

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

- 1. Criminal Appeal No. 268-J of 2014**
(Nasrullah alias Nasru Vs. The State)
- &
- 2. Murder Reference No.135 of 2014**
(The State Vs. Nasrullah alias Nasru)

Date of hearing: 18.05.2017
Appellant by: Ms. Saiqa Javed, Advocate.
Complainant by: Nemo.
State by: Rana Muhammad Shafique, Deputy District
Public Prosecutor.

QAZI MUHAMMAD AMIN AHMED, J:-Bracing the gallows, Nasrullah alias Nasru, appellant herein, impugns the vires of judgment dated 01-04-2014 by a learned Addl. Sessions Judge at Bhalwal whereunder he stands convicted on two counts of homicide and sentenced to death on each with payment of compensation in the sum of Rs.100,000/- each or to undergo six months simple imprisonment in the event of default for committing *Qatl-e-Amd* of Siddiq Akbar, 25, Bilqees Shahzad, 35, within the area of Chak No.12/JB, situating at a distance of 14-k.m. from Police Station Kot Momin District Sargodha on 29-11-2010 at 10:30 a.m; the incident is reported by former's husband Shahzad Iqbal (PW-9) at the police station 2:00 p.m. through First Information Report (Ex.PL) recorded by Muhammad Hussain, SI (PW-15) alleged wherein is that on the fateful day, Bilqees Shahzad, deceased along with Siddique Akbar deceased, both employees in the Health Department, were on their way on a motorbike heading towards Mozamabad Hospital followed by the complainant along with Muhammad Afzal and Muhammad Mumtaz, PWs on another motorbike; as they crossed the bridge of village canal, the appellant accompanied by an unknown pillion rider intercepted them and after halting both the deceased, fired multiple

shots hitting them on various parts of their body; as they felled on the ground, the assailants decamped from the scene while firing in the air; the witnesses attended the victims; they were pronounced dead at the hospital. Motive for the crime is an earlier case registered against the appellant for making obnoxious calls to Bilqees deceased.

Dr. Kashifa (PW-5) conducted autopsy on the dead body of Bilqees deceased at 2:00 p.m. and noted firearm wounds on the base of little finger accompanied by a fracture; a grazing wound on the extensor side of left arm, an entry wound on left nipple and two lacerated wounds each measuring 1 x 1 cm on lateral side of back of left leg as well as on its front. According to Dr. Nisar-ul-Hassan (PW-7), Siddique Akbar deceased had two entry wounds on the back of left shoulder as well as on left side of lower part of chest with one exit on the lower part of abdomen; hemorrhagic shock generated by firearm injuries in both the cases was blamed as cause of death. According to women medical officer, death occurred immediately after the occurrence whereas in the case of Siddique Akbar deceased, this happened within one hour after receipt of injuries; duration between the death and postmortems was estimated as about four hours.

Muhammad Hussain, SI (PW-15) carried out initial investigation; he secured bloodstained earth, motorcycle (P-12) besides taking other investigative steps that included preparation of site plans without scale (Ex.PQ) as well as with scale (Ex.PK). On his transfer, the investigation was taken over by Muhammad Nawaz, SI (PW-14); he arrested the appellant on 28-01-2011 and pursuant to a disclosure, led to the recovery of pistol (P-1) concealed behind a mosque. The appellant was sent to face trial; the unknown person never surfaced and on 7-5-2011 the appellant claimed trial, pursuant where to, prosecution produced as many as 15 witnesses. On forensic side, earth samples were found stained with blood of human origin. Prosecution case is structured upon ocular account furnished by Shahzad Iqbal (PW-9) and Muhammad Mumtaz (PW-10); it constitutes prosecution's mainstay. The appellant confronted the

prosecution evidence with a bald denial. The learned trial Judge vide impugned judgment dated 01-04-2014 proceeded to convict and sentence the appellant as referred to above, vires whereof, are being questioned through Crl. Appeal No.268-J of 2014; the State seeks confirmation of death penalty vide Murder Reference No.135 of 2014; as a common thread binds both the issues, these are being decided through this single judgment.

2. Learned counsel for the appellant contends that both the deceased were done to death in an unwitnessed occurrence and that the appellant is being hounded on the basis of a misconceived and misplaced suspicion; that recovery of pistol (P-1) in the absence of casings from the spot as well as forensic analysis does not advance the prosecution case; according to her, the motive does not provided structural strength to the case, as the appellant had no axe to grind against Siddique Akbar deceased and, if at all, he was so hell-bent, Shahzad Iqbal (PW-9) would not have been spared; she has also referred to delayed autopsies in order to canvass that First Information Report (Ex.PL) was not recorded at a point of time mentioned therein. Contrarily, the learned Law Officer defended the impugned judgment on the ground that occurrence is a daylight affair and prosecution case is firmly structured on the strength of ocular account furnished by witnesses, whose presence at the spot, cannot be doubted. It is further argued that prosecution has successfully proved the motive as registration of earlier criminal case has not been seriously contested. According to the learned Law Officer, absence of forensic analysis of pistol (P-1) does not adversely reflect upon the prosecution case, as injuries noted on dead bodies of both the deceased, are found consistent with the weapon recovered during the course of investigation. The bottom line is that not only the prosecution successfully proved its case beyond reasonable doubt, the penalty of death would be the wage, called for in the circumstances of the case.

3. Heard. Record perused.

4. At first sight prosecution case is found, inescapably, revolving around the appellant. Motive alleged in the crime report as well as reiterated by Shahzad Iqbal (PW-9) in his examination-in-chief has not been contested; both the eye witnesses, with one voice, are pointing their accusing finger on the appellant alone while the occurrence took place on a thoroughfare at 10:30 a.m. in the month of November; prosecution is also possessed with 30-caliber pistol (P-1) to claim affirmation of conviction and loss of two youthful lives is shocking by all means, nonetheless, upon a closer scrutiny, there are certain intriguing aspects that warrant a more cautious and careful appraisal in order to ensure administration of criminal justice; it is all the more important in adjudications primarily based upon oral assertions and ocular accounts. No matter a narrative is how impressively articulated, supported by promptitude and other investigative details, unless it rings true and is found inconsonance with probability of events related by the witnesses, cannot alone furnish basis to sustain a charge, particularly the one involving irreversible penalty of death; circumstances must support and corroborate the narratives as these do not perjure. Bilqees Shahzad deceased, a woman in her prime youth, has admittedly been in the wedlock of the complainant; she was on a motorbike with Siddique Akbar, deceased, a colleague, 25 years of age and according to the prosecution, both of them were heading towards Moazam Hospital at 10:30 a.m; it is rather late for both of them to assume their official duties and the only explanation came on record through otherwise an indiscreet cross-examination on Muhammad Mumtaz (PW-10), according to whom, the entourage was on way after attending court proceedings in the motive case. The complainant vaguely asserts his presence at the crime scene in the First Information Report, though it is not specifically mentioned therein and he is duly confronted with that, nonetheless, on an overall analysis of his statement, both before the police as well as in the court, his stated presence cannot be ruled out on this score alone, nevertheless, it is mind boggling as to why he

would permit his youthful wife to accompany a stranger in a rather intimate ride while he himself was proceeding towards the same destination with two others whom he could conveniently swap with his better half and it was more so if the explanation furnished by Muhammad Bilal (PW-10) is accepted. Our social ethos, particularly in a rural neighbourhood religiously shun such freedoms and options; it is hard to conceive his travelling side by side his wife on a different bike within his view as well as presence, particularly when it is prosecution's own case that the family did not countenance an indecent call allegedly made by the appellant; taken from this angle, the argument that he was not present at the spot cannot be dismissed out of hand. There is yet another reason to suspect his presence at the crime scene and that is the motive duly mentioned in the crime report. In the backdrop of alleged motive, after Bilqees Shahzad, deceased, he would have been the choice target, shown present according to site plan (Ex.PK) at point No.5 located, according to Muhammad Khan (PW-8), at a distance of 11 feet from point No.1 where the appellant surprised the deceased; he was well within his view as well as reach. Entry wounds on the back of left shoulder as well as on left lower part of chest on the dead body of Siddique Akbar deceased exiting on right side of lower part of abdomen are not in line with the descriptive details of the occurrence in First Information Report (Ex.PL) wherein the appellant had statedly halted the deceased and thereafter fired upon them, subsequent whereto, both of them felled on the ground. Similarly, there are three entry wounds besides two lacerated wounds each measuring 1 x 1 cm respectively on lateral side of back of left leg as well as front thereof, for which there are no details available on the record. Absence of casings from the crime scene is yet another dilemma confronting the prosecution, as in absence thereof, recovery of pistol P-1 does not advance prosecution case. Recovery of pistol, concealed behind the wall of village mosque, even otherwise requires a pinch of salt. Statement of Muhammad Mumtaz (PW-10), maternal uncle of Siddique Akbar deceased, hailing from a locality 30/40

kilometers away from the place of occurrence, obliging the complainant in all his pursuits, cannot be safely relied upon; he had apparently no business to share either with the complainant or with the deceased. Prosecution case is fraught with doubts; as various positions taken by the witnesses, upon contemplation are not found confidence inspiring being incompatible with the probable and natural order of events, occurred on the fateful day and, thus, it would be grievously unsafe to maintain the conviction on the basis of a partial motive alone. Consequently, Crl. Appeal No.268-J of 2014 is **allowed**; the appellant is acquitted from the charge and shall be released forthwith, if not required in any other case. **MURDER REFERENCE No.135 of 2014** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

(Asjad Javaid Ghural) (Qazi Muhammad Amin Ahmed)
Judge Judge

Approved for Reporting