

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

1. Criminal Appeal No.144 of 2014
(Yamin Vs. The State & another)

2. Criminal Appeal No.149-J of 2014
(Yamin Vs. The State)

3. Murder Reference No. 20 of 2014
(The State Vs. Yamin)

Date of hearing: 24.09.2018
Appellant by: Mr. Mumtaz Mustafa, Advocate.
Complainant by: Nemo.
State by: Mr. Khalid Pervez Uppal, DPG with Shafiq, ASI.

QAZI MUHAMMAD AMIN AHMED, J:- Yamin son of Yaseen, appellant herein, is in receipt of a guilty verdict, returned by a learned Additional Sessions Judge at Sadiqabad vide impugned judgment dated 26-03-2014; he stands convicted on two counts for committing *Qatl-e-Amd* of Muhammad Akbar, 29/30, and Mst. Irshad Mai, 35/36, hereinafter referred to as the deceased, with penalty of death on each alongwith compensation of Rs.100,000/- or to undergo six months rigorous imprisonment in the event of default; Allah Wasaya, co-accused is still away from law whereas Ghulam Akbar co-accused passed away during the trial. Liaqat Ali alias Pappu was acquitted from the charge.

Prosecution case is founded upon application (Ex.PA) presented by Kamal Din (PW-1) to Sadiq Hussain, S.I (PW-9), 8:25 a.m. on 28-5-2009 at Police Station Saddar Sadiqabad located 7 ½ miles from the venue. According to the complainant, the appellant, his maternal nephew, suspected illicit liaison between his son Muhammad Akbar deceased and latter's sister Irshad Mai

wife of Ghulam Hussain; he took up the issue with the complainant and it was in this backdrop that on 27-5-2009 in the evening, the complainant along with Muhammad Anwar, Muhammad Rafique and his deceased son visited Irshad Bibi at her home in Mouza *Wahid Bukhsh Larr* to vindicate his son's position; they opted to stay overnight in the village; at about 4:00 a.m. they were awakened on Muhammad Akbar's alarm to see him under assault by the appellant with a *Toka*; after having dealt multiple blows to the deceased mostly on his head and face, the appellant turned toward Irshad Mai within witnesses' view who attempted to intervene, however, were kept at bay; both the deceased succumbed to the injuries at the spot.

Autopsy started at 4:00 p.m. Muhammad Akbar, deceased was noted with 14 incised wounds mostly on face and head as well as right shoulder and upper part of trunk; the nose was chopped in the middle; hemorrhagic shock resulted into death within half an hour; interregnum between death and postmortem was estimated, as within 12 hours. Mst. Irshad Mai sustained nine injuries on skull, right cheek, neck, both hands and leg with identical findings in terms of cause of death as well as durations.

Spot inspection includes seizure of blood from two points besides taking other investigative steps of formal nature; the appellant was arrested on 8-6-2009; pursuant to a disclosure he led to the recovery of bloodstained *Toka* (P-6), secured vide inventory. The complainant graduated the number of accused through an application presented to the police on 4-7-2009; he added Allah Wasaya, Liaqat alias Pappu and Ghulam Akbar in the array. Indicted on 26-11-2011, the accused claimed trial; called upon to drive home the charge, prosecution presented as many as 13 witnesses besides reliance upon forensic evidence. Kamal Din (PW-1), Muhammad Rafique (PW-2) and Muhammad Anwar (PW-3) furnished ocular account. Blood, both at the spot as well as blade of *Toka* (P-6) was found that of human origin. The accused confronted the prosecution

evidence with a unanimous denial, blaming Irshad Mai's in-laws to have surprised the deceased. The learned trial Judge, vide the impugned judgment, acquitted Liaqat Ali co-accused, however, proceeded to convict and sentence the appellant, as referred to above, vires whereof, are being challenged through Crl. Appeal No.144 of 2014 clubbed with Murder Reference No.20 of 2014, seeking confirmation of death penalty; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the appellant contends that Muhammad Akbar and Irshad Mai were done to death, under mysterious circumstances, in latter's home and in this backdrop, it is extremely improbable that the complainant along with his deceased son as well as witnesses would visit the in-laws of Irshad Mai to clarify or confront the accusation leveled by the appellant, admittedly residing at a different place; that prosecution story is otherwise extremely improbable; if at all, the witnesses and the deceased had gone to offer explanations, they had no occasion to stay overnight, particularly when the deceased was suspected to have an affair with an inmate; that graduation of number of accused by the complainant while disowning his earlier position goes a long way to conclusively establish that he was not at the crime scene; the bottom line is that it was simply not possible for three witnesses to have omitted reference to the co-accused, if at all they were there. Prosecution has not been able to prove the charge beyond reasonable doubt, concludes the learned counsel. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has defended the impugned judgment on the ground that both sides being closely related with each other, seemingly there is no reason for appellant's false implication, who given his relationship with both the deceased had a strong motive to eliminate them; that injuries are consistent with the weapon recovered, forensically found stained with human blood and, thus, according to the learned Law Officer, there is no space to entertain any hypothesis of appellant's innocence, guilty of

committing murders in a gruesome manner; he has prayed for confirmation of death penalty.

3. Heard. Record perused.

4. No doubt, human life, being most sacrosanct cannot be taken away, on any account save under due process of law; the way both the deceased were done to death is most tragic to say the least, nonetheless, how and under what circumstances, they met their violent end is a different question altogether. Volitional intimacy between the deceased is prosecution's own case; our social ethos, seldom admit possibility of a false imputation. In this backdrop, deceased's visit alongside the witnesses to the house of Irshad Mai, designed to clarify misgivings is a venture far from being prudent and same goes for timing selected for the meeting. Muhammad Akbar's inclusion in the entourage would have simply added fuel to the fire; visit if at all it was undertaken for the stated purpose was sheer embarrassment for the family and it is hard to believe that under such circumstances the visitors would be allowed to stay overnight. According to site plan Ex.PG, the venue is a small dwelling comprising a single room with a lavatory; there was hardly any space to accommodate the number; site plan does not depict cots needed for the purpose, nor taken into possession. On the contrary, circumstances spell out a scenario diametrically incompatible with the case set up in the crime report. When approached by the Investigating Officer, according to the inquest reports, both the deceased were with opened eyes and mouths to unambiguously suggest that they were not earlier attended; they were in the same state when placed on autopsy table; it is hard to believe that a father and two real brothers would stand mutely by the dead bodies. According to Kamal Din (PW-1), "*at the time of occurrence, the son, son's wife and daughter of Irshad Mai were also present in the house of occurrence.*"; they were the best witnesses and have not come forward; deceased's husband was statedly in prison, however, not with many details regarding his absence. Prosecution has elected

to rely upon the witnesses, apparently with no business at the spot. On the whole, prosecution case does not fit within the ambit of probability. The appellant is not expected to have participated in a session deliberating upon the virtues of his sister, that too, in the face of a person, accused of bringing disgrace to the family. The script is poor. Complainant's subsequent deviation from his earlier stance is yet another dilemma confronting the prosecution. Delayed autopsies admit a real possibility that occurrence was not reported at a point of time mentioned in the First Information Report. Prosecution case is fraught with doubts, thus, it would be grievously unsafe to maintain the conviction without potential risk of error. Consequently, by extending benefit of doubt to the appellant, **Crl. Appeal No.144 of 2014** is allowed; he is acquitted from the charge and shall be released forthwith, if not required in any other case. **Murder Reference No.20 of 2014** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

5. Crl. Appeal No.149 of 2011 filed through Superintendent Jail, having become superfluous is dismissed.

(Ch. Abdul Aziz)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting