

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT**

Murder Reference No.03 of 2021
(The State *versus* Gulraiz Shehzad)

CrI. Appeal No.69125-J of 2020
(Gulraiz Shahzad *versus* The State.)

JUDGMENT

Date of hearing: 24.06.2024.

Appellant by: Mr. Maqbool Ahmad Qureshi, Advocate.

Syed Abdul Manan Iftikhar Shah, Advocate (Defence counsel).

State by: Mr. Tariq Siddique, Additional Prosecutor General.

Complainant by: Complainant in person.

AALIA NEELUM, J: - The appellant-Gulraiz Shahzad son of Muhammad Zulfiqar, caste Rajpoot, resident of Meraj Park Kot Abdul Malik, District Sheikhpura, was involved in case F.I.R. No.1087 of 2019, dated 31.07.2019, registered under Section 302 P.P.C., at P.S. Factory Area, District Sheikhpura and was tried by the learned Additional Sessions Judge, Ferozewala. The trial court seized with the matter in terms of the judgment dated 15.12.2020, convicted Gulraiz Shahzad (the appellant) **under Section 302(b) PPC** as Tazir and sentenced to **Death** for committing Qatl-e-Amd of Muhammad Waqas Ali (the deceased), with the direction to pay compensation of Rs.2,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I further.

2. Feeling aggrieved by the trial court's judgment, Gulraiz Shahzad, the appellant, has assailed his conviction and sentence by filing the

instant jail appeal bearing Criminal Appeal No.69125-J of 2020. The trial court also forwarded **M.R. No.03 of 2021** (**The State. Vs. Gulraiz Shehzad**) to confirm the death sentence awarded to the appellant-Gulraiz Shahzad. Both the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

3. The prosecution story, as alleged in the F.I.R (Ex.PF) lodged on the statement (Ex.PC) of Sidra Bibi (PW-4)-the complainant, is that one year prior to the occurrence, complainant (PW-4) got marriage with Muhammad Waqas Ali and lived with her husband along with her father-in-law, namely, Zulfiqar, mother-in-law, namely, Riffat Ara and brother-in-law, namely, Gulraiz Shehzad; that on 31.07.2019 at about 04:00 P.M., complainant (PW-4) was present in her house along with her husband, father-in-law, mother-in-law and Gulraiz Shehzad (Jeth); that Gulraiz started quarrel with Muhammad Waqas Ali, husband of complainant (PW-4), upon which, complainant (PW-4), her father-in-law and mother-in-law tried to stop the quarrel and Gulraiz became furious and took a “churri” and made a blow of churri on the neck of husband of complainant Waqas Ali who became injured; that Gulraiz fled away from the spot while brandishing churri; that they took the injured Muhammad Waqas Ali to Shahdara Hospital, Lahore but Muhammad Waqas Ali succumbed to the injuries on the way.

4. After the incident, the complainant reported the matter to the police through his statement (Ex. PC), and after that, formal F.I.R (Ex. PF) was chalked out by Jamshed Iqbal A.S.I (PW-7). After registering the case, the investigation was entrusted to Shah Faisal S.I. (PW-8), who found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C., and sent the same to the court of competent jurisdiction. On 25.01.2020, the trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as nine (09) witnesses.

5. The ocular account, in this case, has come out from the statements of Sidra Bibi (PW-4)-the complainant, whereas Dr. Ijaz Ahmad

(PW-2), who conducted the postmortem examination of Muhammad Waqas Ali (the deceased) found the following injuries on his person:

INJURIES

A penetrating incised wound 5 x 3 cm over the front of the left side of the neck, 5 cm above the upper margin (border) of the left clavicle.

After conducting an autopsy, the doctor opined that death in this case occurred due to the injury to major blood vessels and vital organs (lungs), leading to hemorrhage, shock, cardiopulmonary arrest, and death.

6. The learned Deputy District Public Prosecutor gave up PWs Zulfiqar and Riffat Bibi as being won over and Adil PW as unnecessary after tendering the Punjab Forensic Science Agency report (Ex.PM) and closed the prosecution evidence.

7. The appellant was also examined in terms of Section 342 Cr.P.C., wherein neither he opted to appear as his own witness in terms of Section 340(2) Cr.P.C. nor to produce defence evidence. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

“Complainant and PWs are closely related to each other. They deposed against me just only to blackmail and harass me with a view to grab my property. I have no concern with the alleged occurrence by any means.”

8. After evaluating the evidence available on record in light of arguments advanced by both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction and sentence in the above terms.

9. We have carefully considered the submissions of the learned counsel for the appellant and learned Additional Prosecutor General and minutely reviewed the evidence on record.

10. After giving our anxious consideration to the facts and circumstances of the case and the evidence on record through which we have been taken, it appears to us that the commission of the crime by the appellant-Gulraiz Shahzad, murdering Muhammad Waqas, his real brother has been established beyond a reasonable doubt. However, Zulfiqar and Riffat Bibi, the father and mother of the appellant in whom presence incident took place, have not supported the prosecution case and have been declared as a hostile witness. The evidence adduced in this case is so clear that it is not difficult to hold that the appellant was guilty of murdering his brother, Muhammad Waqas. In our view, such a finding has been made based on the reliable and clinching evidence adduced in the case, and we find no reason to take a contrary view.

11. The evidence adduced in the case reveals that on 31.07.2019 at about 4:00 p.m., Sidra Bibi (PW-4), the complainant, along with her husband Muhammad Waqas, Zulfiqar and Riffat Bibi, the father and mother of the deceased and Gulraiz Shahzad, the appellant, was present in her house. Sidra Bibi (PW-4), the complainant, deposed that Gulraiz Shahzad, the appellant, started quarreling with Muhammad Waqas (deceased), and Zulfiqar and Riffat Bibi, the father and mother of the deceased, tried to stop the quarrel but the appellant took the knife and gave a blow on the neck of Muhammad Waqas (deceased) and he became injured. Sidra Bibi (PW-4), the complainant, deposed during the examination-in-chief that: -

“Accused Gulraiz Shahzad became furious and took a “Churri” (knife) and made a blow of Churri on the neck of my husband Waqas Ali, who became injured.”

Sidra Bibi (PW-4), the complainant, further deposed that after the occurrence, they took Muhammad Waqas (then injured) to the hospital, but on the way to the hospital, he succumbed to the injury. Dr. Ijaz Ahmad (PW-2) deposed that on 01.08.2019 at 01:20 a.m., he conducted the postmortem examination on the dead body of Muhammad Waqas and found

a penetrating incised wound over the front of the left side of the neck above the upper margin (border) of the left clavicle. The death occurred due to the said injury to a major blood vessel and vital organ (lung), leading to hemorrhage, shock, cardiopulmonary arrest, and death. Dr. Ijaz Ahmad (PW-2) also deposed the dead body of Muhammad Waqas, brought by Muhammad Yaseen 1432-C (PW-9). Muhammad Yaseen 1432-C (PW-9) deposed during examination-in-chief that: -

“Stated that on 31.07.2019 I was posted at P.S Factory Area. On the same day I joined the investigation of this case. I.O handed over me the dead body of the deceased Waqas Ali along with papers and two witnesses for the purpose of postmortem. I escorted the dead body of the deceased along with witnesses to DHQ hospital Sheikhpura for postmortem.”

Shah Faisal SI (PW-8)-investigating officer deposed during examination-in-chief that: -

“I along with other officials reached at Shahdara Hospital where the dead body of the deceased Waqas Ali was present along with complainant and other eye witnesses namely Zulfiqar and Riffat Ara and seven persons. I took into custody the dead body of the deceased Waqas and prepared injury form Exh.PG, inquest report Exh.PH and application for postmortem Exh.PJ of the dead body of the deceased and sent the dead body of the deceased through Yaseen constable and two witnesses to DHQ hospital Sheikhpura for postmortem.”

12. The above-mentioned prosecution evidence reveals that Zulfiqar PW and Riffat Bibi PW, the father and mother of the deceased and appellant, were present when the investigating officer visited Shahdara Hospital, but they did not report the incident. In our social setup, in-laws do not come forward to report the incident to the police when their children are involved. In the present case, one son (Muhammad Waqas) of Zulfiqar PW and Riffat Bibi PW had been murdered, and the other son (Gulraiz Shahzad) was facing a charge of murder. Usually, parents try to save their surviving child. In such a situation, when a woman's husband was killed, and in-laws

were not standing by her, it was difficult for a woman to make a timely report of murder to the police. It is an admitted fact that Muhammad Waqas (the deceased) had not succumbed to injuries at the spot, but rather, during shifting to the Hospital, in injured condition, he succumbed to injuries on the way to the hospital. Dr. Ijaz Ahmad (PW-2) deposed during examination-in-chief that the probable duration between injury and death is 1 to 2 hours. Thus, the time of the deceased being alive and dying would be between 5 p.m. and 6 p.m. Sidra Bibi (PW-4), the complainant, deposed during the examination-in-chief that: -

“I submitted application Ex.PC for the registration of F.I.R in police station Factory Area.” Sidra Bibi (PW-4), the complainant, also deposed during the cross-examination that, **“Application was written by one present in the police station at about 6/7-PM --- We remained present in police station for registration of F.I.R for one/two hours. Dead body was present in the Shahdara Hospital at the time of drafting the application. The dead body was not taken to police station.”**

Jamshed Iqbal ASI (PW-7) deposed during examination-in-chief that: -

“Stated that on 31.07.2019, I was posted at P.S Ferozewala as Duty Officer. The complainant submitted written application for registration of F.I.R upon which I got recorded formal F.I.R No.1087/19, u/s 302 PPC without any addition or deletion on front desk. The F.I.R Exh.PF bears my signature. I sent the said F.I.R Exh.PF to Shah Faisal S.I Homicide (Investigation) through Aamir Shehzad 752-C. ”

Jamshed Iqbal ASI (PW-7) admitted during cross-examination that when the complainant submitted the application for registration of the case, he was present at the police station. According to the police *karwai* endorsed at the bottom of the complaint (Ex. PC), it reveals that the FIR (Ex. PF) was chalked at 07:00 p.m. on 31.07.2019 through rapt No. 65. Shah Faisal SI (PW-8)-investigating officer deposed during examination-in-chief that: -

“Stated that on 31.07.2019 at about 07:05 p.m. an application and F.I.R was received to me through Aamir Shehzad moharrar for investigation.” Shah Faisal SI (PW-8)-investigating officer also deposed during cross-examination that, **“I was in police station when investigation of this case was entrusted to me at about 07:05 p.m. after entrustment of investigation I directly went to Shahdara hospital instead of place of occurrence. I reached hospital at 07:35 p.m. I remained present in hospital for half hour, thereafter I went to the place of occurrence at about 08:30 p.m. As per routine investigation officer choose to went to place where the dead body is present, therefore, I choose to went after the dead body. I remained present at the place of occurrence for 35/40 minutes I conducted whole the proceedings”**

13. The FIR mentions details regarding the date, time, place, and manner of occurrence, as well as the person who committed the offence and the weapon used in the commission of the crime. It simply facilitates the investigating agencies' investigation expeditiously so that they can reach the correct conclusion after the investigation. The series of acts and the proceedings taking place after the occurrence, as discussed above, reveal that the delay appears reasonable and probable and is in coherence with the normal conduct of a human being unless proved otherwise. Sidra Bibi (PW-4), the complainant, deposed during the cross-examination that -

“Accused Gulraiz and deceased Muhammad Waqas were only two brothers. Gulraiz and deceased Waqas has cordial relation. My real sister is also married with the accused.”

14. The appellant did not participate in the last rites of his deceased brother, with whom he had great love and affection. The appellant failed to produce his wife in support of his plea that the complainant had not witnessed the occurrence and was not present at the place of occurrence as she was in her parents' house. The appellant took two pleas during the trial, and in his statement recorded under Section 342 Cr.P.C., one of his alibi was

that he was present at the head office clinic laboratories, Lahore, and second that he was falsely involved in the case by the complainant (PW-4) to grab property (house) of her in-Laws. The appellant failed to establish that Sidra Bibi (PW-4)- the complainant, or Muhammad Waqas (the deceased) had previous enmity on the property (house) owned by the in-laws of the appellant. Neither the appellant brought on the record any proof that his parents were the property owners, which Sidra Bibi (PW-4)-the complainant, wants to grab. There is no evidence that the appellant was present at the head office clinic laboratories in Lahore. In the cross-examination of Sidra Bibi (PW-4)-the complainant, nothing material has come on record that favors the appellant. The appellant has failed to examine himself as a defence witness, and the bald averments made by the accused in his defence without any evidence on record to support them cannot help the accused disprove the prosecution evidence. The defence taken by the appellant under section 342 Cr.P.C. is not evidence at all, and it cannot be read as part of the evidence. It has to be looked into only as an explanation of incriminating circumstances and not as a piece of evidence. The accused has the option to examine himself as a witness, but when he takes a specific defense, he has to prove it. The appellant had not opted to appear in the witness box for cross-examination, nor lead any of his evidence, which draws an adverse inference against him and leads to the conclusion that the version of the eyewitness/complainant regarding the manner of the accident is correct.

15. The evidence of the eyewitnesses, corroborated by the circumstances arising out of the other materials on record, clearly establishes that the appellant-Gulraiz Shahzad had murdered Muhammad Waqas (the deceased) by inflicting a knife blow on his neck. The injury intentionally caused by the appellant-Gulraiz Shahzad, at the vital part of the deceased, was sufficient in the ordinary course of nature to cause death. Given the above circumstances, we have concluded that the prosecution has proved its case against the appellant- Gulraiz Shahzad, beyond any doubt. However, we have observed the factors that have persuaded us not to uphold the capital sentence of the appellants as, according to Shah Faisal S.I. (PW-8)-

the investigating officer admitted that he did not send the knife (P-2) to the PFSA as it was not blood-stained. The appellant has been convicted and sentenced to death for the murder of Muhammad Waqas, the deceased. In such an eventuality, the same can be considered a mitigating circumstance. Furthermore, though it is mentioned in the crime report (F.I.R/Ex.PF) that appellant started quarreling with husband of complainant and when refrained, he became furious/angry (طیش میں آگیا) and committed the occurrence yet it has not come on the record that what and why was said dispute, therefore, immediate cause of occurrence remained shrouded in mystery.

16. Based on the grounds discussed hereinabove, we believe that mitigating circumstances exist regarding the quantum of the appellant's sentence. Therefore, we believe the death sentence awarded to the appellant is quite harsh. It is a well-recognized principle that the accused are entitled to the benefit of the doubt as an extenuating circumstance while deciding his question of sentence. The Hon'ble Supreme Court of Pakistan holds it in the case titled "**Dilawar Hussain v. The State**" (2013 SCMR 1582) in which the Hon'ble Supreme Court of Pakistan has observed at page 1590 as under: -

"---It has neither been the mandate of law nor the dictates of this court as to what quantum of mitigation is required for awarding imprisonment for life rather even an iota towards the mitigation is sufficient to justify the lesser sentence. According to our estimation even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment as an abundant caution. In such circumstances, if the court is satisfied that there are certain reasons due to which death sentence is not warranted, the court has no other option but to improve second sentence of imprisonment for life while extending benefit of the extenuating circumstances to the convict in a just and fair manner---."

17. In these circumstances, the appeal bearing No.69125-J-2020, filed by the appellant, Gulraiz Shahzad son of Muhammad Zulfiqar in FIR No. 1087/2019, dated 31.07.2019, under section 302 P.P.C, Police Station

Factory Area, District Sheikhpura is **dismissed**. However, the appellant's **death sentence is converted into imprisonment for life**. The benefit of Section 382 (b) of Cr.P.C is also extended to the appellant, whereas the compensation amount, as well as sentence qua non-payment of the compensation amount imposed by the learned trial court, shall remain intact upon the appellant (convict).

Murder Reference No.03 of 2021 forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, which is answered in **Negative**.

(Farooq Haider)
Judge

(Aalia Neelum)
Judge

Approved for reporting.

Judge

Judge

This judgment has been
dictated, pronounced on
24.06.2024 and signed
after its completion on
04.07.2024.

Nasar Mehmood