

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

1. Criminal Appeal No.41 of 2015

(Muhammad Akhtar Vs. The State)

&

2. Murder Reference No. 8 of 2015

(The State Vs. Muhammad Akhtar)

Date of hearing: 11.09.2018
Appellant by: Syed Asim Ali Bokhari, Advocate.
Complainant by: Mirza Muhammad Ashfaq Gujjar.
State by: Mirza Asghar Ali Gill, DPG.

QAZI MUHAMMAD AMIN AHMED, J:-. Muhammad Akhtar, appellant herein, is in receipt of a guilty verdict, returned by a learned Additional Sessions Judge at Minchanabad vide impugned judgment dated 3-2-2015; he stands convicted under clause (b) of Section 302 of the Pakistan Penal Code 1860, for committing *Qatl-e-Amd* of Muhammad Sarwar, 45/46, hereinafter referred to as the deceased, within the area of Mauza Rehman Pura, situating at a distance of 21-kilometers from Police Station Ghumandpur District Bahawalnagar; he is sentenced to death with payment of compensation in the sum of Rs.200,000/- or to undergo six months simple imprisonment in the event of default; Muhammad Iqbal, Nazar Muhammad and Altaf Hussain co-accused have been acquitted from the charge whereas Ali Sher and Muhammad Ali are still away from law; proceeded accordingly.

Prosecution case is founded upon application (Ex.PA) by Ubaid-ur-Rehman (PW-2), presented to Nazir Hussain, S.I (PW-11), 5:45 p.m. on 14-10-2011 at the police station. According to the complainant, on way to home on a motorbike, he alongside the deceased and Muhammad Rizwan was surprised by the appellant accompanied by Ali Sher and Muhammad Ali (P.Os),

differently armed, ambushed near their homes; after exhortation, the accused started aimed firing; after fall, they rushed into safety, when Abdul Rehman and Muhammad Umar PWs reached the scene to unsuccessfully intervene while the accused kept on chasing the deceased, felled by exhaustion at some distance; the appellant fired 12 caliber shotgun, repeatedly with two shots on deceased's chest followed by Muhammad Ali with a repeater on left shoulder; the accused then jointly fired the deceased, within witnesses' view, before they took to their heels. Motive for the crime is an earlier incident wherein deceased's daughter Ume-Habiba was murderously assaulted by the accused; they were convicted and sentenced along with payment of compensation; pursuing their appeal in the Court of Session, it is alleged that anticipating failure of their appeal, on the instigation of Nazar Muhammad, Altaf Hussain and Muhammad Iqbal, they committed the crime.

Autopsy conducted by Dr. Ahmad Farooq (PW-5) at 8:00 P.M revealed ten injuries comprising six entry wounds of different dimensions on left ear, right chest, left flank, right arm, right middle finger, left hand, left buttock, right foot with abrasion on right big toe; solitary exit wound smashed the temporal area; damage to vital organs caused immediate cardiopulmonary arrest; interregnum between death and postmortem was estimated as 4-5 hours.

Spot inspection, carried out by Nazir Hussain, S.I (PW-11) includes, seizure of blood as well as seven casings of .12-caliber (P-6/1-7), secured vide inventories; arrested on 31-10-2011, the appellant led to the recovery of 12-caliber gun (P-5) whereas Altaf Hussain and Nazar Muhammad joined investigation on 2-11-2011, their formal arrest was held in abeyance; indicted on 19-3-2014, the accused claimed trial, pursuant whereto, prosecution produced as many as 12 witnesses besides relying upon forensic report to drive home the charge. Ubaid-ur-Rehman (PW-2), Abdul Rehman

(PW-3) and Muhammad Umar (PW-6) furnished ocular account; it constitutes the mainstay of the prosecution case. The accused confronted prosecution evidence with a unanimous denial citing previous enmity as the factor behind their false implication. The learned trial Judge proceeded to acquit Muhammad Iqbal, Nazar Muhammad and Altaf Hussain, co-accused from the charge, however convicted and sentenced the appellant in the above terms, vide the impugned judgment, vires whereof, are being challenged through Crl. Appeal No.41 of 2015 clubbed with Murder Reference No.8 of 2015 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 the deceased was done to death in an un-witnessed occurrence at a deserted place and in the backdrop of earlier enmity, on account of misplaced and misconceived suspicion, he has been arrayed in the crime; that though assigned different roles, nonetheless, consequential, prosecution evidence has been disbelieved qua the majority of the accused and, thus, same cannot be pressed into service to sustain appellant's conviction in the absence of independent corroboration, according to the counsel, hopelessly lacking; that survival of the witnesses without slightest harm, under the shadow of same motive, admits a real possibility of their absence at the crime scene; it is further argued that there was no rhyme or reason for the assailants to allow the deceased opportunity to run into safety while he was well within their view as well as range of weapons; the bottom line is that presence of dead body at a point considerably away from the road, spells out a scenario, altogether incompatible with the case set up in the crime report; even date dispatch of casings with the weapon is cited as a step inconsequential to conclude 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

defended the impugned judgment on the ground that the appellant had an axe to grind and for that obvious reason, the deceased was targeted within the view of the witnesses, having no earthly reason to substitute the appellant with the actual offender, two still away from law. It is argued that prosecution came up with a truthful and straightforward version without casting a wider net and, thus, there was no room to entertain an adverse inference on account of non-receipt of injuries by them; blaming the Investigating Officer for inaptitude, the learned Law Officer has emphasized consistency of injuries with the weapon recovered to argue that an even date dispatch, would not by itself, diminish the value of forensic evidence supporting the charge; he views acquittal of co-accused with inconsequential role, an act of abundant caution with no adverse impact on appellant's culpability, to be squarely visited with penalty of death in circumstances, concludes the learned Law Officer.

3. Heard. Record perused.

4. Both sides have been at dagger drawn on account of murderous assault, endured by no other than deceased's daughter, resulting into conviction, pending appellate scrutiny; prosecution asserts that anticipated failure of the appeal catalyzed as motive for the crime; viewed contrarily, adequacy of the motive, though not a constituent of the crime, nonetheless, is somewhat suspect inasmuch as the complainant side, being incisively aggrieved had a greater account to settle with the opponents. In this backdrop, deceased's murder, apparently, would have further aggravated the situation instead of bringing about improvement in the state of affairs, thus, seemingly motive set up in the crime report does not extend structural strength to the charge. Participation of the accused, three real brothers inter-se, is yet another dilemma confronting the prosecution; they are shown, armed with .12 caliber weapons, with active participation, exclusively aimed at a single target, a task that could be conveniently accomplished by

every single of them without exposing the whole family to a horrendous charge with awful consequences; a net cast widely cannot be viewed as impossible. Acquittal of co-accused albeit with roles, though distinguishable, has its own implication, as it certainly warrants a greater caution. Had the witnesses been believed qua the acquitted accused, they were exposed to same corporal consequences albeit with mitigation; they have not been believed by the trial Court and for valid reasons, without challenge; this in itself shows that they were not without a capacity for mischief, therefore, independent corroboration, in circumstances, as a necessary caution, all the more important given past enmity would be warranted to ensure safe administration of criminal justice; neither the motive equally pointed upon all the accused nor inconsequential recovery of gun (P-5) with forensic report (Ex.PR) resting upon even date dispatch of casings as well as the weapon, can possibly qualify as independent corroboration. Ambush by the accused to confront the deceased and witnesses without anticipation, does not synchronize with the probability of events preceding the assault. Once halted well within the view and range, seemingly there was no space for the deceased to run as far as the place where his dead body was found in reeds/bushes. According to Ubaid ur Rehman (PW-2), the appellant as well as the co-accused fired two shots each on the deceased targeting specific portions of his body; it is mind boggling as to how he escaped accused's relentless wrath, in circumstances a choice target, being a youthful member of the family; hypothesis of his presence at the crime scene cannot be received favourably without being imprudent; same goes for Abdul Rehman (PW-3), brother-in-law of the former, arriving at the crime scene per chance; according to his narrative, all the accused started firing upon the deceased, Ubaid-ur-Rehman and Rizwan PWs soon after they were halted on the road; in such an eventuality, they could not escape receipt of injuries in the face of three guns spreading high velocity

pallets in a narrow circumference. Examined in its totality, prosecution case is not entirely free from doubts and it is so deducible from the stated positions of the witnesses, detailing the events found incompatible within the ambit of probability; it would be unsafe to maintain the conviction, thus, Crl. Appeal No. 41 of 2015 is **allowed**; impugned judgment dated 3.2.2015 is set-aside; he is acquitted from the charge and shall be released forthwith, if not required in any other case. **MURDER REFERENCE No.8 of 2015** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED.**

(Ch. Abdul Aziz)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting