

Stereo HCJDA-38
Judgment Sheet

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

1. Criminal Appeal No.274-J of 2013
(Abdul Malik Vs. The State)

2. Criminal Appeal No.275-J of 2013
(Muhammad Ikram & another Vs. The State)

&

3. Murder Reference No.30 of 2013
(The State Vs. Abdul Malik)

Date of hearing: 10.10.2018
Appellant by: Ms. Gulraiz Abbasi, Advocate.
Complainant by: Mr. Muhammad Sharif Bhatti, Advocate.
State by: Mr. Asghar Ali Gill, Deputy Prosecutor General.

QAZI MUHAMMAD AMIN AHMED, J:- Sarfraz Ahmad, 48, hereinafter referred to as the deceased, was fatally shot on 29-11-2009 at 10:30 a.m. within the area of Mouza Meero Baloch, situating 22-kilometers from Police Station Bakhshan Khan, District Bahawalnagar; incident was reported by his brother Zulfiqar Ali (PW-8) through statement (Ex.PH) recorded by Waris Ali, SI (PW-12), 12:40 p.m. at the police station. According to the complainant, on the fateful day, deceased took his cattle for grazing in the land of Mst. Sharaf Ilahi (PW-10) when at about 10:30 a.m. the appellants along with Muhammad Shafi, since acquitted, differently armed, confronted him with the preconcert. After exhortation, Abdul Malik appellant shot the deceased on his right eye and nose; he felled on the ground. Mst. Fouzia (PW-9) and Sharaf Ilahi (PW-10) came forward to rescue the deceased when Ikram appellant fired .12 caliber repeater hitting the former on her chin, neck, chest and right deltoid;

Habib Ahmad targeted the latter on her right hand. Muhammad Shafi kept on exhorting with firing. Motive for the crime is that one year before the occurrence, Muhammad Shafi along with others murdered complainant's brother Muhammad Ajmal and they were facing trial; it is alleged that in the above backdrop, the mounted the assault. Gun reports attracted the complainant, Ali Sher (PW-11) and Muhammad Hanif to the spot while the accused dragged deceased's corps towards uninhibited dwelling Muhammad Yasin. It is alleged that the appellants murdered one of their ladies, namely, Mazhar Ilahi, first cousin of Habib Ahmad appellant, with a view to set up a counter blast.

Autopsy conducted at 8:00 p.m. revealed a lacerated wound 6 cm x 2 cm, going deep, oval shaped, on right side of nose with inverted margins; the injury fractured the maxillary bone, eyeball and torn the neck vessels; excessive bleeding and neural injury to spinal cord generated hypovolemic shock, resulting into respiratory arrest within 15 minutes with interregnum between death and postmortem as within 10 hours. Fozia Bibi (PW-9) and Sharaf Ilahi (PW-10) were examined under a police docket at 6:10 p.m; the former was noted with four entry wounds, of different dimensions, on chin, front and middle of neck as well as anterolateral aspect of right arm, whereas the latter sustained an entry wound on palmar aspect of right hand surrounded by blackening and tattooing with fracture and dislocation of middle finger at metacarpo phalangeal joint.

Autopsy on Mst. Mazhar Elahi, 35/36, deceased revealed solitary entry wound on anterior aspect of left shoulder with corresponding exit, opined as fatal in the ordinary course of nature; interregnum between injury and death was estimated as five minutes within preceding 12 hours.

Waris Ali, S.I (PW-12) inspected the spot; he secured bloodstained earth as well as 22 casings of rifle and 17 those of

.12 caliber, besides taking other investigative steps of formal nature; the accused were arrested on 25-12-2009; pursuant to their disclosures, they led to the recovery of rifles (P-7, P8, P-9 & P-11), respectively.

The accused came up with their own story, related by Mst. Ghulam Zohran; they blamed the complainant side for mounting assault, in the backdrop of past enmity, a common ground between both sides, in consequence whereof, Mazhar Ilahi sustained fatal shot. Upon a direction, a separate First Information Report was recorded against the complainant party; statedly being prosecuted through a private complaint.

Indicted by a learned Addl. Sessions Judge at Bahawalnagar on 07.04.2010, the accused claimed trial, pursuant whereto, prosecution in order to bring home the charge, besides relying upon forensic reports, produced as many as 12 witnesses; of them, Zulfiqar Ali (PW-8), Mst. Fouzia (PW-9), Sharaf Ilahi (PW-10) and Ali Sher (PW-11) furnished ocular account, prosecution's main reliance. Mst. Fouzia and Sharaf Ilahi are injured witnesses. On forensic side, weapon recovered from Abdul Malik appellant did not tally with the casings recovered, however, weapons recovered from Habib Ahmad and Muhammad Ikram were found wedded therewith. The accused confronted the prosecution evidence with a unanimous denial citing false implication on account of previous enmity; the bottom line is that the prosecution advanced a false case in order to hush up murder of Mazhar Ilahi. The learned trial Judge acquitted Muhammad Shafi co-accused, however, proceeded to convict and sentence the appellants, as follows:-

Abdul Malik

U/s 302(b) PPC sentenced to death with compensation of Rs.200,000/- or six months SI in the event of default

Muhammad Ikram

For causing injuries to Mst. Fouzia Bibi

U/s 337 A(iii) to pay Arsh amounting to Rs.1,09482/- (10% of Diyat) to suffer RI for five years, as Tazir

U/s 337 F(iii) to pay Daman amounting to Rs.5000/- with imprisonment for three years, as Tazir, on three counts.

Habib Ahmed

For causing injuries to Sharaf Ilahi

U/s 336 to pay Arsh amounting to Rs.1,09482/- (1/10th of Diyat) with RI for five years, as Tazir, on two counts

U/s 337 F(vi) to pay Daman amounting to Rs.5000/- with imprisonment for five years, as Tazir.

Sentences awarded to Muhammad Ikram and Habib Ahmad were ordered to run concurrently with benefit of section 382-B vide impugned judgment dated 10-6-2013, vires whereof, are being challenged through Crl. Appeal No.274-J of 2013 and Crl. Appeal No.275-J of 2013 clubbed with Murder Reference No.30 of 2013, seeking confirmation of death penalty; bound by a common thread, these are being decided through this single judgment.

3. Learned counsel for the appellants contends that given the motive relied upon by the prosecution, there was hardly an occasion for the appellants to once again invite the rigors of prosecution, still confronting the earlier indictment, according to him, complainant's side being aggrieved by the previous incident had better reasons to settle the previous score and it is in that pursuit they fatally shot Mazhar Ilahi deceased. It is argued that allegation that appellants' side murdered their own family member being most preposterous merits outright rejection. According to the learned counsel, there was no purpose to take deceased's dead body to the uninhibited premises of Ghulam Yasin and, thus, it is vehemently argued that a scenario diametrically incompatible with the case set up in the crime report is spelt out, casting its shadow upon the prosecution case. Injuries, notwithstanding, the testimony of witnesses cannot be viewed as truthful, otherwise found inherently

flawed and, thus, prosecution case was not free from doubt, concluded the learned counsel. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has defended the impugned judgment; it is argued that the appellants once again committed murder of complainant's side and in cold blood, they also killed their own woman to set up a subterfuge in a daylight affair, viewed by the witnesses with injuries, confirming conclusively their presence at the spot. It is argued that ocular account is fully corroborated by medical evidence, consistent with the weapons recovered during investigation. According to the learned counsel, First Information Report lodged by the accused was found false during investigation and, this according to him further vindicates complainant's position. The bottom line is that prosecution has successfully driven home the charge beyond reasonable doubt; he has prayed for confirmation of death penalty.

4. Heard. Record perused.

5. Viewed on the touchstone of cited motive, the story of appellants' assault, resulting into deceased's death as well as injuries to the witnesses, calculated to once again inflict trauma upon their opponents with sacrifice of a family member, while they were already struggling with the previous indictment, is an hypothesis, one may find hard to receive without hesitation. Undoubtedly, bad blood existed but being on the receiving end, the complainant side with a loss of life would have been more keen to see the heads of their adversaries, rolling on the ground. Argument regarding the inadequacy of motive, certainly not a constituent of the crime, nonetheless, cannot be termed as unrealistic.

Homicidal death of Mazhar Ilahi, on the fateful day, during the same transaction, is not a trivial issue to be disposed of on the basis of slipshod explanation furnished in the crime report; if at all, the appellants had decided to take such a repugnant step, they would not

have been content with a solitary shot while at the same expense, they could have prosecuted a larger agenda; she was certainly done away under circumstances altogether different and prosecution cannot escape consequences thereof merely with the support of injured witnesses. Injuries confirm presence alone, without conferring title of truth upon their recipients. Unanimity of prosecution witnesses, in the present case, has merely constituted an alliance, inherently weak as well as suspect.

Though dispatched well in time prior to appellants' arrest, casings partly matched with the weapons recovered from Habib Ahmad and Muhammad Ikram appellants, without conforming with Abdul Malik's gun (P-7), propelling fatal shot. This circumstance alone throws forensic evidence into doldrums and, thus, same cannot be safely relied to corroborate ocular account. It goes without saying that corroboration is a rule of caution alone, nonetheless, all the more important, in the case in hand in view of enmity raging between the two sides.

Presence of dead body at a place other than one where the deceased received fatal shot is yet another dilemma confronting the prosecution; it is mind boggling as to why the appellants would take pains to remove dead body, once they had accomplished the task, that too, through dragging, as apparently it would not have served any purpose. In crisis situations, ordinarily, the culprits do not indulge in such purposeless trivialities. There are no dragging marks observed by the Medical Officer and, thus, argument that occurrence did not take place where it is initially depicted in the crime report nor in the manner as suggested therein, cannot be viewed as beside the mark.

Once prosecution is found tumbling on principal charge, its case on issues collateral and incidental thereto, also casts away. The story is fraught with doubts, doubts deducible from positions patent on the record, particularly homicidal death of Mazhar Ilahi and, thus,

it cannot be determined through any method of human contemplation as to what actually happened on the fateful day, without potential risk of error. It would be safer to acquit the appellants from the charge. **Crl. Appeal No.274-J of 2013 and Crl. Appeal No.275-J of 2013** are allowed; the appellants are acquitted from the charge. Abdul Malik appellant is in custody and shall be released forthwith, if not required in any other case. Muhammad Ikram and Habib Ahmad, appellants are on bail; they need not to surrender; their bonds are cancelled and sureties discharged. **Murder Reference No.30 of 2013** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED.**

(Raja Shahid Mehmood Abbasi) (Qazi Muhammad Amin Ahmed)
Judge **Judge**

Approved for Reporting