

**IN THE LAHORE HIGH COURT, RAWALPINDI
BENCH RAWALPINDI
JUDICIAL DEPARTMENT**

1. Criminal Appeal No.484 of 2013
(Omair Ali Vs. The State)

2. Criminal Appeal No.505 of 2013
(Kamran alias Kami Vs. The State)

&

3. Capital Sentence Reference No10-T of 2014
(The State Vs. Kamran alias Kami & another)

Date of hearing: 17.01.2018

Appellants by: Mr. Basharat Ullah Khan, Advocate and Raja Amanat Ali, Advocate (at State expense).

State/Complainant by: Mr. Umar Hayat Gondal, Additional Prosecutor General assisted by Mr. Asad Mehmood Qureshi, Advocate.

QAZI MUHAMMAD AMIN AHMED, J:-Syed Shahid Zameer Kazmi 8115/C, 26, henceforth referred to as the deceased, along with Muhammad Atif Kayani, 6471/C (PW-12), came under assault during patrol on a motorbike at 9:45 p.m. on 27-5-2012, within the area of A-Block Rawalpindi, at a distance of 3-kilometers from Police Station Sadiqabad; they were fired upon by two pedestrians, halted as suspects. According to crime report (Ex.PJ), recorded by Muhammad Riaz, SI (PW-14), 10:30 p.m. at the spot, the assailants resorted to indiscriminate firing, resulting into four injuries to the deceased leading to his immediate death; escaping retaliatory fires, they decamped from the scene unscathed.

Autopsy conducted at 11:59 p.m. revealed two entry wounds with blackened margins on the inner side of left ear as well as below left nipple with their corresponding exits; injury on the chest was blamed as cause of death for having generated severe hypovolemic

shock within 30 minutes; interregnum between death and postmortem was estimated as 2 to 4 hours.

Muhammad Riaz, SI (PW-14), after preliminary proceedings collected six 30-caliber casings (P-13/1-6) alongside two SMG casings (P-14/1-2) as well as blood from the crime scene; he arrested Kamran alias Kami appellant on 28-5-2012 while being in possession of 1650-grams of cannabis and pursuant to his disclosure also took into custody Umair Ali alias Ali appellant with 1560-grams of the same contraband; arrests were formally incorporated on 29-5-2012 in pursuance of First Information Reports Nos.439 and 440 of even date when investigation was taken over by Karim Nawaz Khan Niazi, Inspector (PW-15), who recovered pistol (P-1) at the instance of Kamran alias Kami appellant; they were lodged in judicial lock up and put to test identification parade on 16-6-2012 by Ahmad Hassan Ranjha, Special Judicial Magistrate (PW-17) when Muhammad Atif/C (PW-12) along with Zaki-ul-Hassan and Basharat Mehmood/C (PW-13) correctly identified the appellants; Umair Ali alias Ali, pursuant to a disclosure, led to the recovery of pistol (P-10) on 29-6-2012. Casings, six in number, dispatched through Sajjad Sarwar (PW-6) on 31-5-2012, forensically tallied with pistol (P-1) recovered from Kamran alias Kami appellant, received by the Punjab Forensic Science Agency on 15-6-2012; blood secured from the spot was found that of human origin. Indicted before the learned Judge Special Court-II, Anti Terrorism, Rawalpindi Division and Islamabad Capital Territory on 20-9-2012, the appellants claimed trial, pursuant whereto, prosecution produced seventeen witnesses to drive home the charge; of them Muhammad Atif/C (PW-12) and Basharat Mehmood/C (PW-13) furnished ocular account; they unanimously claimed to have seen the appellants while firing upon the deceased within their view; duly identified by them during test identification parade; the appellants confronted prosecution with a denial alleging manipulated substitution; the learned trial Judge, however, unimpressed by their

denial, vide impugned judgment dated 11-11-2013 proceeded to convict and sentence them as under:-

U/s 302(b) PPC	Imprisonment for life with compensation of Rs.100,000/- or six months S.I. in the event of default, each.
U/s 7 (a), ATA, 1997	Death with fine of Rs.100000/- or six months S.I. in default of payment thereof each.
U/S 186 PPC	3-months R.I.
U/s 353 PPC	1-year R.I.

Sentences were ordered to run concurrently with benefit of section 382 of the Code of Criminal Procedure, 1898 except under section 7(a) of the Anti Terrorism Act, 1997. CrI. Appeals No.484 and 505 of 2013 dispute the vires of the impugned judgment; Capital Sentence Reference No.10-T of 2013 seeks confirmation of death penalty while CrI. Revision No.241 of 2013 is directed for enhancement of sentence and compensation awarded under section 302(b) of the Code *ibid*; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the appellants contend that the appellants are not named in the crime report and their subsequent induction in the array, per chance on the basis of manipulated criminal cases being evidently suspect does not furnish basis for their conviction; that test identification parade carried out as late as on 16-6-2012 merited outright rejection; that ocular account was diametrically contradicted by medical evidence inasmuch as qua receipt of four straight direct shots by the deceased, the Medical Officer noted two entry apertures, that too, on locales given the stated posture being inconceivable; reference has been made to an OPD ticket, mentioned as Ex.DA in statement of one of the appellants recorded under section 342 of the Code of Criminal Procedure, 1898 to demonstrate that the deceased was first taken dead at Benzir Bhutto Hospital and not straight to the D.H.Q. Hospital as is suggested in the

crime report; non-availability of any source of light sufficient to capture assailants' features in a momentary encounter has been argued with vehemence; absence of motorbike in the inventories as well as the names of Bashrat Mehmood/C and Zaki-ul-Hassan/C in the crime report is yet another argument addressed at the bar; according to the learned counsel, occurrence did not take place in the manner as alleged, as the police officials armed with automatic weapons simply would not have let the assailants to go scot-free from the spot, had they been at all present there. The bottom line is that prosecution case is fraught with doubts, it would be extremely unsafe to maintain the convictions. Contrarily, the learned Law Officer has defended the impugned judgment by arguing that prosecution successfully drove home the charge with the assistance of two independent and natural witnesses having no axe to grind, duly corroborated by medical as well as forensic evidence excluding every hypothesis of appellants' innocence. Confirmation of death penalty has been prayed for.

3. Heard. Record perused.

4. The complainant was driving the motorbike with deceased in his rear when they confronted the appellants at 9:45 p.m; tenor of the crime report suggests a sudden encounter wherein the accused resorted to firing at spur of the moment and fled from the scene immediately thereafter. Surprised by a sudden and brief assault during the night would certainly leave a little space to the witnesses to meticulously capture details thereof, particularly descriptive features of the assailants in the absence of a source of light conspicuously missing in crime report Ex.PJ as well as in the notes of site plans Ex.PR & Ex.PE; though, a lamp post and an electric bulb on a nearby gate are mentioned without reference to distance inter se; an exercise seemingly carried out subsequently. Sketch Ex.PF mentions one assailant alone. Motorbike used by the constables was never taken into possession nor find mention in the site plans. Prosecution's claim regarding identity of the assailants purportedly picked up by the

witnesses subsequently during a belatedly conducted test identification parade warrants serious reconsideration inasmuch as human response in a sudden crisis situation, that too, momentary in duration would seldom space observations without risk of error. Appellants' per chance arrest from different places in quick succession with cache of contrabands on 28-5-2012 was an event, unexpected by all means and in this backdrop, results of test identification parade conducted as late as on 16-6-2012 hardly constitute a significant piece of evidence, particularly in view of prisoners' objection before the Magistrate that they were exposed to the witnesses.

An overall analysis of prosecution case suggests that the deceased sitting behind the complainant carried a submachine gun subsequently taken over by the latter, who fired twice upon the assailants without any consequence and that while fleeing they also came within the view of Basharat Mehmood and Zaki-ul-Hassan, Constables on patrol duty, admittedly armed with automatic official weapons. Mute response by three witnesses in the face of a fallen colleague at the hands of the appellants, within their view as well as reach, is mind boggling to say the least.

Prosecution case is faltering on medical side as well, both in terms of locales as well as number of shots received by the deceased; it is unambiguously mentioned in the crime report that the appellants hit the deceased distinctly with four fire shots landing on different parts of his body, according to the autopsy report, however, there are two entry wounds with corresponding exits, mistakenly viewed as independent wounds. Similarly, deceased sitting behind the complainant on a motorbike seat with little inter se distance could not possibly receive an injury on his chest. Blackening around the wounds suggests a close blank and, thus, miraculous escape by the complainant sitting next from six fire shots in retrospect suggests his absence from the crime scene.

Solitary pictorial sketch Ex.PF with positive Forensic Science Agency Report Ex.PX qua pistol P-1 alone, excludes presence of the second accused and, thus, given inseparably joint role assigned to them, culpability of any single of them could not be singularly determined through any contemplative methodology without potential risk of fatal error. Even otherwise, positive forensic report does not advance prosecution case in view of dispatch of casings subsequent to arrest.

According to the crime report, the dead body was dispatched straight to DHQ Hospital Rawalpindi, however, an OPD ticket along with electrocardiogram slip, referred to by the appellants in their examination under Section 342 of the Code of Criminal Procedure, 1898, available on record, though not formally exhibited suggest that the deceased was brought dead first to Benazir Bhutto Hospital and, therefore, argument that the details of the case were drawn up subsequently cannot be dismissed out of hand.

A law enforcement official laid his life while his boots on, however, circumstances leading to his death being far from clear, the appellants cannot be convicted and sentenced on moral satisfaction alone and as such are entitled to the benefit of doubts embedded in the poorly investigated prosecution case and, thus, it would be unsafe to maintain the convictions. Consequently, by extending benefit of doubt to the appellants, Crl. Appeals Nos.484 and 505 of 2013 are **allowed**; impugned judgment dated 11.11.2013 is set aside; they are acquitted from the charge and shall be released forthwith, if not required in any other case. **Capital Sentence Reference No.10-T of 2013** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

As a natural corollary, Criminal Revision No.241 of 2013 is **dismissed**.

(Raja Shahid Mehmood Abbasi)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved For Reporting