

Stereo HCJDA-38
Judgment Sheet

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

1. Criminal Appeal No.296 of 2015
(Muhammad Sharif Vs. The State & another)

&

2. Murder Reference No.36 of 2015
(The State Vs. Muhammad Sharif)

Date of hearing: 17.10.2018
Appellant by: Mian Muhammad Tayyab Wattoo,
Advocate.
Complainant by: Mr.Jehanzeb Arbab, Advocate.
State by: Mr.Asghar Ali Gill, Deputy Prosecutor
General.

QAZI MUHAMMAD AMIN AHMED, J:- Muhammad Jehangir, 30, hereinafter referred to as the deceased, was done to death on 9-8-2013 at 7:30 a.m. within the area of Village *Mohib Ali*, situating 6-kilometers from Police Station Donga Bonga, District Bahawalnagar; incident was reported by his brother Muhammad Anwar (PW-5) through written application (Ex.PC) presented at the Police Station 10:00 a.m same day. Muhammad Sharif, appellant herein alongside Zafar Iqbal, Barish Ali, Abdul Jabbar and Abdul Sattar, real brothers *inter-se*, since acquitted was arrayed as accused. It is alleged that on 09.08.2013 the complainant alongwith the deceased went to the village barber; he was standing outside the barbershop while Rizwan alias Jani, the barber was attending the deceased; within witnesses' view the accused assaulted the deceased; Zafar Iqbal hit the deceased with a pistol shot on left side of his chest with its exit on the back whereafter the appellant and Abdul Jabbar dragged the deceased outside the shop, as he was subdued, the appellant dealt multiple *Bughda* blows on neck, chest, left deltoid and

right shoulder. The deceased succumbed to the injuries at the spot whereafter he was dragged by the accused to their home. The deceased had abducted sister-in-law of Zafar accused 6/7 months before the occurrence; she was restored, however, the accused harbored the grudge, quenched on the fateful day read the first information report.

Autopsy was conducted at 1:50 p.m; it revealed a circular lacerated firearm wound pierced through left anterior chest making exit on the back. A large incised wound with multiple cuts and irregular margins was noticed on the front and left side of neck with massive damage to underlying muscles, thyroid gland, caroted vessels, cartilage, tracheal rings, esophagus and cervical vertebra; three incised wounds on upper chest, below clavicle as well as one on the sternum accompanied by a lacerated wound on the right shoulder find mention in the autopsy report. Upon probe, in the thorax, left pleura, left lung, pericardium and heart were also found damaged. Firearm injury on the chest as well as injury on the left side of neck were blamed as cause of death within 2 to 30 minutes, 12 hours preceding autopsy. Upon external appearance rigor mortis was found at its initial stage.

Spot inspection includes seizure of a .30 caliber casing as well as other steps of formal nature; blood was secured from beneath the dead body, shown in the inquest report (Ex.PF/4) lying in the house of Zafar Iqbal, accused. The appellant and Zafar Iqbal co-accused were arrested on 1-9-2013; the former upon a disclosure, led to the recovery of pistol (P-3) whereas the latter a *Bughda* (P-4) on 10.9.2013. Soil as well as *Bughda* (P-4) were found stained with blood of human origin; casing secured from the spot, dispatched on 19.8.2013 was found wedded with pistol (P-3) received on 23.9.2013. Indicted on 5.12.2013 by a learned Additional Sessions Judge at Bahawalnagar, the accused claimed trial, pursuant whereto

prosecution beside placing reliance upon forensic report produced as many as 10 witnesses; its case primarily structured upon ocular account furnished by Muhammad Anwar (PW-5) & Muhammad Zaman (PW-6); they with one voice reiterated the case set up in the crime report. The accused confronted the prosecution evidence with their own story; they rallied behind Muhammad Sharif who stated as under:-

“I am innocent. Actually on the day of occurrence it was Eid day. My all brothers namely Zafar Iqbal, Abdul Sattar, Abdul Jabbar and Barish were not present in the village. They are working at Lahore and all are labourers. Only I and Mst. Nasim Bibi wife of my brother Haji Musawar who is working in Saudi Arabia were present in the house. None other family member including mother and father were present and were at Lahore. My all brothers, father came to celebrate Eid on that day after the occurrence. Actually, the deceased Jahangir was a desperate boy, he had illicit relation with Mst. Nasim Bibi and he was not aware of my presence in the home. He came in morning for his evil design in our house to abduct Mst. Nasim Bibi and commit Zina with her. When I intercepted, he was armed with pistol 30-bore at that time I picket the hatchet which was lying in our house and caused injuries to him and he could not fire on me. I gave hatchet blow, he fell down, then I fired at Jahangir deceased after snatching his pistol. Neither any Pw was present nor they saw the occurrence nor this occurrence took place in Barber’s shop, nor my brothers were present there. The story mention in the FIR is concocted one. Our house is surrounded by four wall more than a man height and no one can see the occurrence. That the dead body was also taken into possession by the police from our house. Hatchet and pistol were also lying there from where the police took the same into possession in my presence. No sign of dragging was found. No blood stained earth was taken from the alleged place of occurrence but later on after coming to know the alleged occurrence, the prosecution concocted the story with the help of complainant and involved my whole family and prosecution does not know anything about the occurrence. My all brothers are innocent. For this reason no independent PW appeared to corroborate the version of the prosecution and prosecution could not prove the case beyond shadow of doubt and deceased attacked upon me. I

caused injury to save my person and honour of my family in panic”.

The learned trial Judge preferred the plea over prosecution evidence; proceeded to convict the appellant under clause (b) of Section 302 of the Pakistan Penal Code, 1860, he sentenced him to death with compensation of Rs.200,000/- or six months SI in the event of default while acquitting the remainder from the charge vide impugned judgment dated 3-6-2015, vires whereof, are being challenged through Crl. Appeal No. 296 of 2015 clubbed with Murder Reference No.36 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 there was no occasion for the learned trial Judge to convict the appellant merely on account of his admission in statement under Section 342 of Code of Criminal Procedure, 1898 in the face of rejection of prosecution evidence for valid reasons. In order to qualify his point, he has argued that occurrence did not take place in the manner as alleged in the crime report and once the learned trial Judge excluded the identically placed co-accused from the array, the entire case had gone to the wind, particularly after dismissal of complainant's appeal against acquittal, a common ground at the bar. The bottom line is that impugned judgment is not sustainable. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has defended the impugned judgment on the ground that after appellant's admission before the court, he could not blow heart and cold in the same breath particularly after having inflicted massive violence upon the deceased on Eid day. The bottom line is that prosecution has successfully driven home the charge beyond reasonable doubt; he has prayed for confirmation of death penalty.

3. Heard. Record perused.

4. The impugned judgment is primarily based upon appellant's position, taken during his examination under Section 342 of the Code of Criminal Procedure, 1898; holding this aspect of the case in abeyance for a while, there are many questions that warrant answers, of them, the most intriguing is participation of five real brothers in the crime; viewed from this angle, deceased is found to have received seven injuries, one firearm entry wound with its exit, a large incised wound with three incised muscle deep wounds within the diameter of 4 x ½ cm below clavicle, and incised wound of 3 x 1 cm on the sternum accompanied by a lacerated wound, tissue deep measuring 1 ½ x 1 on the right shoulder. Violence suffered by the deceased is not commensurate with the number of accused, nor the weapons, held by two of them. Argument that net has been cast wide to ensnare the entire family does not sound unrealistic. Similarly, one would find himself at a loss to understand as to why the accused shifted the deceased after murder to their home; there was no apparent purpose likely to be served except for incurring embarrassment with a formidable proof of crime inside their precinct. Omission by the Investigating Officer to secure blood from inside the shop spaces possibility of absence thereof. Failure of Rizwan alias Mani, the barber who last attended the deceased, to enter the witness box, though, symptomatic of social apathy, nonetheless, his non-association in the investigative process as admitted by the Investigating Officer cannot be viewed as an inconsequential lapse. Magnitude of violence corresponds with intensity of rage that propelled the assault. The above circumstances vividly spell out a scenario altogether incompatible with the case set up in the crime report particularly in the backdrop of deceased's illicit liaison with the female inmate of the house where he was found dead in a pool of blood.

Adverting to appellant's plea, the learned trial Judge discarded prosecution story, however, structured findings of guilt on appellant's response to certain questions answered by him during his confrontation with prosecution evidence, an exercise contemplated by section 342 of the Code *ibid*; he ran into a juridical error. Purpose behind accused examination is to confront him with the evidence produced by the prosecution, and likely to be used against him; the exercise is carried out to acquaint him with incriminatory material with a view to enable him to vindicate his position; procedural fairness requires that the accused is not taken by surprise and thus, is a beneficial arrangement; though a question may be put to the accused at any stage of the trial, however, more often than not; accused's attention is invited after close of the State case. In the face of rejection of prosecution evidence or its failure to drive home the charge, explanation offered by the accused cannot be allowed to substitute the discarded proof. The statement has to be viewed in *toto* without quantification or dissections in pieces, adverse to the accused. Reliance is placed in the case of *Azhar Iqbal v. The State* (2013 SCMR 383); relevant portion is reproduced with profit:-

“.....the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. A reference in this respect may be made to the case of Waqar Ahmed v. Shaukat Ali and others (2006 SCMR 1139). The law is equally settled that the statement of an accused person recorded under section 342, Cr.P.C is to be accepted or rejected in its entirety and where the prosecution's evidence is found to be reliable and the exculpatory part of the accused person's statement is established to be false and is to be excluded from consideration then the inculpatory part of the accused person's statement may be read in support of the evidence of the prosecution. This legal position stands amply demonstrated in the cases of Sultan Khan v. Sher Khan and others (PLD 1991 SC 520), Muhammad Tashfeen and others v. The State and others (2006 SCMR 577) and Faqir Muhammad and another v. The State (PLD 2011 SC 796).

Crl. Appeal No.296 of 2015 is allowed; the appellant is acquitted from the charge; he shall be released forthwith if not required in any case. **Murder Reference No.36 of 2015** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

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

Approved for Reporting