

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Murder Reference No.29 of 2023

The State Versus Khawaja Muhammad Tayyab

Criminal Appeal No.330 of 2023

Khawaja Muhammad Tayyab Versus The State etc.

Date of hearing: 06.11.2024

Appellant by:- Mr. Zahid Iqbal Khokhar,
Advocate/Defence Counsel.

State by:- Mr. Naeem Akbar, DPG with
Awais Hayat, SI.

Complainant by:- Mr. Aabid Maroof Mughal,
Advocate.

SADAQAT ALI KHAN, J. Appellant (**Khawaja Muhammad Tayyab**) has been tried by the trial Court in case FIR No.906 dated 06.07.2022 in offence under Section 302 PPC Police Station Waris Khan, District Rawalpindi, and was convicted and sentenced vide judgement dated 31.05.2023 as under:-

Khawaja Muhammad Tayyab (appellant)

u/s 302(b) PPC Sentenced to DEATH for committing Qatl-i-Amd of Mehmood Asghar (deceased) with compensation of Rs.3,00,000/- payable to legal heirs of deceased u/s 544-A(1) Cr.P.C., recoverable as arrears of land revenue, and in default whereof to further undergo simple imprisonment for 6-months.

2. Appellant has filed this Criminal Appeal against his conviction and the trial Court has sent Murder Reference for confirmation of his death sentence or otherwise, which are being decided through this single judgment.

3. Heard. Record perused.

4. Mehmood Asghar was done to death in the street on 06.07.2022 at 12:30 a.m. (**night**) whereafter FIR was lodged on the same night at 1:45 a.m. on the statement of his wife

Samina Mehmood^{PW-6/complainant}, who while claiming herself to be the eyewitness of the occurrence stated in her statement before the trial Court as under:-

“My husband Mehmood Asghar worked in Gas Agency. I have a daughter namely Zainab aged about 13 years. Some days prior to the day of occurrence, accused Khawaja Tayyab (present in the court) teased my daughter Zainab. On coming to house, my daughter told us about teasing of accused. My husband Mehmood Ahmad admonished accused Tayyab. My dewar Yaqoob Asghar and Tariq Shahzad came to our house to talk about said matter. On 06.07.2022 I alongwith Yaqoob Asghar and Tariq Shahzad was standing in the street outside my house and were talking. At about 12:30am my husband Mehmood Asghar while riding on motorcycle bearing registration no.ABN/983 came from his work place i.e Gas Agency. When he reached the street near our house, in the meanwhile, accused Khawaja Tayyab while armed with pistol came out from his house and came in front of my husband. My husband tried to save him. Accused Khawaja Tayyab fired a shot with his pistol which hit on back of head of my husband, who fell down in serious injured condition. Accused Khawaja Tayyab fired 2/3 more shots upon my husband. Occurrence was witnessed by me, Yaqoob Asghar and Tariq Shahzad. On our hue and cry, accused fled away from the spot while brandishing his pistol. My husband succumbed to the injuries at the spot.

Motive behind the occurrence was that Khawaja Tayyab was not having good character, who committed murder of my husband for admonishing him from teasing my daughter. Police came at the spot. I got recorded my statement Ex.PF which was read over to me. I marked my thumb impression Ex.PF/1 on my statement.”

5. Tariq Shahzad^{PW-7 (brother of the deceased)} while appearing before the trial Court has reiterated the same story.

6. Statement of the complainant (**Exh. PF**) upon which FIR was lodged and endorsement of police at the bottom show that police reached the place of occurrence where statement of the complainant was reduced into writing. Contrary to this, complainant (**Samina Mehmood^{PW-6}**) stated in her cross-examination that application (**statement/Exh.PF**) was drafted in hospital; that was drafted at about 2:00 a.m. (**FIR shows that it was lodged at 1:45 a.m. before the statement of the complainant Exh. PF**).

Nasir Waseem, SI ^{PW-11}/IO of this case stated in his

examination-in-chief that he recorded the statement of Tariq Shahzad^{PW-7} at the spot. Contrary to this, Tariq Shahzad^{PW-7} stated in his cross-examination that he got recorded his statement before police orally which was recorded by the IO in the hospital outside mortuary at about 2:00 a.m. These contradictions are not ignorable, rather shatter the credibility of the eyewitnesses creating doubt regarding their presence at the time of occurrence at the place of occurrence and also negate the whole story of the prosecution.

7. Rough and scaled site plans of the place of occurrence show the presence of the deceased at point (1) which is almost adjacent to the houses of Haji Khalid Rehman and Muhammad Hashim, who have not been produced in support of the story of prosecution. Complainant (**Samina Mehmood^{PW-6}**) stated in her cross-examination that accused (**appellant**) was at a distance of 10/12 feet from her (**them**) at the time of occurrence which took place at mid of night. In these circumstances, identity of the appellant is also not free from doubt.

8. Statedly, complainant Samina Mehmood^{PW-6}, her *Dewar* Tariq Shahzad^{PW-7} and Yaqoob Asghar (**given up PW**) were talking to one another at odd hours of the night i.e. 12:30 a.m. in the street and witnessed the occurrence but they have not disclosed the reason of their presence in the street at such time. Complainant (**Samina Mehmood^{PW-6}**) also stated in her cross-examination that she had not got recorded in her statement (**Exh. PF**) that on which topic she (**Samina Mehmood^{PW-6}**), Tariq Shahzad^{PW-7} and Yaqoob Asghar (**given up PW**) were talking while standing in the street. In these circumstances, this story of the prosecution is neither plausible nor believable, rather both the eyewitnesses have concealed the real facts of the occurrence which has not taken place in the manner narrated by them (**Samina Mehmood^{PW-6} and Tariq Shahzad^{PW-7}**), such conduct of the witnesses is quite unnatural.

9. Both the eyewitnesses have stated in their statements before the trial Court that deceased was coming to house from his work place i.e. gas agency, reached the place of occurrence whereafter present occurrence took place at odd hours of the night i.e. 12:30 a.m. Complainant (**Samina Mehmood^{PW-6}**) stated in her cross-examination that she has neither mentioned the name of gas agency (**work place of her husband**) in her application (**Exh. PF upon which FIR was lodged**) nor produced any proof during investigation in this respect. All this shows that reason of the presence of the deceased at the time of occurrence at the place of occurrence i.e. adjacent to the houses of Haji Khalid Rehman and Muhammad Hashim (**discussed above**) given by the PWs is false one, otherwise presence of the deceased adjacent to the said houses at odd hours of the night raises eyebrows.

10. Dead body of the deceased was shifted to hospital through officials of rescue 1122. Neither any official of rescue 1122 nor any report in this respect has been produced to establish the presence of the eyewitnesses with the dead body at relevant time, who statedly were with the deceased at the time of occurrence and shifting of the dead body through rescue 1122 from the place of occurrence, otherwise this story of the eyewitnesses is not believable.

11. Recovery memos i.e. of blood stained earth, collection of crime empties and recovery of motorcycle from the place of occurrence do not show the name of the accused (**appellant**) which also create doubt qua the involvement of the appellant.

12. Inquest report shows that Fazal-e-Rabi and Muhammad Qasim^{PW-8} were present with the dead body at the spot but presence of the eyewitnesses around the dead body is not mentioned. Muhammad Qasim^{PW-8} while appearing before the trial Court has also not stated that when he reached the place of occurrence, eyewitnesses were

also present with the dead body at the spot. All this shows that it was unwitnessed occurrence.

13. Tariq Shahzad^{PW-7} is not resident of vicinity of the occurrence i.e. Mohallah Chaudhary Waris Khan, rather is resident of Mohallah Dhone Hukamdad, Rawalpindi. He has not disclosed any reason of his arrival in the house of the complainant on the night of occurrence. He, being chance witness, has failed to establish his presence at the time of occurrence at the place of occurrence with his stated reasons. **2017 SCMR 564** “Arshad Khan Vs. The State” and **2014 SCMR 1698** “Muhammad Rafique Vs. The State”.

14. Considering the peculiar facts and circumstances of this case (**discussed above**), we are of the view that it was an unseen occurrence took place at odd hours of the night. Both the witnesses have not witnessed the occurrence, rather on getting information of the occurrence, complainant got registered the FIR after making statement in the hospital after due deliberation and consultation at much later stage but wrongly shown the time of lodging of the FIR i.e. 1:45 a.m. just to show it prompt one. **2019 SCMR 631** “Muhammad Arif Vs. The State”.

15. Zainab Mehmood^{PW-10} (**daughter of the deceased**) stated before the trial Court regarding motive of the occurrence that deceased was teasing her whereafter her father Mehmood Asghar (**deceased**) admonished him, in response, he extended threats to her father for dire consequences. Admittedly, FIR qua the motive story has not been lodged against the appellant, otherwise such delayed story is not believable.

16. Nasir Waseem, SI^{PW-11} stated in his statement before the trial Court that on 15.07.2022, appellant during interrogation disclosed and got recovered pistol from his house in presence of Tariq Shahzad^{PW-7} and Aamer Shehzad, who has not been produced in support of this

recovery whereas Tariq Shahzad^{PW-7} while appearing before the trial Court did not utter even a single word regarding this recovery which is not believable.

17. In view of the above discussion, we entertain serious doubt in our minds regarding participation of the appellant 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.

18. For the foregoing reasons, this appeal is allowed, conviction and sentence of the appellant (**Khawaja Muhammad Tayyab**) awarded by the trial Court through impugned judgment are hereby set-aside. He is acquitted of the charges and directed to be released forthwith, if not required in any other case. Murder Reference is answered in **NEGATIVE** and death sentence of the appellant (**Khawaja Muhammad Tayyab**) is **NOT CONFIRMED**.

(MIRZA VIQAS RAUF)
Judge

(SADAQAT ALI KHAN)
Judge

Approved for Reporting.

Judge

Judge

Farhan