SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

CRIMINAL PETITION NO.224-P/2025
(Against the judgment dated 17.07.2025, passed by the Peshawar High Court, Peshawar in Criminal Appeal No.350-P of 2025)

Shehryar and another

…Petitioner(s)

VERSUS

The State and another

…Respondent(s)

For the Petitioner(s): Mr. Astaghfirullah, ASC

For the State: Mr. Danial Khan, Addl. AG, KP

For the Respondent(s): Mr. Amirullah Khan, ASC

Date of hearing: 21.10.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- The prosecution's case, as set forth in FIR No.134 dated 18.02.2019, registered under Sections 302, 324 and 34 PPC at Police Station Nowshera Kalan, District Nowshera, is that on 18.02.2019, at about 1750 hours, the petitioners, Shehryar and Asfandyar, both sons of Niaz Muhammad, in furtherance of their common intention, committed the murder of Kifayat Ullah (deceased) by firing at him with their respective weapons on Main Mandani Road, near Masjid Khesghi. The injured deceased was shifted to DHQ Hospital, Nowshera Kalan, where he reported the occurrence wherein one Ijaz Khan (PW.4) was cited as an eyewitness to the incident. The deceased was shifted to Lady Reading Hospital, Peshawar in injured condition, and thereafter to Khyber Teaching Hospital, Peshawar, where he succumbed to his injuries.

2. Upon the arrest of the petitioners and completion of the investigation, a report under Section 173 Cr.P.C. was submitted against them before the learned Additional Sessions Judge-III, Nowshera (the “trial Court”). Upon conclusion of the trial, the learned trial Court, vide judgment dated 19.03.2025, convicted both petitioners under Section 302(b) PPC and sentenced each of them to imprisonment for life, along with payment of compensation of Rs.500,000/- each to the legal heirs of the deceased under Section 544-A Cr.P.C., and, in default of payment thereof, to undergo simple imprisonment for six months. They were also convicted under Section 324 PPC and sentenced to rigorous imprisonment for five years each. The benefit of Section 382-B Cr.P.C. was extended to them. The learned Peshawar High Court, Peshawar, vide judgment dated 17.07.2025, dismissed their appeal and maintained their convictions and sentences. Hence, the instant petition for leave to appeal.

3. We have heard the learned counsel for the parties as well as the learned Additional Advocate General, Khyber Pakhtunkhwa, appearing on behalf of the State, and have carefully examined the material available on record. The prosecution case primarily rests upon the dying declaration of Kifayat Ullah (deceased) recorded in the form of murasila, scribed by Asif Khan SI (PW.7), at DHQ Hospital, Nowshera Kalan. In his statement Asif Khan SI categorically stated that at the time of making the statement, the deceased was conscious and well-oriented in time and space. Dr. Mehran Ali (PW.8), who medically examined the deceased in his injured condition, also confirmed that the deceased was conscious at the time of examination. On the following day i.e. 19.02.2019, the deceased succumbed to his injuries, whereupon his postmortem examination was conducted at 0830 hours by Dr. Sahib Dad Khan (PW.3). He noted two firearm entry wounds, each measuring 0.5 cm, one on the right anterior side of the chest and the other on the right anterior side of the thigh of the deceased. In view of the testimony of scriber of the dying declaration and Dr. Mehran Ali, it stands established that the deceased was conscious and capable of making

his statement. The evidentiary value of the dying declaration, however, must be assessed separately with regard to the individual role attributed to each petitioner and in the light of the other evidence available on record.

4. Although the deceased, in his dying declaration, and Ijaz Khan (PW.4), the alleged eyewitness, attributed the role of firing to both petitioners, however, they did not specify that fire shots of which of the two petitioners hit the deceased. They even did not clarify the type or calibre of the firearm used by each petitioner at the time of the occurrence. The medical evidence establishes that the deceased sustained two firearm entry wounds, each measuring 0.5 cm, on the anterior aspect of his body. No crime empties were shown to have been recovered from the respective places attributed to the petitioners at the place of occurrence. However, after arrest of the petitioners, a repeater gun was shown recovered on the pointation of petitioner Shehryar, whereas a .30-bore pistol was recovered from petitioner Asfandyar. The dimensions and characteristics of the entry wounds found on the body of the deceased are inconsistent with the use of a repeater gun. Had a repeater gun been used, the nature and pattern of the injuries would be different. Rather, the dimensions and characteristics of the entry wounds on the person of the deceased appear to be more consistent with injuries caused by firing a .30-bore firearm. In this view of the matter, it can be easily concluded that the fatal firing was attributable to petitioner Asfandyar. It is also borne out from the record that petitioner Shehryar is educated up to the degree of M.Sc. Although his educational qualification, standing alone, has no bearing upon the determination of his guilt or innocence, the prosecution was nonetheless required to establish his individual participation through reliable evidence. In the circumstances of the case discussed above, the possibility that petitioner Shehryar was implicated along with his brother petitioner Asfandyar, without sufficient evidence establishing his participation, cannot safely be excluded. The principle that the prosecution must prove the guilt of each accused through reliable evidence, and that the evidence must

be evaluated separately with respect to each accused, is well settled. The maxim *falsus in uno, falsus in omnibus* is not to be applied mechanically; equally, the Court is not required to accept or reject the prosecution evidence in its entirety merely because a portion of it is found doubtful. Rather, the Court must separate the grain from the chaff and determine whether the evidence, after careful scrutiny, inspires confidence against each accused individually. In this regard, the case titled *Tawaib Khan* (PLD 1970 SC 13) is relevant. In that case, two accused persons had been implicated in a dying declaration and testimony of an eyewitness, Mst. Meraj Dana. Although both the accused had been convicted by the trial Court and their convictions were maintained by the High Court, however, this Court, upon sifting the evidence, maintained the conviction of Khawaja Muhammad but acquitted co-accused Tawaib Khan by extending him the benefit of doubt. The decision emphasizes the principle that the evidence against one accused may be accepted while the same evidence, to the extent it implicates another, may be rejected where the latter's participation is not established beyond reasonable doubt. Relevant parts of the judgment (supra) are reproduced below:-

> "In the present case, judging the dying declaration of the deceased and the statement of Mst. Meraj Danan, in light of the physical circumstances of the case, I have formed the opinion that whereas the charge against Khawaja Muhammad who had fired twice at the deceased, is clearly proved, the charge against the other appellant, namely, Tawaib Khan, is not at all free from doubt. The injuries suffered by the deceased in relation to the roles which he has ascribed to his assailants, furnish the best test to find out as to what is the truth, or at least to discover what is doubtful. According to him, he was fired at by Khawaja Muhammad first in the back. He says that after this he fired his own rifle at Khawaja Muhammad ineffectively, but the latter simultaneously fired another shot at him hitting him in the abdomen. It seems obvious to me that when he first saw Khawaja Muhammad firing at him, he must have turned his back to avoid a frontal shot. It was thus that he received an injury on the back and a grazing wound (injury No.4) which had a direction from backwards towards the front, then he turned to fire at Khawaja Muhammad with his own rifle without sticking him and just then he received the second shot from him which hit him in the front. The second shot, to my mind caused the two front injuries which the deceased had sustained, one in the abdomen and the other on his right forearm. According to the site plan, the firing by Khawaja Muhammad was done from a distance of 40 paces. Therefore, the dispersal of the pellets was quite large to account for the distance in the injuries.

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> According to the evidence of Sub-Inspector, Baqir Ali Khan, a barricade of stones had been put up at the place from where Khawaja Muhammad had fired. The learned counsel for the appellants submitted that this indicated that Khawaja Muhammad had taken precautions to conceal his identity. This would seem a mistaken impression as the barricade of stones which was very small in height, was put up more for self-protection than for concealment. The directions of the injuries on the deceased suggest that the shots were fired at the deceased from a level position more or less. It was a clear day light occurrence and there was no possibility of the deceased missing or mistaking the identity of Khawaja Muhammad appellant who was 40 years away and who must have been in his full view as manifested by the front injuries received by him at his hand. Card board discs were recovered from the place wherefrom Khawaja Muhammad had fired to confirm the prosecution story. Khawaja Muhammad's defence was of total denial. He alleged that at the relevant time he was a sepoy in the 14th Baluch, stationed at Sailkot and was on duty on the day of occurrence. This has been found to be false according to the statement of PW Irshad Ali Shah, a sepoy clerk in the 14th Baluch, who produced the record to show that Khawaja Muhammad was on leave from the unit from the 11th of April 1965 to the 10th of June 1965, and again from the 16th of July 1965 to the 10th of August 1965,
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> As compared to this, the case against Tawaib Khan is very doubtful. He is alleged to have fired from a distance of 20 yards and had allegedly succeeded in causing only one pellet injury on the right forearm of the deceased. There were no indications of any firing from the spot from which he had allegedly fired such as we fine in the case of Khawaja Muhammad. If Tawaib Khan had fired from that close distance—20 paces as is alleged, he must have certainly caused a greater damage to the deceased than is attributed to him. He could not be such a bad marksman as to cause only one stray pellet injury with his gun from a distance of 20 paces. The injuries to the deceased, according to my view were all caused by two shots, one from behind and the other from front, both of which were initially attributed to Khawaja Muhammad by the deceased as well as by Mst. Meraj Dana, although subsequently, the deceased magnified the number of these shots to three and Mst. Merj Dana did so into many more. This exaggeration was introduced merely to ascribe the firing of a shot by Tawaib Khan, but this, as I have said above, is very doubtful.
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> In these circumstances, I am constrained to reject t the evidence of Mst. Meraj Dana as well as of the dying declaration of the deceased as far as Tawaib Khan is concerned, giving him the benefit of doubt which I consider, was wrongly withheld from him by the courts below. I would, therefore, acquit him. As already stated above, the guilt of Khawaja Muhammad is established beyond doubt and his conviction and sentence as awarded by the trial judge and confirmed by the High court are well merited in which no interference is justified. I decide the appeal accordingly. Tawaib Khan shall be released forthwith if not wanted in any other case."

5. Applying the foregoing principles to the facts and circumstances of the present case and for safer administration of justice, we find that, notwithstanding the dying declaration and the ocular account of PW.4 implicating both petitioners, the prosecution

has failed to produce sufficient corroborative evidence or medical evidence connecting petitioner Shehryar with the firearm injuries sustained by the deceased. The absence of any clear attribution of the shots that hit the deceased, the distinction between the weapons allegedly recovered from the petitioners, the dimensions and location of the entry wounds, and the circumstances depicted in the site plan, when considered cumulatively, create a reasonable doubt regarding the participation of petitioner Shehryar in the commission of the offence. His case, therefore, calls for separate consideration from that of his co-accused, petitioner Asfandyar.

6. Conversely, the prosecution has produced sufficient direct evidence, duly corroborated by the medical evidence and recovery of .30 bore pistol, establishing the participation of petitioner Asfandyar in the commission of the offence. No sufficient ground has been made out to warrant interference with his conviction and sentence. Consequently, the instant criminal petition is converted into an appeal and partly allowed. The convictions and sentences of appellant Sheharyar recorded by the Courts below are set aside. Extending him the benefit of doubt, he is acquitted of the charge in the instant case and shall be released forthwith, if not required to be detained in any other case.

7. To the extent of petitioner Asfandyar, the petition is dismissed and leave to appeal is refused.

Judge

Judge

Judge

(Peshawar)
(21.10.2026)
NOT APPROVED FOR REPORTING
M.Siraj Afridi PS