

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

1. Criminal Appeal No.1164 of 2017
(Ameer Afzal Vs. The State & another)

2. Criminal Appeal No.22 of 2018
(Abdul Hameed Vs. The State & another)

&

3. Crl.Revision No.29 of 2018
(Riasat Khan Vs. Ameer Afzal & 2 others)

Date of hearing: 16.01.2019

Appellants by: Mr. Khaliq-uz-Zaman, Advocate at State expense along with Mr. Muhammad Asad Khan, Advocate.

Complainant by: Mr. Basharat Ullah Khan, Advocate.

State by: Mr. Khalid Pervez Uppal, Deputy Prosecutor General Punjab.

QAZI MUHAMMAD AMIN AHMED, J:- Ameer Afzal and Abdul Hameed, appellants herein, are in receipt of a guilty verdict, returned by a learned Additional Sessions Judge at Rawalpindi vide impugned judgment dated 12-12-2017; they stand convicted on three counts under clause (b) of section 302 of the Pakistan Penal Code, 1860 for committing *Qatl-e-Amd* of Adnan Riasat, 19/20, Nauman Ali, 19, & Rifaqat Ali, 23, henceforth referred to as the deceased, at 5:00 p.m. on 24-2-2015 within the area of Dhalwali Mohra, situating at a distance of 3-Kilometers from Police Station Chauntra; they have been sentenced to imprisonment for life on three counts with a direction to pay compensation in the sum of Rs.200,000/- on each or to suffer six months simple imprisonment in default of payment thereof; Tahir Mehmood, Mukhtar Ahmad and Dilshad, co-accused stand acquitted from the charge whereas Muhammad

Usman, assigned identical role, is still away from law. Crl. Appeals Nos.1164 of 2017 and 22 of 2018 filed by the convicts, dispute vires of the impugned judgment; the complainant seeks enhancement of sentence through Crl. Revision No. 29 of 2018; bearing a common thread, these are being decided through this single judgment.

2. Prosecution case is structured upon statement (Ex.PS) of Riasat Khan (PW-18), father of Adnan Riasat deceased, recorded by Tariq Manzoor (PW-19), 10:30 p.m. at DHQ Hospital Rawalpindi. According to the complainant, on the fateful day, he had invited his maternal nephew Rifaqat Ali deceased over a feast; he stayed there for a while and planned a hunting session with Adnan Riasat and Noman Ali deceased. The complainant, hearing gun reports, at about 5:00 p.m, rushed to the graveyard to find Abdul Hameed, Khalil Ahmad alias Kala, Muhammad Usman, Ameer Afzal armed with .44 caliber guns accompanied by two unknown with Kalashnikovs, firing indiscriminately upon the deceased; within the witnesses' view, Adnan retaliated with .44 caliber gun upon the assailants, that included Khalil deceased. Previous enmity is cited as motive for the crime.

Autopsy on the dead body of Adnan Riasat was conducted same day at 11:55 p.m; multiple firearm injuries, on neck, below axilla, left forearm, left thumb, abdomen, left buttock, left thigh, right leg and ankle, were noted with extensive damage to neck vessels and left lung, leading to severe hemorrhagic shock, resulting into immediate death with estimated interregnum of 6 to 8 hours between death and postmortem. Nouman Ali, deceased examined at 1:40 a.m. on 25.2.2015 endured massive violence comprised of nine injuries on left ear, left occipital area, skull, back bone, pubic region, left lumber region involving the

buttocks; head injury generated hemorrhagic shock, resulting into immediate death; time between death and postmortem was estimated as within 8 to 12 hours. Razaqat Ali, shifted in injured condition succumbed to his injuries in the hospital; his autopsy was conducted on 25-2-2015 at 10:25 p.m; the medical officer noted twelve injuries on different parts of his body; these caused damage to liver spleen, stomach, small and large intestines, leading to hemorrhage and ultimate death within 28 hours; time between death and postmortem was estimated as within 3 hours. Autopsy of one Khalil Ahmad from accused side was conducted same day at 5:00 p.m; he received multiple injuries, noted under 12 headings with multiple wounds, lacerated, incised as well as firearm; collective impact caused the death within preceding 13 to 14 hours.

Tariq Maznoor, SI (PW-19) commenced investigation; during spot inspection, he collected bloodstained earth from three points, six casings of 30-caliber, a .30-caliber pistol (P-15) from underneath dead body of Khalil alias Kala alongwith five bullets, *Khaki* bag (P-16), and one magazine of Kalshnikove (P-18) with 10 bullets of Kalshnikov (P-17/1-10), 22-casings of Kalashnikov, 11-casings of 44-caliber secured vide inventories; Abdul Hameed appellant was arrested on 12-5-2015 whereas Ameer Afzal stood exonerated while he was on ad interim pre-arrest bail vide case diary dated 30-5-2015.

Supplementary statements, purportedly recorded on 25.2.2015 and 4-6-2015 introduced Mukhtar, Tahir Memood and Dilshad in the array of accused, arrested on 21-5-2015 and 12-6-2015. Indicted on 15-2-2016, the accused claimed trial, pursuant whereto, prosecution, besides relying upon forensic reports, produced as many as 21 witnesses; of them, Liaqat Ali (PW-17) and Riasat Khan (PW-18) furnished ocular account, the

mainstay of the prosecution case. On forensic side, earth secured from the spot was found stained with blood of human origin; ballistic report is in the negative; accused confronted the prosecution evidence with a unanimous denial citing previous enmity as a factor behind their motivated prosecution. The learned trial Judge, while acquitting the co-accused from the charge, proceeded to convict and sentence the appellants, as referred to above.

3. Learned counsel for the appellants contend that prosecution case is fraught with doubts, contradictions and improvements and as such reliance cannot be placed on the statements of witnesses, being inherently flawed; that implication of three unknown accused by their name subsequently in the absence of any source that could possibly improved upon complainant's knowledge at a belated stage and this by itself casts doubt on the veracity of prosecution case, benefit whereof, cannot be withheld; that evidence disbelieved qua identically placed co-accused, with indivisibly same roles, nonetheless, cannot be relied upon against the appellants without independent corroboration, hopelessly lacking; that a vaguely formulated motive does not provide structural strength to the prosecution case; even otherwise, according to the learned counsel, it would be unsafe to rely upon the witnesses without strong corroboration; the bottom line is that prosecution has not been able to prove its case beyond reasonable doubt and thus, it would be unsafe to maintain the conviction. Contrarily, the learned Law Officer assisted by learned counsel for the complainant has defended the impugned judgment on the ground that three innocent persons have been done to death in a natural and wanton manner; that witnesses had no axe to grind against the appellants and their testimony could not be discarded merely on account of their

relationship with the deceased; according to him, they were natural witnesses with no motive to substitute the real offenders. While arguing Criminal Revision, learned counsel for the complainant pressed into service huge loss of lives to argue that penalty of death would be a conscionable wage in circumstances.

4. Heard. Record perused.

5. Visit by Rafaqat Ali deceased to complainant's home is certainly well within the realm of possibility, nonetheless, his departure with his cousins and Adnan Riasat and Noman Ali deceased on an obscure hunting session in a winter evening is a pursuit, after an hectic day, far from being usual or probable; deceased's encounter with the assailants near village graveyard is yet another intriguing aspect of the case; they stayed home whole day and planned a venture to the exclusion of assailants' knowledge, leaving no space for their interception at the venue, according to Babar Rehman Patwari (PW-9) located outside the village with last inhabited house at a distance of half furlong, a place most unsuitable for the purpose mentioned in the crime report; arrival of the witnesses upon gun reports, given the inter se distance, is extremely improbable to say the least; if at all, the assailants had confronted the deceased in the manner as mentioned in the crime report, they simply would not have held the assault in abeyance till arrival of the PWs. Spot inspection also belies hypothesis of hunting as only one .30 caliber pistol was found lying underneath dead body of Khalil Ahmad with nothing surrounding the deceased. In this backdrop, position taken by Tariq Manzoor, SI/Investigating Officer (PW-19) that "*During my investigation it was found that Khalil alias Kala attacked upon Rafaqat, Noman and Adnan, who in their self defence made firing, as a result of which, Khalil alias Kala died*" is not entirely beside the mark. Certainly *ipsi dixit* of the police is not binding upon the

Court nor a subjective conclusion can override direct evidence, nonetheless, if found in totality in consonance with the circumstances otherwise spelling out, cannot be ignored. Vacillating positions taken by Riasat Khan (PW-18) tremor the very foundation of the prosecution case; he brought about massive changes in his first version by not only graduating the number of accused but also identifying them by their names; he cannot justify his somersaults by citing stress or trauma statedly endured by him before he made his first statement to the Investigating Officer. Most agonizing and tormenting moments indeed, nonetheless, the change in his earlier stance squarely spaces the hypothesis of his absence from the crime scene at the relevant time. Supplementary statements, more often than not, are being employed as a convenient method to bring about desired changes initially omitted in the crime report; sudden trauma and mental stresses are invariably cited as cover-up. Though human capacity to endure intensity of grief and suffering cannot be quantified with an empirical exactitude, nonetheless, these concepts/issues are by now well documented. Sudden notification of homicide/murder triggers both short term as well as long term psychological impacts that may include anger, rage, fear, terror, frustration, confusion, etc and as a result set off “all system go”, bypassing normal cognitive behavior”, however, these convulsions do not project or perceive partial cognizance of events or crime scene; grief and suddenness notwithstanding, imprints of the tragedy and details of perpetrators leave indelible imprints on human memory and if at all there is complete suspension of human faculty, it is seldom partial, therefore, prosecution cannot improve upon its case by importing changes in its framework, without putting the entire structure into jeopardy. In the circumstances of the present case, complainant’s statement Ex.PS would remain indivisible

throughout and in case he omitted names of some of the assailants on account of suspension of faculties, it would inevitably cast its shadow upon the nomination of others. Statement Ex.PS and subsequent supplementary statements are, thus, mutually destructive. Acquittal of Tahir Mehmood, Mukhtar Ahmad and Dilshad assigned identical roles alongside the appellants is yet another predicament confronting the prosecution; after taking them on board through supplementary statement, the prosecution cannot let them off to save its case qua the appellants in the face of rejection of its evidence to their extent. There is no independent corroboration and, thus, the entire case is cast away, particularly in the face of a non-specific motive with inconsequential recoveries. Prosecution case is fraught with doubts, deducible from its stated positions and, thus, it would be unsafe to maintain the conviction. Consequently, Crl. Appeals Nos.1164 of 2017 and 22 of 2018 are **allowed**; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case.

As a natural corollary, Criminal Revision No.29 of 2018 stands dismissed.

*(Qazi Muhammad Amin Ahmed)
Judge*

APPROVED FOR REPORTING