

Under Section 337-A(i)/34 PPC

*Rigorous imprisonment for one year and to pay Daman Rs.20,000/-
to injured Naseer Khan.*

Appellant Muhammad Zafar Bajwa,

Under Section 302(b)/34 PPC

*Imprisonment for life and to pay the compensation of Rs.500,000/-
under Section 544-A Cr.P.C. to the legal heirs of the deceased and
in default thereof to further undergo simple imprisonment for six
months.*

Appellant Muhammad Ramzan,

Under Section 302(b)/34 PPC

*Imprisonment for life and to pay the compensation of Rs.500,000/-
under Section 544-A Cr.P.C. to the legal heirs of the deceased and
in default thereof to further undergo simple imprisonment for six
months.*

Under Section 337-L(ii)/34 PPC

*Rigorous imprisonment for one year and to pay Daman Rs.20,000/-
to injured Naseer Khan.*

*Benefit of Section 382 Cr.P.C. was extended to appellants
Muhammad Zafar Bajwa and Muhammad Ramzan.*

3. Murder Reference No.07 of 2016 had been sent up by the learned trial Court for confirmation or otherwise of death sentence of appellant Bashir Ahmad. All the aforementioned cases shall also be decided through this single judgment.

4. The conviction and sentenced of the appellants awarded to them vide judgment dated 16.07.2008 passed by the learned Additional Sessions Judge, Multan was earlier set aside by this Court vide judgment dated 26.09.2013 with the result that criminal appeals No.87 of 2012 & No.362 of 2010 were disposed of, their conviction and sentence were set aside and the case was remanded for framing the statements of accused persons in accordance with the codified law and Murder Reference No.34 of 2008 for confirmation or otherwise of death sentence of appellant Bashir Ahmad was answered in the negative.

5. The prosecution story unfolded in the crime report (Ex.PN), which was registered on the complaint of Naseer Khan (PW-1) is that in the intervening night of 4/5th of March, 2006 at about 12:30 a.m., he alongwith his son Muhammad Javed and paternal uncle Wahid Bakhsh was irrigating the wheat crop in Muraba No.40, Killa No.16 when Muhammad Zafar (appellant) armed with hatchet, Ramzan son of Nazar Muhammad (appellant) armed with club (danda), Bashir Ahmad (appellant) armed with dagger, Muhammad Ramzan Soru (since proclaimed offender) armed with gun and an unknown accused, Mst. Waziran Mai and Dalu Mai both empty handed emerged there. Muhammad Zafar asked the complainant why he was irrigating the said land inspite of his earlier restraint to which the complainant replied that he was irrigating the land with the prior permission of Muhammad Ramzan son of Nazar Muhammad whereupon they exchanged hot words. On hearing noise Mujahid (PW-2), another son of the complainant and Muhammad Akram also came there. Ramzan alias Soru gave a butt blow of his gun 12-bore at the complainant's head. Javed Naseer (deceased), son of the complainant came forward to rescue the complainant whereupon Bashir Ahmad (appellant) inflicted repeated dagger blows at the left side of chest, belly and hands of Javed Naseer. Muhammad Ramzan Bajwa inflicted Sota blow at the head and Zafar Khan inflicted hatchet blow at the head of Javed Naseer, who fell down on the ground. The complainant stepped forward to rescue his son Javed Naseer whereupon Mst. Waziran Mai and Dalu Mai caught hold of the complainant and in the meanwhile Bashir Ahmad inflicted upon the complainant, the complainant blocked with hands, which caused injury at his hand. Muhammad Ramzan also inflicted two Sota blows to the complainant. The unknown accused inflicted but blow of his pistol, which hit at the complainant's head. Upon their hue and cry, the people of the locality gathered there whereupon the accused persons fled away from the scene of occurrence, they attended Javed Naseer, who had succumbed to the injuries at the spot.

Motive behind the occurrence was that the complainant had a dispute over landed property with his sister Waziran Mai and civil cases were

pending in the Court and due to irrigating Killa No.16, accused Mst. Waziran Mai with the assistance of his son and son-in-law, got murdered Muhammad Javed and caused injuries to the complainant by hired assassins.

6. Muhammad Ismaeel, SI (PW-9) had received the information through Rescue-15 in the midnight on 05.03.2016, reached at the place of occurrence, recorded the statement of the complainant, inspected the dead body of deceased, prepared injury statement (Ex.PF) and inquest report (Ex.PG) and prepared site plan without scale (Ex.PM), secured blood stained earth vide memo (Ex.PD). He had prepared injury statement of the complainant and referred him to the hospital. The dead body of the deceased was escorted to the mortuary through constables and recorded the statements of witnesses under Section 161 Cr.P.C. He got prepared scaled site plan on 09.03.2006 by Irfan Hayat, Draftsman. He arrested appellant Zafar on 11.03.2006 from hospital. During investigation appellant Zafar made disclosure that appellant Bashir Ahmad was admitted in Ward No.9 in Nishtar Hospital and had been discharged from the hospital. Both the aforesaid accused persons were medically examined and formally arrested in this case on 12.03.2006. He had arrested appellant Muhammad Ramzan on 14.03.2006. Muhammad Zafar led to the recovery of hatchet (PW-1) on 19.03.2006, which was taken into possession vide recovery memo (Ex.PB/1). Appellant led to the recovery of dagger (P-2) on 25.03.2006, which was taken into possession vide recovery memo Ex.PC. During investigation the appellants alongwith their co-accused Mst. Waziran, Mst. Dallo Mai and Muhammad Ramzan Soru were found fully involved in this occurrence. He got declared Muhammad Ramzan alias Soru as proclaimed offender through the Court. He had also verified the handwriting of Muhammad Nawaz, ASI being author of the FIR.

7. Dr. Muhammad Younas Ansari (PW-4) had conducted autopsy on the dead body of deceased Muhammad Javed and observed 15-incised wounds at the left eye, nose, axillary line, right upper arm, right thumb, right finger, middle finger, left side of chest, left side of abdomen, left arm, left elbow joint, left thumb, left right finger and on the back of abdomen. All the

injuries had caused hemorrhage particularly injuries No.8 & 9 to vital organs i.e. heart causing extensive hemorrhage, shock and death at the spot. Duration between injuries and death was instantaneous and between death and post mortem 10 to 12 hours.

On the same day he had conducted medico legal examination of complainant Naseer Khan and observed a lacerated wound on the top of head, contused swelling on the back of his head, left buttock and back of left leg and an abrasion on the back of his left hand. Injuries No.1 & 2 were declared Shajja Khafifa and injuries No.3 to 5 were declared Ghair Jaifah Hashma. All the injuries were caused by blunt object. The probable duration of injuries was 10 to 12 hours.

8. At the commencement of the trial, the learned trial Court had framed a charge against the appellants and their co-accused Mst. Waziran and Mst. Dallo Mai to which they pleaded not guilty and claimed to be tried.

9. The prosecution had produced 09-witnesses besides the reports of Chemical Examiner (Ex.PP & Ex.PQ) and the reports of Serologist (Ex.PO & Ex.PR). The appellants and their co-accused, in their statements under Section 342 Cr.P.C. had denied and controverted all the allegations of fact leveled against them, they neither opted to make statements under Section 340(2) Cr.P.C. nor had they produced any witness, however they had produced documents Ex.DA to Ex.DL in their defence.

10. Learned trial Court, upon conclusion of the trial, acquitted co-accused Mst. Waziran Mai, Mst. Dallo Mai and Sarfraz by giving them the benefit of doubt whereas convicted and sentenced the appellants as stated above. Hence, the present appeals as well as the connected Murder Reference.

11. Learned counsel for the appellants has contended that the appellants are quite innocent and had been falsely implicated in this case due to some ulterior motive; that the mode and manner of the occurrence as narrated by the prosecution does not meet with the actual facts what happened at the place of occurrence; that it was a blind murder, which had taken place in the dark night and no source of light has been mentioned by the prosecution and the claimed eye witnesses were not able to identify the real culprits; that

there was considerable delay in conducting the autopsy on the dead body of the deceased, which shows that the time had been consumed to cook up a false story and to manage the eye witnesses; that three of the co-accused have already been acquitted of the charge by the learned trial Court by disbelieving the prosecution and no appeal against their acquittal has been preferred by the complainant, which shows his satisfaction towards the innocence of the co-accused and speaks volume with regard to the mode and manner of the occurrence; that the recovery of weapon of offence at the instance of appellant Bashir Ahmad and Muhammad Zafar has no consequence upon the fate of the prosecution case being planted one. At the last, a prayer for acquittal of the appellant has been made.

12. Conversely, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant has vehemently opposed the aforesaid contentions and submits that the prosecution has been succeeded to prove the guilt of the appellant beyond reasonable shadow of doubt; that both the parties are closely related to each other and the identification of the accused persons by their features/physic and appearance in the rural setup was not difficult; that during his cross-examination, the complainant has categorically clarified the source of light as a torch was available to him at the time of occurrence on the question put by the defence itself; that the complainant being father of the deceased would be the last person to falsely implicate the appellants in this case by letting off the real culprits; that the role of acquitted co-accused was quite different to that of the present appellants, who had caused fatal injuries to the deceased and the injured witness; that the recovery of weapon of offence from the appellant coupled with the positive report of the Serologist and that of the medical evidence provides full corroboration to the ocular account; that the prosecution has successfully proved the charge against the appellant beyond any reasonable shadow of doubt.

13. 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.

14. Naseer Ahmad (PW-1)/complainant, father of the deceased and Mujahid (PW-2), a real son of the complainant have furnished the ocular account. Naseer Ahmad had deposed before the learned trial Court that on 05.04.2006 at 12:30 midnight he alongwith his son Javed Naseer and brother Wahid Bakhsh was busy in irrigating their wheat crop in Square No.40, Killa No.16 when Bashir Ahmad (appellant) armed with dagger, Zafar Khan (appellant) armed with hatchet, Ramzan son of Muhammad Nazar (appellant) armed with Sota, Ramzan Soru armed with gun 12-bore, Waziran Mai and Dallu Mai, empty handed and an unknown (subsequently known as Sarfraz) emerged there. Muhammad Ramzan son of Muhammad Nazar, Zafar Khan, Waziran Mai and Dallu Mai were known to them being their close relatives whereas Bashir Ahmad and Muhammad Ramzan Soru (since PO) were known to them as they had visiting terms with Mst. Waziran Mai. Zafar Khan (appellant) inquired from the complainant that why they were irrigating the disputed fields, complainant told him that he was doing so with the prior permission of Muhammad Ramzan son of Nazar Muhammad whereupon they exchanged hot words. In the meanwhile, Mujahid (PW-2), another son of the complainant and Muhammad Akram also came there. Ramzan alias Soru gave a butt blow of his gun 12-bore at the complainant's head. Javed Naseer (deceased), son of the complainant stepped forward to rescue the complainant whereupon Bashir Ahmad (appellant) inflicted repeated dagger blows at the left side of belly, chest and hand of Javed Naseer. Ramzan son of Nazeer inflicted Sota blow at the head of Javed Naseer, who after receiving injuries, fell down on the ground. The complainant stepped forward to rescue his son Javed Naseer whereupon Mst. Waziran Mai and Dalu Mai caught hold of the complainant, Bashir Ahmad inflicted dagger blow, the complainant blocked the same with his hand, which caused injuries at his hand. Ramzan son of Nazeer inflicted Sota blows at the left buttock of the complainant. The unknown accused person inflicted butt blow of his pistol at the head of the complainant. Upon their hue and cry, 15/16 other people of the locality gathered there whereupon the accused persons fled away from the scene of occurrence, they attended

Javed Naseer, who had succumbed to the injuries at the spot. Wahid Bakhsh and Akram stood guard with the deceased whereas the complainant left for reporting the matter to the police but on his way, the police met him at a distance of hardly one acre and they reached at the place of occurrence. Mujahid (PW-2) had stated the same story but with some variation as to the reporting of matter to the police at a distance of one acre and arrival of the police at the place of occurrence after 2-½ hours. The complainant had claimed that soon after the occurrence he had covered the distance of hardly one acre for reporting the matter to the police when the police met him and reached at the place of occurrence. This occurrence had taken place at 12:30 a.m. and the police reached there soon after the occurrence. The other claimed eye witness namely Mujahid (PW-2) had deposed during cross examination that the police reached at the place of occurrence after about 2-½ hours of the murder, he and his father Naseer Ahmad and Wahid Bakhsh remained sitting there for 2-½ hours at the spot till the arrival of the police. This variation to meet the delayed reporting of the matter to the police has lost the credibility of the eye witnesses.

The major factor, which shakes the credibility of both the eye witnesses, was the non-availability of the source of light at the place of occurrence. Both the eye witnesses have not uttered even a single word with regard to the source of light at the place of occurrence. Admittedly, it was a dark night occurrence, which had taken place in an open field where no source of light was available. The availability of source of light was neither claimed by the complainant nor by the eye witnesses in the crime report nor in their examination-in-chief before the learned trial court. During cross examination, the complainant had admitted that it was a dark night occurrence but at the same breath he volunteered that he had a torch with him at the time of occurrence and witnessed the occurrence in the light of torch. Mujahid (PW-2) had negated the improved version of the complainant's statement deposing that neither he nor the complainant had any torch at the time of occurrence. Even otherwise, it was not possible for a human being to identify any person in a pitched dark night. Neither the

complainant party had produced any torch nor the investigating officer had made any effort to collect/secure torch during investigation. The mode of occurrence as narrated by the complainant explaining each and every injury one-by-one with the specific location against the accused persons by names with specific weapons including the number of injuries was not possible for a human being. It cannot be expected from a real father to count each and every injury on the person of his real son as a silent spectator in slow motion instead of making any attempt to rescue him.

The complainant alongwith Mujahid, Wahid Bakhsh, Javed Naseer and one Akram (five in number) had been claimed to be present at the place of occurrence. They were equal to the number of male accused persons as mentioned in the crime report, who were not armed with any conventional weapon except Ramzan Soru, who had not used the fire arm weapon but quite astonishingly, the complainant party could not cause any injury to any of the accused persons or even to the women folk. We have observed that appellant Bashir Ahmad was medically examined on 11.03.2006 and the medical officer had observed three incised wounds on his person, which were declared as Shajjah Mudihah, Ghair Jaifah Damiah and Ghair Jaifa Hashima and the duration of injuries was 6-7 hours, which corresponds to the date of occurrence. The injuries sustained by the aforesaid appellant were suppressed by the prosecution and the medical officer, who had conducted his medico legal examination was not produced before the learned trial Court. The injuries on the person of appellant Bashir Ahmad were intentionally suppressed by the prosecution, which shows the mode and manner of occurrence and the implication of the appellants as alleged by the prosecution was other than the prosecution's claim.

15. Admittedly, it was a dark night occurrence, the crime report was registered against five nominated and an unknown accused person. The unknown accused person was subsequently known as Sarfraz, who was also a close relative of both the eye witnesses. This fact clearly indicates that Sarfraz was not a stranger to the witnesses. If the prosecution witnesses remained fail to identify their close relative namely Sarfraz then the question

arises how they succeeded to identify rest of the accused persons including those who were not resident of the vicinity and had no business whatsoever to be present at the place of occurrence. The only conclusion could be drawn that if any source of light was available at the time of occurrence enabling the witnesses to identify the culprits then definitely the same would have been mentioned in the crime report. We are of the considered view that the witnesses of ocular account were neither present at the place of occurrence nor had they witnessed the occurrence with their own eyes. If the prosecution's case is taken to be true even then, it was not possible for the eye witnesses to identify the culprits in a pitched dark night with the specification and number of injuries caused by each of the accused persons on the person of the deceased as well as the injured witness with their respective weapons. The ocular account furnished by the prosecution in the given circumstances, merits outright rejection.

16. Learned counsel for the complainant has urged that the injuries on the person of the complainant duly supported by the medical evidence establishes his presence at the venue of occurrence. This argument might have some force but how and who had caused these injuries, must have been proved by the prosecution beyond reasonable shadow of doubt. It was a dark night occurrence and keeping in view the unnatural conduct of the eye witnesses, the deposition of injured witness cannot be taken as gospel truth. Reliance is placed on case titled "MUHAMMAD PERVEZ versus THE STATE and others" (2007 SCMR 670) wherein it has been held as under:-

"It is also a settled law that injuries on a P.W. only indication of his presence at the spot but it is not informative prove of his credibility and truth. See said Ahmad's case 1981 SCMR 795."

17. Dr. Muhammad Younas Ansari (PW-4) had conducted autopsy on the dead body of the deceased on 05.03.2006 at 1:30 p.m. and he observed 15-incised wounds at the left eye, nose, axillary line, right upper arm, right thumb, right finger, middle finger, left side of chest, left side of abdomen, left arm, left elbow joint, left thumb, left right finger and on the back of abdomen. All the injuries had caused hemorrhage particularly injuries No.8

& 9 to vital organs i.e. heart causing extensive hemorrhage, shock and death at the spot. Duration between injuries and death was instantaneous and between death and post mortem 10 to 12 hours.

On the same day he had conducted medico legal examination of complainant Naseer Khan and observed a lacerated wound on the top of head, contused swelling on the back of his head, left buttock and back of left leg and an abrasion on the back of his left hand. Injuries No.1 & 2 were declared Shajja Khafifa and injuries No.3 to 5 were declared Ghair Jaifah Hashma. All the injuries were caused by blunt object. The probable duration of injuries was 10 to 12 hours.

The purpose of post mortem examination was to ascertain the number of injuries, nature of injuries, kind of weapon used but the post mortem examination report by itself does not raise finger towards the actual culprit. We have observed that the post mortem examination was conducted with the delay of 10-12 hours, which indicates the possibility that the time had been consumed by the police as well as the complainant for cooking up a false story and to manage the eye witnesses. We seek guidance in this regard from case titled "FAQEER MUHAMMAD versus SHAHBAZ ALI and others" (2016 SCMR 1441). The relevant dictum from page No.1443 is hereby reproduced:-

“The Post-mortem Examination Reporting pertaining to the deadbody of Iftikhar Ahmed deceased clearly establishes that the post-mortem examination had taken place after about 24 to 30 hours of the death of the deceased which factor clearly indicated that time had been consumed by the local police and the complainant party in cooking up a story for the prosecution and in procuring and planting eyewitnesses.”

18. Learned counsel for the complainant has urged that the injuries on the person of the complainant duly supported by the medical evidence establishes his presence at the venue of occurrence. This argument might have some force but how and who had caused these injuries, must have been proved by the prosecution beyond reasonable shadow of doubt. It was a dark night occurrence and keeping in view the unnatural conduct of the eye witnesses, the deposition of injured witness cannot be taken as gospel truth.

Reliance is placed on case titled “MUHAMMAD PERVEZ versus THE STATE and others” (2007 SCMR 670) wherein it has been held as under:-

“It is also a settled law that injuries on a P.W. only indication of his presence at the spot but it is not informative prove of his credibility and truth. See said Ahmad’s case 1981 SCMR 795.”

19. The recovery of blood stained dagger from appellant Bashir Ahmad coupled with the positive report of the Forensic Science Agency though provides corroboration to the ocular account yet the same alone being corroboratory piece of evidence, is of no avail to the prosecution in absence of confidence inspiring ocular account. It has been settled once for all by august Supreme Court of Pakistan that once the intrinsic value of ocular account has been discarded, the corroboratory piece of evidence even of higher degree, cannot be made basis to maintain conviction. Refer the case titled “FAQEER MUHAMMAD versus SHAHBAZ ALI and others” (2016 SCMR 1441) wherein it has been held as under:-

“After ruling out of the ocular account the other circumstances of the case providing corroboration or support to the ocular account had automatically collapsed. In these circumstances High Court had extended the benefit of doubt to respondent No.1 and had acquitted him of the charge. Upon our own independent evaluation of the evidence we have not been able to take any legitimate exception to the said conclusion reached by the High Court.”

20. Having scanned the entire prosecution evidence, we are of the considered view that the prosecution has miserably failed to bring home guilt of the appellants beyond reasonable shadow of doubt. It was admittedly a dark night occurrence, which had taken place in an open filed and no source of light had been mentioned by the eye witnesses in their statements before the police or before the learned trial Court. The source of light volunteered by the complainant during cross-examination was contradicted by Mujahid (PW-2) deposing that they had no torch at the time of occurrence. The material contradictions as to the reporting of the matter to the police and the non-availability of source of light, create serious doubt in the veracity of the eye witnesses. The mode and manner of the occurrence

as to what actually happened at the place of occurrence and who had committed the murder of the deceased during pitched dark night could not be surfaced by the complainant for the reasons best known to him. The injuries on the person of appellant Bashir Ahmad as mentioned in (Ex.DA/1) had been suppressed by the prosecution, which speaks the mode and manner of the occurrence other than the one alleged by the prosecution. To extend the benefit of doubt to an accused, only single instance has always been considered by the apex Courts to tilt the balance of justice in his favour but the case in hand is replete with doubts. The prosecution has failed to substantiate the charge against the appellants beyond reasonable shadow of doubts.

21. For what has been discussed above, both the aforementioned criminal appeals filed by appellants Bashir Ahmad, Muhammad Zafar and Muhammad Ramzan are allowed, their conviction and sentence awarded by the learned trial Court are set aside and they are acquitted of the charge by giving them the benefit of doubt. Appellants Bashir Ahmad and Muhammad Zafar are directed to be released forthwith from jail, if not required to be detained in connection with any other case. Appellant Muhammad Ramzan is present on bail, his bail bonds as well as surety stands discharged from the liability.

Murder Reference No.07 of 2016 is answered in **NEGATIVE** and the Death Sentence awarded to appellant Bashir Ahmad is **not confirmed**.

(Raja Shahid Mehmood Abbasi)
Judge

(Asjad Javaid Ghural)
Judge

Approved for reporting.

JUDGE