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Judgment Sheet

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Criminal Appeal No.78 of 2014

Latif Masih versus The State, etc.

Criminal Appeal No.388 of 2014

Saleem Masih versus Yasir Masih etc.

Criminal Revision No.202 of 2014

Saleem Masih versus Latif Masih etc.

Murder Reference No.178 of 2015

State versus Latif Masih

JUDGMENT

Date of hearing	***18.04.2018***
Appellant (Latif Masih) in Crl. Appeal No.78 of 2014 represented by:	*Barrister Moman Malik and Javaid Gill, Advocates*
The State represented by:	*Ch. Zubair Ahmad Farooq Additional Prosecutor General*
Appellant/Petitioner (Saleem Masih) in Crl. Appeal No.388 of 2014 and Crl. Revision No. 202 of 2014 represented by:	*Mr. Zafar Mahmood Chaudhary, Advocate*

SARDAR AHMED NAEEM, J.- *Latif Masih appellant alongwith Natin Masih and Yasir Masih (co-accused) were tried by the learned Addl. Sessions Judge, Lahore in case FIR No.856 dated 10.8.2010, for offences under sections 302/34 PPC, registered at Police Station South Cantt. District Lahore, lodged by Saleem Masih complainant, for committing murder of Akbar Masih deceased. At the conclusion of the trial, vide judgment dated 04.01.2014, the learned trial Court acquitted Natin Masih and Yasir Masih co-accused and convicted and sentenced the appellant Latif Masih as under:-*

> ***"Under Section 302(b) PPC and sentenced to death with a direction to pay a sum of Rs.2,00,000/- as compensation to the legal heirs of the deceased under section 544-A, Cr.P.C, in default thereof, to further undergo six months Simple Imprisonment. In case of non-payment of the compensation, the amount was ordered to be recovered as arrears of land revenue."***

2. The appellant filed Criminal Appeal No.78 of 2014, challenging his conviction and sentence awarded by the learned

trial Court. Saleem Masih appellant/complainant filed Criminal Appeal No.388 of 2014 challenging acquittal of Yasir Masih and Natin Masih, respondents and also filed Criminal Revision No.202 of 2014 for enhancement of compensation from Rs.2,00,000/- to Rs.10,00,000/-. Murder Reference No.178 of 2015 is also before us for confirmation or otherwise of the death sentence awarded to Latif Masih, appellant. Through this single judgment, we propose to decide all the above mentioned matters.

3. The epitome of the prosecution story as mentioned in FIR Exh.PA/2 was that on 10.8.2010, the complainant along-with his family members was present in his home. Meanwhile, some one knocked at the main door of the house and Akbar Masih (deceased) went out. On hearing the hue and cry, complainant along-with Akram Masih (son) and Pervaiz Masih (brother) went in the street and saw Natin Masih and Yasir Masih armed with pistols encircled Akbar Masih (deceased). Complainant along-with PWs moved forward to save him but threatened that if some one tried to move forward would be done to death. Natin Masih raised lalkara to teach a lesson to Akbar Masih (deceased) for forbidding them to sell the narcotics, on which Latif Masih (appellant) took out Churri from 'naifa' of his shalwar and inflicted churri blow at the neck of Akbar Masih (deceased) who fell down in injured condition. Accused while brandishing their weapons fled away from the crime scene. Akbar Masih (deceased) was taken to hospital where he succumbed to the injuries.

4. After usual investigation, the appellant along-with acquitted co-accused was sent to the Court for trial. They were charge sheeted. They pleaded not guilty and claimed trial, hence the prosecution evidence was summoned.

5. In order to prove its case, the prosecution examined as many as twelve witnesses in all.

6. Saleem Masih complainant (PW-1) supported the prosecution story as mentioned in the FIR. Pervaiz Masih (PW-2)

being eye witness of the occurrence also corroborated the statement of PW.1.

7. Dr. Ahmad Raza Khan (PW-5) conducted post-mortem examination of the deceased Akbar Masih and observed following injury on his person:

> ***"An open gapping incised wound 3 x 1 cm with clean cut margins and well defined angles, crescentic in shape. On the lower part of front aspect of right side neck, 4 cm right of midline and 1 cm above the medial end of clavicle."***

According to his opinion, said injury was ante-mortem in nature and caused by sharp edge weapon. The death of the deceased occurred due to the damage of major blood vessels of the right side of the neck under injury No.1 leading to hemorrhage, shock and death and sufficient to cause death in ordinary course of nature. Probable time between the injury and death was within few minutes and time between death and post mortem was 15 to 24 hours. Copy of the postmortem report was Exh.PE and diagrams Exh.PE/1 and Exh.PE/2 showing the locale of injuries were in his hand and signed by him.

8. Faqeer Muhammad S.I. (PW-9) conducted the investigation of the instant case. On 10.8.2010, after learning about the occurrence, he proceeded to the hospital where dead body of Akbar Masih was lying. He prepared injury statement Ex.PM and inquest report Ex.PO of the deceased and then handed over the dead body to the medical officer for post-mortem. On the same day at night, he went to the place of occurrence, prepared rough site plan Ex.PN and recorded statements of the PWs under Section 161 Cr.P.C.

9. On 14.1.2010, he inspected the spot alongwith Draftsman. On 16.08.2010, he obtained non bailable warrants of arrest of Latif Masih Ex.PF, Natin Masih Ex.PG and Yasir Masih Ex.PH. On 22.08.2010, he arrested Latif Masih appellant. On 29.08.2010, he interrogated Latif Masih appellant and recovered churri P-1 which he took into possession vide Memo

Ex.PC. On 30.08.2010, he sent Latif Masih appellant to the Judicial Lock up.

10. Muhammad Imran Haider Inspector (PW-10) partially investigated the case. On 16.10.2010, he arrested accused Yasir Masih and Natin Masih and sent both the accused to the judicial lock up and prepared report under Section 173 Cr.P.C. Rest of the PWs are of formal nature, therefore, need not to be discussed.

11. The prosecution while tendering in evidence report of Chemical Examiner Ex.PP and report of Serologist as Ex.PQ, closed its case.

12. After close of the prosecution evidence, the appellant was examined under section 342, Cr.P.C. He denied the prosecution allegations and pleaded innocence. Responding to a question ***"why this case against him and why the PWs deposed against him****", the accused/appellant Latif Masih replied as under:-*

> ***"The deceased was a drug addict. On 10.08.2010 at about 7.00 p.m. a quarrel took place between my children and the deceased upon mobile prior to the occurrence. On the same night I was playing snooker in the Snooker Club at about 8.30 p.m. Akbar deceased called me. I came out from Snooker Club and the deceased used filthy language against my mother and we entered into a scuffle with each other. Akbar deceased wanted to take revenge of the evening quarrel and had brought churri from his house. During this scuffle the deceased suffered a churri blow. The deceased attacked upon me. He was aggressor person. I have intention to kill the deceased at the time of occurrence. I did not give a churri blow to Akbar deceased. I have no motive to kill the deceased at the time of occurrence. Motive set up in the FIR was concocted and afterthought. The complainant was not present at the spot and was called from his house after the occurrence. The other PWs of the FIR were also not present at the spot. They are also related to the deceased. My first version was not properly recorded by the I.O. in league with the complainant party. I am innocent and pray for justice."***

The appellant appeared as his own witness in his statement under Section 340(2) Cr.P.C., in disproof of the prosecution evidence and stated as under:-

> ***"On 10.08.2010, I had a quarrel with the deceased Papa over a trivial matter relating to mobile phone. The matter thereafter, was resolved. Thereafter, after some time, the deceased again came back to snooker club where I was playing the game, dragged me and we had a scuffle there. During scuffle the deceased put out a knife (churri) and wanted to assault upon me, accidently slipped there and***

inflicted himself with the said churri, was done to death due to said injury. I did nothing nor assaulted upon the deceased. It was his mistake as he was under intoxication, due to which he succumbed to his wound."

The appellant, however, did not produce any witness in his defence.

It was observed that Criminal Appeal No.78 of 2014 did not reach the Court after its institution, however, learned Additional Prosecutor General assisted by the learned counsel for the complainant accepted the notice and the case was decided as 'Pucca' matter.

13. Learned counsel for the appellant submitted that no independent witness was cited by the prosecution; that there were contradictions between the medical and the ocular account; that the postmortem examination in this case was held on the following day of the occurrence; that prosecution failed to prove the motive; that blood stained churri allegedly recovered from the appellant was dispatched to the office of public analyst after the lapse of 4 ½ months and was found blood stained, improbable and unusual; that co-accused of the appellant were acquitted on the same set of evidence and no corroboration was forthcoming; that place of occurrence was at a distance of 7/8 kilometers from the Lahore General Hospital and the witnesses shifted the deceased to hospital by a rickshaw but neither their clothes were stained with blood nor produced during the investigation; that the case of prosecution was riddled with doubts and the doubt even slightest is always resolved in favour of the accused. Concluding the arguments, learned counsel submitted that the prosecution miserably failed to prove its case, thus, the appellant was entitled to acquittal.

14. Learned Additional Prosecutor General assisted by the learned counsel for the complainant submitted that the witnesses had no grudge or grouse to falsely implicate the appellant; that the learned trial Court held the appellant guilty after fair appraisal of the evidence; that case of prosecution

was corroborated by the medical evidence as well as recovery of churri; that the motive was proved; that the minor discrepancies hinted at by the learned counsel for the appellant do creep up with the passage of time; that the prosecution has proved its case against the appellant beyond reasonable doubt. Learned counsel supported the judgment rendered by the learned trial Court.

15. We have considered the arguments advanced by the learned counsel for the parties and have perused the record.

16. The gist of the prosecution's case was that on 10.8.2010 at 9.00 p.m some one knocked at complainant's door whereupon the deceased went outside his home. The alarm then being raised in the street attracted the complainant along-with Akram Masih and Pervaiz Masih. They went outside and saw that the appellant along-with his co-accused intercepted the deceased in front of Gugo Snooker Club. The co-accused, namely, Natin and Yasir Masih stood at guard and that Latif Masih appellant stabbed the deceased with churri hitting on front side of his neck. The complainant along-with the eye witnesses shifted the injured to Lahore General Hospital in a rickshaw but the deceased expired in the hospital.

17. The place of occurrence was surrounded by different shops and houses. It was in the evidence that may others were attracted to the spot but no independent witness was cited by the prosecution. The complainant being father and Akram Masih and Pervaiz Masih being close relatives of the deceased did not make even an abortive attempt to save the deceased from the clutches of the accused. Their conduct was, thus, unnatural as no father or real uncle would let anybody to commit murder of their son in their presence. The complainant claimed to have gone to Lahore General Hospital sitting besides rickshaw driver, whereas, Akram Masih and Pervaiz Masih were sitting on both sides of the deceased, was bleeding profusely but neither their clothes were stained with blood nor

secured/taken into possession during the investigation. The production and securing of their clothes would have been a very important circumstance to establish the presence of the witnesses inside the rickshaw and with the injured as stated by the eye-witnesses.

The place of occurrence was at a distance of 7/8 kilometers from the Lahore General Hospital and it takes about 15 to 20 minutes to get from Gugo Snooker Club to hospital. It is also hard to believe that the clothes of the eye-witnesses would not have been stained with blood if they actually carried the injured. The absence of blood stains on the clothes of eye-witnesses clearly indicate that none of them was sitting beside the injured or shifted him to hospital.

18. The ocular account was furnished by the complainant and Pervaiz Masih, real Chacha of the deceased, whereas, Akram Masih was given up being unnecessary. The complainant reported the incident in clear terms that the appellant brought out churri from the fold of his shalwar and stabbed his son. He also levelled the same allegation during trial that appellant ( ) but the Medical Officer observed incised wound against the allegation of stabbing.

19. A stab wound is produced when force is delivered along the long axis of a narrow or pointed object, such as knife, dagger, spear, arrow, screw driver etc. in the depth of the body. It is deeper than its length and width on skin. This can occur by driving the object into the body or from the body's pressing or falling against the object. They are called penetrating stab wound, when they enter in a cavity of body.

The factors that determine how much force is needed for penetration to occur are:-

(i) The sharpness of the tip of the weapon: the sharper the tip, the easier it is to penetrate the skin.

(ii) The speed of the contact: the faster the contact, the greater the force applied and the easier it is to penetrate the skin.
(iii) Whether clothing has been penetrated: clothing increases the resistance to penetration.
(iv) Whether bone or cartilage has been injured: skin offers very little resistance to a stabling action by a sharp knife, but penetration of these denser tissues will require greater force.

When the weapon enters into the body one side and comes out from the other side, perforating through and through puncture wounds are produced The entry is larger with inverted edges, and the exit is smaller with everted edges, due to tapering of blade. Whereas, the incised wounds are wounds caused by a clean sharp object such as a knife, broken piece of glass or razor. There are different types of incised wounds including cuts to the skin during shaving, cutting of skin from a broken glass, accidently cutting one-self with a knife, surgical incisions, etc. Since these wounds are result of clean sharp object cutting into the skin, these are usually pretty straight without any jagged edges to the wound. The autopsy in this case was held by Dr. Ahmed Raza Khan (PW.5), who observed incised wound of Churri 3 X 01 c.m with clean cut margins and well defined angles, crescentraic in shape and on the lower part of front aspect of right side neck, 04 c.m right of mid line and 01 c.m above medial end of clavical, thus, said injury does not appear to be result of stabbing as stated by the complainant.

The medical evidence produced by the prosecution in this case could not provide much support to the ocular account. It can only provide support to the ocular evidence regarding various details. However, medical evidence has no supportive value where the eye-witnesses themselves do not inspire confidence and, thus, there is nothing left to be suppored.

20. The eye witnesses reached at the crime scene on the alarm raised in the street and after the occurrence, the deceased then injured was shifted by them on a rickshaw to hospital. He expired in the hospital at 10.25 p.m The

Investigating Officer having information of the occurrence also reached in the hospital. The complainant got recorded his statement Exh.PA and the FIR was registered at 11.15 p.m. It was also in the evidence that the dead body was shifted to hospital at 12.10 a.m but the postmortem was conducted on 11.08.2010 at 01.15 p.m. The time which elapsed between the postmortem and the death was 15 to 24 hours, mentioned in the statement of PW.5, who further claimed that the police papers were not provided to him and being handicapped for that reason, he could not conduct the postmortem which reflects that the police papers were not prepared till the next day and suggests deliberation and consultation.

21. The reasons for the outbreak of this episode was that Latif Masih was a drug seller and the deceased was an addict who quite often refrained the appellant from selling the narcotics in the area. The complainant has admitted in cross examination that his son i.e. the deceased was an addict, though occasionally, thus, story of shunning a drug peddler by an addict does not appeal to prudent mind. The Investigating Officer also admitted during his cross-examination that no evidence was produced during the investigation to support the motive and there was no record of the appellant being the drug peddler, thus, the evidence about the motive was virtually next to nothing and the prosecution failed to substantiate the allegation.

22. After the occurrence, the appellant fled away from the crime scene and was arrested after twelve days of the occurrence and led to the recovery of churri P-1 from a place not exclusively in his possession rather it was state land. The recovered Churri (P.1) was blood stained, however, dispatched to the office of Public Analyst after 4½ months of the occurrence. The report of the chemical examiner reveals that it was stained with blood. The last worn clothes of the deceased were also found to be blood stained and taken into possession

vide memo Exh.PD but no report of serologist was available on the file regarding blood grouping, thus, the recovery of churri P-1 would not help the prosecution in any manner. The Hon'ble Supreme Court in another identical case titled "Muhammad Asif Versus The State" ***(2017 SCMR 486)*** *observed as under:*

> ***"17. It is, normal practice and conduct of culprits that when they select night time for commission of such crime, their first anxiety is to conceal their identity so that they may go scot-free unidentified and in that course they try their level best to conceal or destroy each piece of evidence incriminating in nature which, might be used against them in the future thus, human faculty of prudence would not accept the present story rather, after committing crime with the dagger, the appellant could throw it away anywhere in any field, water canals, well or other place and no circumstances would have chosen to preserve it in his own shop if believed so because that was susceptible to recovery by the police.***
> ***18. Before parting with this judgment, we deem it essential to point out that, mere sending the crime weapons, blood stained to the chemical examiner and serologist would not serve the purpose of the prosecution nor it will provide any evidence to inter link different articles.***
> ***19. We have noticed that the Punjab Police invariably indulge in such a practice which is highly improper because unless the blood stained earth or cotton and blood stained clothes of the victim are not sent with the same for opinion of serologist to the effect that it was human blood on the crime weapons and was of the same group which was available on the clothes of the victim and the blood stained was available on the clothes of the victim and the blood stained earth/cotton, such inconclusive opinion cannot be used as a piece of corroboratory evidence. Therefore, copy of his judgment be sent to the Prosecutor General, Punjab, and Chief Incharge of Investigation, Punjab Provincial Police to issue instructions to the investigating agencies in this regard.***

23. It may also be mentioned that the learned trial Court tried all the accused and acquitted Natin Masih and Yasir Masih on the same set of evidence. It is settled law that if the co-accused of the appellant are acquitted on the same set of evidence, then, conviction on a capital charge can only be sustained on strong corroboration of the material available on record which is not forthcoming in this case. Reliance in this context, can be placed on "Muhammad Akram V. The State" ***(2012 SCMR 440)*** *and "Ulfat Hussain V. State"* ***(2018 SCMR 313).***

24. It is necessary for the prosecution to prove its case against the accused beyond any reasonable doubt and in

absence of any direct or circumstantial evidence, conviction of a person cannot be sustained merely on account of his failure to explain the circumstances appearing in the evidence against him. In this respect, reliance may be placed on the case titled "ABDUL MAJEED V. THE STATE" ***(2011 SCMR 941).*** *It is by now settled that benefit of doubt, if found in the prosecution's case, the accused shall be held entitled to the benefit, thereof. It is also settled principle of criminal administration of justice that if there is element of doubt, as to the guilt of accused, it must be resolved in his favour. The golden rule of benefit is initially a rule of prudence which cannot be ignored, while dispensing justice in accordance with law. It is based on maxim that it is better to acquit ten guilty persons rather than to convict one innocent person. For acquittal of accused in an offence, how-so heinous it may be, only a single doubt in the prosecution evidence is sufficient. In this respect, reference may be made to case titled "Ayub Masih v. The State"* ***(PLD 2002 SC 1048)*** *and "G.M. Niaz V. The State"****(2018 SCMR 506).***

The instant case as discussed above is replete with serious doubts and the appellant is entitled to the benefit, thereof.

25. The overall effect of the discussion of above facts and circumstances is that the eye-witnesses, whose very presence at the time and place of occurrence, is highly doubtful, does not find ample corroboration from the other available evidence/material. The medical evidence did not furnish requisite corroboration to the eye-witnesses. No evidence regarding motive was produced during investigation or at trial. This case is replete with doubts, which leads us to hold that the prosecution failed to prove its case against the appellant beyond any reasonable shadow of doubt.

26. In view of above, the Criminal Appeal No.78 of 2014 is accepted. The conviction/sentence awarded to the appellant is hereby set aside. He is in custody and be released forthwith if not required in any other criminal case.

27. In sequel of the above discussion, Criminal Appeal No.388 of 2014 against the acquittal of co-accused namely Yasir Masih and Natin Masih and Criminal Revision No.202 of 2014 for enhancement of compensation from Rs.2,00,000/- to Rs.10,00,000/- moved by the appellant/petitioner are hereby dismissed.

28. The death sentence is not confirmed and the Murder Reference No.178 of 2015 is answered in the negative.

The record of the learned trial Court be remitted immediately and the case property be dealt with as directed by the learned trial Court.

(CH. ABDUL AZIZ) (SARDAR AHMED NAEEM)
Irfan JUDGE JUDGE

APPROVED FOR REPORTING

Judge

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