

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

1. Criminal Appeal No.488 of 2015
(Sultan Muhammad Vs. The State)

&

2. Murder Reference No.18 of 2016
(The State Vs. Sultan Muhammad)

Date of hearing: 13.02.2018
Appellant by: Mr. Muhammad Khaliq-uz-Zaman, Advocate
(State expense).
Complainant by: Nemo
State by: Mr. Umar Hayat Gondal, APG with Saeed
Akhtar, SI.

QAZI MUHAMMAD AMIN AHMED, J:-Muhammad Akram, 26/27, henceforth referred to as the deceased, was asleep in his room on 09-08-2014 when shot dead at 7:00 a.m. by Sultan Mehmood, no other than his real brother, appellant herein, within the area of *Thatti Noor Ahmad Shah* situating at a distance of 25-Kilometers from Police Station Pindi Gheb, District Attock; his sister Fouzia Sultan (PW-5), mother Sarwar Bano (PW-8) along with Aamir Shahzad (PW-9) appallingly witnessed the occurrence, reported through statement (Ex.PD) recorded by Javed Iqbal, SI (PW-17) 9:15 a.m. at the spot. According to complainant Fozia Sultan (PW-5), the family had assembled in the ancestral home on account of *Eid* holidays; relations between two brothers as well as spouses were far from being congenial; they used to quarrel more often than not; deceased and the appellant lastly confronted each other on 7-8-2014 whereafter the latter took family to his in-laws. On the fateful day, Aamir Shahzad along with his wife Shazia Aamir were having breakfast with Sarwar Bano and Fouzia Bibi PWs in the courtyard when the appellant carrying a .30 caliber pistol entered the house; while exhorting that he

would bring the issue to an end and within witnesses' view shot the deceased on left side of his head.

Dr. Imran Ali (PW-3) conducted autopsy same day at 9:45 a.m. and noted solitary firearm entry wound, on left side of head just above left ear .8 x .8 cm surrounded by blackening and charring alongside corresponding exit; the injury damaged scalp, skull (cranium) and brain resulting into hemorrhagic shock leading to cardiopulmonary arrest within two minutes; interregnum between death and postmortem was estimated as 2 to 3 hours.

Spot inspection carried out by Javed Iqbal, SI (PW-17) includes seizure of blood, a .30-caliber casing, secured vide inventory; he arrested the appellant as well as co-accused nominated through supplementary statement; pursuant to a disclosure, the appellant led to the recovery of pistol .30-caliber (P-3) on 6-2-2015; the accused were sent to face trial before a learned Addl. Sessions Judge at Pindibheb; indicted on 11-03-2015, they claimed trial, pursuant whereto, prosecution, besides relying upon forensic reports, produced as many as seventeen witnesses to bring home the charge. Fouzia Bibi (PW-5), Sarwar Bano (PW-8) and Aamir Shahzad (PW-9) furnished ocular account, it constitutes prosecution's mainstay. On forensic side, blood secured from the spot was found that of human origin; .30-caliber casing dispatched prior to appellant's arrest on 19-8-2014 tallied with pistol P-3. The appellant confronted the prosecution evidence with a denial and blamed the deceased to have committed suicide. The learned trial Judge vide impugned judgment dated 2-11-2015 acquitted Muhammad Zahoor, Abdul Ghafoor and Samina Bibi, co-accused while proceeded to convict the appellant under Section 302(b) of the Pakistan Penal Code 1860 and sentenced him to death with payment of compensation in the sum of Rs.300,000/- or six months simple imprisonment in the event of default. Crl. Appeal No.488 of 2015 disputes the vires of the impugned judgment whereas Murder Reference No.18 of 2016 seeks confirmation of death penalty; bound

by a common thread, these are being decided through this single judgment.

2. Mr. Khaliq-uz-Zaman, learned counsel for the appellant, appointed at State expense, contends that given the locale of injury and blackening as well as charring surrounding the wound, the hypothesis of a suicide sounds more probable than assault by a real brother for a motive trivial in nature, otherwise shrouded into mystery; that witnesses could not be believed merely on account of their relationship with the appellant and the deceased in a sharply divided household; he has referred to supplementary statement admittedly made by the complainant whereby she brought on the crime scene acquitted respondents alongside the appellant to argue that if the witnesses were really present at the crime scene, there was no occasion for them to omit their presence in complaint Ex.PD; the bottom line is that prosecution failed to bring home charge beyond reasonable doubt and, thus, the appellant could not be convicted merely on the basis of moral satisfaction or inter se relationship of the witnesses between the deceased and the appellant. Contrarily, the learned Law Officer, single handedly, defended the impugned judgment on the ground that the deceased was done to death in cold blood by the appellant, his real brother inside the safety of his home without any provocation, while he was asleep. It is further argued that motive alleged in the crime report is not an unusual saga in rural neighbourhood, however, furnish no justification for the extreme step taken by the appellant; he has referred to dispatch of casing prior in point of time than appellant's arrest in the wake of absconscion, found wedded with pistol P-3. Entry wound being on left side of the head, according to learned Law Officer, there was no space to entertain hypothesis of suicide as canvassed by the appellant. Confirmation of death penalty has been prayed for.

3. Heard. Record perused.

4. In this case of fratricide, domestic dispute between the two brothers is cited as a motive behind the crime without many

details thereof and, thus, it is far from being clear as to what really actuated the appellant to take life of his own brother, nonetheless, his plea that the deceased committed suicide requires a pinch of salt inasmuch as given the locale of entry wound on left side of head just above the ear measuring .8 x .8 cm surrounded by blackening and charring is outside the realm of possibility. The fire was shot from a close blank possibly from within the distance of four feet, given the left side of skull, it cannot be presumed that the same was made by the deceased upon himself, presumably with his right hand. Fouzia Bibi (PW-5) is real sister of both, the appellant as well as the deceased, whereas Sarwar Bano (PW-8), a real mother; it was certainly a most difficult choice for them and there is no earthly reason to disbelieve these witnesses so as to entertain any hypothesis of appellant's innocence on the basis of theory of suicide. Recovery of wedded pistol P-3 is an additional plank to sustain the charge. Appellant's guilt is proved to the hilt. Crl. Appeal No.488 of 2015 **fails**. However, insofar as quantum of sentence to be exacted from the appellant is concerned, it warrants serious reconsideration. Witnesses are reticent on the motive side of their case, however, there are oblique references in their statements during cross-examination to the effect that as the deceased had divorced his first wife and desired to go for a second marriage, the appellant somehow stood in impediment to the desired arrangement. Position taken by the witnesses is far from being plausible as deceased's second marriage could not be a possible cause for the appellant to take life of his real brother, thus, what exactly prompted the appellant to gun down his real brother is a mystery hovering above the case. Prosecution case that the appellant was asleep inside the room at 7:00 a.m. in a sizzling hot weather while the family alongside guests was busy in breakfast in the courtyard also spells out a different scenario. Introduction of Muhammad Zahoor, Abdul Ghafoor and Samina Bibi, as accused who allegedly abetted the crime and accompanied the appellant as well, through a supplementary statement admitted by the complainant in following terms:-

“On 9.8.2014 my supplementary statement was also recorded by the police in which I stated that on 8.8.2014, Abdul Ghafoor, Zahoor Ahmad brothers along with their sister Samina Bibi (Bhabi) accused present in court all came in our and threatened my brother Muhammad Akram that if you remain alive, then you will be able to contract second marriage and got vacated quarter from Sultan accused.”

is yet another circumstances that converges in the appellant’s favour; though the step taken by the complainant, indiscreet by all means, does not impinge upon the inherent fate of the case, nonetheless, can be taken into account to visit the appellant with alternate penalty of imprisonment for life in the face of prosecution failure to satisfactorily establish the motive. It has been held in the case of Haqnawaz Vs. The State (2018 SCMR 21), relevant portion whereof is reproduced with advantage:-

“The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmed Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaisar Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran @ Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. the State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State 2017 SCMR 148).”

There is yet another reason to alter the sentence; appellant’s execution would not bring much good to the family, grievously devastated by homicidal death of Muhammad Akram to confront a similar trauma, identical in magnitude. In the facts and circumstances of the case,

sentence of imprisonment of life would meet the ends of justice, an alternate penalty, according to the law declared in the case of Ghulam Mohy-ud-Din alias Haji Babu vs. The State (2014 SCMR 1034):-

“Once the legislature had provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty was the normal penalty and should ordinarily be awarded. If the intent of the legislature was to take away the discretion of the court, then it would have omitted from S. 302 (b), P.P.C. the alternative sentence of life imprisonment. Sentence of death and life imprisonment were alternative to one another, however, awarding one or the other sentence essentially depended upon the facts and circumstances of each case.”

Consequently, penalty of death is altered into **imprisonment for life** with benefit of Section 382-B of the Code of Criminal Procedure, 1898; amount of compensation and consequence in the event of default are kept intact. **Murder Reference No.18 of 2016** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

(Raja Shahid Mehmood Abbasi)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved For Reporting