

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No. 220945-J of 2018
(Mansab Ali Vs. The State etc.)

&

Criminal Revision 218894 of 2018
(Ameen Bibi Vs. Mansab Ali etc)

Date of hearing: 06.06.2023

Appellant by: **Barrister Muhammad Yar Khan Daha & Mr. Junaid Fareed Khan Daha, Advocates.**

Complainant by **Mr. Abid Saqi & Rai Faisal Nauman Bhatti, Advocates.**

State by: **Mr. Ikram Ullah Khan Niazi, Deputy Prosecutor General for the State.**

JUDGMENT

.....

SARDAR MUHAMMAD SARFRAZ DOGAR, J.:- On 30.08.2016 at 10.00 a.m. in the area of 'Tahli Adda' within the precincts of Police Station Jalalpur Bhattian, Mansab Ali appellant along-with his co-accused Muhammad Irshad while armed with firearm weapons had allegedly murdered one Shahid Imran deceased by causing successive firearm injuries on different parts of his body in the backdrop of a motive according to which Shahid Imran deceased had quarreled with the accused persons. The accused had a grudge with him and committed murder of Shahid Imran deceased.

2. With the said allegations the appellant Mansab Ali and his co-accused Muhammad Irshad as alluded to hereinabove were indicted in case FIR No. 378 dated 30.08.2016 registered at above mentioned Police Station on the same day at 11.45 a.m. (noon) under sections 302/34 PPC. However, during the course of investigation local police exonerated co-accused Muhammad Irshad in this case,

whereupon Ameen Bibi complainant (PW2) being aggrieved of the investigation was constrained to file private complaint (Ex. PD) against both the accused persons.

3. After a regular trial in the above-said complaint, the learned Additional Sessions Judge, Pindi Bhattian *vide* judgment dated 16.5.2018 while acquitting co-accused Muhammad Irshad, found the appellant guilty of the offence under section 302 (b) PPC and sentenced him as under:-

***Under Section 302 (b) PPC,** imprisonment for life with direction to pay compensation of Rs. 2,00,000/- to the legal heirs of the deceased as envisaged under section 544-A, Cr.P.C. or in default of payment thereof to further undergo six months S.I. Benefit of section 382-B, Cr.P.C. was also extended to the appellant.*

4. Against the above-said conviction and sentence, Mansab Ali appellant has preferred instant Criminal Appeal No. 220945-J of 2018 through jail, while the complainant Ameen Bibi (PW2) has filed Criminal Revision No. 218894 of 2018 for enhancement of sentence awarded to the appellant as well as equitable increase in the compensation amount. As both these matters are outcome of the same judgment of the learned trial court and being interlinked and interconnected with each other are disposed of together through this single judgment.

5. It is contended on behalf of the appellant that the impugned judgment was passed in a trial, arising out of a private complaint which was filed with an unexplained delay of about 4 ½ months; that the case in hand though apparently is arising out of a promptly lodged crime report, however, the perusal of record reveals otherwise; that the two eye-witnesses who appeared before trial court miserably failed to prove their presence at the crime scene and both of them on account of peculiar facts of the case were proved to be chance witnesses, thus were not worthy of any reliance; that testimony of both the eyewitnesses was disbelieved to the extent of co-accused Muhammad Irshad who

was ascribed the role of active participation in the crime and he was acquitted from the case; that in such circumstances the statements of eyewitnesses can only be made basis for upholding the conviction of the appellant if strongly supported and corroborated from other circumstances; that even the positive report of PFSA regarding the weapon recovered from Mansab Ali appellant is not worthy of any reliance on account of multiple discrepancies; that the medical evidence is also found not to be in conformity with the eyewitness account furnished by Ameen Bibi complainant (PW2) and Akhtar Ali (PW3); that it is evident from the medical evidence that certain blunt weapon injuries were also noticed on the person of Shahid Imran deceased for which no explanation was put forth by the two eye-witnesses; that even the postmortem examination of the deceased was held with the delay of about 6-7 hours which gives rise to further doubt about the truth of prosecution case; that though, a specific motive was taken up by the prosecution, however, prosecution failed to attribute it exclusively to the appellant and that though reasonable doubt arises out from the plain view of prosecution case, however, its benefit was not given to appellant. With these submission, it is urged by the learned counsel that the conviction awarded to the appellant is liable to be set-aside.

6. On the other hand, learned Deputy Prosecutor General assisted by learned counsel for the complainant vehemently opposed the arguments advanced on behalf of the appellant and submitted that the occurrence took place at about 10:00 a.m. and its information was conveyed to police without any delay; that the case is arising out of a day-light occurrence where there is no chance of mistaken identity; that during occurrence, the appellant caused successive firearm injuries to the deceased which were duly found during postmortem examination; that though eye-witnesses of the occurrence were subjected to lengthy cross-

examination, however, the defence failed to extract any benefit out of it; that the case of prosecution is further corroborated from the recovery of pistol effected from appellant during investigation; that the motive taken up by the prosecution provides required corroboration to the case of prosecution; hence the appellant deserves no mercy and sentence of imprisonment of life awarded to the appellant is liable to be enhanced to death sentence alongwith equitable increase in compensation amount.

7. Heard. Record perused.

8. A peep through the record reveals that the case of prosecution is comprising of the ocular account furnished by Ameen Bibi complainant (PW2) and Akhtar Ali (PW3), the medical evidence brought on record through secondary evidence adduced by Dr. Khalid Mahmood Zafar (CW9), the recovery of pistol (P.6) witnessed by Akhtar Ali (PW3) and Ahmed Ali (not produced) and the motive which was described as a grudge arising out of quarrel took place between the deceased and the accused.

9. It emerges from the wade through of record that the case in hand is arising out of an occurrence which took place on 30.08.2016 at about 10:00 a.m. in an area known as "Tahli Adda Stop" situated at a distance of 6-miles towards South from Police Station Jalalpur Battian, District Hafizabad. The detail of crime was reported by Ameen Bibi complainant (PW.2) through written application (Exh.PC) presented before Zulfiqar Ali, S.I. (CW1) in the Police Station at about 11:45 a.m. which shortly thereafter was transcribed into First Information Report (Exh.CW1/A). Though from above it appears that the case is arising out of a prompt FIR, however, review of record reflects that it is not so. In this regard, it is noticed that although dead body of the deceased was received in the dead house at 12.00 p.m. on 30.08.2016, but postmortem examination on the dead body of Shahid Imran deceased was

conducted at 4.00 p.m. and as per postmortem report (Ex. CW9/A) the time between the death and postmortem examination was 6-7 hours. So it was a case of delayed postmortem, which casts serious doubt that the FIR was got recorded with promptitude, but the inference can be drawn that the intervening period was consumed in fabricating the prosecution story after the preliminary investigation, otherwise there was no justification for submitting the documents at 3.30 p.m. and conducting the postmortem examination with the delay of 6-7 hours instead of conducting the postmortem examination at 12.00 p.m. when the dead body of the deceased was received in the hospital. No doubt, the noticeable delay in post mortem examination of the dead body is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses before preparing police papers necessary for the same. Reliance is placed on "Muhammad Ashraf alias Acchu versus The State" (2019 SCMR 652), "Muhammad Rafique alias Feeqa versus The State" (2019 SCMR 1068), "Safdar Mehmood and others versus Tanvir Hussain and others" (2019 SCMR 1978), "Ulfat Hussain v. The State" (2018 SCMR 313), "Nazir Ahmad versus The State" (2018 SCMR 787) and "Muhammad Yaseen v. Muhammad Afzal and another" (2018 SCMR 1549).

10. The ocular account of the incident in issue was presented before the learned trial Court by Ameen Bibi complainant (PW2) and Akhtar Ali (PW3) from which I have found that both the said witnesses are not only very closely related to Shahid Imran deceased but they are also chance witnesses. In ordinary parlance, a chance witness is the one who, in the normal course is not supposed to be present on the crime spot unless he/she offers cogent, convincing and believable explanation, justifying his/her presence there. Ameen Bibi complainant (PW2) who is the real mother of Shahid Imran deceased whereas Akhtar Ali (PW3) is a brother of the

complainant and a paternal uncle of the deceased and they failed to bring any evidence on the record establishing their presence close to the deceased at the relevant time. The occurrence in this case took place far away from the houses of the said witnesses which is apparent from the statement of Ameen Bibi complainant (PW2), who during the cross-examination with regard to the distance between the place of occurrence and the place of their abode has unequivocally stated as under:-

"The distance between my house and that of place of occurrence is about half/one mile and the distance between the house of Shamsher Pw from the place of occurrence is about three/four miles."

In such circumstances, presence of the eyewitnesses on the crime spot at the fateful time seems to be per chance as they were not supposed to be present on the spot at the early hours of the day but at a place where they reside, carry on business or run day to day life affairs. To fortify this view statement of Akhtar Ali (PW3) is referred, who during the cross-examination has stated as under:-

"Shamsher pw had not come to the house of complainant prior to the occurrence, rather Shamsher pw met us at Adda Tahli Goriya. Prior to the occurrence I did not go with complainant to Tahli Goriya for buying grocery."

Even otherwise, the stated reason for presence of the eyewitnesses with the deceased at the relevant time had never been established before the trial court through any independent evidence as according to the complainant Ameen Bibi (PW2), she along-with her brother Akhtar Ali, his son Shahid Imran (deceased) and Shamsher Ali (not produced) were standing at "Adda Tahli" Stop for purchasing grocery items, when the occurrence had taken place, whereas, the said reason has been refuted by Hafiz Ghulam Shabbir, S.I. (CW12), Investigating Officer, who during the cross-examination has unequivocally stated that during the course of investigation the complainant did not produce any independent witness to prove that on the day of occurrence she along-with PWs and Shahid Imran

deceased went to "Tahli Goriya" for buying grocery. In such circumstances, the presence of both the eye-witnesses appears to be a laboured story to justify presence at place of occurrence, more importantly when the acclaimed presence of both eyewitnesses was out of their routine, rather was a sheer coincidence. It needs no elaboration that presence of eyewitnesses at the spot is not to be inferred rather is to be proved by prosecution beyond scintilla of doubt. In the absence of some confidence inspiring explanation regarding their presence at crime scene, the two witnesses are found to be chance witnesses and their testimony can safely be termed as suspect evidence. In arriving at such conclusion, I am enlightened from the cases of "Ibrar Hussain and another versus The State" (2020 SCMR 1850), "Mst. Mir Zalai versus Ghazi Khan and others" (2020 SCMR 319), and "Naveed Asghar and 2 others versus The State" (PLD 2021 Supreme Court 600) wherein the Hon'ble Supreme Court of Pakistan while dealing with a case of chance witness observed as under:-

"Reading of the statement of Mirza Muhammad Umar (PW-13) shows that he is a chance witness; a witness who in view of his place of residence or occupation and in the ordinary course of events is not supposed to be present at the place of occurrence but claims to be there by chance. Testimony of such witness requires cautious scrutiny and is not accepted unless he gives satisfactory explanation of his presence at or near the place of the occurrence at the relevant time."

11. Apart from the above, the overall conduct of the eyewitnesses regarding their presence at the spot makes their presence doubtful as according to the medical evidence the deceased died instantaneously, but in spite of that they took the deceased to hospital who had already died instead of reporting the matter to the police for setting the machinery of law in motion, which speaks volume on the veracity of the eyewitnesses. During the cross-examination both the eyewitnesses claimed that they shifted the deceased to the hospital on a car/wagon, but they could not disclose the registration number of the car or wagon or

name of the driver of that vehicle which also makes the presence of both the eyewitnesses at the place of occurrence doubtful. Though Hafiz Ghulam Shabbir, S.I. (CW12) claims that the complainant had produced one Khawar driver who shifted the deadbody to hospital along-with the complainant party, but astonishingly the driver of the said wagon had not been produced by the prosecution during the trial which give rise to an adverse inference that had he been entered the witness-box he would have deposed against the prosecution. Reliance is placed upon “Nadeem alias Kala versus The State” (2018 SCMR 153), & “Haroon Shafique Vs. The State and others” (2018 SCMR 2118).

12. Furthermore, both the witnesses namely Ameen Bibi complainant (PW2) and Akhtar Ali (PW3) had claimed that while handling the deceased their clothes had been smeared with the blood of the deceased but admittedly no such blood-stained clothes of the said eye-witnesses had been secured or produced which otherwise could prove conveniently that they took the deceased to the hospital. It is also significant to note that both the PWs during the cross-examination stated that their clothes were smeared with blood but at the same breath they took somersault by stating that they washed the same. This omission on the part of the eyewitnesses strikes at the roots of the case of the prosecution and bespeaks volumes about the dishonest and false claim of the said witnesses. Reliance is placed on “Nadeem alias Kala versus The State and others” (2018 SCMR 153), and “Mst. Sughra Begum and another v. Qaiser Pervez and others” (2015 SCMR 1142), wherein it has been held as under:-

“20. Both the eye-witnesses admitted that their clothes were stained with the blood of the deceased while lifting and handling him but the Investigating Officer, otherwise showing extraordinary interest in the case, did not take the same into possession because if these were sent to the Chemical Examiner for examination and grouping with that of the blood stained clothes of the deceased, the same would have provided strongest corroboration to the testimony of the two eye-witnesses. This

omission strikes at the roots of the case of the prosecution and bespeaks volumes about the dishonest and false claim of the said witnesses."

The august Supreme Court of Pakistan in another case reported as **"Mst. Mir Zalai v. Ghazi Khan and others"** (2020 SCMR 319) has held as under:-

"Both the eye-witnesses produced by the prosecution had claimed that while handling Afsar Khan deceased their clothes had been smeared with the blood of the deceased but admittedly no such blood-stained clothes of the said eye-witnesses had been secured or produced."

13. There is another factor which has persuaded this Court to draw an inference adverse to the case of prosecution that according to the theory of crime advanced by prosecution, Shahid Imran deceased fell prey to inescapable clutches of death after receiving only the firearm injuries. The eye-witnesses remained consistent while deposing so, however, they did not utter even a single word qua the receiving of blunt weapon injuries. On the other hand, postmortem report (Ex CW9/A) of Shahid Imran deceased reveals that as many as fifteen injuries were found on the person of the deceased, out of which nine were firearm injuries while six were caused by blunt weapons. Now the question arises that if at all the occurrence was witnessed by Ameen Bibi complainant (PW2) and Akhtar Ali (PW3) then why no reference was made to these blunt weapon injuries. So much so, neither in the crime report nor in their depositions before the court, any accused was alleged to be armed with any club, rod stick, etc. This fact gains more importance when seen in the context that the alleged eyewitnesses, namely, Ameen Bibi complainant (PW2) and Akhtar Ali (PW3) were not mentioned either in column No. 4 or at page 4 of the inquest report (Ex. CW9/D) as being the ones who were present at the time of preparation of the said inquest report (Ex. CW9/D) by the Investigating Officer. These witnesses were also not the ones who

had identified the dead body of the deceased at the time of the postmortem examination. All these omissions are conspicuous by their absence. In absence of physical proof or the reason for the presence of the witnesses at the crime scene, the same cannot be relied upon. Reliance is placed on "Muhammad Rafique v. State" (2014 SCMR 1698), & "Nasrullah alias Nasro v. The State" (2017 SCMR 724).

14. There is yet another intriguing aspect of the matter which raised an eye brow on the presence of the eyewitnesses at the crime spot at the relevant time for the reason that as per site plan of the place of occurrence (Ex. CW11/A) point No. 1 is the place where the deceased Shahid Imran had received injuries, whereas, point No. 4 is the place from where the deceased was fired at by the appellant. The distance from point No. 1 to point No. 4 is six feet, whereas, as per postmortem report (Ex. CW9/A) blackening and burning on all the entry wounds is visible, therefore, ocular account furnished by the two eyewitnesses is not in consonance with the medical evidence which clearly contradicts the statements of the eyewitnesses. It is a settled law that blackening appears on the dead body in case the deceased has received injuries at a distance of 4 feet according to medical jurisprudence by Modi. Reliance is placed on "Abdul Jabbar and another versus The State" (2019 SCMR 129), & "Tajml Hussain Shah versus The State and another" (2022 SCMR 1567), wherein the August Supreme Court of Pakistan in similar facts and circumstances has granted benefit of doubt in the following manner:-

"Blackening around the wound showed that the fire shot would have been made from a close range but according to the site plan, the accused was shown standing at a distance of 18 steps away from the deceased--- Such major discrepancy raised serious doubts on the credibility of the prosecution witnesses of the ocular account."

15. The motive as alleged by the prosecution had rightly been discarded and disbelieved by the trial court and even perusal of the evidence reveals that no detail of the quarrel which was the motive part of the occurrence has been given either in Ex. PC or in Ex. PD. It is not discernible from the record that what was the cause of that quarrel, who was witness of that quarrel and who had separated them. It was neither reported to the police nor any Panchayat was convened for patch-up. The motive part of the occurrence, being words of mouth, could not get corroboration from any other independent source of the evidence, which remains unproved and a shrouded mystery as well. It is by now well settled that once the motive is setup by the prosecution, but thereafter fails to prove the same, then prosecution must suffer the consequences and not the defence. Reliance is placed upon the cases reported as "Amir Muhammad Khan versus The State" (2023 SCMR 566), "Tajamal Hussain Shah versus The State and another" (2022 SCMR 1567), "Liaqat Ali and another versus The State and others" (2021 SCMR 780), "Najaf Ali Shah versus The State" (2021 SCMR 736), and "Khalid Mehmood and others versus The State and others" (2021 SCMR 810).

16. The recovery of pistol (P.6) on the pointing out of the appellant is legally inconsequential for the simple reason that the said recovery had not been effected from an exclusive custody of the appellant as is evident from the statement of recovery witness Akhtar Ali (PW3) who during the cross-examination on this crucial aspect of recovery has stated as under:-

"xxx at the time of recovery the family members of the owner of the house were present there. The room from where the recovery was effected was open. The briefcase from which the recovery was effected was locked. The briefcase was open Saif Ullah owner of the house of recovery. xxx"

It is also pertinent to mention here, that the attesting witness to all the recoveries of incriminating articles, i.e. recovery of pistol 30 bore

(Ex. PH), recovery of empty cartridges (Ex. PF) and possession of blood of the deceased secured from the place of occurrence through cotton (Ex. PE) is Akhtar Ali (PW3) whose testimony has already been disbelieved as a whole. It is fundamental principle of justice that corroboratory evidence, must come from independent source providing strength and endorsement to the account of the eye-witnesses, therefore, eye-witnesses, in the absence of extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery of crime articles. In other words, eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other than eye-witnesses, thus, these recoveries are equally of no judicial efficacy. Furthermore, in column No. 23 of the Inquest Report (Ex. CW9/D) no crime empty has been shown present there, albeit in the recovery memo (Ex. PF) and in the site plan (Ex. CW11/A), these empties have been shown recovered lying very close to the dead body of the deceased. This deliberate omissions, creates reasonable doubt about the recovery. Reliance is placed on "Mst. Rukhsana Begum and others versus Sajjad and others" (2017 SCMR 596).

17. It is significant to point out here that co-accused of the appellant, namely, Muhammad Irshad was acquitted of the charge by the learned trial court while extending benefit of doubt to him, as such the eye-witnesses produced by the prosecution were capable of falsehood. The appellant's case is based on the same set of evidence and further acquittal of the respondent has not been challenged before this Court. It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature but

that is not available in the present case. Reliance is placed on "Pervaiz Khan and another versus The State" (2022 SCMR 393), "Abdul Ghafoor versus The State" (2022 SCMR 1527), and "Sajjad Hussain versus The State and others" (2022 SCMR 1540).

18. The fact that the appellant Mansab Ali absconded and was not traceable for considerable period of time could also not be made sole basis for his conviction when the other evidence of the prosecution is doubtful as it is riddled with contradictions. Reliance in this regard is placed on "Muhammad Sadiq Vs. The State" (2017 SCMR 144).

19. At this juncture it will not be out of place to mention here that the deceased was notorious person and criminal bent of mind as is evident from the certified copies of FIRs No. 186/09, 06/2007, 30/2007, 155/2014, 69/2014, 143/2015, 140/2015 all registered in Police Station Kasessay, 465/09, 357/09, registered in Police Station Jalalpur Bhattian, 591/09, 652/09 registered in Police Station Pindi Bhattian, 107/2015 P.S. Sadar Pindi Bhattian, rapt No. 08 dated 11.11.2016 P.S. Jalalpur Bhattian. It is also significant to point out here that it has been brought on the record that the deceased on the day of occurrence was on a motorcycle which was stolen by him and the said motorcycle has been taken on superdari by one Abdul Rasheed the actual owner as per Ex. D.N and Ex. D.O. Even otherwise, Akhtar Ali (PW3) during the cross-examination has failed to rebut the said facts in the following manner:-

"xxx I cannot rebut the suggestion that the motorcycle was owned by one Abdul Rashed and was stolen by Shahid Imran. It is correct that prior to the occurrence numerous cases of dacoity, theft, attempt to murder and illegal weapons were registered against deceased Shahid and Safdar and were sent to jail."

20. For what has been discussed above a conclusion is unavoidable and irresistible that the prosecution has utterly failed to prove its case against the appellant beyond reasonable doubt. This

appeal is, therefore, allowed, the conviction and sentence of the appellant recorded by the learned trial court by way of impugned judgment dated 16.5.2018 is set aside and the appellant is acquitted of the charge. He shall be released from the jail forthwith if not required to be detained in connection with any other case.

21. As a sequel to above, no question arises for enhancement of sentence as Mansab Ali appellant has been acquitted of the charge while allowing his appeal, therefore, **Criminal Revisions No. 218894 of 2018** filed by the complainant for enhancement of sentence as well as equitable increase in the compensation is **dismissed** having no merits.

(Sardar Muhammad Sarfraz Dogar)
Judge

APPROVED FOR REPORTING

JUDGE
SIGNED ON _____

Maqsood