

Stereo. HCJDA-38

JUDGMENT SHEET

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

Criminal Appeal No.748-J of 2019
(Muhammad Riaz alias Baddi versus The State)

Criminal Appeal No.870 of 2019
(Mst. Ameeran Mai versus The State etc.)

and

Murder Reference No.46 of 2020
(The State versus Riaz alias Baddi)

JUDGMENT

Date of Hearing	26.02.2025
Appellant by	Rana Muhammad Nadeem Kanjoo, Advocate
State by	Mr. Waheed Rafique, Deputy District Public Prosecutor
Complainant by	Malik Nazar Hussain Ponta and Malik Ghulam Sarwar Langrial, Advocates

Syed Shahbaz Ali Rizvi, J: - Through this appeal (Crl. Appeal No.748-J of 2019), appellant Muhammad Riaz alias Baddi impugns the judgment dated 27.06.2019 passed by the learned Addl. Sessions Judge, Shujabad in connection with case FIR No.534 dated 26.10.2016 registered for offence under Sections 302 and 34 PPC at Police Station City Shujabad District Multan whereby, he was convicted under Section 302(b) PPC as 'Ta"zir' and sentenced to death for committing the murder of Irshad alias Shada, deceased with the direction to pay Rs.200,000/- as compensation to the legal heirs of deceased as envisaged under Section 544-A of the Code of Criminal Procedure, 1898 and in default thereof, to undergo simple imprisonment for four months. The learned trial court, however, through the same judgment, acquitted Muhammad Aslam alias Punnun and Muhammad

Abdullah alias Dildar Hussain, co-accused while giving them the benefit of doubt. Mst. Ameeran Mai, complainant also filed Crl. Appeal No.870 of 2019 against their acquittal whereas, the learned trial court also sent Murder Reference No.46 of 2020 for confirmation or otherwise of sentence of death inflicted upon Muhammad Riaz alias Baddi, convict. All these matters are being decided with this single judgment.

2. The allegation against the appellant and his co-accused Muhammad Abdullah alias Dildar Hussain alias Dila and Muhammad Aslam alias Pannun (since acquitted) is that on 26.10.2016 at about 05.00 p.m, they while armed with firearms committed the murder of Muhammad Irshad son of the complainant by firing at him. Motive behind the occurrence, as disclosed by the complainant, was that Muhammad Irshad, deceased contracted marriage with sister of the appellant against the wishes of her family and due to this grudge, the appellant along with his co-accused (since acquitted) committed this occurrence.

3. After investigation, challan of this case was submitted to the learned trial court where prosecution produced the witnesses, fourteen in number, to substantiate the charge against the appellant. Mst. Ameeran Mai, complainant and Imtiaz Hussain, the eyewitnesses joined the proceedings as PW-1 & PW-7 while Altaf Hussain PW-2, the third eyewitness after recording his examination in chief did not appear for cross examination and was given up by the learned Prosecutor being unnecessary. Dr. Muhammad Aurangzeb (PW-8) furnished the medical evidence. Irfan Hayat, draftsman (PW-3) prepared scaled site plans (Exh-PF/A, Exh-PF-1/A, Exh-PF-2/A and Exh-PF-3/A) of the place of occurrence. Ghulam Yasin (PW-6) is the witness of recovery of crime weapon at the instance of appellant Muhammad Riaz alias Baddi and his co-accused (since acquitted) while Zawar Hussain,

SI (PW-13) is the Investigation Officer of this case whereas, rest of the witnesses are formal in nature.

4. The appellant, after the prosecution evidence rendered, in his statement recorded under Section 342 of the Code of Criminal Procedure, 1898 denied the allegation against him but he did not prefer to produce any evidence in his defence and similarly, claiming his innocence, did not appear as his own witness on oath under Section 340(2) of the Code *ibid*.

5. Arguments heard. Record perused with the assistance of learned counsel for the appellant, learned Prosecutor and the learned counsel for the complainant.

6. It has straightaway been observed that Altaf Hussain (PW-2) though initially got recorded his examination in chief but the prosecution subsequently on 12.03.2019 gave up the said witness being unnecessary and produced Mst. Ameeran Mai, complainant and Imtiaz Hussain, the third eyewitness as PW-1 & PW-7, respectively. The witnesses besides being related to the deceased and inter se are residents of the place, per PW-7, situated at a distance of four Kilometers from the place of occurrence hence, their deposition requires a strict scrutiny. Though, as per prosecution's case, the crime report was got registered by the complainant within two hours of the occurrence at 07.00 p.m. through a written application yet the fact also remains that during cross examination, Mst. Ameeran Mai, complainant, at page 49 of the paper book, maintains that the police recorded the statements of the PWs before the FIR. She also volunteered that she did not know about the investigation. Imtiaz Hussain also endorsed this statement by stating that his statement was recorded before the registration of FIR. It *prima facie* reflects that the Investigation Officer (PW-13) held preliminary inquiry before registration of the FIR that creates doubt about the veracity of the contents as well as timing of registration of crime report. It has also been noticed that

postmortem examination on the dead body of poor deceased Muhammad Irshad was conducted at 07.00 a.m. on 27.10.2016 though as per Medical Officer, the dead body was received in the hospital at 09.30 p.m. on 26.10.2016. The Medical Officer (PW-8) also concedes that he was on duty from 08.00 p.m. on 26.10.2016 to 08.00 a.m, the next morning. Neither the said Medical Officer nor any of the witnesses gave any explanation with regard to the delay in conducting autopsy. It is also noticed that according to relevant column in postmortem examination report (Exh-PL), the police papers were received in the hospital at 03.00 a.m. i.e. with the delay of ten hours after the occurrence and eight hours after the registration of case and no explanation in this regard is available on record. If the FIR was registered at 07.00 p.m. on 26.10.2016 and the Investigation Officer after collection of evidence at the spot dispatched the dead body received in the hospital at 09.30 p.m. then why the police papers were sent at 03.00 a.m. on 27.10.2016 is a question that also remained unanswered. Police Rules, 1934 Chapter 25 Rules 37 and 39 provide actions to be taken by the police with regard to postmortem examination and qua Form to accompany the dead body towards the Medical Officer. For convenience and ready reference, Rules 37, (1), (3), (4), (5) and Rule 39 Chapter 25 of the Rules *ibid* are reproduced hereunder: -

“25.37. Post-mortem examinations-action to be taken by police---When corpses are sent for medical examination the following rules shall be observed:-

- (1) The result of the investigating officer's examination of the body shall be carefully recorded in form 25.39 (1). Clothing found on the body, foreign matter adhering to it and any instrument likely to have caused death remaining in a wound or on the body shall be secured in the position in which found, if possible, or, otherwise, shall be carefully packed separately, according to the instructions contained in rule 25.41.

- (2)
- (3) The body shall be placed on a charpoy or other light litter and protected from the sun, flies and exposure to the weather. The litter shall be transported to the place appointed for the holding of post-mortem examinations by such means as the investigating officer may consider most expedient in the circumstances of weather, distance to be covered and conditions of the body. If necessary and expedient conveyance, including a motor vehicle, may be hired to carry the corpse and those who are required to accompany it as escort or witnesses.
- (4) All police officers along the route are required to give immediate assistance to expedite the transportation of dead bodies for medical examination.
- (5) Two police officers who have seen the dead body in the position in which it was first found, and are competent to detect any attempt at substitution or tampering with the body or its coverings, shall accompany the body to the mortuary, and remain in charge of it until examination is complete. If necessary as additional guard shall be supplied by the Lines officer to place a sentry on the mortuary, but the officer who have accompanied the body from the spot shall hand it over personally to the medical officer conducting the post-mortem examination together with all reports and articles sent by the investigating officer to assist the examination and shall receive and convey to the investigating officer the post-mortem report.
- (6)"
(underlining is for emphasis)

Similarly, Chapter 25 Rule39 reads as under: -

25.39. Form to accompany body or injured person.—When an injured person or a body is sent so a medical officer, Form 25.39 shall, in addition to any other report prescribed, be prepared by the carbon copying process and given to the police officer, in duplicate, who accompanies the injured person or goes in charge of the body. The form shall be prepared in English, if possible."

Perusal of police rules reproduced supra and that of the forms prescribed makes it clear that the police papers i.e. Form 25.35(1)(B) and 25.39 along with other reports prescribed prepared and articles collected by the Investigation Officer are to accompany the dead body to be transported expeditiously to the Medical Officer for examination. In particular Rule 39(5) mandates that the officer accompanying the dead body shall personally deliver it to the Medical Officer along with all reports and articles sent by the Investigation Officer to assist the examination. If it is not so done and even is not explained plausibly, it surely renders doubt about the credibility of the police proceedings conducted at the place of occurrence and also about the timing and contents of the crime report. In case the requisite report/papers are not delivered to the Medical Officer with the corpse and it is subsequently provided that too with inordinate delay resulting into belated autopsy, such delay is normally seen by the superior courts of the country with suspicion and has repeatedly been held that it ordinarily occurs in cases of un-witnessed incidents where police during the intervening time remain busy in preliminary inquiry and concoction of a prosecution story to be incorporated in police papers as required in Rule 37(1) and 39 of Chapter 25 of the Police Rules, 1934.

7. We have also observed the evasive conduct of complainant during her cross examination which is evident from the following reproduced parts of her statement: -

“I cannot tell the intervening distance between my house and P.S. City...I am illiterate due to which I cannot tell the exact time that in my first statement regarding time of departure from our house is correct or not...I cannot tell the detail of grocery items either purchased by us or the Pws. I cannot tell exact time we stayed in Shujabad city for the purpose of shopping...I cannot tell whether Todarpur and Chhaju Shah are adjacent to each other...I cannot tell the colour of the motor cycle which we used to come Shujabad city...I cannot tell whether Pw Imtiaz and Irshad deceased, ever came for

shopping together. I cannot tell exact figure of persons gathered soon after the occurrence...I cannot tell whether the bullets penetrate into the skull of the deceased or not...I do not know whether Altaf had enmity with the accused persons or not...I cannot tell the exact time of post mortem of deceased Irshad...I do not know that there is any criminal case was against the accused Irshad deceased. It is not in my knowledge that FIR No.100/04 u/s 320, 436/427/148/149 PPC P.S Khangarh, was registered against Irshad deceased and others on the complaint of Muhammad Bakhsh. It is not in my knowledge that FIR No.171/04 u/s 302/148/149 PPC P.S Khangarh was registered against deceased and others by Khadim Hussain. It is not in my knowledge that FIR No.292/04 u/s 13/20/65 A.O was registered against deceased at P.S Khangarh. It is not in my knowledge that FIR No.106/04 u/s 302/324/148/149 PPC was registered against the deceased by Hazoor Bakhsh at P.S Khangarh. It is not in my knowledge that FIR No.133/04 u/s 364 PPC was registered against the deceased at P.S Khangarh by Shabbir Ahmad. It is not in my knowledge that FIR No.307/03 u/s 392/459 PPC was registered against the deceased at P.S Khangarh by Muhammad Akram. It is not in my knowledge that FIR No.420/17 u/s 365-B/376/380 PPC was registered against the deceased at P.S Khangarh. It is not in my knowledge that FIR No.496/10 u/s 395 PPC was registered against the deceased at P.S Sadar Muzafargarh...I do not know about the C.D.R of Abdullah, accused...I do not know whether I.O made rough site plan on my pointation...I do not know how my son was murdered. It is also correct that I was complainant of that murder case...I do not know regarding the criminal cases registered against my deceased son...I do not know that Altaf Pw purchased how many "KHUL"...I had no knowledge regarding the articles purchased by the deceased. I purchased grocery items, however, I cannot tell the details of said items...I do not remember whether I got mentioned in the complaint that on which vehicle I reached at the police station. I also did not remember whether I got mentioned in the complaint that with whom I reached at the police station. I did not remember the exact distance as I am illiterate...I do not remember with whom I returned at the place of occurrence...I do not know regarding my cell number...I do not remember whether I joined investigation of this case or not..."

The above reproduced excerpts from her statement reflect that she being elusive is not an honest and fair witness.

Complainant (PW-1) when was questioned about the criminal history of the deceased with reference to the detail of those cases, she despite being the real mother expressed her lack of knowledge regarding the same while PW-7 candidly affirms the previous criminal history of the deceased. According to prosecution's case, the witnesses went to the town for grocery shopping that they did for about seven hours and PW-1 also stated, during her cross examination, that the grocery items were lying at the place of occurrence when the Investigation Officer reached there but admittedly, the grocery was never taken into possession and even availability of the same there is not mentioned in the site inspection note as well as the marginal notes at scaled site plan (Exh-PF). Moreover, during cross examination, at page 61 of the paper-book, complainant (PW-1) also stated that she had no knowledge regarding the articles purchased by Irshad, deceased. It reflects that the reason for the availability of the witnesses at the relevant time does not find support from any other evidence/the record. The statements of the two eyewitnesses besides being inconsistent qua certain facts have also been disbelieved by the learned trial court to the extent of co-accused Muhammad Aslam alias Punnun and Muhammad Abdullah alias Dildar Hussain (since acquitted).

Both the eyewitnesses, in their statements under Sections 154 and 161 of the Code of Criminal Procedure, 1898, respectively and even in their examinations in chief claimed that appellant Muhammad Riaz alias Baddi made two fires with his rifle which hit on the back of right shoulder and head of deceased Muhammad Irshad. Similarly, the eyewitnesses also claimed that two fires shot by Dildar alias Dila hit on the back of left shoulder and head of Muhammad Irshad, deceased but perusal of medical

evidence rendered by Dr. Muhammad Aurangzeb (PW-8) made it clear that the deceased was not having any firearm injury on his head. The said Medical Officer also affirmed the possibility of sustaining injuries No.5 & 6 by the deceased by fall on the ground and he very clearly mentioned that these injuries could be caused by any blunt weapon. According to site plan (Exh-PF), the distance between Muhammad Riaz alias Baddi, appellant and the deceased at the relevant time was 33 feet and similarly, between the deceased and Dildar alias Dila was more than 34 feet but when we go through the description of two bullet entry wounds reflected in the postmortem examination report as injuries No.2 & 3, it becomes clear that injury No.3 was having blackening around the inverted margins that is not possible by a fire shot from the distance of 33 feet. According to statement of PW-1, the complainant, she was at a distance of 5/6 'Karams' from the deceased at the relevant time but marginal point No.6 of the scaled site plan (Exh-PF) reveals that the distance between the two was about 165 feet, about 30 'Karams'. Being inconsistent with the medical evidence, the complainant also stated that the accused persons were standing close to the deceased at a distance of less than one foot. It also controverts the distance given in the scaled site plan (Exh-PF) and the distance claimed by the other eyewitness (PW-7). These discrepancies of the ocular account with the medical evidence available on record make the same further doubtful.

8. So far as the recovery of rifle (P-14) at the instance of the appellant and positive report of the Punjab Forensic Science Agency (Exh-PS) with regard to wedging of the crime empty of rifle, we have noticed that both, the crime empties and blood stained earth were taken by the Investigation Officer (PW-13) on the night of occurrence but admittedly, the blood stained earth was sent to the Punjab Forensic Science Agency on 17.11.2016 while

the crime empties were sent to the said Agency on 09.12.2016. The appellant was arrested on 14.12.2016. The prosecution is not equipped with any justification with regard to the belated dispatch of crime empties to Punjab Forensic Science Agency and the reason for not sending the same along with blood stained earth on 17.11.2016. It has also been noticed that the date of receiving crime empties is not given in the report of Punjab Forensic Science Agency (Exh-PS) available at page 189 of the paper book. These aspects of the case in hand make the credibility of report of the Punjab Forensic Science Agency doubtful. In this view of the matter, alleged recovery of rifle (P-12) along with two live bullets (P-13/1-2) and positive report of the Punjab Forensic Science Agency (Exh-PS) become inconsequential to the prosecution case.

9. With regard to the motive part of the occurrence, suffice to observe that by now it is an established proposition of law that motive is always considered a double edged weapon. If it can be a reason to commit an offence, the same could also be a reason for false implication of an accused.

Taking stock of the facts mentioned above, we are of the opinion that the prosecution has failed to substantiate the charge against the appellant beyond the shadow of a reasonable doubt and such situation certainly requires his acquittal hence, **Crl. Appeal No.748-J of 2019 is allowed**, conviction and sentence inflicted upon Muhammad Riaz alias Baddi, appellant by the learned trial court is set aside and he is acquitted of the charge levelled against him by extending him the benefit of doubt. He is in custody, be released forthwith if not required to be detained in any other case.

10. For what has been discussed above, **Crl. Appeal No.870 of 2019** filed by complainant Mst. Ameeran Mai against the acquittal of Muhammad Abdullah alias Dildar Hussain and Muhammad Aslam alias Punnun is dismissed *in limine*.

11. **Murder Reference No.46 of 2020** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

Signed on 15.03.2025

(Muhammad Jawad Zafar)
Judge

(Syed Shahbaz Ali Rizvi)
Judge

APPROVED FOR REPORTING:

(Muhammad Jawad Zafar)
Judge

(Syed Shahbaz Ali Rizvi)
Judge

