

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

- 1. Criminal Appeal No.495-J of 2014**
(Muhammad Saleem & another Vs. The State & another)
&
2. Murder Reference No.342 of 2014
(The State Vs. Muhammad Saleem & another)

Date of hearing: 02.05.2017

Appellants by: M/s Muhammad Khan Daal and Nisar Ahmad Kausar, Advocate.

Complainant by: Mr. Muhammad Akmal, Advocate.

State by: Mr.Munir Ahmad Sial, DPG with Faryad, ASI.

QAZI MUHAMMAD AMIN AHMED, J:- Muhammad Tariq, 40/41, hereinafter referred to as the deceased, was gunned down, within the area of Chak No.203/RB, Malikpur, situating at a distance of 4-k.m. from Police Station Mansoorabad, soon after 3:15 p.m. when he was taken away by Subhan Ali accused within the view of his brother Muhammad Asif, complainant (PW-6); it is alleged that Muhammad Saleem and Muhammad Liaqat, real brothers inter se, appellant herein, accompanied by three unknown persons, each armed with 30-caliber pistol, on an unmarked motorbike, surprised the deceased in front of house of Javed; they shot multiple fires upon the deceased; the appellants are assigned specific shots hitting the deceased on his chest, abdomen and legs, respectively. Gun reports attracted Muhammad Shahid (PW-7) as well as Muhammad Ghaffar (given up); in the wake of indiscriminate firing, the accused decamped from the scene. Muhammad Javed and Subhan Ali co-accused have been blamed to have instigated the crime. Motive for the crime is that the deceased was witness in a case of homicide wherein brother of the appellants, namely, Azhar was murdered and as he declined to offer evidence, the accused committed his murder.

The incident was reported through statement (Ex.PA) presented before Manzoor Hussain, SI (PW-9) at 4:00 p.m. in Allied Hospital Faisalabad. During spot inspection, bloodstained earth and eight casings were secured vide inventories, besides other investigative steps of formal nature that included preparation of site plan (Ex.PV).

Autopsy was conducted at 10:25 a.m. on 6-4-2011 by Dr. Muhammad Naeem (PW-8); massive violence suffered by the deceased includes eight entry wounds on left cheek, abdomen, left buttock, right side of chest, left thigh, left foot, right leg accompanied by a grazing wound on the front of right knee; hemorrhagic shock generated by the injuries resulted into immediate death, injuries were opined as sufficient to cause death individually as well as collectively, in other ordinary course of nature; time between death and postmortem was estimated as within 12 to 24 hours.

On 17-5-2011, the complainant, through a supplementary statement arrayed unknown accused as Muhammad Yasin, Asghar Nadim and Arslan. As the accused stayed away from the law, they were proceeded against accordingly. Muhammad Yasin was arrested on 12-5-2011 and lodged to judicial lock up for test identification parade wherein he was rightly picked by the witnesses on 24-5-2011; his formal arrest is shown as on 13-6-2011, pursuant to a disclosure, he led to the recovery of pistol Petitioner-6; Arslan and Asghar Nadim were arrested on 12-12-2011. Muhammad Saleem appellant was arrested on 1-7-2012 by Khalid Mehmood SI (PW-11), who transposed pistol (P-10) allegedly used by him from the record of case FIR No.762 of 2011; Liaqat Ali appellant was arrested on 8-10-2012 and pursuant to a disclosure led to the recovery of pistol (P-8). Muhammad Anwar, SI (PW-10) arrested Ahsan accused on 21-10-2011 and this graduated the number of the accused to eight; he was put to test identification parade on 27-10-2011. Casings secured from the spot were dispatched to the Forensic Science Laboratory Punjab Lahore on 13-4-2011 through Muhammad Aslam/C (PW-5); three of them, C-1 to C-3 were found wedded with pistol (P-6) recovered on

the disclosure of Muhammad Yasin co-accused. There is no other forensic information on the record with regard to remainder of recoveries.

On completion of investigation, the eight accused were indicted by a learned Addl. Sessions Judge at Faisalabad on 30-5-2013, as they claimed trial, the prosecution was called upon to produce evidence; it was during pendency thereof that Subhan accused was acquitted from the charge by the learned trial Court in exercise of powers vesting in it under Section 265-K of the Code of Criminal Procedure, 1898. The case came up for recording of statements under Section 342 of the Code of Criminal Procedure, 1898 when Ahsan and Muhammad Arslan failed to appear before the Court; attempts to secure their attendance failed and they were proceeded against accordingly and as such they are away from the law till date. Remainder of the accused confronted prosecution evidence with a unanimous denial. The learned trial Judge acquitted Asghar Nadim, Muhammad Yasin and Muhammad Javed, co-accused from the charge, however, proceeded to convict the appellants under Section 302 (b) of the Pakistan Penal Code, 1860 and sentenced Muhammad Saleem alias Booti appellant to death along with compensation of Rs.100,000/- or to undergo six months simple imprisonment in the event of its default while Liaqat Ali appellant was sentenced to imprisonment for life, however, with compensation in the sum of Rs.300,000/- or to undergo six months simple imprisonment in default of payment thereof; he was also extended benefit of Section 382-B of the Code of Criminal Procedure, 1898 vide impugned judgment dated 6-9-2014, vires whereof, are being challenged through Crl. Appeal No.495-J of 2014 clubbed with Murder Reference No.342 of 2014 seeking confirmation of death penalty; as a common thread binds the both, these are being decided through this single judgment.

2. Learned counsel for the appellants contend that prosecution case is far from being plausible and confidence inspiring inasmuch as on a plain reading occurrence does not appear to have

taken place in the manner as alleged in the crime report; that evidence disbelieved qua majority of the accused cannot sustain the charge vis-à-vis the appellants without strong independent corroboration, according to him, conspicuously lacking; that acquittal of Muhammad Yasin, in particular, in view of positive forensic report heavily militates against the hypothesis of appellants' participation in the crime; that the alleged motive does not provide structural strength to the prosecution case and in this backdrop it would be unsafe to maintain the conviction on the basis of dubious statements; that it is a case of wider net and as such it would be humanly possible to locate the real offender/offenders if any; that belatedly conducted postmortem examination admits a space to reasonably entertain the possibility of deliberations and consultations; the bottom line is that prosecution has not been able to prove its case beyond reasonable doubt. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has supported the impugned judgment on the ground that occurrence being a broad daylight there was no occasion for the family to substitute the real offender and that ocular account is duly supported by medical evidence and as such absence of forensic analysis of the weapons recovered does not adversely impact upon the prosecution case, otherwise, firmly structured on ocular account; absence from law has also been cited as a corroborative piece of evidence against the appellants. According to the learned Law Officer, massive violence inflicted upon the deceased, warranted to exact usual wage of penalty of death.

3. Heard. Record perused.

4. Muhammad Asif (PW-6), real brother of the deceased, while in the witness box claimed not only to have seen deceased's departure from the house but also assault upon him; it is his case that Subhan Ali accused duped the deceased within his view to visit Muhammad Javed accused. Both Subhan Ali as well as Muhammad Javed have been acquitted from the charge; their acquittal has not been challenged. Subhan Ali's departure from the scene plunges the very genesis of the case into doldrums and same goes for the acquittal of

Muhammad Javed and, thus, argument that origin of occurrence seemingly did not come about as alleged by the complainant, cannot be dismissed out of hand. Complainant's claim to be an eye witness is also not far from being credible for the reason that according to his narrative in application (Ex.PA), he unambiguously mentioned his arrival at the crime scene after receipt of information; he did not need any information, if had himself seen the events; as such his claim is inherently flawed. The second eye witness, again a real brother, is attracted to the spot per chance; during cross-examination, he admitted that he was present at Dogar Chowk when gun reports brought him at the scene; both the witnesses have been disbelieved qua identically placed co-accused and as there is no appeal against acquittal, vires thereof, cannot be gone into.

Nomination of unknown persons by the complainant through a supplementary statement is yet another intriguing aspect of the case; they are assigned effective roles and one remains clueless as to what improved upon his knowledge to bring them into the array with their names; nebulous explanations offered during cross-examination heavily reflect upon veracity of his position; he admits that Ex.PA was not drafted by him and that he "*could not concentrate on few contents of Ex.PA*".

The deceased left home at 3:15 p.m. on 5-4-2011; according to the complainant, he was being shifted in a rickshaw when picked up by 1122 ambulance. Dr. Muhammad Naeem (PW-8) stated that death was immediate, however, the autopsy is conducted surprisingly as late as at 10:25 a.m. on the following day i.e. 6-4-2011 while the time of death is noted in the column as at 3:30 p.m. on 5-4-2011; receipt of application Ex.PA at 4:00 p.m. on 5-4-2011 would not have allowed this wide interregnum between arrival of dead body and postmortem examination; the only irresistible conclusion is that application Ex.PA was not presented nor received at a point of time mentioned therein; arrival of dead body in an ambulance spells out a different scenario,

incompatible with stated attempts to remove the deceased to the hospital in a rickshaw.

The witnesses are reticent on the motive as well; it is alleged that the deceased was cited as a witness in a murder case wherein appellants' brother was murdered and as he had connived with the accused, he was done to death on the instigation of Muhammad Javed and Subhan Ali. For the cited cause, no instigation by Muhammad Javed or Subhan Ali was required and, if at all, the deceased had lost confidence, he could have conveniently been given up by the prosecution instead of inviting another trouble when the family was already attending loss of life in a pending case; reason cited is not adequate. Massive violence inflicted upon the deceased also does not synchronize with the alleged motive.

Incorporation of Ahsan in the list of accused is without any basis; both the witnesses confined the number of accused, both nominated as well as unknown, to seven; arrest of Ahsan accused in addition thereto is mind boggling and yet another question mark on their presence at the crime scene, as in the event of their presence, they might not have any difficulty in giving correct names and number of the accused to the police. Similarly, nomination of as many as five accused, each armed with a weapon and actively participating in the occurrence, is yet another dilemma confronting the prosecution; once the deceased was successfully taken away, there was seemingly no reason for a joint assault by the accused when every single of them could have accomplished the task, particularly two real brothers would not opt for each other to risk the consequences of a prosecution on capital charge; three unknown companions could have done the needful; hypothesis of wider net is seemingly a real possibility. Recoveries are inconsequential. Prosecution case is fraught with doubts; positions taken by the witnesses are self-destructive and, thus, it would be grievously unsafe to maintain the convictions. Consequently, by extending benefit of doubt to the appellants, CrI. Appeal No.495-J of 2014 is **allowed**; they are acquitted from the

charge and shall be released forthwith, if not required in any other case. **MURDER REFERENCE No.342 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