to the eye-witnesses prior to the incident, being a resident of the same locality. We also find no force in the contention that the eye-witnesses ought to be disbelieved merely due to their close relationship with the deceased. While PW-9 (son) and PW-10 (brother) are undoubtedly related witnesses, relationship alone is no ground to discard evidence where their presence at the scene is natural and their testimony remains consistent, and unshaken throughout cross-examination. Real kinsmen would not let the actual murderer escape unpunished by falsely substituting an innocent person in his place. No father's son or brother would shield the real perpetrator of a brutal murder merely to falsely implicate another. Therefore, the ocular evidence offered by PW-9 and PW-10 inspires confidence and merits full reliance.

6. Now coming towards the ocular account and medical corroboration. Both witnesses namely PW-9 and PW-10 have consistently deposed that on the day of occurrence, the petitioner, Qaiser Mehmood, raised a *lalkara* and opened direct consecutive fire upon the deceased, Rana Liaqat Ali Khan, hitting him on his chest, abdomen, right arm, and left ear. This account receives corroboration from the medical evidence brought on record through Dr. Hassan Aslam (PW-1), who conducted the post-mortem examination on the body of the deceased. The post-mortem findings substantiate the presence of the following firearm injuries on the body of the deceased:

> 1. A firearm lacerated entry wound of 1 x1cm going deep with inverted margins margins on dorsal surface on right hand with corresponding exit lacerated wound of 2 x 2 cm on ventral side of right forearm with averted margins
>
> 2. A firearm lacerated entry wound of 1x1 cm on left front of external ear going through and through with corresponding exit lacerated wound of 2 x 2 cm on back of left external ear
>
> 3. A firearm lacerated wound on front of right side of 4 cm above right nipple inverted margins i.e wound of entry going deep into the chest cavity corresponding exit lacerated of 2x2 cm everted margin on lateral border of right axillary fold at the level of approx. 6-7 ribs
>
> 4. A firearm injury lacerated wound of 1 x 1 cm going deep into the abdominal cavity inverted i.e wound of entry on right hypochondriac region along corresponding exit lacerated wound of 2 x 2 cm with everted margin i.e of wound exit on left upper hypochondriac region.
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> 5. A firearm lacerated wound of 1 x 1 cm going deep into the abdominal cavity with inverted margins i.e wound of entry on right lumber region alongwith corresponding lacerated wound of 2 x 2 cm with everted margins i.e. wound of exit on left hypochondriac region.

6. A lacerated wound of 1 x 1 cm skin deep on upper hypochondriac region.

This shows that the ocular version stands fully corroborated by the medical evidence available on record.

7. In view of the foregoing discussion, we find no ground to interfere with the concurrent findings of the courts below. Consequently, J.P. No. 228 of 2022 is dismissed, and leave to appeal is refused. The reasons recorded by the courts below for awarding the sentence of imprisonment for life are also well-reasoned and call for no interference. No case for enhancement of sentence is made out. Accordingly, Crl.P.L.A. No. 872-L of 2022 is also dismissed, and leave to appeal is refused.

Judge

Judge

Judge

Announced in Open Court at Islamabad _____

Judge

Approved for Reporting

Tayyaba Munir, Law Clerk