

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Muhammad Hashim Khan Kakar
Justice Salahuddin Panhwar
Justice Ishtiaq Ibrahim

Jail Petition No.372/2022 & Criminal Petition No. 978-L/2022
(Against the judgment dated 18.05.2022 passed by the Lahore High Court, Lahore, in Criminal Appeal No. 231530 of 2018)

Azmat Ullah @ Motu
Muhammad Luqman @ Gona
(In JP.372/2022)

Syed Arif Ali
(Crl. P No. 978-L/2022)

...Petitioner(s)

Versus

The State and another

...Respondent(s)

For the Petitioner(s):	Raja Nadeem Haider, ASC. (In JP.372/2022) Mian Pervez Hussain, ASC. (In Crl.P No. 978-L/2022)
For the Informant:	Mian Pervez Hussain, ASC.
For State:	Miss Nuzhat Bashir, DPG, Punjab.
Assistance:	Mr. Muhammad Subhan Malik, JLC, SCP.
Date of Hearing:	01.10.2026

JUDGMENT

Salahuddin Panhwar, J.- (JP No.372/2022) Through this jail petition, the petitioners seek leave to appeal against the judgment of the Lahore High Court dated 18.05.2022, whereby the conviction under Section 302(b) PPC in FIR No.299/2011 PS Begowala, Tehsil Sambrial, District Sialkot, was maintained, and their sentence of death was converted into imprisonment for life.

2. The skeletal facts giving rise to this matter are that on 18.11.2011 at 10:10 a.m., an unfortunate incident occurred within the territorial jurisdiction of Police Station Begowala, District Sialkot, wherein two brothers, Ali Raza and Tasawar Hussain, lost their lives due to firearm injuries. The matter was promptly reported to the police within forty

minutes by the Informant Arif Ali (PW.1), father of the deceased. The High Court, upon a meticulous appraisal of the evidence, found that the ocular account furnished by Arif Ali (PW.1) and Sada Hussain (PW.2) was consistent, trustworthy, and corroborated seamlessly by the medical testimony of Dr. Muhammad Mudassar (PW.17).

3. The learned counsel for the petitioners has strenuously contended that there are major discrepancies in the statements of the eyewitnesses, as the post-mortem report and inquest report noted that the eyes of the two deceased were open, he contended that the occurrence was unwitnessed and placed reliance on **Muhammad Asif v. The State** (2017 SCMR 486). He further contended that the motive alleged by the prosecution remained unproven, and that the recovery of weapons lacks corroborative forensic value. Lastly, the learned counsel for the petitioners contended that another discrepancy exists in the prosecution case inasmuch as the identifying witnesses named in post-mortem report (Ex-PZ) are entirely different from the eyewitnesses stated in the FIR, which, according to him, shatters the veracity of the ocular accounts. The learned counsel for the Informant as well as the State, though supporting the conviction upheld by the High Court argued primarily on the enhancement of sentence as the offence involved murder of two innocent persons and the heinous nature of this occurrence demands capital sentence.

4. A critical reappraisal of the record reveals that the ocular account deposed by Informant Arif Ali (PW.1) and Sada Hussain (PW.2) is coherent, confidence-inspiring, and natural. Both witnesses are immediate kith and kin of the deceased and residents of the same village. The occurrence transpired in broad daylight in the village street. While PW.1 was accompanying his son Ali Raza when the assault commenced, Sada Hussain (PW.2) rushed to the spot alongside Tasawar Hussain upon hearing the first burst of gunfire. Both witnesses were subjected to rigorous cross-examination, yet they remained steadfast regarding the venue, the broad daylight visibility, the firearms carried, and the specific roles attributed to each petitioner namely, that petitioner Azmat Ullah fatally targeted Ali Raza, while petitioner Muhammad Luqman opened fire upon Tasawar Hussain.

5. The ocular account receives seamless, objective corroboration from the medical testimony of Dr. Muhammad Mudassar (PW.17). The

doctor found five firearm injuries on the body of Ali Raza and four firearm injuries on Tasawar Hussain, exhibiting inverted margins and blackening at the points of entry, which confirms direct firing from close and effective firearm range, exactly matching the eyewitness narrative. In this backdrop, the learned counsel for the petitioner's endeavor to challenge the presence of the eyewitnesses by seizing upon the condition of the eyes noted in the inquest reports (Exh. PL and Exh. PO) and post-mortem reports (Exh. PY and Exh. PZ) is completely unfounded when examined against the timeline and pathological facts. The occurrence took place at 10:10 a.m., the dead bodies were brought to the mortuary of Civil Hospital, Daska, at 8:30 p.m., and autopsies were commenced at 8:45 p.m. establishing an intervening hiatus of over ten and a half hours.

6. In the post-mortem report of Ali Raza (Exh. PY), the doctor noted that his 'eyes open' and that 'rigor mortis has started to develop'. In respect of Tasawar Hussain (Exh. PZ), the record reflects: 'mouth closed and left eye open and right eye protruding outwards with degloving injury of left scalp'. The protrusion of Tasawar Hussain's right eye was inevitably an anatomical result of Injury No. 1.B. Furthermore, (PW.17) unequivocally confirmed in his deposition that the autopsies were conducted 10 to 11 hours post-demise, and conceded that after approximately four hours, the development of rigor mortis in the facial musculature locks the eyelids, preventing them from being closed. Projecting the state of the eyes observed more than ten hours later at the mortuary to infer what transpired at the crime scene ten hours earlier is a logical fallacy and an evidential impossibility which shall be addressed in the latter part of this judgment.

7. It is a well-entrenched principle that minor discrepancies, natural variations, or general inconsistencies, attributable to the passage of time and the rigors of cross-examination, do not dismantle an otherwise robust and natural ocular account. Both eyewitnesses are natural witnesses, being close relatives residing at the scene of the crime; their presence cannot be doubted. Their testimony remained unshaken on the core attributes of the crime: the specific attribution of fatal shots to each petitioner.

8. As regards the motive, the High Court rightly noted that the prosecution could not substantiate the underlying house dispute

through independent documentary or oral evidence. Similarly, the recovery of the 44-bore rifles proved inconsequential. However, the axiomatic rule of criminal law in this jurisdiction is that the failure of motive or defective recoveries does not neutralize or weaken direct, sterling ocular testimony that is firmly supported by medical evidence. The High Court, exercising sound judicial discretion, extended substantial leniency to the petitioners by treating the unproved motive and inconsequential recoveries as mitigating circumstances, thereby commuting their death sentence into imprisonment for life.

9. At this juncture, we find it imperative to address this recurring contention stated above that an occurrence must be presumed unwitnessed whenever the inquest or post-mortem notes record that the eyes of the deceased were found open, it is a submission frequently advanced by defense counsels, and even accepted by the Courts, that if the inquest or the post-mortem notes record the eyes of the deceased as open, the occurrence is presumed to be unwitnessed; for had close relatives been present they would, in the ordinary course of events, have closed the eyes upon expiry. While this court and the High Courts have, in certain instances such as in **Waqas Ahmad v. State** (2025 SCMR 1087), **Zafar Ali Abbasi v. Zafar Ali Abbasi** (2024 SCMR 1773), **Muhammad Asif v. The State** (2017 SCMR 486), **Muhammad Usman Ali v. The State** (2026 YLR 1787) and **Hussain Ali v. The State** (2021 YLRN 78) drawn an inference of an unwitnessed occurrence where the eyes of the deceased were found open, such observations must be understood strictly in the peculiar facts of those individual cases. Elevated to a generalized legal principle, however, such an inference is medically untenable and unsupported by the statutory scheme of evidence. This Court is of the opinion, that setting a mathematical presumption of absence of witnesses at the place of occurrence solely through position of eyelids is a grave erroneousness to commit, for the very reason that the reasoning this rigid mathematical formula carries, is utterly divorced from the natural course of human conduct.

10. Law does not mandate closing of the eyes after death as a legal duty, rather this act is a customary as well as a religious act. Let it be assured that opened or semi-opened eyes are never a conclusive proof of the incident being unwitnessed, as conclusive proofs are only those which are expressly stated in the Qanun-e-Shahadat Order, 1984 and not otherwise. As far as this presumption is concerned, it is basically a

rule of law that a Court shall or may draw a particular inference from a particular fact or from particular evidence, unless and until the truth of such inference is disproved. One of such presumptions, applicable to the instant matter is dealt under Article 129 of the Qanun-e-Shahadat Order (QSO), 1984 in the following words:

“129. Court may presume existence of certain facts.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

This provision is *pari materia* to section 114 of the Evidence Act, 1872, for which M. Monir in his treatise¹ has observed that presumptions arising under this provision are governed by well-settled legal strictures. First of all, the presumptions under this provision fall under the statutory definition of **“may presume”**. They are discretionary, natural presumptions of fact, not obligatory presumptions of law (**“shall presume”**). The court is never bound to draw them; it may refuse to raise an inference or require independent affirmative proof of the predicate fact. Furthermore, an inference regarding human conduct cannot be deduced in a vacuum or subjected to a rigid, mechanical mold. The reaction of human beings facing trauma, terror, or violent loss varies fundamentally from one individual to another. Therefore, it becomes unsafe for any court to draw a rigid inference each time from a variable fact.

11. M. Monir classifies presumption into three basic classes; (i) presumptions of law, (ii) presumptions of fact, and (iii) mixed presumptions. The concerned presumption in the proposition before us is the term ‘presumption of fact’, which is used to designate an inference, affirmative or dis-affirmative of the existence of some fact, drawn by a Court, by a process of probable reasoning from some matter of fact, either judicially noticed, or admitted, or established by legal evidence to the satisfaction of the Court, the force of which rests altogether on experience and observation of the course of nature and habits of human beings. This type of presumption is mere discretionary inference, which the judicial mind spontaneously deduces from proven facts without any aid of statutory mandate or legislative direction. Being purely permissive

¹ M. Monir, *Principles and Digest of the Law of Evidence* (University Book Agency, Allahabad, 9th edn., 1993)

and rebuttable, they do not constitute an artificial rule of positive law, but remain confined to the province of logic, human conduct, and ordinary experience of the course of nature. Therefore, let it be assured that by no stretch of judicial interpretation can a discretionary presumption under Article 129 be elevated to the pedestal of an obligatory rule of law. To deduce, as a matter of mechanical routine, that the deceased's open eyelids invariably signify an unwitnessed occurrence is to commit the grave error of converting a variable, permissive presumption of fact into a rigid presumption of law, which runs diametrically contrary to the letter and spirit of the law of evidence.

12. Apart from the absence of witnesses, there are multiple other factors which become the cause for open or semi-open eyelids in the post mortem report or inquest report:

(A) **Human Psychology and Resolute Hope:** When a gruesome tragedy unfolds before natural witnesses, especially the kith and kin, their immediate reaction is eclipsed by profound shock and trauma. Clinging to the desperate hope that their loved one may still survive, a close relative entirely focuses on securing urgent medical intervention, not on performing mortuary rituals that would seal the victim's demise. The human psyche naturally rebels against the finality of death, clinging desperately to a resolute hope that the victim might still survive the attack. In such an agonizing state of denial, the legal heirs or bystanders may refrain from performing the final rite of closing the deceased's eyes, as doing so would be a painful acceptance of his death. Relatives commonly treat the victim as injured until a medical officer or the police say otherwise. Even otherwise, death itself is often not obvious at the spot in each case. Article 129 of the Qanun-e-Shahadat Order, 1984 aligns with this stance as it deals with common course of natural events as well human conduct, and the above stated behavior is conduct which can be expected in common course of natural events.

(B) **Medical Jurisprudence:** From the standpoint of forensic pathology and medical jurisprudence (**Parikh, Modi, and Taylor**)², the state of the eyelids after death is governed by

² C.K. Parikh, *Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology* (CBS Publishers & Distributors, 6th edn., 1999) [chapter on Death and its Medicolegal Aspects, post-mortem

physiology, not by the presence or absence of witnesses. Immediately upon somatic death, all muscles enter a state of primary flaccidity. Unless actively shut and held down, eyelids frequently remain open or partially open, which is known as ***lagophthalmos***. Even otherwise, the lifting and handling of the body may affect the position of eyelids and the eyes which were previously closed may re-open, where rigor mortis is not yet developed e.g within an hour of death. When rigor mortis sets in (typically starting in the involuntary muscles and small voluntary muscles of the face and eyelids within one to two hours), it locks the tissues in their prevailing position. If the eyes were open or semi-open when rigor mortis developed, they cannot close easily with bare hands.

(C) ***Locard's Exchange Principle:*** A cardinal precept of criminal forensics is Locard's Exchange Principle, elaborating that every contact leaves a trace. In today's world, witnesses in urban areas as well as rescue responders are increasingly aware that touching or manipulating a corpse may contaminate evidence and is therefore commonly discouraged. Experts discourage it for the reason that touching a body may disturb blood-spatter patterns, dislodge micro-traces, or introduces foreign biological material and DNA evidence. Reluctance to touch the body to close eyes, may also sometimes reflect a prudent and commendable anxiety against disturbing the sanctity of a crime scene, before the experts and officials arrive.

(D) ***Lack of Knowledge:*** A close relative, suddenly confronted with the gory spectacle of a violent murderous attack, may lack the medical knowledge to even pronounce clinical death with certainty. Additionally, the majority of the witnesses of murder witness a person's death for the very first time in their life, it is unsafe to draw any rigid presumption that every lay person possesses in his knowledge the manner to deal with a dead body.

13. Accordingly, forensic literature does not recognize "closed eyes" as an index of a witnessed death, nor does the law recognize a rigid,

changes]; Modi's *Medical Jurisprudence and Toxicology* (LexisNexis, 23rd edn., 2006) [chapter on Death, signs of death]; Alfred Swaine Taylor, *Taylor's Principles and Practice of Medical Jurisprudence* (J. & A. Churchill, 13th edn., 1984, ed. Keith Mant) [chapters on Death and Post-mortem Changes]

universal pattern of human behavior following an assault. Deducing an unwitnessed crime solely from the open position of the eyelids is therefore rejected as legally and medically unsound. Even otherwise in the instant matter, as stated above, medical jurisprudence recognizes that eyes closed immediately after death can reopen again, especially if the body is shifted or handled. The observation of open eyes at a later examination (inquest or post-mortem) is therefore compatible both with the eyes never having been closed and with their having been closed and subsequently reopened due to above stated reasons. It does not, by itself, prove the absence of persons at or immediately after death.

14. Lastly, as far as the contention of the learned counsel regarding the discrepancy between the identifying witnesses and the eyewitnesses of the ocular account is concerned, such contention is frequently advanced by defense counsels that where the persons who identify the deceased in the Post-Mortem Report (PMR) are not the eyewitnesses nominated in the FIR, such variance is ipso facto fatal to the prosecution. We find this argument to be legally untenable. Witnessing an occurrence and identifying a body for formal verification serve two distinct procedural functions. While the eyewitness testifies to the actual assault and the specific roles of the assailants, an identifying witness merely establishes anatomical identity for official records. In the ordinary course of human affairs, when an injured person or dead body is rushed to the hospital, the close relatives are either engaged in lodging the FIR or they may not be in mental state to participate in formal medical documentation. When other relatives, acquaintances, or villagers subsequently arrive at the hospital upon learning of the tragedy, the officials rather than disturbing the distraught primary relatives who are overwhelmed by the trauma of their loss, routinely associate these newly arrived relatives to complete official formalities. Such a discrepancy cannot, by itself, be treated as an absolute or fatal flaw capable of dismantling an otherwise coherent, confident, and corroborated ocular account.

15. Coming back to the instant case, the learned High Court has undertaken a comprehensive and balanced re-appraisal of the evidence. No legal or constitutional infirmity, misreading, or non-reading of evidence has been pointed out in the impugned judgment that would warrant our interference.

16. For the foregoing reasons, this petition is devoid of merit and leave is refused, and consequently, Jail Petition No. 372 of 2022 is dismissed.

(Criminal Petition No. 978-L/2022)

For reasons set out in Jail Petition 372/2022, this Criminal Petition filed by the Informant is hereby dismissed.

Judge

Judge

Judge

Lahore
01.10.2026
Muhammad Subhan Malik, JLC, SCP/-

APPROVED FOR REPORTING