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JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Criminal Appeal No. 193965 of 2018

(Aamir Hayat vs The State etc.)

Murder Reference No.137 of 2018

(The State vs Aamir Hayat)

J U D G M E N T

Date of hearing.	12.03.2024
Appellant by:	M/s Burhan Moazzam Malik, Advocate, Mian Tabassum Ali, Advocate and Khaqan Moazzam Malik, Advocate assisted by Mr. Mohsin Nawaz Sial, Advocate (Defense Counsel at state expense).
Respondent (State) by:	Rai Akhtar Hussain, Additional Prosecutor General
Complainant by:	Mr. Sarfraz Khan Gondal, Advocate.

MIRZA VIQAS RAUF, J.:- The appellant namely Aamir Hayat after being held guilty of committing homicide of Aamir Shehzad was sentenced to death under Section 302 (b) of the Pakistan Penal Code, 1860 (hereinafter referred to as “**PPC**”) by the learned Additional Sessions Judge, Sargodha, seeks acquittal through Criminal Appeal No.193965 of 2018. In furtherance of the appeal Murder Reference No.137 of 2018 was also transmitted to this Court by the learned trial court in terms of Section 374 of the Criminal Procedure Code, 1898 (hereinafter referred to as “**Cr.P.C**”) read with Section 338-D of “**PPC**” for confirmation of death sentence of appellant Aamir Hayat and as such by way of this judgment we propose to decide the both.

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2. The edifice of the prosecution story is structured on the statement of Allah Yar who being the complainant got recorded his statement as (PW.2) which is to the following effect:

“Stated that on 08.09.2014 at about 7.00 am, my son Aamir Shehzad left the house for selling and purchasing milk and was going towards dera of Zulfiqar Gondal. When he reached in the landed area of Lal Khan, accused Aamir, Imran, Ansar alongwith two unknown accused while armed with pistols were already present there. They came out there from and intercepted and halted him. Accused Aamir raised lalkara that today Aamir Shehzad should not be spared, he with the intention to kill him made two fires with his pistol, one hit upon on his face near moustaches on right side of the face; whereas, he made second fire which hit upon his left arm. Thereafter, accused Imran made fire with his pistol which hit upon his abdomen. Other unknown accused alongwith Ansar remained making aerial firing with the threats and lalkaras that if any one step forward they would kill him. The occurrence was seen by Gul Anaar and Muhammad Asghar.

Witness Gul Anaar informed me about the occurrence through mobile phone. After receiving information I reached the place of occurrence, my son Aamir Shehzad was lying on the ground and was seriously injured. I arranged a car and shifted him to DHQ Hospital. When we reached there, keeping in view the condition of my son the doctors referred us to Jinnah Hospital, Lahore for further treatment. When we reached in the emergency department of hospital of Jinnah Hospital, there he succumbed to the injuries. I returned to DHQ Sargodha for conducting postmortem upon the dead body. I asked Azam and Liaqat to remain with the dead and I myself went to the police station for reporting the matter. On my statement FIR Exh.PB was registered.

Motive behind the occurrence was that as my son and other residents of ‘Deha’ and Amir Hayat accused were used to play volleyball. The accused had forbidden my son to play volleyball. Due to this fact quarrel had taken place and due to this grudge, after two days the occurrence had taken place. During the course of investigation I and the witnesses fully supported the contents of the FIR but local police had become collusive with the accused party and declared accused Imran innocent. This attitude of the police shattered our confidence due to this fact I was constrained to file complaint Exh.PC.

The local police during the course of investigation came to the place of occurrence and inspected the same. Blood stained earth was taken into possession through recovery memo Exh.PD. I alongwith Gul Anaar signed the same as attesting witness. My signature thereupon are Exh.PD/1. Three empties of pistol 30 bore were taken into possession from the place of occurrence and was sealed and taken into possession through recovery memo Exh.PE. I alongwith Gul Anaar signed the same as attesting witnesses. My signatures thereupon are Exh.PE/1.

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At the time of occurrence my deceased son was riding on a motorcycle bearing registration No.SGN/3974 maker super star and same was also lying on the place of occurrence and was taken into possession through recovery memo Exh.PF. I alongwith Gul Anaar signed the same as attesting witnesses my signature thereupon Exh.PF/1. My statement was recorded by the I.O. u/s 161 Cr.P.C.”

3. Before moving further it would not be out of place to mention here that initially with regard to the alleged occurrence F.I.R. No.464 dated 08.09.2014 was registered under Sections 302/ 148/ 149 “PPC” at Police Station Jhal Chakian, Sargodha, however, being dissatisfied, the complainant filed private complaint which was dealt with by the learned Additional Sessions Judge, Sargodha. After noting down the cursory statements in the private complaint, the appellant was summoned as accused *vide* order dated 14.09.2015 whereas co-accused namely Imran was declared as Proclaimed Offender. The appellant Aamir Hayat being accused, however, appeared before the learned trial court who delivered the copies of the documents as required under Section 241(2)(a) of the “Cr.P.C”. The appellant was formally charge sheeted on 17.06.2016 to which he pleaded not guilty and claimed trial.

4. In order to bring home guilt of the appellant the prosecution examined as many as nine witnesses in support of the charge and in addition thereto Rab Nawaz, S.I, Zaigham Nisar, S.I, Muhammad Ameen, S.I, being Investigating Officers appeared as CW-1 to CW-3 respectively whereas statement of Dr. Usman Imtiaz, CMO was recorded as CW-4. Muhammad Azam being unnecessary witness, was given up by the prosecution and after tendering reports of Punjab Forensic Science Agency, Lahore (hereinafter referred to as “PFSA”) including blood stained earth (Exh.PD) and pistol .30 bore P.1 (Exh.PE), the prosecution evidence was closed. On completion of prosecution evidence, the appellant got recorded his statement under Section 342 of “Cr.P.C.” wherein he pleaded his innocence. The appellant though did not opt to record his statement on oath as required under Seciton 340(2) of “Cr.P.C.” but he tendered certain documents in his defence. On conclusion of trial, the appellant was held guilty of offence under Section 302 (b) of “PPC”

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and was sentenced to death vide judgment dated 03.03.2018. He was also directed to pay a sum of Rs.200,000/- as compensation to legal heirs of Aamir Shehzad deceased under Section 544-A of “Cr.P.C.” In default of payment of compensation, the appellant was held liable to further undergo a period of six months Simple Imprisonment.

5. Learned counsel for the appellant submitted that F.I.R. was lodged with a considerable delay. He added that occurrence was unseen and the alleged eyewitnesses are only chance witnesses. Learned counsel argued with vehemence that ocular account is even not corroborated from the medical evidence. It is contended that the prosecution has badly failed to prove its case against the appellant. Learned counsel emphasized that though motive was alleged in the F.I.R. but it was not proved. It is further contended that a pistol was though shown got recovered from the appellant but negative report of the “PFSA” discarded such recovery. Learned counsel in the last submitted that in view of the available material conviction of the appellant cannot sustain.

6. Conversely, learned Additional Prosecutor General assisted by the learned counsel for the complainant defended the impugned judgment. It is argued that while examining the eyewitnesses, the prosecution has been able to successfully bring whom guilt of the appellant. Learned Prosecutor submitted that the delay in lodging the F.I.R. was sufficiently explained as the deceased was initially taken to District Headquarters Hospital, Sargodha in a critical condition whereafter he was shifted to Lahore. Learned Additional Prosecutor General added that the alleged occurrence took place in the morning and the eyewitnesses are natural witnesses of the crime. It is contended that the prosecution has successfully discharged its onus with regard to the commission of the crime by the appellant.

7. We have heard learned counsel for the appellant as well as learned Additional Prosecutor General assisted by learned counsel for the complainant at considerable length and perused the record.

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8. The prosecution in this case was set to motion on the statement of Allah Yar who is father of deceased Aamir Shehzad. As per his statement, his son was assassinated by the appellant along with his co-accused through successive fire shots which landed on vital parts of body of Amir Shahzad who was shifted to DHQ Hospital, Sargodha though in an injured condition but succumbed to the injuries later. As per his statement, the alleged occurrence was witnessed by Gul Anaar (PW.3) and Muhammad Asghar (PW.4) who informed him through telephone about the occurrence. The motive behind the occurrence statedly was that appellant Aamir Hayat along with his co-accused forbidden the deceased from playing volleyball in the ground which was adjacent to the house of appellant.

9. In order to examine the validity of the judgment passed by the learned Additional Sessions Judge resulting into conviction of the appellant, we when bisected the limbs of prosecution evidence it comprises of ocular account in the shape of statements of Allah Yar (PW.2), Gul Anaar (PW.3), Muhammad Asghar (PW.4), medical evidence, recovery of pistol and at the last motive part. We have noticed that the alleged occurrence took place at 07:10 am whereas it was reported to the police at 07:30 pm. There is thus delay of more than twelve hours. The explanation to this effect is though offered that on account of precarious condition of Aamir Shehzad (deceased), he was initially shifted to DHQ Hospital, Sargodha from where he was referred to Jinnah Hospital, Lahore for further treatment where he succumbed to the injuries and took his last breath but it is apparent from the record that despite having ample time to report the matter to the police, the complainant took considerable time for the said purpose. We entertain no doubt in our mind to hold that the prosecution has not been able to ably explain the delay in lodging the F.I.R. This delay surely occurred for the purpose of deliberation and concoction.

10. The alleged occurrence was not witnessed by complainant Allah Yar (PW.2). The complaint was lodged on the basis of information

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furnished by Gul Anaar and Muhammad Asghar (PW.3) and (PW.4) respectively who are purportedly the eyewitnesses of the occurrence. While examining their statements we find that both these witnesses were not residents of the vicinity and they were residing at faraway places from the venue of occurrence. Apparently both these witnesses are chance witnesses and in order to establish their presence at the venue of occurrence, they were supposed to provide satisfactory explanation with regard to their presence at the site at the relevant time. From the perusal of their statements it can easily be inferred that they were unable to give a plausible explanation with regard to their presence at the place of occurrence when the alleged offence took place. Gul Anaar (PW.3) is brother of the complainant and uncle of the deceased whereas Muhammad Asghar (PW.4) is close friend of the deceased who even failed to justify his presence at the place of occurrence in the early hours of the day in the company of Gul Anaar (PW.3). A chance witness is a witness who claimed that he was present at the crime spot well in time though his presence in ordinary course of business was sheer chance. The testimony of chance witness is always to be examined by the courts with a hard look as in normal course the presumption would be that such witness was not present at the crime spot. Needless to observe that a chance witness has to undergo strict scrutiny so as to qualify as a reliable witness. Guidance to this effect can be sought from the cases reported as “Naveed Asghar and 2 others v. The State” (PLD 2021 SC 600) and “Mst. Rukhsana Begum and others v. Sajjad and others” (2017 SCMR 596).

11. There is yet another aspect which causes serious aspersions qua status of alleged eyewitnesses as initially on the basis of their information, the complainant nominated the appellant along with Imran as one of the perpetrators of the offence along with three unknown assailants but later on Gul Anaar (PW.3) disclosed the name of one of unknown accused as Ansar without mentioning as to how he became acquainted with the name of said accused whereas two of them are still mystery. Furthermore in

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order to justify their presence at the scene of occurrence both these witnesses have introduced notable improvements in their statements.

12. The ocular account furnished by the eyewitnesses does not find support from the medical evidence. As per allegations recorded in the F.I.R and the statements of the complainant and eyewitnesses, the appellant fired two shots with his pistol at the body of the deceased which landed on his face and left arm whereas accused Imran fired at the deceased which hit him on his abdomen. Contrary to this, Dr. Muhammad Asif (PW.7) who conducted postmortem of the deceased when entered into witness box while giving description of injuries termed injury No.5 “a firearm wound of reentry 3 x 1 cm on interio lateral side of left forearm, 03 cm below left elbow joint crease” which clearly negates the version of the witnesses that the appellant fired two shots one of which hit on the left arm of the deceased. This material conflict in the oral account and the medical evidence lends support to the conclusion that the occurrence was in fact not witnessed by Gul Anaar and Muhammad Asghar (PW.3) and (PW.4) respectively.

13. It is though claim of the prosecution that pistol .30 bore was recovered from the appellant on 08.03.2016 which was taken into possession through recovery memo (Exh.PN) but as per report of “PFSA” (Exh.PV), pistol (P.4) purportedly recovered from the appellant, when examined was not found matched with the crime empties collected from the place of occurrence. The recovery of pistol and the crime empties in the circumstances is thus completely inconsequential.

14. We also entertain no doubt in our minds that the prosecution has though set up a specific motive for the offence but it was neither stated by the witnesses with full heart nor proved at all.

15. It is though argued before us on behalf of the prosecution that the appellant had remained fugitive from law for a considerable period but in absence of any cogent and confidence inspiring evidence qua his guilt, we cannot held him guilty of the offence merely on account of his

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abscondence which at the most can be termed as a corroborative piece of evidence.

16. In the light of above noted threadbare discussion, we are of the considered opinion that the prosecution case is fraught with doubts. Needless to observe that an accused is always to be treated as innocent unless it is proved otherwise. Sections 375 and 376 of “Cr.P.C.” cast a duty upon the High Court to examine and reappraise each and every piece of evidence before confirming or repelling the view of the trial court qua the guilt of the accused. It is an oft repeated principle of law that whenever a reasonable doubt emerges with regard to the involvement of the accused in the alleged offence, he should be benefitted with the same without any hesitation. For the said purpose it is not necessary that there should be multiple anomalies creating doubt in the prosecution case but even if a single circumstance creates reasonable doubt that would be sufficient. We, thus, are of the considered view that the prosecution has failed to prove its case against the appellant beyond shadow of doubt.

17. Resultantly, we allow Criminal Appeal No.193965 of 2018 filed by Aamir Hayat appellant and set-aside his conviction and sentence awarded by the learned trial court *vide* Judgment dated 03.03.2018. Consequently, the appellant namely Aamir Hayat is acquitted of the charge by extending him the benefit of doubt and he shall be released forthwith from jail, if not required to be detained in connection with any other case. Murder Reference No.137 of 2018 is thus answered in **NEGATIVE** and death sentence of present appellant Aamir Hayat is **NOT CONFIRMED**.

(Malik Shahzad Ahmad Khan)
Chief Justice

(Mirza Viqas Rauf)
Judge

M.Arshad

APPROVED FOR REPORTING

Chief Justice

Judge