

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

1. Criminal Appeal No.394 of 2012/Mtn
(Muhammad Danish Vs. The State & another)

&

2. Murder Reference No. 72 of 2012
(The State Vs. Muhammad Danish)

Date of hearing: 05.09.2017
Appellant by: Mr. Bashir Ahmad Rai, Advocate.
Complainant by: Nemo.
State by: Mr. M. Waqas Anwar, D.P.G.

QAZI MUHAMMAD AMIN AHMED, J:-. Muhammad Shafi, 50, hereinafter referred to as the deceased, was shot dead on 18-6-2011 at 6:30 p.m. within the precincts of Police Station Qureshiwala District Lodhran; the incident was reported 7:15 p.m. at Banneywala Chowk by his widow Mst. Hajran Bibi (PW-1) through application (Ex.PA), presented before Naeem Muzaffar, SI (CW-6) wherein besides Muhammad Danish appellant, his brother Muhammad Younas was arrayed as an abettor. Motive for the crime was cited as previous dispute over land. It is complainant's case that on the fateful day, she along with her nephew Muhammad Azhar while the deceased with his son Tahir Mehmood were on way to home on two motorbikes when the appellant armed with a 30-caliber pistol emerged all of a sudden from a cotton field and fired solitary straight shot upon the deceased within their view.

Autopsy was conducted by Dr. Mumtaz Ahmad (CW-5) at 9:30 p.m. same day; a lacerated firearm entry wound measuring 3 x 3 cm was noted on the abdomen 4 cm below umbilicus; on dissection multiple intestinal perforations with rupture of aorta accompanied by fracture of 3rd and 4th lumber spine were noted;

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a piece of pellet was recovered from inside the wound. Probable time between injury and death was 5 to 10 minutes whereas between death and postmortem it was estimated as 3 hours. The solitary shot generated hypovolemic shock as a result of heavy loss of blood and as such was opined as sufficient to cause death in the ordinary course of nature.

Upon spot inspection, the Investigating Officer collected four casings of 12-caliber as well as five that of 30-caliber besides taking other investigative steps that included preparation of site plan without scale (Ex.PG). Blood as well as the motorbikes lastly ridden by the deceased and the witnesses were conspicuously missing from the crime scene; arrested on 27-6-2011, the appellant pursuant to a disclosure, on 3-7-2011, led to the recovery of 30-caliber pistol (P-3); casings, three in number, and pistol (P-3) were dispatched to the Forensic Science Laboratory Punjab Lahore through Ghulam Mustafa/C (CW-4); according to forensic report Ex.PJ, these were found to have been fired from the pistol (P-3). Feeling aggrieved by investigation, the complainant preferred to institute a private complaint wherein process was issued against both the accused; indicted on 28-9-2011 by a learned Addl. Sessions Judge at Lodhran, they claimed trial, pursuant whereto, prosecution produced evidence comprising of nine witnesses; of them Hajran Bibi (PW-1) and Tahir Mehmood (PW-2) furnished ocular account wherein both of them, with one voice, reiterated prosecution case initially set up in the crime report; they blamed the police for dishonest investigation. The appellant confronted prosecution evidence with the following plea:-

“The deceased Muhammad Shafi was my real maternal uncle and the complainant prior to her marriage with my maternal uncle had no relation whatsoever with him. They both, deceased and complainant had seriously controversies for the hand of their daughter namely Sajida. The late maternal uncle 2 and half years prior to the occurrence exposed his desire to give the hand of his daughter to

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myself but the complainant seriously contradicted the proposal and got her daughter married with her nephew (son of her sister) two years prior to the occurrence. However, Sajida is thereafter sister like for me but the husband and wife the parents of Sajida remained in serious controversies which exposed to me after the occurrence. It is an admitted position that rescue 1122 was summoned by the complainant party as per statement of investigating officer, CW-6, which speaks volume of live of my maternal uncle late Muhammad Shafi. I further refer to the material submitted by CW-6 regarding keeping of cotton and bandage on the belly of my deceased uncle by the rescue staff. No independent witness was brought before this Hon'ble court except for the complainant and his son. Even the son in law and his other brother Muhammad Azhar were also not interested. This case is false and I am quite innocent."

The learned trial Judge, unimpressed by appellant's position, proceeded to convict him under Section 302 (b) of the Pakistan Penal Code, 1860; he was sentenced to death with a direction to pay Rs.100,000/- as compensation to be recovered as arrears of land revenue vide impugned judgment dated 30-5-2012; Muhammad Yousaf co-accused was acquitted from the charge. Crl. Appeal No.394 of 2012 disputes the vires of conviction and sentence whereas Murder Reference No.72 of 2012 seeks confirmation of death penalty; there being a common thread, these are being decided through this single judgment.

2. Learned counsel for the appellant contends that occurrence did not take place in the manner as alleged in application Ex.PA; it is further submitted that the deceased was first attended by Rescue-1122 officials and crime report was recorded after deliberations and consultations; that there is a conflict between ocular account and medical evidence, as the solitary injury sustained could not come about as a result of fire shot by a 30-caliber pistol; according to him, retrieval of a pellet from inside the body goes a long way to reflect upon the veracity of prosecution version; he has also drawn our attention towards presence of slight burning around

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the corresponding hole in the clothes, that according to him, was not possible given the inter se distance in scaled site plan Ex.PE. Partial rigor mortis, it is added, also does not fit within the time frame between occurrence and autopsy; the bottom line is that the deceased was done to death in an unwitnessed occurrence and that witnesses were staged managed subsequently on account of admitted previous enmity. Contrarily, the learned Law Officer has supported the impugned judgment on the ground that ocular account furnished by two witnesses of the locality, whose presence could not be suspected, stands duly corroborated by medical evidence; according to him, occurrence being a broad daylight affair, every hypothesis of appellant's innocence stood excluded. For presence of multiple casings at the crime scene, the learned Law Officer has pointed his finger upon Investigating Officer's credibility.

3. Heard. Record perused.

4. Though the incident is a daylight affair, nonetheless, prosecution case carries many question marks; the witnesses are unanimous over solitary shot fired during the occurrence, that too, specifically by a 30-caliber handgun and in this backdrop, presence of a half a dozen casings of different calibers is mind boggling. More intriguing is dimension of entry wound as 3 x 3 cm in front of abdomen 4 cm below the umbilicus and presence of a pellet embedded in the wound; this is not inconsonance with the theory of single fire shot with pistol (P-3). Taken from another angle, given the respective positions and inter se directions between the deceased and the appellant, who emerged from a roadside cotton field, a fire shot simply could not have landed on abdominal front below umbilicus as this portion of the body in the given position of the deceased was not exposed to the appellant allegedly confronting him from point No.2 located on south eastern side from the deceased with inter se distance of 5 ½ feet. It is a case of massive bleeding generating hypovolemic shock and according to the complainant as

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well as Investigating Officer Naeem Muzaffar (CW-6), the dead body remained at the crime scene till arrival of the police; it is surprising that not a single drop of blood was spotted at the scene. Slight burning around the hole of last worn shirt clearly suggests inter se distance much shorter than one mentioned in site plan Ex.PE; partial development of rigor mortis in sizzling hot summer clearly indicates a longer interregnum between death and postmortem than three hours. Recovery of a pellet from inside the wound too is a serious blow to the prosecution. Motorbikes used both by the deceased as well as the witnesses do not figure anywhere nor were taken into possession. Thus, argument of the learned counsel for the appellant that occurrence did not take place in the manner as alleged by the witnesses cannot be dismissed out of hand. Recovery of pistol (P-3) with three casings found to have been fired therefrom on the basis of forensic report Ex.PJ in the wake of even dated dispatch does not improve upon prosecution case either. Similarly, a vaguely formulated motive in application (Ex.PA) improved in its context by Mst. Hajran Bibi (PW-1) in the witness box, fails to plausibly suggest any grudge that possibly actuated the appellant to take life of the deceased, no other than his real maternal uncle. According to the complainant, the appellant and his brother wanted to purchase a piece of land from her father which was taken by the deceased in exchange; this improved narrative is not in line with any existing land dispute between the parties. Both the eye witnesses are reticent about arrival of 1122 at the scene as well as a cross firing admitted by Naeem Muzaffar, SI (CW-6). Yet another aspect of prosecution case that requires a pinch of salt is appellant's emergence from a cotton field; unless the soil is exceptionally fertile with a bumper crop, ordinarily height and sparsity of cotton plants would not admit much space for an ambush. It is also inconceivable as to how the appellant, hidden in a field by roadside anticipated arrival of the deceased, unnoticed by all and sundry. Prosecution case is fraught

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with doubts; doubts neither illusory nor imaginary rather based upon stated prosecution positions, thus, it would be grievously unsafe to maintain the conviction. Consequently, Crl. Appeal No.394 of 2012 is allowed; impugned judgment dated 30-5-2012 is set aside; the appellant is acquitted from the charge and shall be released forthwith, if not required in any other case. **Murder Reference No.72 of 2012** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED.**

(Sardar Ahmad Naeem)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting

*Azmat**