

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

1. **Criminal Appeal No.58-J of 2015**
(*Muhammad Zulfiqar Vs. The State*)
2. **Criminal Appeal No.398 of 2015**
(*Muhammad Gulfam Vs. The State*)
3. **Criminal Appeal No.399 of 2015**
(*Mazhar Iqbal Vs. The State, etc. .*)
4. **Criminal Revision No.143 of 2015**
(*Mazhar Iqbal Vs. The State, etc. .*)
&
5. **Murder Reference No.31 of 2015**
(*The State Vs. Muhammad Aslam & another*)

Date of hearing: 29.01.2018
Appellants by: Raja Ghaneem Aabir Khan, Advocate.
Complainant by: Mr. Aamir Shafique Qureshi, Advocate.
State by: Mr. Qaisar Mushtaq, Assistant District Public
Prosecutor with Hidayat Ali, SI.

OAZI MUHAMMAD AMIN AHMED, J:-Nazar Iqbal, 40 alongside his father Muhammad Azam, 65, henceforth referred to as the deceased, were done to death at 4:30 p.m. on 13-6-2009, inside their home, located within the area of village *Nodair* situating at a distance of 7-kilometers from Police Station Mandra District Rawalpindi. Mazhar Iqbal (PW-1), Irfan Iqbal (PW-2) and Rabia Begum witnessed the occurrence; they sustained injuries as well. Mazhar Iqbal PW is architect of the case structured upon statement Ex.PA recorded by Iftikhar Hussain SI (PW-16) 6:00 p.m. at the spot wherein Muhammad Aslam (since dead) Muhammad Zulfiqar and Muhammad Gulfam, real brothers inter se, appellants herein, alongside Muhammad Waqas, Muhammad Tahir, Muhammad Imran, Parvez Iqbal, Khalid Mehmood accompanied by 3/4 unknown persons, variously armed with .12-caliber carbines as well as shotguns were

arrayed as the culprits. According to the complainant, the family was surprised by the assault, spearheaded by Muhammad Aslam appellant, no other than father of Asma Bibi wife of Imran Iqbal PW; she was declined permission by Muhammad Azam deceased, her father-in-law to visit parental house on 12-6-2009. From amongst the accused, who barged their entry into a room, Muhammad Aslam appellant is attributed a straight fire shot upon Muhammad Azam's chest followed by a shot by Muhammad Zulfiqar landing on his chest as well; Muhammad Gulfam targeted left deltoid of Nazar Iqbal deceased in his fallen posture; shot by Tahir accused hit the complainant on his legs. Khalid Mehmood dealt a butt blow on the face of Rabia Bibi PW followed by a butt blow by Parvez Iqbal on left side of face of Irfan Iqbal PW; Muhammad Waqas batted a brick followed by a butt blow on the shoulder and face of Irfan Iqbal PW; complainant escaped a straight fire shot by Imran accused. Lastly, the accused are jointly assigned indiscriminate firing upon the deceased; they succumbed to the injuries at the spot. Gun reports attracted the neighbourhood and the assailants decamped from the scene in the vehicles brandishing their weapons alongside Asma and her minor daughter.

Medical examinations commenced, under police docket, at 7:40 p.m. when Dr. Aamir Shahzad (PW-3) medically examined Irfan Iqbal PW to find chip of upper right incisor fractured along with slants, sizing respectively as 3 x 4 and 2 x 2 cm on left deltoid muscles and shoulder accompanied by a bruise 7 x 3 cm on left cheek as well as swelling 1 x 1.5 cm on the center of forehead. Mazhar Iqbal PW was noted to have multiple (*wound complex*) of firearm injury on medial side of left leg comprising eleven wounds each measuring 1 x 1 cm. Nine identical wounds measuring 1 x 1 cm each were noted on right knee as well besides a gunshot wound on right side of back 6 cm from right superior posterior inferior spine. Rabia Begum was medically examined by Dr. Farhat Nawaz (PW-17); she was noted to have a

swelling on nose with redness measuring 2 x 3 cm with profuse bleeding as well as bluish bruise at the middle of right eye. Autopsy on the dead body of Nazar Iqbal was carried out by Dr. Waqar Ahmad (PW-5) at 10:00 p.m. *Multiple wound complex of firearm injury* measuring 11x 6 cm on front of chest midline 16 below sterna notch and 8 cm from left nipple comprising of irregular multiple entry wounds largest being 5 x 3 cm was noted with multiple small shots both superficial as well as embedded deep inside the body; a deep grazing wound measuring 12 x 8 cm on the lateral aspect of left arm 6 cm below shoulder with skin tag missing over the area deeply grazed was observed as well. Violence leading to extensive hemorrhage caused cardiopulmonary arrest on account of irreversible hypovolemic shock within minutes being sufficient to cause death in the ordinary course of nature; time between death and postmortem was estimated as 5 to 6 hours. Muhammad Azam deceased was noted with a large complex wound of firearm injury measuring 8 x 6 cm on front upper aspect of right chest below clavicle 7 cm from right nipple with multiple superficial as well as embedded shots, blamed for causing death within minutes due to cardiopulmonary arrest on account of extensive hemorrhage, generated by rupture of blood vessels leading to irreversible hypovolemic shock sufficient to cause death within minutes; interregnum between death and postmortem was estimated as 6 to 7 hours.

Iftikhar Hussain SI (PW-16) carried out spot inspection, besides various investigative steps, he collected blood stained earth as well as 19 casings of 12-caliber (P-12/1-9) secured vide inventory. As the investigation progressed, he arrested Muhammad Aslam, Muhammad Zulfiqar and Parvez Iqbal on 21-6-2009 besides taking into possession Suzuki (P-9), allegedly used in the occurrence. According to this witness, Muhammad Aslam and Muhammad Zulfiqar appellants sustained injuries during the occurrence; he got them medically

examined by Dr. Muhammad Khalil Ullah (CW-1). Muhammad Aslam appellant was noted with seven healed wounds comprising of abrasions, swelling and bruises, found clinically superficial on various parts of his body with complaint of pain on the skull. Muhammad Zulfiqar appellant complained of pain in left shoulder in front of chest cage with no apparent marks of violence except tenderness on the lateral end of left clavicle. Duration of the injuries was estimated as 8-9 days preceding examination. Both the appellants were referred to Holy-Family Hospital for Radiography that detected no bone lesions. 12-caliber gun P-9 was recovered on the disclosure of Muhammad Aslam (since dead) on 28-6-2009 followed by Muhammad Zulfiqar carbine P-12 on 3-7-2009. Gulfam, Waqas Ahmad, Khalid Parvez, co-accused were arrested on 2-7-2009 after dismissal of their bail plea. Waqas accused was discharged by a learned Magistrate on 10-7-2009. Muhammad Imran accused stayed away from law; he stands proceeded against; regarding unknown accomplices, prosecution is clueless till date. Amended charge was framed on 4-11-2013 when the accused before the Court claimed trial, pursuant whereto, prosecution produced as many as 16 witnesses to drive home the charge. Ocular account is prosecution's mainstay; it comprises of inmates of the house who sustained injuries as well. On forensic side, blood secured from the spot was found as that of human origin whereas gun P-9 recovered at the disclosure of Muhammad Aslam appellant was found wedded with seven casings vide report Ex.PLL, negative qua the weapon allegedly recovered from Muhammad Zulfiqar. Muhammad Aslam (since dead) confronted prosecution evidence with a detailed statement; his plea in the nutshell is that his daughter Asma was being kept under restraint and he alongside his brother Muhammad Zulfiqar went to take her home when the complainant side thrashed them, subsequent whereto, Mazhar Iqbal and Imran Iqbal started firing resulting into injuries to both the deceased. The learned trial Judge not

much impressed by the plea proceeded to convict Muhammad Aslam (since dead), Muhammad Zulfiqar and Muhammad Gulfam appellants under section 302(b) of the Pakistan Penal Code, 1860; Muhammad Aslam and Muhammad Zulfiqar were sentenced to death whereas Muhammad Gulfam to imprisonment for life with payment of compensation in the sum of Rs.200,000/- or six months simple imprisonment in the event of default, *vires* whereof, are being challenged through Crl. Appeal No.58-J of 2015 and Crl. Appeal No.398 of 2015 clubbed with Murder Reference No.31 of 2015 seeking confirmation of death penalty; Crl. Appeal No.399 of 2015 and Crl. Revision No.143 of 2015 are aimed at reversal of acquittal of co-accused and enhancement of compensation and sentence of imprisonment for life; since a common thread binds the same, these are being decided through this single judgment.

2. Learned counsel for the appellants contends that occurrence did not take place in the manner as alleged in the crime report; that not only what exactly came about on the fateful day is dishonestly withheld, treatment meted out to Asma Bibi has also been suppressed; that it is a case of wider net to ensnare the entire family, a circumstance patent on the record, however, ignored by the learned trial Court; that injuries suffered by Muhammad Aslam (since dead) and Muhammad Zulfiqar appellant have been suppressed. The bottom line is that on overall analysis of prosecution evidence, the case revolves around Muhammad Aslam (since dead) and, thus, it would be unsafe to maintain conviction qua Muhammad Zulfiqar and Muhammad Gulfam appellants. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has defended the impugned judgment on the ground that prosecution successfully drove home the charge with the assistance of natural witnesses that included an injured as well; that occurrence being a daylight affair between close family members, there is no space to entertain hypothesis of

mistaken identity or substitution. It is argued that learned trial Court rightly returned a guilty verdict. Attention has been invited towards a suggestion put to Mazhar Iqbal (PW-1) by Syed Zia Hussain, counsel for the accused in the following terms “*it is incorrect to suggest that except Aslam and Zulfiqar none of the remaining accused were present at the time of occurrence.*” Loss of life in the safety of residential protection has been pressed into service for confirmation of death penalty as well as enhancement of sentence awarded to Muhammad Gulfam appellant. While arguing appeal against acquittal, learned counsel for the complainant contends that there was no occasion for the learned trial Judge to let off the respondents as they not only constituted an unlawful assembly but also participated actively in the crime after committing criminal house trespass.

3. Heard. Record perused.

4. Asma Bibi wife of Imran Iqbal PW gave birth to a baby girl three months prior to the occurrence; it is prosecution’s case that refusal by Muhammad Azam deceased to allow his daughter-in-law to visit her parents annoyed the appellants and co-accused and this served as a motive for the crime, nonetheless, Mazhar Iqbal (PW-1) admits in his cross-examination as follow:-

“Mst Asima had delivered daughter three months prior to the occurrence of this case. Mst. Asima had gone with her father during these three months once or twice. She had gone for medical check up to the doctor and from there she had proceeded to the house of her father. Firstly she remained in her parents house during days hours and secondly she lived there for two days. During these two visits she lived happily and there was no bitterness. There was no reason for restraining Asima Bibi from going with her father, but my father said that when she will go for medical check up, she will visit her parents.”

While certainly human impulse in adversity or provocation, in a crisis situation, cannot be analyzed on a paradigmatic touchstone, so as to

draw empirical conclusions, nonetheless, more often than not, reactions/responses are proportionately commensurate with the factors actuating them. The above episode would hardly furnish any cause or motive to the accused to mount such a devastating attack, through a collective effort with horrendous consequences upon the future of their own daughter and her infant sibling, particularly when she was convalescing after being in a family way; the argument that what exactly brought both sides face to face on the fateful day has been left to one's imagination is not beside the point. On the contrary in retrospect position taken by Muhammad Aslam (since dead) that her daughter was placed under restraint by her in-laws in a room bolted from outside and having found his daughter in a miserable condition, he attempted to rescue her when a situation ignited by the deceased side, would merit a thoughtful consideration.

Seven persons have been arrayed by their names accompanied by 3/4 unknown assailants, each is shown to have carried .12-caliber weapon; of them, Aslam (since dead), Zulfiqar and Gulfam are real brothers inter se, so are Mehrban and Azam as well as Tahir and Khalid; the last two are sons of Javed Iqbal, real brother of Parvez, Waqas and Haider Ali are sons of Zulfiqar appellant; Parvez accused is also related with Aslam (since dead) and Gulfam appellant through his mother; similarly Tahir is son-in-law of Gulfam appellant; the entire family was in the dock. Deceased as well as the injured received pellet injuries, most certainly through fire shots by a .12-caliber weapon. Argument of casting of wider net is seemingly not unrealistic inasmuch as it appears extremely improbable that the entire clan would senselessly jump into a situation which every single of them could have independently tackled so as to achieve desired results, if any, and this is amply borne out from forensic report Ex.PLL where nine empties are found wedded with gun P-9 recovered on the disclosure of Muhammad Aslam (since dead) and, thus, possibility of

participation by Muhammad Zulfiqar and Muhammad Gulfam appellants cannot be hypothesized through any contemplative mode without potential risk of error; they had no earthly reason to undertake extra burden when Muhammad Aslam (since dead) had already neutralized his targets with nine fire shots from his semi automatic gun. Insofar as reference to an indiscreet suggestion about presence of Muhammad Zulfiqar appellant along with Muhammad Aslam is concerned, he cannot be punished on capital charge merely on account of a disastrous inaptitude on part of his counsel in the face of his consistent denial throughout as well as prosecution's failure to independently drive home the charge. Loss of life, that too inside safety of a dwelling, notwithstanding, justice has to be essentially administered upon truth, both being synonymous with each other. Injuries on the persons of Mazhar Iqbal and Irfan Iqbal PWs are proof of their presence at the crime scene; injuries by themselves do not establish that their recipients are telling the whole truth; their narrative does not fit within the ambit of probability.

Medical examination, though belatedly conducted on Muhammad Aslam (since dead) and Muhammad Zulfiqar appellant unambiguously confirm receipt of injuries by them with durations in terms of point of time corresponding with the occurrence; though not extensive in nature, nonetheless, in the absence of any plausible explanation, these injuries cast their shadow upon the veracity of prosecution case set up in crime report Ex.PA. Under circumstances and for the reasons far from being clear, the incident appears to be a one man show, seemingly by no other than Muhammad Aslam (since dead) with a reason to sharply react given his relationship with Asma Bibi, under conditions referred to above. Yet another mystery hovering over the prosecution case is presence of 3/4 unknown assailants who intruded inside the house with .12 caliber guns and according to crime report Ex.PA jointly fired upon the deceased after

fire shots individually assigned to the appellants. Given inter se relationship of the deceased and the appellants as well as rural neighbourhood, it was certainly not difficult for the PWs to identify them or in any case locate them subsequently, if their presence was truthfully mentioned in the crime report and in case it is so believed, possibility that assault was carried out by hired assassins would not be unrealistic. Prosecution case is fraught with doubts; doubts neither imaginary nor illusory, on the contrary, embedded in stated positions and, thus, it would be unsafe to maintain the convictions. Consequently, by extending benefit of doubt to Muhammad Zulfiqar and Muhammad Gulfam, appellants Crl. Appeal No.58-J of 2015 and Crl. Appeal No.398 of 2015 are **allowed**; they are acquitted from the charge and shall be released forthwith, if not required in any other case. **Murder Reference No.31 of 2015** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

As a natural corollary of findings above, Criminal Appeal No.399 of 2015 as well as Criminal Revision No.143 of 2015 are **dismissed**.

(Raja Shahid Mehmood Abbasi)
Judge

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting