

JUDGMENT SHEET

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

Crl. Appeal No.12779 of 2023

Sher Azam Khan etc. Vs. The State etc.

Crl. PSLA No.19569 of 2023

Ghulam Farooq Khan Vs. The State etc.

Date of hearing: 28.11.2024

Appellants by:- Mr. Munir Ahmad Bhatti, Ms. Mehroo Munir Bhatti and Mr. Muhammad Asif Hayat, Advocates.

State by:- Mian Imran Rahim, DPG with Anwar, SI.

Complainant by:- Mr. Ajaz Khalid Khan Niazi, Advocate with complainant.

SADAQAT ALI KHAN, J. Appellants (**Sher Azam**

Khan and Huzaifa Usman Khan) along with their co-accused i.e. Zar Badshah (**since acquitted**) have been tried by the trial Court in private complaint under Sections 302, 324 and 34 PPC arising out of case FIR No.246 dated 29.05.2019 Police Station City, District Mianwali, and were convicted and sentenced vide judgement dated 30.01.2023 as under:-

Huzaifa Usman Khan (appellant)

u/ss 302(b)/34 PPC Sentenced to undergo imprisonment for life as Tazir on two counts for committing Qatl-i-Amd of Muhammad Shoib Khan and Mureed Hussain Shah (**deceased**) with compensation of Rs.5,00,000/- each (**total Rs.10,00,000/-**) payable to the legal heirs of each deceased u/s 544-A Cr.P.C. and in default whereof, the above said compensation amount will be recovered as arrears of land revenue and to further undergo simple imprisonment for 6-months on two counts.

All the sentences of the appellant (**Huzaifa Usman Khan**) were ordered to be run concurrently with benefit of Section 382-B Cr.P.C.

Sher Azam Khan (appellant)

u/ss 302(b)/34 PPC Sentenced to undergo imprisonment for life as Tazir for committing Qatl-i-Amd of Muhammad Shoaib Khan (**deceased**) with compensation of Rs. Five Lacs payable to the legal heirs of deceased u/s 544-A Cr.P.C. and in default whereof, the above said compensation amount will be recovered as arrears of land revenue and to further undergo simple imprisonment for 6-months.

Benefit of Section 382-B Cr.P.C. was also extended to the appellant (**Sher Azam Khan**).

2. Appellants have filed this Criminal Appeal against their conviction whereas complainant has filed Criminal PSLA against acquittal of co-accused (**Zar Badshah**), which are being decided through this single judgment.

3. Heard. Record perused.

4. Muhammad Shoaib Khan was done to death whereas Mureed Hussain Shah sustained firearm injuries (**died on 07.06.2019**) during the occurrence took place on the road in front of the shop of Khyber Shoes on 29.05.2019 at 8:55 p.m. whereafter FIR was lodged on the same night at 10:30 p.m. on the statement of Ghulam Farooq Khan^{PW-10} (**brother of Muhammad Shoaib Khan (deceased)**), who while claiming himself to be the eyewitness of the occurrence stated in his statement before the trial Court as under:-

“Stated that on 29.05.2019, on my oral statement **Exh.P-D**, FIR No.246/2019 (**Exh.P-E**) for the offence U/S 302/324/34 was registered in police station City Mianwali wherein it was alleged that on 29.05.2019 at 07:50 p.m. I alongwith my brother Ghulam Rasool on one motorcycle while Ikram Ullah Khan son of Muhammad Afzal Khan my Mamoozad/my co-villager alongwith Shoaib Khan while mounting on other motorcycle came to Mianwali city for shopping of Eid festival. At 08:55 p.m. we reached at Khayber Shoes Shop, located at Katchery road Mianwali City. When Muhammad Shoaib Khan, my brother was proceeding towards the shop, meanwhile accused persons present before the court namely Huzaifa Uman armed with 30-bore pistol, Sher Azam Khan armed with 30-bore pistol, Zar Bad Shah armed with 30-bore pistol alongwith their co-accused Shakeel Khan (since being separately tried as juvenile) armed with 30-bore pistol who were identified by us in the lightening of shops

and bazar, came there on motorcycles and co-accused Shakeel Khan (since being separately tried as juvenile) challenged Muhammad Shoaib Khan by raising lalkara to be brave as they had come to avenge their insult/dishonor. In our presence, co-accused Shakeel Khan (since being separately tried as juvenile) and present accused Huzaifa Uman fired with their respective pistols upon Muhammad Shoaib Khan which landed on his head. Thereafter Sher Azam Khan accused present in the court made fire shots with his pistol at Muhammad Shoaib which hit on his left elbow and thigh. Zar bad Shah, accused present in the court made fire shots with pistol at Muhammad Shoaib Khan hitting the later at left calf and ankle. Muhammad Shoaib Khan fell to the ground being seriously injured. Thereafter, Huzaifa Uman, accused present in the court made a fire shot that hit on left side of the belly of Mureed Hussain Shah (deceased). Humza Shah son of Mureed Hussain Shah took care of Mureed Hussain Shah. All the aforesaid accused, while firing with their respective weapons, decamped towards north while riding on their motorcycles. The occurrence was witnessed by me and my aforesaid companions besides aforesaid Humza Shah.

Motive behind the occurrence is that a few days earlier an altercation/exchange of hot words took place between Muhammad Shoaib Khan and Shakeel Khan etc. and due to said grudge, aforesaid accused with common intention and consultation, had injured Muhammad Shoaib Khan and Mureed Hussain Shah with intention to kill them. After arranging conveyance, Muhammad Shoaib Khan and Mureed Hussain Shah were brought to DHQ Hospital, Mianwali. Muhammad Shoaib Khan on reaching the hospital breathed his last. The accused had killed Muhammad Shoaib Khan and injured Mureed Hussain Shah and thus, committed serious offence. I am complainant against the accused persons and they be proceeded against. Exh.P-D was read over to me and I signed the same.”

5. Hamza Shah^{PW-11} (**son of Mureed Hussain Shah (deceased)**) and Ikram Ullah Khan^{PW-12} (**cousin "اں عزیز" of Muhammad Shoaib Khan (deceased)**) while appearing before the trial Court have reiterated the same story.

6. All the eyewitnesses have given photographic narration of the incident by attributing each injury of each deceased to each of the accused but Hamza Shah^{PW-11} (**eyewitness**) has not disclosed seat of injuries of Muhammad Shoaib Khan (**deceased**) attributed to Zar Badshah (**co-accused**). Ghulam Farooq Khan^{PW-10} and Ikram Ullah Khan^{PW-12} stated in their statements before the trial Court that fire shots made by Zar Badshah (**co-accused**)

hit on left calf and ankle of Muhammad Shoaib Khan (**deceased**). Contrary to this, medical officer Dr. Uzair Hashim Niazi^{PW-8} during his post-mortem examination did not observe any injury on his left calf (جگہ) and ankle specifically attributed to Zar Badshah (**co-accused**), rather observed grazing wound over the dorsum of left foot which has not specifically been attributed to him. This conflict between ocular and medical evidence is not ignorable, rather shatters the credibility of the eyewitnesses creating doubt regarding their presence at relevant time at the place of occurrence. **2020 SCMR 192** “Sufyan Nawaz and another Vs. the State and others”.

7. Zar Badshah (**co-accused**) has been found not involved in the occurrence during investigation as stated by Ameer Ahmed Khan, SI/SHO^{CW-1}. In these circumstances, involvement of Zar Badshah (**co-accused**) in this case is not only free from doubt but also sufficient to discard whole story of the prosecution. **2019 SCMR 1978** “Safdar Mehmood and others Vs. Tanvir Hussain and others”.

8. Zar Badshah (**co-accused**) has been attributed effective role of firing on the person of Muhammad Shoaib Khan (**deceased**) but he has been acquitted by the trial Court by discarding the evidence of the eyewitnesses, same evidence is not believable to the extent of the appellants in absence of independent corroborative piece of evidence which is conspicuously missing in the present case. **2016 SCMR 1763** “Shahbaz Vs. The State”.

9. It is mentioned in the FIR that after the occurrence, Mureed Hussain Shah (**deceased**) in injured condition and dead body of Muhammad Shoaib Khan (**deceased**) were shifted to hospital. Shahid Nisar Akbar, Inspector^{CW-2} admitted in cross-examination that he had not interrogated about any vehicle or vehicle of Rescue 1122 through which the injured and deceased were shifted from the place of occurrence.

10. Zafar Khan (**Emergency Medical Technician/Official of Rescue 1122**) while appearing before the trial Court as DW-2 stated in his statement that on 29.05.2019, he was working at District Headquarter Rescue Service 1122, Mianwali as Emergency Medical Technician, on the same day he reached at Katchehri Road, Mianwali City in response to an emergency call about Mureed Hussain s/o Mushtaq Hussain aged about 50 years r/o Balo Khel Road Mianwali (**now deceased**) where he came to know that above said Mureed Hussain had sustained firearm injuries at the hands of unknown persons while purchasing shoes from a shop; he and Bilal, Emergency Medical Technician (**not DW**) provided him first aid and shifted him to DHQ Hospital, Mianwali through emergency vehicle No.MN-02 driven by Iqbal Driver of Rescue Office. Original record of Emergency Response Form No.60654, COD No.199374 is before him which is in his handwriting. Exh. DK is copy of 1122 Emergency Response Form. The trial Court has observed that “original record perused and returned” which was brought by Muhammad Rizwan (**Official of Rescue Service Office**) and produced it before the trial Court while appearing as DW-1. Copy of Emergency Call Form No.60654 at Serial No.83685. Exh. DJ was also obtained in the statement of Muhammad Rizwan^{DW-1}, perusal of which shows that one person namely Sami through cell phone i.e. 0301-3953415 had informed Rescue Office on 29.05.2019 at 20:55 (**8:55 p.m.**) regarding the present incident, it is also mentioned in Urdu as under:-

"کم تھے۔ ایک کوپلیس والی دین لیکر چل گئی تھی جو نوت ہو گیا تھا۔ یہ وکم راہ گیر تھا۔"

Exh. DK is Emergency Response Form, perusal of which shows that Zafar Khan^{DW-2} with Bilal (**Officials of Rescue 1122**) reached the place of occurrence and found Mureed Hussain (**deceased**) in injured condition, it is also mentioned on the Form in Urdu as under:-

"نامعلوم افراد کی فائزگ سے دکان سے جو ت خریدتے ہوئے گولی لگی (راہگیر)۔"

Above said Sami, who had informed Rescue Office, has not been produced being material witness by the prosecution with the reason best known to it.

11. Muhammad Rizwan^{DW-1} and Zafar Khan^{DW-2} being Rescue Officials have no grudge or ill-will against the complainant. Their statements and documents i.e. Exh. DJ and DK discard the presence of the eyewitnesses at relevant time. Had the eyewitnesses been present at the time of occurrence at the place of occurrence, their names would have been mentioned in above said documents i.e. Exh. DJ and DK prepared by the officials of Rescue Office. This was the reason that the prosecution has concealed shifting of the deceased/the then injured through official vehicle of Rescue 1122 to hospital, otherwise, it was the duty of prosecution to produce the above said public documents to establish the presence of eyewitnesses with the deceased at relevant time. Presumption of correctness is attached to them (**public documents**), certified copy thereof is relevant and admissible in evidence unless contrary is proved rebutting such presumption completely, in present case, prosecution has not produced any evidence to rebut the same which negates the presence of eyewitnesses at relevant time at the place of occurrence.

12. It is the case of complainant that he along with his brother Ghulam Rasool reached the place of occurrence on motorcycle and witnessed the occurrence but neither the motorcycle nor its registration number has been produced before the IO to establish his presence. Likewise, it is mentioned in the FIR that Ikram Ullah Khan^{PW-12} (**cousin "ڦڻڻ" of Muhammad Shoaib Khan (deceased)**) was with the deceased and reached the place of occurrence on motorcycle and witnessed the occurrence but it is not mentioned that who was driving the motorcycle. In the FIR, presence of Hamza Shah^{PW-11} has

been disclosed after the occurrence which is also not believable.

13. Statedly, on 29.05.2019 Mureed Hussain Shah (~~deceased/the then injured~~) was brought in the hospital in injured condition (~~died on 07.06.2019~~). Medical Officer Dr. Uzair Hashim Niazi^{PW-8} has specifically stated in his MLR as well as before the trial Court that during medical examination, he was not well-oriented to space and time. GCS was 13/15. In these circumstances, statement of Mureed Hussain Shah (~~deceased/the then injured~~) statedly got recorded by the IO on the same day in the hospital along with endorsement of the medical officer is not free from doubt and had rightly not been considered by the trial Court as his dying declaration. **2016 SCMR 1233** “Muhammad Ameer and another Vs. Riyat Khan and others”.

14. All the eyewitnesses have specifically stated in their statements before the trial Court that fire shots of Shakeel Khan (~~co-convict tried separately being juvenile and has been acquitted by this Court today i.e. 28.11.2024 vide separate judgment while accepting his Cr. Appeal No.12776 of 2023 against his conviction~~) and Huzaifa Usman Khan (~~appellant~~) hit on the head of Muhammad Shoaib Khan (~~deceased~~). Medical Officer has not stated anywhere that injury observed by him on his head is result of two fire shots, in such eventuality, it is not discernable as to which of the accused is responsible for the said injury, otherwise both the accused could not have been convicted against single injury, benefit of which also goes to them.

15. Neither name of the owner of the shop (~~Khyber Shoes~~), in front of which occurrence took place, has been disclosed nor has been produced in support of the prosecution story which also creates doubt.

16. It is also worthwhile to point out that CCTV cameras installed on the adjacent shops of the place of occurrence as

stated by the IO (**Ameer Ahmed Khan, SI/SHO^{CW-1}**) have not been taken into possession to establish presence of the eyewitnesses.

17. Rough and scaled site plans of the place of occurrence do not show the houses of the eyewitnesses around the place of occurrence. They, being chance witnesses, have failed to establish their presence at the time of occurrence at the place of occurrence with their stated reasons. **2017 SCMR 564** “Arshad Khan Vs. The State” and **2014 SCMR 1698** “Muhammad Rafique Vs. The State”.

18. Motive of the occurrence mentioned in the FIR was a quarrel between the parties took place few days prior to present occurrence, detail of which has not been disclosed which is not believable.

19. Nothing was recovered from Sher Azam Khan (**appellant**) during interrogation.

20. Nasir Iqbal, Constable^{PW-13} while appearing before the trial Court stated in his statement that on 24.07.2019, Huzaifa Usman Khan (**appellant**) during interrogation disclosed and got recovered pistol from his house. I.O. has not joined any independent person from the vicinity to witness the recovery proceedings in violation of mandatory provisions of Section 103 of Cr.P.C. which are not believable. **2017 SCMR 898** “Muhammad Ismail and others Vs. The State”.

21. In view of the above discussed circumstances, I entertain serious doubt in my mind regarding participation of the appellants and Zar Badshah co-accused (**since acquitted**) in the present case. It is settled principle of law that for giving benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in the prudent mind about the guilt of the accused, then he would be entitled to its benefit not as a matter of grace or concession but as of right.

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22. For the foregoing reasons, **instant criminal appeal** filed by the appellants (**Sher Azam Khan and Huzaifa Usman Khan**) is **accepted**, their convictions and sentences awarded by the trial Court through the impugned judgment are hereby set-aside. They are acquitted of the charges and directed to be released forthwith, if not required in any other case.

23. In view of the above decision, **Crl. PSLA** filed by the complainant against the acquittal of co-accused (**Zar Badshah**), having no merits is **dismissed**.

(SADAQAT ALI KHAN)
JUDGE

Approved for Reporting.

JUDGE

Farhan