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Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

No.1

Criminal Appeal No.260-J of 2012

Muhammad Nawaz versus The State

No.2

Murder Reference No.349 of 2014

The State versus Muhammad Nawaz

No.3

Criminal Revision No.915 of 2012

Malik Alam Khan versus The State etc.

No.4

Criminal Appeal No.1463 of 2012

Malik Alam Khan versus The State etc.

Date of hearing **13.04.2017**

Appellant Muhammad Nawaz by M/s Falak Sher Nagra and
Danish Ahmad Mukaram,
Advocates.

The complainant by Ch. Shahid Tabassum,
Advocate

The State by Mr. Munir Ahmad Sial,
Deputy Prosecutor General.
Ubaidullah, SI.

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Asjad Javaid Ghural, J. Through Criminal Appeal No.260-J of 2012 appellant Muhammad Nawaz has challenged the vires of judgment dated 07.06.2012 passed by the learned Additional Sessions Judge, Chiniot in case FIR No.731 dated 05.09.2009 in respect of offences under Sections 302, 404, 148 & 149 PPC, registered at Police Station Saddar Chiniot whereby he was convicted and sentenced as under:-

“Under Section 302(b) PPC

Death and to pay the compensation of Rs.100,000/- under Section 544-A Cr.P.C. to the legal heirs of deceased Irfan Aslam and in default thereof to further undergo simple imprisonment for four months.

2. Murder Reference No.349 of 2014 for confirmation or otherwise of death sentence of appellant Muhammad Nawaz and all the aforementioned cases will also be decided through this single judgment.

3. Complainant Malik Alam Khan has preferred Criminal Revision No.915 of 2012 seeking enhancement of sentence of compensation of respondent No.2 and Criminal Appeal No.1463 of 2012 against acquittal of respondents No.2 to 4.

4. The prosecution story as narrated in the crime report (Ex.PA/1) are that the complainant having one son and a daughter. The appellant alongwith his co-accused had been working for the complainant and had received an advance amount of Rs.97,000/- from the complainant but they left the complainant's job and secretly shifted their residents about two years ago. The complainant had been making demands from the complainant and his co-accused for the return of said amount. Early in the morning on 04.09.2009 co-accused Nawaz had come to their house and asked them to receive the aforesaid amount from his house at Iqbal Nagar. On next day i.e. 05.09.2009 at 10/11:00 a.m. the complainant alongwith his son Irfan Alam (deceased), Javed (given up) and Wazir Khan (PW-2) reached at Iqbal Nagar near the crop of sugarcane when abruptly, Nawaz armed with Carbine, Ahmad armed with 12-bore gun, Salihoon armed with 12-bore gun, Sardara armed with 12-bore gun and Mst. Shamshad emerged there. The appellant fired with his carbine which landed on the right and left thighs, the fire shot of Ahmad hit on the left knee, the fire shot of Salehoon hit on the forearm and the fire shot of Sardara hit on the right shoulder, nose and forehead of Irfan Alam (deceased). Mst. Shamshad Bibi kept on alarming the accused to do away with all of them. The complainant and the witnesses shifted the injured to hospital where he succumbed to the injuries.

4. Jafar Ali, SI (PW-9) had conducted preliminary investigation and visited the place of occurrence, secured blood stained earth from the place of occurrence, prepare rough site plan, took into possession last worn clothes of the deceased and recorded the statements of the witnesses under Section 161 Cr.P.C. He arrested the appellant and got recovered a carbine at his instance on 30.09.2009. During investigation, he could not collect any piece of

evidence against co-accused Siddique, Ahmad, Mst. Shamshad, Salhoon and Sardara and handed over the case file to the Station House Officer for the submission of a challan before the learned trial Court.

5. Dr. Rana Khushnood Hussain (PW-5) had conducted autopsy of deceased Irfan Aslam and observed six firearm wounds on the different parts of his body. The cause of death was due to hemorrhage and shock injuries to multiple vessels (right brachial, radial and ulnar vessels and left femoral vessels) and multiple fractures of bones resulting from injuries No.1 and 3. Duration between injuries and death was about 4 to 6 hours and between death and post mortem 4 to 6 hours.

6. At the commencement of the trial, the learned trial Court had framed a charge against the appellant and his co-accused Siddique Ahmad, Mst. Shamshad, Salehoon and Mehmood to which they pleaded not guilty and claimed to be tried.

7. The prosecution had produced 10-witnesses besides the reports of Chemical Examiner (Ex.PL), report of Serologist (Ex.PM) and that of the Forensic Science Agency Ex.PN. The appellant and his co-accused, in their statements under Section 342 Cr.P.C. had denied and controverted all the allegations of fact leveled against them, they did not opt to make statement under Section 340(2) Cr.P.C., however they had produced four witnesses DW-1 to DW-4 in their defence.

8. Learned trial Court, upon conclusion of the trial, acquitted Siddique Ahmad, Mst. Shamshad, Salehoon and Mehmood by giving them benefit of doubt and convicted and sentenced the appellant as stated above. Hence, the aforementioned criminal appeals as well as the connected Murder Reference.

9. Learned counsel for the appellant has contended that the appellant was quite innocent and had been falsely implicated in this case due to suspicion; that the crime report had been lodged against five accused persons with their specific role of causing fire arm injuries, out of which four accused persons had been acquitted of the charge by the learned trial Court on the same set of witnesses by giving them benefit of doubt and the appellant deserves for the same treatment as his role being not distinguishable; that there was inordinate delay of about 4/5 hours in reporting the matter to the police,

which had been caused for cooking up a false story and to procure false witnesses for the alleged occurrence; that the motive as set up by the prosecution could not be proved by the prosecution by producing any tangible piece of evidence and that the positive report of the Ballistic Expert is inconsequential. Finally, it is prayed that the appellant be acquitted of the charge.

10. Conversely, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant has vehemently opposed the aforesaid contentions maintaining that the appellant had deceitfully called the complainant for the return of amount and he alongwith his co-accused, in furtherance of their common intention, committed the brutal murder of the only son of the complainant; that the co-accused had been acquitted of the charge having identical role by the learned trial Court without appreciating the evidence available against them in its true perspective due to the said reason the complainant had filed an appeal against their acquittal; that the prosecution has successfully proved the charge against the appellant beyond any reasonable shadow of doubt.

11. We have heard learned counsel for the appellant, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant and have perused the record.

12. This unfortunate occurrence had taken place at 10/11:00 a.m. which was reported to the police within an inordinate delay of 4/5 hours whereas the distance between the police station and the place of occurrence was five kilometers. The record of patient (Ex.CW-1/A) shows that the deceased was brought to District Headquarters Hospital, Chiniot at 12:40 p.m. for first aid after about 2/3 hours, who was provided medical treatment but expired at 2:30 p.m. and till that time the matter was not reported to the police with regard to the alleged occurrence. The prosecution evidence is silent on the point that how and who had shifted the injured to hospital. The delayed shifting of the deceased to the hospital for providing first-aid and delay in reporting the matter to the police denotes that the deceased remained unattended in injured condition. Had the prosecution witnesses been present at the place of occurrence, they would have shifted the injured to hospital for

providing him first aid to save his life. The unnatural conduct of the eye witnesses shows that the eye witnesses had been introduced and the story had been cooked up to nominate the appellant and his co-accused in the crime report with their respective roles, which factually had not been proved through any cogent, reliable and confidence inspiring evidence.

13. Complainant Malik Alam Khan (PW-1) and Wazir Khan (PW-2) had furnished the ocular account. They unanimously reiterated the averments of the complaint and what they had stated before the police at the time of recording their statements under Section 161 Cr.P.C. but the story narrated by the prosecution does not appeal to ordinary prudence, which seems to be improbable for the reason that the complainant had given an amount of Rs.92,000/- to co-accused Sardara (since acquitted) as an advance/security/loan for using his services much more than two years before the occurrence and during said period no quarrel, altercation or fight had taken place between them then what exaggerated the appellants' party to murder Irfan Alam, who had not even demanded the return of amount from the complainant. The matter does not end here, we have observed that the complainant had the demand of return of money from co-accused Sardara but instead of Sardara, the appellant had murdered Irfan Alam instead of the complainant even having an opportunity of causing injury to the complainant as well being armed with firearm weapon. The unnatural conduct of the eye witnesses in attending and shifting the deceased to hospital as well as non-receiving of even a single scratch to the complainant shows that they were the chance witnesses and their presence at the place of occurrence was without any cause even though they had tried to justify the same yet they remained failed to inspire confidence.

14. The appellant alongwith his co-accused had been attributed the specific role of causing firearm injuries to the deceased and even more graver to the role played by co-accused Sardara, to whom the motive was directly attributed. All the accused persons mentioned in the crime report except the appellant, had been declared innocent during investigation by Jafar Ali, SI (PW-9) and even had been acquitted by the learned trial Court by disbelieving the evidence qua their involvement without distinguishing

their roles to that of the role played by the appellant during the occurrence, which shows that the eye witnesses were capable of falsehood and, thus, they are far from being received acceptance by this Court. It is well settled principle of law by now that when the co-accused having identical role on the same set of witnesses had been acquitted of the charge being disbelieved, the same cannot be relied upon to the extent of remaining accused persons. We seek guidance from case titled “SHAHBAZ versus The STATE” (2016 SCMR 1763). The relevant portion is reproduced for ready reference:-

“The law is settled by now that if some eye-witnesses are disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be relied upon to the extent of the other accused persons in the absence of any independent corroboration.”

14. The motive set up by the prosecution that the complainant had gone to the appellant’s village for receiving his borrowed money from co-accused Sardara, is neither directly attributed to the appellant nor was the same towards the deceased rather it was the complainant, who had lend money to the said co-accused. Each and every criminal case has some motive behind, which plays a decisive and vital relevancy being the foundation of a crime to determine the extent of culpability of an accused. Although the apex Courts have held in plethora of judgments that the motive is always considered to be a corroboratory evidence yet in rare cases it gets more significance in establishing a charge against a perpetrator when whole of the prosecution’s case rests upon the motive part only. The case in hand is the best example of such like cases wherein it was the alleged motive, which prompted the complainant, the deceased and the eye witnesses to go to the place of occurrence and they had no other business whatsoever to go there. Likewise, the same had constrained the appellant party to commit this occurrence. Even otherwise, no time, date, place and the terms and conditions of giving the aforementioned amount could be brought on record. The motive being vague, sketchy, shaky and feeble and unbelievable because the same was neither directly attributed to the appellant nor was the same attributed towards the deceased and even without any proof of specification as well as its terms and conditions. The motive appears to have

been cooked up just to strengthen the prosecution version. The prosecution remained failed to substantiate the real cause of the occurrence and what happened just before the occurrence is shrouded in mystery.

15. A carbine P-1 along with empty cartridges had been shown to be recovered at the instance of the appellant on 30.09.2009 but admittedly, no crime empty was secured by the investigator at the time of his first visit of the place of occurrence, therefore, positive report of the Ballistic Expert with regard to the matching of weapon of offence with an empty alien to the proceeding, is misconceived.

16. Dr. Rana Khushnood Hussain (PW-5) had conducted the post mortem examination of the deceased on the same day and had observed six firearm injuries on the different parts of his body. He had observed multiple injuries on the person of the deceased including the injury attributed to the appellant but rest of the injuries do exist, which were attributed to his co-accused, who had already been acquitted of the charge by the learned trial Court disbelieving the ocular account. The purpose of medical evidence is to establish the seat of injury, locale of injury, cause of death and the kind of weapon used for causing such injury but the same cannot denote or raise finger towards the actual culprit. The medical evidence does not lend support to the ocular account.

17. After scanning the entire evidence available on record, we have observed that the prosecution has failed to bring home guilt of the appellant beyond reasonable shadow of doubt. The unnatural conduct of the witnesses for not timely shifting the deceased to hospital, delay in reporting the matter to the police, acquittal of co-accused having identical role rather graver role by the learned trial Court without distinguishing their roles from that of the appellant disbelieving the ocular account, vague and false motive as well as the inconsequential recovery of weapon of offence clearly indicates that the prosecution has miserably failed to bring home guilt of the appellant beyond reasonable shadow of doubt and the benefit of even a single doubt tilts the scale of justice in favour of an accused.

18. For what has been discussed above Criminal Appeal No.260-J of 2012 filed by appellant Muhammad Nawaz is allowed, his conviction and

sentence awarded by the learned trial Court are set aside and he is acquitted of the charge by giving him the benefit of doubt. He shall be released forthwith from jail if not required to be detained in connection with any other case.

19. **Murder Reference No.349 of 2014** is answered in **NEGATIVE** and the Death Sentence awarded to appellant Muhammad Nawaz is **not confirmed**.

Criminal Revision No.915 of 2012

20. As respondent No.2 has been acquitted of the charge by extending him the benefit of doubt, therefore, this revision has lost its relevance to be discussed, the same stands **dismissed**.

Criminal Appeal No.1463 of 2012

21. For the foregoing reasons, this appeal against acquittal of respondents No.2 to 4 is without any merit, the same stands **dismissed**.

(Qazi Muhammad Amin Ahmed)
Judge

(Asjad Javaid Ghural)
Judge

Asif*

APPROVED FOR REPORTING.

JUDGE