

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

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

**Criminal Petition No.22-Q/2023**

(Against the judgment dated 4<sup>th</sup> April, 2023, passed by the High Court of Balochistan, Sibi Bench in Criminal Appeal No.11/2023)

Jamshair

...Petitioner(s)

**VERSUS**

The State

...Respondent(s)

For the Petitioner(s): Mr. Nadir Ali Chalgari, ASC  
(via video link from Quetta)

For the State: Mr. Baqir Shah, ASC, State counsel

Date of hearing: 25.08.2026

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** Petitioner Jamshair, along with co-accused Abdul Aziz and Barkat Ali (since absconders), was charged in case FIR No.266/2008, registered under Sections 302/34, PPC, at Police Station Dera Allah Yar, for allegedly committing the murder of Ghulam Murtaza, deceased. The learned Additional Sessions Judge, Dera Allah Yar ("Trial Court"), upon conclusion of the trial, vide judgment dated 18.01.2023, convicted the petitioner under Section 302/34, PPC, and sentenced him to imprisonment for life as Ta'zir. He was further directed to pay a sum of Rs.500,000/- as compensation under Section 544-A, Cr.P.C. to the legal heirs of the deceased and, in default thereof, to undergo further simple imprisonment for a period of six months. The petitioner was also extended the benefit of Section 382-B, Cr.P.C.

2. Feeling aggrieved, the petitioner-convict preferred an appeal before the learned High Court of Balochistan, Sibi Bench ("High Court"), which, vide judgment dated 04.04.2023, dismissed the appeal and maintained the conviction and sentence awarded to the petitioner-convict by the learned Trial Court. Hence, the instant petition for leave to appeal has been filed.

3. Since co-accused Abdul Aziz and Barkat Ali are absconders and have not faced the trial along with the petitioner-convict, therefore, the findings recorded herein are confined strictly to the extent of the case of the petitioner-convict. The assessment of the evidence made in the instant case, as well as the conclusions drawn on the basis thereof, shall not prejudice or otherwise affect the case of the absconding co-accused. Their case shall be considered and adjudicated independently, by the competent Court, on the basis of the evidence that may be brought on record against them in accordance with law. Accordingly, the observations and findings recorded in the present judgment shall have no bearing whatsoever upon the merits of the case of absconding co-accused Abdul Aziz and Barkat Ali, and shall not be construed as an expression of opinion, one way or the other, with regard to their guilt or innocence.

4. Having heard the learned counsel for the petitioner-convict as well as the learned State counsel, and having gone through the record with their assistance, it transpires from the contents of the FIR that on 12.10.2008 at about 05:15 p.m. complainant Muhammad Umar (PW.1), along with his nephew Rehmatullah (PW.2) and other inmates, was present at his house situated in *Meerali Colony, Dera Allah Yar*, when the petitioner-convict Jamshair, armed with a Kalashnikov, accompanied by co-accused Abdul Aziz and Barkat Ali (*both since absconders*), armed with pistols, alleged came to his house. The absconding co-accused, who are relatives of the complainant entered the house of the complainant, called his son Ghulam Murtaza deceased out of the house on the pretext that his guest was waiting outside. On hearing commotion, the complainant along with his nephew Rehmatullah (PW.2), when came out of the house, the petitioner-convict allegedly pointed his Kalashnikov towards them and restrained them from

moving forward, while the absconding co-accused Abdul Aziz and Barkat Ali caught hold of Ghulam Murtaza deceased. Thereafter, Abdul Aziz (PO), allegedly on account of *Siyakhari*, fired at Ghulam Murtaza deceased with his pistol, as a result whereof he sustained a firearm injury on his head and succumbed to the same at the spot. The accused thereafter fled from the place of occurrence.

5. A careful scrutiny of the FIR reveals that no specific role of firing upon the deceased or either of the prosecution witnesses has been attributed to the petitioner-convict. The only role assigned to him is that he allegedly aimed his Kalashnikov at the complainant and PW Rehmatullah and restrained them from moving forward. When the complainant and PW Rehmatullah appeared in the witness box as PW.1 and PW.2, respectively, they reiterated the same version and did not attribute any act of firing to the petitioner-convict either on the deceased or at them. The learned Courts below, however, have convicted the petitioner-convict by invoking the provision of Section 34, PPC. It is a settled principle of law that the applicability of Section 34, PPC, cannot be presumed merely from the presence of an accused at the place of occurrence or from his association with the actual assailant. The prosecution is required to establish, through cogent and confidence-inspiring evidence, that the criminal act was committed by several persons in furtherance of their common intention. Such common intention may be inferred from the conduct of the accused and the attending circumstances, but the inference must be founded upon positive and reliable evidence and not upon conjectures or surmises. Mere presence, even if established, would not by itself be sufficient to attract the vicarious liability contemplated by Section 34, PPC. In the present case, the prosecution has failed to bring on record any convincing material showing that the petitioner-convict shared a common intention with the absconding co-accused to commit the murder of Ghulam Murtaza. Although, the petitioner-convict was allegedly armed with a Kalashnikov, but he neither fired upon the deceased nor caused any firearm injury to the eyewitnesses. Even when, according to the prosecution, the eyewitnesses were allegedly within his reach and he had aimed his weapon towards them, he did not fire at them. His

conduct, therefore, does not furnish the requisite incriminating circumstance from which a shared intention to commit the murder can safely be inferred. It is also noteworthy that the petitioner-convict is the elder brother of the absconding co-accused Abdul Aziz and Barkat Ali. In the circumstances of the case, the possibility of his false implication by attributing him a general and sweeping role on account of his relationship with the principal accused, cannot safely be ruled out. At times we have observed that, in cases of this nature, the complainant party attributes general and categorised roles, such as that of raising a *lalkara*, being present at the place of occurrence, or catching hold of the deceased, to the other family members of the principal accused throwing the net wide so as to discourage or prevent such family members for effectively pursuing or defending the case of the principal accused. Such allegations, therefore, require careful scrutiny and cannot, in the absence of independent and confidence inspiring evidence, be made the basis for fastening vicarious liability. In the present case, the prosecution has failed to bring on record any positive, cogent and convincing evidence establishing that the petitioner shared common intention with the principal accused in the commission of the offence. Mere presence of accused at the spot or attribution of a subsidiary role, without reliable evidence showing prior meeting of minds or participation in furtherance of the common intention, would not be sufficient to attract the provisions of Section 34, PPC. In these circumstances, the essential ingredient of common intention having remained unestablished, the petitioner cannot be saddled with vicarious liability for the act allegedly committed by the principal accused. Thus, in the absence of any positive evidence showing that the petitioner-convict shared the common intention with the principal accused, or that he performed any overt act in furtherance of such common intention, mere on the basis of bald allegation of the PWs, the provisions of Section 34, PPC, could not have been invoked against him. The learned Courts below, therefore, fell into an error of law in fastening vicarious liability upon the petitioner-convict merely on the basis of his presence at the place of occurrence and his alleged act of pointing his weapon towards the complainant and PW Rehmatullah.

6. For what has been discussed and observed above, this petition is converted into an appeal and is allowed. The conviction and sentence of the appellant, Jamshair, recorded by the learned Courts below are set aside. The appellant is extended the benefit of doubt and is accordingly acquitted of the charge in the instant case. He shall be released forthwith, if not required to be detained in connection with any other case. The impugned judgments of the learned Courts below shall stand set aside to the aforesaid extent.

Judge

Judge

Judge

**Islamabad the**

25<sup>th</sup> August, 2026

Not Approved for Reporting

*M.Siraj Afridi PS*