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Judgment Sheet
IN THE LAHORE HIGH COURT, MULTAN BENCH
MULTAN
(JUDICIAL DEPARTMENT)

Criminal Appeal No.359 of 2013

Allah Ditta versus The State etc.

Murder Reference No.51 of 2013

The State versus Allah Ditta

Date of hearing **10.04.2018**

The Appellant by Mr. Mudassar Altaf Qureshi,
Advocate

The Complainant by Miss. Asma Khan, Advocate

The State by Mr. Muhammad Ali Shahab,
Deputy Prosecutor General.

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Asjad Javaid Ghural, J. Through the afore-titled criminal appeal under Section 410 Cr.P.C., appellant Allah Ditta has challenged the vires of judgment dated 05.07.2013 passed by the learned Sessions Judge, Vehari in case FIR No.451 dated 09.09.2011, in respect of offences under Sections 302, 324 & 34 PPC, registered at Police Station, Luddan District Vehari whereby he was convicted and sentenced as under:-

Under Section 302(b) PPC

Death and to pay the compensation of Rs.50,000/- under Section 544-A Cr.P.C. to the legal heirs of deceased Ghulam Farid and in default thereof to further undergo simple imprisonment for six months.

Under Section 324 PPC

Rigorous imprisonment of 10-years and to pay the fine of Rs.50,000/- and in default thereof to further undergo simple imprisonment for three years.

Under Section 337-F(v) PPC

Imprisonment of 05-years and to pay Daman.

2. Murder Reference No.51 of 2013 for confirmation or otherwise of death sentence of appellant Allah Ditta shall also be decided through this common judgment.

3. The prosecution story unfolded in the crime report (Ex.PA) registered on the complaint of Muhammad Waryam (PW-11) is that in the preceding season of harvesting wheat crop, Allah Ditta (appellant) and Ghulam Farid (deceased) had been jointly working as laborer on thresher machine and during the said period, Allah Ditta had withheld seven mounds of wheat out of his total labour outcome. Ghulam Farid had been making repeated demands for the return of his wheat from Allah Ditta but he refused and extended threats to kill him, if he again made such demand. On 09.09.2011 at about 5:00 p.m., the contractor of WAPDA had installed an electric pole in the land of Muhammad Nadeem (PW-10) near the house of Allah Ditta due to which Muhammad Nadeem and Allah Ditta had exchanged hot words whereupon Ghulam Farid intervened and forbade them. In the meanwhile, Muhammad Latif, armed with Sota and Muhammad Sharif empty handed (both since acquitted), had come there. Muhammad Latif raised Lalkara to teach a lesson to Ghulam Farid for demanding wheat and restraining Muhammad Nadeem to install the electric pole. At the very moment, Muhammad Mehram and Irshad Ali (PW-12) had also come there. In their view, Allah Ditta made a fire shot, which landed at the left side of belly of Ghulam Farid. He repeated the fire shot, which hit at the right shin of Muhammad Nadeem. All three accused persons succeeded to run away towards the village while raising Lalkaras. The complainant, Muhammad Mehram and Irshad Ali attended Ghulam Farid, who had succumbed to the injuries at the spot.

Motive behind the occurrence was that Ghulam Farid had to take seven mounds of wheat from Allah Ditta and Muhammad Nadeem had restrained him from installing the electric pole.

4. Irshad Hussain, SI (PW-13) had visited the place of occurrence on the same day at 6:00 p.m., recorded the statement of the complainant (Ex.PG) and sent the same to the police station for the registration of case. He prepared injury statement Ex.PJ and inquest report Ex.PK and escorted

the dead body of deceased Ghulam Farid to the mortuary. He also examined injured Muhammad Nadeem, prepared his injury statement Ex.PL and sent him to the hospital. He inspected the place of occurrence, prepared unscaled site plan Ex.PM, secured two empties of 30-bore pistol alongwith blood stained earth from the place of occurrence and took the same into possession vide recovery memo Ex.PH. On the same day he recorded the supplementary statement of the complainant to the effect that Allah Ditta was armed with pistol 30-bore instead of gun 12-bore. During investigation, appellant led to the recovery of a pistol 30-bore (P-3) on 22.09.2011, which was taken into possession vide recovery memo Ex.PD. He recorded the statements of witnesses under Section 161 Cr.P.C. and after completion of investigation, he got prepared report under Section 173 Cr.P.C. He did not arrest Muhammad Latif and Muhammad Sharif as they were not involved in this occurrence, however he submitted second report under Section 173 Cr.P.C. on 14.11.2011.

5. Dr. Muhammad Anwar (PW-8) had conducted medico legal examination of injured Muhammad Nadeem on 09.09.2011 and observed a lacerated wound at the inner side of middle 1/3rd leg 1 cm x 1 cm going inward through and through at the outer side of the leg. There was no tattooing, blackening and no corresponding hole in Dhoti. It was a fresh injury.

He had also conducted autopsy on the dead body of deceased Ghulam Farid on 10.09.2011 and observed the following injury:-

“A lacerated wound (inlet) at the front of left side of abdomen 5 cm above umbilicus, wound measured 1 cm x 1 cm x going inward to abdominal cavity crosses the structures in front through and through with an outlet at the upper outer most 1/4th of right buttock, 1.5 cm x 1.5 cm. Corresponding hole for this injury was present on the Qameez which was encircled signed and stamped. X-rays of the abdomen were taken and were sent to Radiologist for expert opinion regarding fire arm injury. Injury No.1 was ante-mortem, kind of weapon was fire arm.

All the organs of thorax and abdomen were healthy, however the peritoneum, small intestine and the abdominal main blood-vessels to lower limb were ruptured. The cause of death was due to hemorrhage and

shock with injury No.1, which was sufficient to cause death individually. The probable duration between injuries and death was immediate whereas between death and post mortem examination about 24-hours.

6. At the commencement of the trial, the learned trial Court had framed a charge against the appellant and his co-accused to which they had pleaded not guilty and claimed to be tried.

7. The prosecution had produced 13-witnesses besides the report of Chemical Examiner (Ex.PO), report of Serologist (Ex.PP) and the report of Punjab Forensic Science Agency (Ex.PQ). The appellant and his co-accused, in their statements recorded under Section 342 Cr.P.C. had denied and controverted all the allegations of fact leveled against them, they neither opted to make their statements under Section 340(2) Cr.P.C., nor had they produced any evidence in their defence.

8. Learned trial Court, upon conclusion of the trial had acquitted co-accused Muhammad Latif and Muhammad Sharif whereas convicted and sentenced the appellant as stated above, hence the aforementioned criminal appeal as well as the connected Murder Reference.

9. Learned counsel for the appellant submits that the appellant is innocent having nothing to do with the alleged occurrence; that the occurrence had taken place in the appellant's house where the complainant party had in fact aggressed the appellant's party; that if there was a dispute between Muhammad Nadeem (PW-10) and the WAPDA employees for installation of the electric pole outside the house of the appellant then what prompted the complainant party to enter into the house of appellant Allah Ditta and caused fire arm injuries to the deceased as well as to the injured witness; that all the three claimed eye witnesses had narrated the facts contrary to each other with regard to the place of occurrence; that the post mortem examination on the dead body of the deceased had been conducted with the delay of 24-hours, which shows the real possibility that it was an unseen occurrence and the eye witnesses had been planted subsequently in order to falsely implicate the appellant and his co-accused in this case; that the complainant party, while armed with fire arm weapons, had in fact trespassed into the house of the appellant,

launched murderous assault upon him and during grappling, the fire shot of their own weapon had hit the deceased; that the prosecution has put forward two motives but failed to prove any one of the same through independent piece of documentary or oral evidence; that the weapon of offence allegedly recovered at the instance of the appellant remained inconsequential as the same had been deposited into the office of Ballistic Expert after the appellant's arrest together with the crime empty secured from the place of occurrence; that the prosecution has miserably failed to prove the charge against the appellant beyond shadow of reasonable doubt and the learned trial court, while passing the impugned judgment of the appellant's conviction, had erred in law and facts of the case, which warrants interference by this court.

10. Conversely, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant has submitted that the matter was promptly reported to the police within the shortest possible time, which excludes the possibility of consultation prior to the registration of case and also rule out the possibility of non-presence of the eye witnesses at the venue of occurrence; that it was a day light occurrence and there was no question of misidentification of the assailant; that all the three eye witnesses including an injured witness i.e. Muhammad Nadeem (PW-10), had made quite natural and consistent statements with regard to the mode and manner of the occurrence and the specific role of causing fire arm injury by the appellant to the deceased; that the appellant had himself admitted the occurrence in his statement recorded under Section 342 Cr.P.C.; that the minor discrepancies in the prosecution evidence, as pointed out by the defence, are natural and cannot be considered as material; that there was no occasion for the complainant to falsely implicate the appellant in this case for the murder of his real brother by replacing them with the actual culprits; that the motives has well been stated and established by each of the eye witnesses in their deposition before the learned trial court; that the report of Ballistic Expert with regard to the weapon of offence recovered at the instance of the appellant has been received with positive result being wedded with the

crime empty secured from the place of occurrence; that the medical evidence lends full support to the ocular account; that the impugned judgment entailing the conviction and sentence of the appellant does not warrant interference by this court.

11. We have heard learned counsels for the appellant, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant and have perused the record with their able assistance.

12. The prosecution's mainstay was on the testimony of Muhammad Waryam (PW-11/complainant), brother of deceased Ghulam Farid, Muhammad Nadeem (PW-10), maternal nephew of the complainant and Irshad Ali (PW-12), a cousin of the said witnesses. They were closely related to each other as well as to the deceased. The complainant while appearing in the witness box had deposed that on 09.09.2011 at about 5:00 p.m., an altercation took place between Muhammad Nadeem and Allah Ditta. In the meanwhile, Muhammad Latif, armed with Sota and Muhammad Sharif (both since acquitted) empty handed, had come there, Muhammad Latif raised a Lalkara to teach a lesson to Ghulam Farid for demanding wheat and restraining Muhammad Nadeem to install the electric pole whereupon Allah Ditta made a fire shot, which landed at the left side of belly of Ghulam Farid and all the three accused persons decamped towards the village. Muhammad Nadeem (PW-10) had deposed that on the aforesaid day and time, the WAPDA employees were installing electric pole in the field, he reprimanded them not to install the same in his field and he was not the need of electricity and asked them to install the same in the field of a person, who was in need of the electricity, he had a quarrel with appellant Allah Ditta over the installation of electric pole by the WAPDA employees, Ghulam Fareed had intervened upon which appellant Allah Ditta had made two fire shots with his pistol, one fire shot hit at the belly of deceased Ghulam Fareed whereas the other at his shin. Ghulam Fareed succumbed to the injuries whereas he fell down in injured condition, Muhammad Mehram, Muhammad Waryam and Irshad Ali shifted him to Rural Health Centre, Luddan. Irshad Ali (PW-12) had made consistent statement to that of injured Muhammad

Nadeem (PW-10). Muhammad Waryam (PW-11) had not supported Muhammad Nadeem in his examination-in-chief as the complainant had not uttered even a single word with regard to the injury sustained by injured Muhammad Nadeem, which shows that he had not seen the occurrence with his own eyes and he had been planted and maneuvered to depose against the appellant. He had not only failed to mention the injury sustained by injured Muhammad Nadeem but also mentioned that the appellant was carrying a pistol 12-bore at that time instead of pistol 30-bore as narrated by the other claimed eye witnesses. Furthermore, the complainant's claim, as stated above, was that they had shifted the dead body of the deceased within ten minutes from the place of occurrence to their house whereas Irshad Hussain, SI (PW-13) had stated that he visited the place of occurrence on the same day, examined the dead body there, prepared his injury statement (Ex.PJ) and inquest report (Ex.PK) and escorted the dead body to the mortuary through Muhammad Abbas, constable. The scaled site plan (Ex.PB) and the inquest report also shows contradiction with regard to the shifting of the dead body from the place of occurrence wherein it was mentioned that the dead body of the deceased was lying at the place of occurrence i.e. courtyard of the appellant's house.

13. Another important factor relevant to the discussion is that the complainant's claim was that the occurrence had taken place inside the house of the appellant, the dead body of the deceased was lying in front of the room in the courtyard of the house of appellant Allah Ditta and injured Muhammad Nadeem was lying on the ground in injured condition near the deadbody of the deceased, they had shifted the dead body of their brother Ghulam Farid within ten minutes to their house. Muhammad Nadeem (PW-10) had stated in cross-examination that the altercation had taken place out of the house of the appellant, he had received injury at his right shin out of the appellant's house and the deceased had received fire arm injury out of the house of appellant Allah Ditta, who was standing in his field, again said in the field where the electricity pole was going to be installed. The material contradiction as to the place of occurrence has

fallen the proceedings of investigation, conducted by Irshad Hussain, SI (PW-13) to the ground. It depicts that either both the said witnesses were not present at the time and place of occurrence or they had made false statement in order to suppress some real facts from the court for the reasons best known to them.

Though Muhammad Nadeem had stamped injuries on his person to establish his presence at the venue of occurrence yet it cannot be lost sight of the fact that Dr. Muhammad Anwar (PW-8) had not observed any corresponding hole on 'Dhoti' of the said injured witness and that his statement could not be corroborated from the testimony of one of the material witnesses i.e. the complainant/eye witness with regard to the injury sustained by him during the occurrence. It is notable that Irshad Ali (PW-12) had supported the injured witness but his testimony has been found to be not worth reliance as he was a chance witness being resident of Mouza Mustafabad whereas the occurrence had taken place at Mouza Qadirwah and no reason whatsoever could be brought on record to establish his presence at the venue of occurrence at the relevant time especially when he had admitted in his cross-examination that he and Mehram Ali were at a distance of 10/12 karmas from the place of occurrence having intervening crop of Bajra, cotton and the outer wall of the appellant's house with the height of five feet. In this scenario, he was unable to see that who had made the fire shot landing at which part of the body of the deceased or the injured witness. The story narrated by the said witnesses seems to be fabricated and maneuvered subsequently just to support the injured witness. It is also well-settled principle by now that once there appears a single doubt as to the presence of the claimed eye witness at the crime scene, it would be sufficient to discard his testimony as a whole. A reference may be made to case titled "Mst. RUKHSANA BEGUM and others versus SAJJAD and others" (2017 SCMR 596), wherein it has been held as under:-

"A single doubt reasonably showing that a witness/witnesses' presence on the crime spot was doubtful when a tragedy takes place would be sufficient to discard his/their testimony as a whole. This principle may be pressed into service in cases such

witness/witnesses are seriously inimical or appears to be a chance witness because judicial mind would remain disturbed about the truthfulness of the testimony of such witnesses provided in a murder case, is a fundamental principle of our criminal justice system.”

14. By taking the case in broader aspect, we have observed that the electricity pole was going to be installed outside the house of appellant Allah Ditta in the field of Muhammad Nadeem and in case of altercation between Muhammad Nadeem and the WAPDA employees what was the purpose of the complainant party to invite trouble for themselves by entering into the house of the appellant. This shows that the occurrence had not taken place as narrated by the prosecution and something has been suppressed from the court for some unknown reasons. The story narrated by the prosecution is not coincide with the real facts as emerged from the facts and circumstances of the case. We do not believe that the claimed eye witnesses had narrated the true picture of the occurrence and, thus, their veracity is under heavy clouds.

15. The prosecution has unfolded two motives in the crime report, as stated in the preceding paragraph i.e. the appellant's 4/5 months earlier dispute with the deceased on account of giving seven mounds of wheat as labour proceed to the deceased as well as on the day of occurrence, his dispute over the installation of electricity pole with Muhammad Nadeem. The prosecution was under legal obligation to prove the motives, either anyone or both of them, through independent piece of oral as well as documentary evidence other than the words of mouth of the claimed eye witnesses, who had appeared before the learned trial court to state the mode and manner of the occurrence. None of the claimed eye witnesses had seen appellant Allah Ditta and deceased Ghulam Fareed while quarrelling over the dispute of demanding wheat by the deceased. Likewise, if the appellant had a dispute with the WAPDA employees on the installation of electric pole in the land of Muhammad Nadeem (PW-10), there was no occasion to exchange hot words, to enter into the appellant's house and then to take the extreme step of killing the deceased on the basis of nothing. The trite principle of law is that when a specific

motive is put by the prosecution, the same has to be proved through independent source of evidence and in case of failure, the prosecution has to face the consequences and not the accused. Reliance is placed on case titled “NOOR MUHAMMAD versus THE STATE and another (2010 SCMR 97)” wherein it has been held as under:-

“Thus, the prosecution has failed to prove the motive. It has been held in the case of Muhammad Sadiq v. Muhammad Sarwar 1979 SCMR 214 that when motive is alleged but not proved then the ocular evidence required to be scrutinized with great caution. In the case of Hakim Ali v. The State 1971 SCMR 432 it has been held that the prosecution though not called upon to establish motive in every case, yet once it has set up a motive and failed to establish it, the prosecution must suffer consequences and not the defence. In the case of Ameenullah v. State PLD 1976 SC 629 it has been held that where motive is an important constituent and is found by the Court to be untrue, the Court should be on guard to accept prosecution story.”

16. Dr. Muhammad Anwar (PW-8) had conducted autopsy on the dead body of deceased Ghulam Farid on 10.09.2011 at about 9:00 p.m. with the delay of about 16-hours and observed a lacerated wound (inlet) at the front of left side of abdomen 1 cm x 1 cm x going inward to abdominal cavity crosses the structures in front through and through with an outlet at the upper outer most 1/4th of right buttock. The corresponding hole was present on the Qameez. The X-rays of the abdomen were taken and were sent to Radiologist for expert opinion regarding fire arm injury. It was an ante-mortem injury having been caused with fire arm weapon. The duration between injuries and death was immediate whereas between death and post mortem examination within 24-hours. The delay of 14-hours in conducting the post mortem examination of the deceased indicates the real possibility that the time had been consumed by the police as well as the complainant for cooking up a false story and to manage the eye witnesses. We seek guidance in this regard from case titled “FAQEER MUHAMMAD versus SHAHBAZ ALI and others” (2016 SCMR 1441). The relevant dictum from page No.1443 is hereby reproduced:-

“The Post-mortem Examination Reporting pertaining to the deadbody of Iftikhar Ahmed deceased clearly establishes that the post-mortem examination had taken place after about 24 to 30 hours of the death of the deceased which factor clearly indicated that time had been consumed by the local police and the complainant party in cooking up a story for the prosecution and in procuring and planting eyewitnesses.”

17. Irshad Hussain, SI (PW-13) had secured two crime empties of pistol 30-bore at the time of his first visit of the place of occurrence. The said investigating officer had not mentioned the date of arrest of the appellant, however it is shown that during investigation, appellant Allah Ditta led to the recovery of a pistol 30-bore (P-3) with two live bullets (P-4/1-2) on 22.09.2011. The empty bullets were sent to the office of Ballistic Expert on 06.10.2011 after 27-days of the occurrence and after 14-days of the recovery of weapon of offence from the appellant whereas the weapon of offence was deposited in the office of Ballistic Expert on 25.10.2011 after more than one month of its alleged recovery from the appellant. The report of Punjab Forensic Science Agency (Ex.PQ) has been received with the positive result. In the crime report, it had been mentioned that the appellant was armed with pistol 12-bore but at the very moment when the investigation officer had secured empties of pistol 30-bore from the place of occurrence, the complainant had made supplementary statement mentioned the weapon of offence as pistol 30-bore with the appellant just to bring the same in line with the prosecution case. Anyhow, the dispatch of crime empties to the office of Punjab Forensic Science Agency after arrest of the appellant with the delay of 27-days of its securing, renders it to be legally unacceptable and, thus, in the circumstances the recovery of weapon of offence from the appellant remained inconsequential. Reliance is placed on case titled “NAZEER AHMED versus The STATE” (2016 SCMR 1628) wherein it has been held as under:-

“the crime-empty secured from the place of occurrence was sent to the office of Forensic Science Agency after recovery of the gun rendering such recovery to be legally unacceptable----”

18. The appellant, in his statement recorded under Section 342 Cr.P.C., had taken a specific plea that Muhammad Nadeem (PW-10) and Ghulam Farid (deceased), being armed with pistols, had launched murderous assault upon him when he was present in his house, they grappled with him and during the scuffle, the pistol of them went on and hit the deceased. The appellant had neither opted to appear under Section 340(2) Cr.P.C. nor had he produced any proof or piece of evidence to establish his plea. However, one thing is clear that when the place of occurrence was the appellant's house and the altercation of Muhammad Nadeem had taken place with the WAPDA employees in the fields adjacent to the appellant's house then what constrained the complainant party to enter into his house where the appellant had taken an extreme step of killing the deceased. The aforesaid statement of the appellant shows that in fact the complainant had aggressed the appellant and what actually happened just before the occurrence, could not be ascertained from the evidence available on record, which remained shrouded in mystery.

19. Having scanned the entire prosecution evidence, we could not find any iota of evidence to connect the appellant with the murder in issue. The claimed eye witnesses could not make consistence statement and we have found certain material contradictions, which were sufficient to change the fate of the case. The complainant had himself disputed the place of occurrence in his statement before the learned trial court contrary to the other eye witnesses by shifting the dead body of the deceased from the place of occurrence within ten minutes. The contradictory statement of the complainant as well as the injured witness Muhammad Nadeem with regard to the place of occurrence i.e. inside or outside the appellant's house as well as injury sustained by Muhammad Nadeem (PW-10) during the occurrence renders them to be false witnesses. Irshad Ali (PW-12) was a chance witness being resident of some other place and he could not establish any reason whatsoever to be present there at the relevant time, which renders him to be not a truthful witness. The post mortem examination on the dead body of the deceased had been conducted with considerable delay of 16-24 hours, which is another factor showing the

real possibility that no one had seen the occurrence with one's own eyes and the time had been consumed in order to manage the eye witnesses and for cooking up a false story for the prosecution. Though the report of Punjab Forensic Science Agency has been received with positive result yet it cannot be lost sight of the fact that the crime empty had been sent to the aforesaid office for expert opinion after the appellant's arrest, which renders it to be legally unacceptable. Furthermore, the complainant's divergent stance with regard to the kind of weapon by itself speaks volume. In the instance case, the prosecution has tried to take the advantage of the statement of appellant recorded under Section 342 Cr.P.C. but when the prosecution has failed to discharge its onus to prove the case, even the admission of an accused in his statement of accused under Section 342 Cr.P.C. for killing the deceased, the capital sentence cannot be maintained. Co-accused have already been acquitted of the charge and no appeal against their acquittal has been preferred by the complainant or the State, which shows their satisfaction over the innocence of acquitted accused persons. We do not find any iota of evidence to connect the appellant with the murder in issue. It is well-settled principle of law that the prosecution has to stand on its own legs to prove the charge against the accused and the benefit of doubt, even slightest, shall favour the accused. What to speak of a single doubt, the case in hand is replete with doubts, which is sufficient to tilt the scale of justice in favour of the appellant. Reliance is placed on case titled "MUHAMMAD AKRAM versus THE STATE" (2009 SCMR 230) wherein at page No.236, it has been held as under:-

"It is an axiomatic principle of law that in case of doubt, the benefit of thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervaiz v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right."

20. The nutshell of above discussion is that Criminal Appeals No.359 of 2013 filed by appellant Allah Ditta is allowed, his conviction and

sentence awarded by the learned trial court are set aside and he is acquitted of the charge by giving the benefit of doubt to him. He shall be released from jail forthwith, if not required to be detained in connection with any other case.

21. **Murder Reference No.51 of 2013** is answered in the **NEGATIVE** and the Death Sentence awarded to appellant Allah Ditta is **not confirmed.**

(Syed Muhammad Kazim Raza Shamsi)
Judge

(Asjad Javaid Ghural)
Judge

APPROVED FOR REPORTING.

JUDGE

*Asif**