

Stereo HCJDA-38
Judgment Sheet
**IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT**

1. **Criminal Appeal No.25 of 2016**
(Faisal Shahzad Vs. The State & another)
2. **Criminal Appeal No.23 of 2016**
(Sajjad Ali Vs. The State)
3. **Criminal Appeal No.77 of 2016**
(Sharafat Begum Vs. Mst. Iqra Bibi, etc)
&
4. **Criminal Revision No.18 of 2016**
(Jamil Afzal Khan Vs. Faisal Shahzad & 2 others)

Date of hearing: 18-01-2017.
Appellants by: Sh. Waqar Azeem Siddiqui, Advocate.
Complainant by: Mr. Fakhar Hayat Awan, Advocate.
State by: Mr. Qaisar Mushtaq, DDPP.

QAZI MUHAMMAD AMIN AHMED, J:- Faisal Shahzad and Sajjad Ali, appellants herein, are in receipt of a guilty verdict returned by a learned Addl. Sessions Judge at Attock vide judgment dated 09-01-2016; the incident occurred within the area of *Chichian* situating at a distance of 4-k.m. from Police Station; they stand convicted under Section 302 (b) read with Section 34 of the Pakistan Penal Code, 1860 for committing *Qatl-e-Amd* of Muhammad Imran, 25, hereinafter referred to as the deceased, and sentenced to imprisonment for life alongside compensation of Rs.5,00,000/- each or six months simple imprisonment each in the event of default with benefit of Section 382-B of the Code of Criminal Procedure, 1898; Mst. Iqra Bibi co-accused tried alongside the appellants was acquitted vide the same judgment, vires whereof, are being challenged by the convicts through Crl. Appeals No.25 & 23-J of 2016; Criminal Appeal No. 77 of 2016 filed by Sharafat begum,

mother of the deceased seeks reversal of acquittal of the co-accused whereas the complainant prays for enhancement of sentence & compensation through Crl. Revision No.18 of 2016; these are being decided together through this single judgment.

2. Prosecution case is structured upon statement (Ex.PK) of Jameel Afzal (PW-10) recorded by Ghulam Hussain, S.I (PW-12) on 1-1-2012, 2:45 a.m at *Hattian* Chowk. According to the prosecution, the deceased owed a Suzuki van and left along with the appellants at 3:15 p.m. on 30-12-2011, shortly after offering Friday prayer; he was statedly carrying gold ornaments with him; Faisal Shahzad appellant was employed as a driver on the cab and the departure took place within the view of Haji Jameel Afzal Khan (PW-10) and Muhammad Taj (given up PW); they headed towards *Faqirabad* and as the deceased did not return till late in the evening, his mother Sharafat Bibi contacted the complainant; as the PWs set out in his search, they found the appellant and Iqra Bibi, widow of the deceased, as missing; the search ended at a deserted place near *Chichian* where the dead body was spotted. A suspected illicit liaison between Iqra Bibi and Faisal Shahzad was cited as a motive for the crime

3. During spot inspection, Investigating Officer secured bloodstained earth as well as three casings of 32-caliber, besides taking other investigative steps of formal nature. Autopsy was conducted by Dr. Muhammad Yasir (PW-3) on 1.1.2012 at 3:30 p.m; the Medical Officer noted three entry wounds with two exits on head, temporal region, chest and right nipple; injury on temporal region on left side of head was blamed as cause of death as it damaged the brain and caused inter-cranial bleeding; the injuries were ante mortem in nature and caused by firearm; probable time between the injuries and death was about half hour whereas between death and postmortem about two days. The appellants along with co-accused were arrested on 5-1-2012 & 3-1-2012 respectively;

Sajjad, appellant led to the recovery of three gold bangles (P-2/1-3), one kara (P-1) and mobile phone (P-3) followed by Faisal Shahzad, appellant who got recovered one kara (P-4), three gold bangles (P-5/1-3), chain of brass (P-6), pistol (P-13) as well as Suzuki pick up RIN-3428(P-14); after completion of investigation, they were sent to face trial before a learned Addl. Sessions Judge at Attock when on 18-02-2012, they contested their indictment and claimed trial, pursuant whereto, prosecution in order to bring home charge, besides relying upon forensic reports, produced as many as twelve witnesses; as there was no direct evidence, the prosecution relied upon various pieces of circumstantial evidence, comprising of last seen, extrajudicial confession and recoveries, these constitute mainstay of the prosecution case. According to forensic report, earth secured from the spot was found stained with blood of human origin. Report of Punjab Forensic Science Agency (Ex.PU) is in the positive; the date of dispatch of casings coincides with arrest of Faisal Shahzad. The appellants confronted prosecution evidence with a unanimous denial. Unimpressed by the plea taken, on conclusion of trial, the learned trial Judge proceeded to convict and sentence the appellants, as referred to above vide the impugned judgment; Mst. Iqra Bibi was, however, acquitted from the charge.

4. Learned counsel for the appellants contends that case prosecution case is fraught with contradictions, inconsistencies and improbabilities and as such the learned trial Court erred in placing reliance thereon; that evidence disbelieved qua acquitted co-accused cannot be pressed into service to support the charge against the appellants, according to the learned counsel, hopelessly lacking; bottom-line of the submissions made by learned counsel for the appellants is that prosecution miserably failed to prove the case against the appellants. Contrarily, the impugned judgment is defended by the learned Law Officer assisted by learned counsel for the complainant on the ground that various pieces of circumstantial

evidence constituted a continuous nexus between the crime and the culprits; according to him, the evidence is so consistent, straightforward and confidence inspiring that every hypothesis of appellants' innocence stands excluded. Enhancement of the sentence of sentence has also been prayed for at the bar.

5. Heard. Record perused.

6. There is no direct evidence and prosecution's reliance on various pieces of circumstantial evidence furnishes the basis for appellants' conviction on a charge that entails capital sentence. The mainstay of the prosecution case is extrajudicial confession, by both the appellants, before Dilnawaz (PW-11); according to this witness, on 2-1-2012 at about 9:00 p.m. while he was present with Saeed Akhtar (given up PW), both the appellants visited him to make their breast clean; with one voice, they not only admitted their guilt but sought forgiveness as well while undertaking return of gold ornaments; the witness assured them to intervene and to return after 2/3 days; it is prosecution case that on 5-1-2012, they again visited the PWs and while they were being taken to the police station, a police party apprehended them on way; Iqra Bibi, co-accused is conspicuously missing in this narrative. It is astonishing as to why the appellants, in the absence of any evidence pointed upon them, would voluntarily relate the incriminatory details of their guilt and thereby offer their necks before someone with no social station merely to retract therefrom subsequently; no less strange is as to why they were let off on 2-1-2012 and again came all the way on 5-1-2012 in order to obligingly accompany the witnesses on way to the police station; the script is poor. Even otherwise, the alleged confessional statement being joint cannot be admitted into evidence and once it is excluded from consideration, entire edifice is raised to the ground. It would be difficult to place implicit reliance upon the statement of the complainant as well; it is mind boggling as to why the deceased was carrying with him six gold bangles, two bracelets

and a chain even while offering prayer and as to what impelled him to display the jewelery to the witnesses; the position is far from being confidence inspiring. Recovery of gold ornaments when correlated with the above backdrop, in itself, cannot sustain the charge. Forensic Report Ex.PU is not at a better footing either in view of even dated dispatch of empties and weapon subsequent to appellant's arrest. Circumstantial evidence cannot be made basis to sustain indictment unless it comprises of facts coherently synchronized, coming from an unimpeachable source and thereby constituting a nexus through chain of various circumstances admitting no space to entertain any hypothesis of innocence; it is not a case in hand and therefore, it would be grievously unsafe to maintain the convictions. Consequently, Crl. Appeal Nos 23 & 25 of 2016 are **allowed**; impugned judgment dated 09-01-2016 is set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case.

7. As a natural corollary of above findings, Crl. Appeal No. 77 of 2016 and Crl. Revision No.18 of 2016 stand dismissed.

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting