

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

1. Criminal Appeal No.463-J of 2013

(Khalid Farooq & another Vs. The State & another)

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2. Murder Reference No.2 of 2014

(The State Vs. Khalid Farooq & another)

Date of hearing: 26.04.2017
Appellants by: Mr. Ayan Tariq Bhutta, Advocate.
Complainant by: Mr. Naseer-ud-Din Khan Nayyar, Advocate.
State by: Mr. Humayun Asghar, Deputy Prosecutor General, Punjab with Mehdi, S.I.

QAZI MUHAMMAD AMIN AHMED, J:-. Hamid Mehmood, 32, and Basit Ali, 28, real brothers inter se, hereinafter referred to as the deceased, were done to death at 2:00 p.m. on 24.05.2010 within the area of Sangla Hill, situating at 2-furlongs from Police Station City Sangla Hill; incident was reported by their father Iftikhar Ahmad (PW-1) through application (Ex.PA) received by Sikandar Ali, S.I (PW-8), 5:15 p.m. same day at Rural Health Centre; Mukhtar Ahmad (PW-2) is an injured witness to the occurrence. The complainant, a goldsmith, managed his business alongside the deceased; it is alleged that on 23-5-2010 at 7:30 p.m. Tahir appellant, another vendor in the market, asked for the payment of soft drinks when altercation ensued on part payment thereof and the appellant left the scene with a threat. According to the complainant, on the fateful day, in the wake of traders' election, he along with the deceased and other PWs was visiting shops for thanks giving when the appellants accompanied by Shahid, Imran, Zahid, Abid and four unknown persons confronted them; Shahid raised *Lalkara*, pursuant whereto, Imran dealt blow with a wooden plank hitting Hamid Mehmood in his head followed by a blow with an awl by Tahir landing on the left side of his arm and heart. Khalid dealt a

blow with awl to Basit Ali deceased hitting on left shoulder, piercing through his heart. Mukhtar Ahmad PW was clutched by Zahid co-accused when Abid dealt him awl blow on his back while Imran hit his left arm with a wooden plank; the accused kept on exhorting the victims and thereafter decamped from the scene. Hamid Mehmood and Basit Ali succumbed to their injuries on way to the hospital.

Hamid Mehmood, deceased was attended at 6:30 p.m. and according to autopsy report (Ex.PN), two stab wounds accompanied by swelling on left shoulder, sternum and right side of head were noted; hemorrhagic shock resulted into cardio respiratory arrest within a duration of 30 minutes; time between death and postmortem was estimated as within six hours. According to autopsy report (Ex.PO), Basit Ali, deceased suffered injuries on his left shoulder, neck, left scapula and outer aspect of thorax; injury on the scapula has been blamed as the cause of death, occurred within one hour whereas time between death and postmortem is reckoned as 6 hours. Mukhtar Ahmad (PW-2), medically examined at 3:20 p.m. in Allied Hospital Faisalabad, sustained one penetrating wound accompanied by three incised wounds on the back of chest as well as left forearm.

Sikandar Ali, S.I (PW-9) carried out initial investigation; during spot inspection, besides taking other investigative steps of formal nature, he secured bloodstained earth; appellants as well as Imran co-accused were arrested on 8-6-2010; pursuant to their disclosures, they led to the recovery of awls and wooden plank (P-10, P-11 & P-12), respectively; Zahid, Shahid & Abid, co-accused were exonerated during the investigation. Dissatisfied with police investigation, the complainant instituted a private complaint (Ex.PB) on 6-8-2010 and in the wake of issuance of process, the appellants as well as co-accused were indicted by a learned Addl. Sessions Judge at Sangla Hill; on 30.9.2010, they claimed trial, pursuant whereto, prosecution in order to bring home the charge, besides relying upon forensic reports, produced as many

as fifteen witnesses inclusive of a court witness; of them, Iftikhar Ahmad (PW-1) and Mukhtar Ahmad (PW-2) furnished ocular account; it is prosecution's main reliance. The appellants confronted prosecution evidence with a unanimous denial and produced Azhar Hussain (DW-1) and Muhammad Amjad (DW-2) in their defence.

The learned Additional Sessions Judge vide impugned judgment dated 05-12-2013 acquitted Zahid, Abid, Shahid and Muhammad Imran, co-accused, however, proceeded to convict the appellants under Section 302(b) of the Pakistan Penal Code, 1860 and sentenced them to death on single count along with payment of compensation in the sum of Rs.500,000/- each count or to undergo six months simple imprisonment in the event of default as well as imprisonment for life on each count; on the charge of murderous assault, the judgment is silent. Crl. Appeal No.463-J of 2013 disputes the vires of the impugned judgment whereas Murder Reference No.2 of 2014 seeks confirmation of death penalty awarded to appellants; these are being decided through this single judgment.

2. Learned counsel for the appellants contends that the occurrence did not take place in the manner as alleged by the complainant, as the real facts have been massively twisted to hush up an assault by no other than the deceased with their companions; that it is a case of casting of wider net wherein none from amongst the adversary was spared; that the witnesses have been disbelieved qua majority of the accused albeit with somewhat different roles, nonetheless, as such their testimony cannot be relied upon in the absence of independent corroboration, conspicuously lacking, as the motive is collectively revolving around all the accused and recovery of awls (P-10 & P-11) is manifestly fake; that investigation suggests melee initiated by no other than the complainant's side itself and as such it would be extremely unsafe to maintain the convictions. Contrarily, the learned Law Officer assisted by learned counsel for the complainant contends that in a broad daylight two real brothers

have been done to death in a most callous and brutal manner for a motive that stands duly established and that ocular account furnished by witnesses of the locality including an injured excluded every hypothesis of appellants' innocence and that acquittal of co-accused with inconsequential roles does not adversely impact upon the prosecution case; confirmation of death penalty has been prayed for.

3. Heard. Record perused.

4. It is in evidence that barring Imran, the remainder of the nominated accused are real brothers inter se and the venue, a family business comprising of an outlet for cold drinks as well as ice and as such month of May, a peak season; in this backdrop, use of wooden plank (P-12) and two identical awls (P-10 & P-11) in the alleged preconcert is far from being a choice selection; this is again prosecution's own case that Iftikhar Ahmad (PW-1) had returned as General Secretary of Goldsmith Association by defeating his rival Saleem alias Kaloo and occurrence took place in front of his shop; shops of Abid, Khalid and Tahir are located close by one and another. Thus, it can be safely inferred that a situation ignited after arrival of the deceased and their companions at the venue in their celebratory pursuit and as such the alleged motive of altercation on the preceding day requires a pinch of salt; it is explained by the complainant in his cross-examination that Tahir appellant was paid a sum of Rs.1000/- and issue cropped up as there was no change for remainder thirty-five rupees; in traditional business neighbourhoods, such shortfalls are waived/condoned more often than not; no prudent man would prefer meager amount of rupees thirty five to lose a continuous source of income; sum of Rs.1035/- is also mind boggling; what really triggered the incident is left to imagination.

Though the presence of the PWs, particularly that of Mukhtar Ahmad (PW-2), cannot be doubted yet whether they are telling the whole truth is another story; the entire family was brought in the dock and the complainant remained adamant on the presence of four

unidentified accused throughout the occurrence, while raising *Lalkaras* to keep the witnesses at bay.

Both the deceased collectively received three stab wounds, two by Hamid Mehmood and one by Basit Ali, respectively; there is a swelling 3 cm x 3 cm noted on the head of Hamid Mehmood deceased whereas a contusion 6 cm x 2 cm on left shoulder and neck of Basit Ali deceased accompanied by a teeth bite like “*grazed contusion*” on the outer aspect and middle of left thorax; Mukhtar Ahmad (PW-2) has one penetrating wound on the lower part of his chest measuring $\frac{3}{4}$ x $\frac{1}{2}$ cm without any probe into its depth, accompanied by three skin deep incised wounds; he was without shirt when brought for medical examination. The injuries observed by the medical officer san intensity behind the blows; absence of shirt at the time of medical examination is intriguing as well. Notwithstanding the above factors, mere presence of injuries would not lead the one to believe that what is being said by the injured is nothing but truth. Thus given the nature of injuries observed by the Medical Officer, three stab wounds could have possibly come about by awls (P-10 & P-11), distributed one each amongst three real brothers and this admits enough space to entertain the hypothesis of a wider net. Identically placed Abid co-accused has since been acquitted from the charge with no petition aimed to question his acquittal. It is also inconceivable as to why three real brothers each of age with sufficient strength would jointly incur the risk of consequences when every single of them could accomplish the task. Investigative details also point upon solitary role. Once on a reasonable and realistic analysis, participation of some of the accused is found suspicious, search for the real offender on the basis of a guess game would have inherent risks, as the possibility of an error cannot be eliminated altogether and thus may have horrendous consequences, therefore, it would be “*better to err in acquittal than to err in conviction*” in order to ensure safe administration of criminal justice.

Recovery of bloodstained awls (P-10 & P-11) on 13-6-2010 is far from being confidence inspiring for more than one reason; in the first place, there was no point for both the appellants to keep P-10 & P-11 as souvenirs of the crime, that too, smeared with the blood of their victims without disintegration despite flux of time defying forensic parameters. Sealed parcels were re-opened to find two identical instruments with their virgin handles seemingly procured same day. An obscure motive assigned to all the assailants and suspect recoveries cannot provide requisite independent corroboration to the prosecution after its failure qua Abid co-accused. Even otherwise, argument that occurrence did not take place in the manner as alleged in the crime report cannot be controverted with much force, particularly in view of use of non-conventional weapons, a wooden plank and ice cutting awls spells out a scenario incompatible with the case initially set up by the complainant; investigative conclusions were not favouring the complainant as well, thus, it would be grievously unsafe to maintain the convictions. Consequently, by extending benefit of doubt to the appellants, **Crl. Appeal No.463-J of 2013** is allowed; they are acquitted from the charge and shall be released forthwith, if not required in any other case. **Murder Reference No.2 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