

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.1381 and 1395 of 2018

(Against the judgment dated 26.11.2018, passed by the
Lahore High Court, Multan Bench Multan in Criminal
Appeals No.878 and Murder Reference No.130 of 2017)

Muhammad Imran (in CrI.P No.1381/2018)
Muhammad Fayyaz (in CrI.P No.1395/2018)

...Petitioner(s)

VERSUS

The State and another
(in CrI.P. No.1381/2018)
The State through PG Punjab, etc
(in CrI.P. No.1395/2018)

...Respondent(s)

For the Petitioner(s): Sardar Usman Sharif Khosa, ASC a/w
Jehanzeb Khan Kokar, AHC
(in CrI.P. No.1381/2018)

Mr. Aftab Alam Yasir, ASC a/w Syed
Rifaqat Hussain Shah, AOR/ASC
(in CrI.P. No.1395/2018)

For the State: Ms. Maimona Ihsan-ul-Haq, Addl. PG
Punjab (in both matters)

Date of hearing: 05.08.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- Petitioner Muhammad Imran, charged in case FIR No.192/2016 dated 09.05.2016, under section 302 PPC, registered at Police Station Sadar, Dera Ghazi Khan, for committing murder of Muhammad Khan deceased with .30 bore pistol, was tried by the learned Sessions Judge, Dera Ghazi Khan (‘the Trial Court’). Upon conclusion of trial, the learned Trial Court vide judgment dated 16.09.2017, convicted the petitioner under section 302(b) PPC

and sentenced him to death as Ta'zir with direction to pay Rs.5,00,000/- as compensation under section 544-A Cr.P.C. to legal heirs of the deceased, recoverable as arrears of land revenue and in default thereof to further undergo six months simple imprisonment. The Lahore High Court, Multan Bench Multan ('the High Court') while dismissing appeal of the petitioner/convict, altered his sentence from death to imprisonment for life and consequently answered Murder Reference No.430 of 2017, sent by the Trial Court for conformation or otherwise of the death sentence in the negative vide judgment dated 26.11.2018 ('impugned judgment').

2. Through Criminal Petition No.1381 of 2018, the petitioner-convict seeks leave to appeal against the impugned judgment of the High Court. Conversely, Muhammad Fayyaz, the petitioner-complainant has filed Criminal Petition No.1395 of 2018, seeking enhancement of sentence of the respondent-convict from life imprisonment to normal penalty of death provided for the offence under section 302 PPC.

3. The prosecution's case, as gleaned from the First Information Report ("FIR") Exh.PB registered on the complaint of complainant Muhammad Fayyaz (PW-4), is that on 09.05.2016 he along with his brothers, namely, Fahim Akhtar (PW.5), Muhammad Khan (the deceased) and uncle Karim Bakhsh, was present in their *Baithak*, situated in Mouza Churhatta Basti Waliya Dera Ghazi Khan, when at about 8:45 a.m., petitioner-convict Muhammad Imran, armed with .30 bore pistol allegedly arrived on a motorcycle bearing registration No. 4727-DGL and inquired about Muhammad Riaz and when the deceased stepped forward and informed the petitioner-convict that Muhammad Riaz was not present, the petitioner-convict allegedly declared that he would not spare any of Muhammad Riaz's brothers and opened fire at Muhammad Khan deceased, as a result, he got hit on his abdomen and fell to the ground. The complainant, his brother and uncle attempted to apprehend the petitioner-convict; however, he managed to escape from the scene with the weapon of offence, leaving behind his motorcycle and a pair of shoes. The complainant then contacted Rescue 1122, and the deceased then injured Muhammad Khan was

shifted to the Trauma Centre, Dera Ghazi Khan, for medical treatment, but he succumbed to his injuries. Motive behind the occurrence was that the petitioner-convict was suspecting Muhammad Riaz (brother of complainant and deceased) for having illicit relation with his sister due to which the petitioner-convict came to the spot to kill Muhammad Riaz, but committed murder of his brother Muhammad Khan deceased.

4. Having heard the learned counsel for the parties as well as the learned Additional Prosecutor General, Punjab, appearing on behalf of the State and after examining the record with their able assistance, we find that the learned Trial Court and the learned High Court while believing the ocular account furnished by the complainant Muhammad Fayyaz (PW-4), and Faheem Akhtar (PW-5), the medical evidence furnished by Dr. Hafeez-ur-Rehman who conducted postmortem of the deceased, recovery of the crime empty from the spot, the crime pistol recovered on the pointation of the petitioner-convict and the positive FSL report in respect thereof, reached to the conclusion that the prosecution has proved the guilt of the petitioner-convict beyond the shadow of doubt. Both the Courts below have disbelieved some part of the defence version of the petitioner-convict to the extent of the alleged assault on the part of the complainant party upon him.

5. Upon our own independent scrutiny of the evidence available on the record, we find ourselves in complete agreement with the view of the Courts below. A careful examination of the testimony of the two eyewitnesses named-above reveals that the same is confidence inspiring, straightforward and consistent on all material particulars such as the day, date, time and place of occurrence as well as the manner in which the petitioner-convict arrived at the scene on a motorcycle, committed the murder of the deceased with fire arm of .30 bore pistol and thereafter fled from the place of occurrence, leaving behind his motorcycle and shoes at the spot. The occurrence took place in broad daylight at about 8:45 a.m., which was promptly reported at 9:45 a.m. eliminating the possibility of consultation, deliberation or fabrication in implicating the petitioner-convict on the party of the complainant. Admittedly, the petitioner-convict is

the cousin (*Phopizad*) of the eyewitnesses, hence, there is no possibility whatsoever of mistaken identity. The occurrence took place in the *Baithak* of the complainant party, and both the eyewitnesses, being the real brothers of the deceased and residents of the same house, were most natural witnesses to the occurrence. Their presence at the place of occurrence during the early hours of the morning cannot be doubted. Although PW Faheem Akhtar, was serving as Personal Assistant to the Director, Anti-Corruption, Dera Ghazi Khan, but he has explained in his statement that he was on leave on the fateful day. The defence failed to confront him with any documentary or any other cogent evidence to show that he was not on leave on the relevant date. Both the eyewitnesses were subjected to extensive cross-examination; however, nothing favourable to the defence could be elicited from them to cast any doubt upon their presence at the scene of occurrence or to damage their credibility. Likewise, no circumstance suggestive of any ulterior motive, malice or ill-will on their part against the petitioner-convict was brought on the record. Rather, the admitted relationship between the eyewitnesses and the petitioner-convict furnishes a strong guarantee of the truthfulness of their testimony. It is difficult to conceive that the real brothers of the deceased, having no previous animosity against the petitioner-convict, who was admittedly their *Phopizad*, would falsely implicate him in the murder of their own brother while allowing the actual perpetrator to escape. The possibility of substituting the real offender with an innocent person, particularly where the eyewitnesses are closely related to the deceased, have themselves witnessed the occurrence, and have suffered the irreparable loss of a near relative, is not only remote but, in the peculiar facts and circumstances of the present case, wholly inconceivable. It is by now a settled principle of law that the testimony of related witnesses cannot be discarded merely on account of their relationship with the deceased. On the contrary, where such witnesses are found to be natural, confidence-inspiring and trustworthy, their evidence carries great evidentiary value, for the reason they are the least likely to spare the actual culprit and falsely implicate an innocent person. Guidance in this regard may profitably be sought from the judgments of this Court in *Aman Ullah*

v. The State (2023 SCMR 723), *Imran Mehmood v. The State* (2023 SCMR 795), *Asfandiyar v. The State and others* (2021 SCMR 2009), and *Muhammad Abbas and another v. The State* (2023 SCMR 487).

6. The medical evidence furnished by Dr. Hafeez-ur-Rehman (PW-7), who conducted the post-mortem examination of the deceased, lends full corroboration to the ocular account. During the post-mortem examination, he observed a lacerated firearm entry wound measuring 0.5 × 0.5 cm on the right side of the abdomen, situated 4 cm below and to the right of the umbilicus at the 7 o'clock position, with inverted margins and without any blackening or burning, along with its corresponding exit wound on the right side of the back of the abdomen. According to the Medical Officer, the said injury was ante-mortem in nature, caused by a firearm, and was sufficient, in the ordinary course of nature, to cause the death of the deceased. The medical evidence, therefore, not only fully supports the prosecution's ocular account but also rules out any inconsistency between the direct and medical evidence.

7. As regards the defence version of the petitioner-convict, he in his statement recorded under Section 342, Cr.P.C., as well as under section 340(2) Cr.P.C., denied the prosecution allegations and set up an altogether different version of the occurrence. According to the petitioner-convict on 08.05.2016, his sister Mst. Shamim Mai, while working in the fields, was teased by his *phopizad*, namely, Muhammad Riaz. Upon being informed of the said incident, his mother asked him on the following morning to visit his paternal aunt (*Bua*), so that the matter could be brought to her notice; that on 09.05.2016 at about 8:30 a.m., while proceeding to the house of his aunt and passing through the *Baithak* of Muhammad Riaz, he found Muhammad Riaz and the deceased Muhammad Khan playing cricket. Upon inquiry by Muhammad Riaz regarding the purpose of his visit, the petitioner-convict informed him that he intended to complain to his aunt about the incident involving his sister, upon which Muhammad Riaz and the deceased became enraged and started assaulting him. The deceased allegedly inflicted several blows with a cricket bat on different parts of his body, including the sternoclavicular joint, the left lateral canthus of the left eye and the

left fronto-parietal region. He further stated that in the meantime, Muhammad Riaz brought a pistol from a room in the *Baithak* and fired at him; however, the shot accidentally hit Muhammad Khan deceased; that immediately after the occurrence his father produced him before the local police in an injured condition, but the police neither arranged nor facilitated his medical examination. According to him, it was only pursuant to an order passed by the learned Trial Court that he was medically examined on 04.04.2017, and the Medical Officer who examined him confirmed that he had sustained the injuries allegedly caused by the deceased and Muhammad Riaz. Mst. Shamim Mai was produced as DW.3. She deposed to the extent of the incident took place on 08.05.2016.

8. A careful appraisal of the defence plea reveals that, instead of probabilizing the innocence of the petitioner-convict, it substantially affirms the prosecution case regarding the day, date, time and place of occurrence. In both the statements, the petitioner-convict has unequivocally admitted his presence at the place of occurrence at the relevant time as alleged by the prosecution. The defence version, however, to the extent that the petitioner was assaulted by the deceased and Muhammad Riaz and that the fatal shot of Muhammad Riaz accidentally hit the deceased, does not inspire confidence. Mst. Shamim Mai (DW-1), the real sister of the petitioner-convict, who allegedly furnished the motive for the occurrence, did not utter a single word regarding the alleged beating of the petitioner-convict at the hands of the deceased and Muhammad Riaz. Had there any beating of the petitioner-convict by the complainant party, she, being the sister of the petitioner-convict, would not have omitted to depose about such a material aspect. It is also noteworthy that the occurrence took place on 09.05.2016, whereas the petitioner-convict was arrested on 16.05.2016. The arrest card is conspicuously silent regarding the presence of any injury on the person of the petitioner at the time of his arrest. Likewise, none of the police documents prepared at the time of his arrest or during the investigation reflects that the petitioner-convict had sustained any injury. Had he actually received the injuries, the same would naturally have found mention in the official record. The

petitioner-convict neither disclosed this defence while the formal charge was framed against him nor suggested such a version to any of the prosecution witnesses during their cross-examination. He also failed to put forth this plea before the Investigating Officer during the course of investigation or before the learned Magistrate when he was produced for remand. It was only after an unexplained lapse of about ten months that the petitioner moved an application on 17.03.2017 seeking his medical examination, whereupon the learned Trial Court constituted a Medical Board. The report of the Medical Board (Exh. DB), produced through Dr. Muhammad Asim Bhatti (DW-2), merely indicates that the petitioner's left clavicle had suffered an old healed fracture with callus formation and that the duration of the fracture could not be determined as it was more than six months old. In cross-examination DW.2 stated that according to his opinion the said injury could not be caused by sharp edge weapon as there was no external evidence of any scar and the same might be due to fall or blunt weapon. The report, therefore, does not establish that the said injury was sustained by the petitioner during the occurrence or at the hands of the complainant party. No independent or corroborative evidence has been produced by the defence to connect the said injury with the occurrence. Furthermore, despite alleging that he was the victim of an assault, the petitioner-convict neither got a cross-version registered nor made any effort to have his version recorded by approaching the superior police authorities. He also did not invoke the jurisdiction of the learned Justice of Peace for issuance of directions regarding the registration of his version by filing application under section 22-A Cr.P.C. Such inaction and the long silence of the petitioner-convict is wholly inconsistent with the conduct expected of a person who claims to have been the victim of an attack and seriously undermines the veracity of the defence plea.

9. The cumulative effect of the foregoing circumstances leaves little room for doubt that the defence version, to the extent it alleges injuries on the person of the petitioner-convict during the occurrence and seeks to portray the incident as a case of accidental firing, is a belated, fabricated and afterthought plea, devised merely

to give the occurrence the complexion of a cross-version and to minimize the role of the petitioner-convict. On the contrary, the admissions made by the petitioner-convict regarding the day, date, time and place of occurrence, coupled with the motive narrated by him, materially supports the prosecution case rather than advancing his own defence.

10. The contention advanced by the learned counsel for the petitioner-convict that having regard to the peculiar facts and circumstances of the case and the evidence adduced by the prosecution, the offence, if any, would fall within the ambit of section 302(c) P.P.C. rather than section 302(b) P.P.C., is wholly misconceived and devoid of substance. The evidence on the record fully establishes that the petitioner-convict acting with prior intention to commit the murder, armed himself with a pistol and proceeded to the place of occurrence. No doubt, he is attributed the role of single fire shot at the deceased, but the said single fire shot was aimed at the abdomen of the deceased, which is undoubtedly a vital part of the human body. Had the defence succeeded in substantiating its plea that the petitioner-convict was first assaulted by the deceased or the complainant party, thereby giving rise to a situation attracting any recognized legal exception or mitigating circumstance, the submission advanced by the learned counsel might have some weight. In these circumstances, the plea that the case falls within the contemplation of section 302(c), P.P.C. is wholly untenable and cannot be accepted.

11. For what has been discussed above, we are satisfied that the prosecution has succeeded in proving its case against the petitioner-convict beyond any shadow of reasonable doubt through a trustworthy, confidence-inspiring and consistent ocular account, which finds full corroboration from the medical as well as the circumstantial evidence brought on the record. The findings of the Courts below regarding the guilt of the petitioner-convict are the result of a correct and proper appraisal of the evidence and are neither arbitrary nor suffering from any legal or factual infirmity warranting interference by this Court in the exercise of its discretionary jurisdiction under Article 185(3) of the Constitution.

12. As regards the quantum of sentence awarded to the petitioner-convict is concerned, we find that the learned High Court, while maintaining the conviction of the petitioner-convict under Section 302(b), P.P.C., commuted the sentence of death into imprisonment for life on the premise that the deceased was not the intended target of the petitioner-convict. The learned High Court treated the said circumstance as a mitigating factor while extending the benefit of the lesser sentence. Having examined the matter, we find no legal infirmity or perversity in the approach adopted by the learned High Court. The reasons assigned by it for awarding the lesser sentence are neither arbitrary nor capricious and do not call for interference. Consequently, we also find no justification for enhancing the sentence of the petitioner-convict.

13. For the foregoing reasons, Criminal Petition No. 1381 of 2018 as well as Criminal Petition No. 1395 of 2018, being devoid of merit, are dismissed, and leave is refused.

Judge

Judge

Judge

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

Judge

Not Approved for Reporting
M.Siraj Afridi PS

