

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

1. Criminal Appeal No.256-J of 2013

(Muhammad Irshad Vs. The State)

&

2. Murder Reference No. 379 of 2014

(The State Vs. Muhammad Irshad)

Date of hearing: 11.04.2017
Appellant by: Mr. Aamir Raza Bhatti, Advocate.
Complainant by: Mr. Tayyab Jafari, Advocate.
State by: Mr. Munir Ahmad Sial, D.P.G. with Sarfraz, ASI.

QAZI MUHAMMAD AMIN AHMED, J:-. Muhammad Irshad, appellant herein, is in receipt of a guilty verdict, returned by a learned Additional Sessions Judge at Lahore vide impugned judgment dated 10-07-2013; he stands convicted under Section 302 (b) of the Pakistan Penal Code, 1860 for committing *Qatl-e-Amd* of Naseem Bibi, 18/19, hereinafter referred to as the deceased, within the area of *Lichianwala Bagh* situating 2-k.m. from Police Station Shafiqueabad District Lahore; he is sentenced to death with payment of compensation of Rs.100,000/- or to undergo six months simple imprisonment in the event of default.

Prosecution case is founded upon statement (Ex.PA) of Fazal Ilahi (PW-1) recorded by Sher Khan, S.I (PW-4), 2:50 p.m. on 12-11-2009 at the spot. According to the complainant, he resided with his family in a multistoried house wherein on the ground floor he ran a grocery shop; on the fateful day, he along with his son Muhammad Tariq, brother Noor Ilahi and wife was present in the shop when his son Muhammad Tariq saw the appellant ascending through the staircase and informed him accordingly; after a short while, he heard the shrieks of the deceased whereupon he along with his brother and son went upstairs on third floor to see the appellant

slitting deceased's throat with a sharp edged weapon; upon their alarm, the appellant decamped from the scene after scaling over the rooftops of adjoining houses; the deceased was attended, however, succumbed to her injuries before taken to any medical facility. According to the complainant, 10/15 days before the occurrence, appellant's mother solicited deceased's hand; the proposal was declined, prompting the appellant to commit the crime.

During spot inspection, Waris Ali, SI (PW-9) secured blood vide inventory besides taking other investigative steps of formal nature. Autopsy was conducted by Dr. Atfa Naheed (PW-6) at 6:30 p.m. on 12-11-2010; she noted a gaping wound above sternal notch rupturing underlying tissues, carotid as well as jugular vessels on both sides along with sternocleidomastoid muscle, trachea and esophagus extending up to 3rd cervical vertebra; excessive hemorrhage generated the shock causing death in the ordinary course of nature; the injury was ante mortem and caused death within few minutes; time between death and postmortem was estimated as 6 to 12 hours. The appellant arrested on 29-11-2009, pursuant to a disclosure, led to the recovery of razor (P-5); after completion of investigation, he was sent to face trial when he pleaded not guilty and claimed trial on 13-2-2010, pursuant whereto, prosecution produced as many as 10 witnesses to drive home the charge. According to forensic reports, blood on razor (P-5) as well as on the spot was of human origin. Fazal Elahi (PW-1) father of the deceased and her real brother Noor Elahi (PW-2) furnished ocular account; they with one voice reiterated the story narrated in complaint Ex.PA; their narrative constitutes the mainstay of the prosecution case. The appellant confronted prosecution evidence with a denial citing rumors of suicide as well as his suspected role in an earlier incident of elopement in the family. Unimpressed by the plea taken by the appellant, the learned trial Judge proceeded to convict and sentence the appellant vide the impugned judgment as

referred to above, vires whereof, are being challenged through Crl. Appeal No.256-J of 2013 whereas the State seeks confirmation of death penalty vide Murder Reference No.379 of 2014; these are being decided through this single judgment.

2. Learned counsel for the appellant contends that the prosecution case on face of it is extremely unnatural and improbable; that it was simply not possible for the appellant or any other person for that matter to escape the notice of four family members while entering the house and equally improbable is his escape from the scene, if at all, the occurrence had taken place in the manner as alleged in the crime report; that a vaguely formulated motive does not extend structural support to the prosecution case, as refusal of the proposal would have possibly furnished a motive against the parents and not the deceased; the bottom line is that prosecution has not been able to prove its case beyond reasonable doubt and thus, it would be unsafe to maintain the conviction. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has defended the impugned judgment on the ground that an innocent girl in her early youth has been brutally slaughtered for no fault on her part, inside the safety of her house and within the view of her family members, natural and independent witnesses with no animus or grudge against the appellant and, thus, every hypothesis of appellant's innocence stood excluded; citing brutality inflicted upon the deceased, confirmation of death penalty has been prayed for.

3. Heard. Record perused.

4. The deceased was done to death in a most brutal and callous manner to say the least, inside her room located on 3rd floor and the appellant was solely blamed for the crime, however, the prosecution narrative warrants a careful scrutiny. It was a winter morning when at 8:45 a.m, a point of time seemingly interpolated in complaint Ex.PA, all the PWs were present in the shop located

nearby the entrance, a staircase with 4-feet width; only one of them noticed appellant's entry in the house and he was no other than deceased's real brother Muhammad Tariq PW; instead of reacting himself and with promptitude, he passed on this information to his father accompanied by his wife and real brother; even then, they followed the appellant, in a while, after hearing deceased's shrieks; response ought to have been more swift. Muhammad Tariq has not been produced as witness. Even otherwise, presence of all the family members, except the deceased, in the shop at the relevant time and only one of them spotting the appellant while entering the house is a story one may find rather hard to buy. No matter how desperate or dejected the appellant might be, it was simply not feasible for him to undertake the drastic adventure without first risking his own life with a possibility to confront unforeseeable response from the inmates; his straight arrival in the room where the deceased was statedly watching T.V, lying on a bed on 3rd floor in a dwelling though small, however, with multiple floors and rooms is mind boggling; it was simply not possible unless he had advance knowledge of her location inside the premises, a scenario difficult to hypothesize. No one even below ordinary prudence would take such a step within the view of the family members. Some sharp edged weapon is mentioned in crime report (Ex.PA) while the prosecution has relied upon recovery of a bloodstained razor (*Ustra*) with broken handle; it is intriguing that the complainant could not specify this ordinary instrument of common use in the crime report; in his cross-examination he, however, described the weapon as "*Ustra*". According to memo Ex.PE, razor (P-5) had a broken handle; it is really strange that the appellant while jumping over the rooftops preferred to keep razor (P-5) with its broken handle with him as a souvenir of his crime. No less intriguing is absence of any attempt by the witnesses, four in number, to subdue or intercept the appellant while they saw him slitting deceased's neck; statedly she was in a

standing posture face to face with the appellant holding her hair in one hand and attempting razor with the other; this mute inaction is not expected from close family members; blood is thicker than water; same goes with appellant's escape from the scene by scaling over the kitchen and rooftops of the adjoining houses located at a lower level without suffering any injury. The script is suspect. Occurrence took place at 8:45 a.m; the police station was located just 2-k.m. away from the crime scene, however, the incident is reported as late as 2:50 p.m. and reason cited by the complainant in his cross-examination for belated recourse to law is sudden grief that precluded him to approach the police in time; grief and emotional devastation, notwithstanding, delay in reporting the incident cannot be ignored for more than one reason. According to Waris Ali, SI (PW-9), he received information about the occurrence at 8:45 a.m; it is accordingly mentioned in Column No.3 of inquest report (Ex.P.G.); he further admitted that he reached the crime scene at 9:00 a.m; these facts contradict the plea of grief raised by the complainant and establish beyond doubt that crime report (Ex.PA) is outcome of consultation and deliberation. According to Dr. Atfa Naheed (PW-6), the dead body was received in the mortuary at 3:25 p.m. under police escort while postmortem was conducted at 6:30 p.m. when the rigor mortis was in a developing stage. Learned Law Officer has no explanation as to why the dead body was not dispatched immediately after arrival of the Investigating Officer at the crime scene and postmortem examination postponed for almost three hours even after receipt thereof in the mortuary. Yet another appalling aspect of the case is the way Waris Ali (PW-9) was treated by the learned trial Court; while in the witness-box, he claimed to have recovered razor (P-5) on the basis of appellant's disclosure on 25-11-2009 from his house, however, made it into a parcel at the police station when the learned Law Officer requested the Court to declare the said witness as hostile with permission of cross-

examination, a request readily granted, followed by a lengthy cross-examination with the assistance of complainant's counsel spreading over two hearings. No doubt, the Court may, in its discretion, permit the prosecution to put questions to its own witness in exercise of powers under Article 150 of the Qanun-e-Shahdat Order, 1984, however, power of this amplitude is to be exercised with caution and circumspection and the discretion is to be structured judicially in situations where it is found expedient in the interest of justice to deal with a witness concealing truth and without compromising on the fundamentality of fair trial; this power cannot be exercised to harness a witness into a desired direction or to rectify an investigative blunder or error; not only this was done, the learned Law Officer with active participation of complainant's counsel brought on record through leading questions all the investigative details in admitted narrative to appellant's detriment in flagrant violation of order of examination of a witness provided under Article 133 of the Order *ibid*, a statutory safeguard to ensure fair trial to a defendant without being placed in a disadvantageous position; this portion of Investigating Officer's statement is liable to be excluded from consideration. The prosecution case is fraught with doubts and thus it would be unsafe to maintain the conviction. Consequently, by extending benefit of doubt to the appellant, *CrI. Appeal No. 256-J of 2013* is **allowed**; impugned judgment dated 10.07.2013 is set-aside; he is acquitted from the charge and shall be released forthwith, if not required in any other case. **MURDER REFERENCE No.379 of 2014** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

(Asjad Javaid Ghural)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting