Stereo HCJDA-38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Crl. Appeal No. 234893-J of 2018

(Shahid Ali alias Makhi versus The State)

JUDGMENT

Date of hearing	01-10-2024
Appellant by:	Mian Abdul Qaddous, Advocate
State by:	Mr. Moeen Ali, DPG.
Complainant by:	Mr. Abdul Razzaq Younas, Advocate

Muhammad Tariq Nadeem. J:- Shahid Ali *alias* Makhi appellant was tried by the court of Additional Sessions Judge, Lahore, in case FIR No.336 dated 31.07.2015, offence under sections 302, 34 PPC, registered at Police Station Hair, Lahore and after conclusion of trial, *vide* judgment dated 30.06.2018, he was convicted **under section 302(b) PPC** and sentenced to **Imprisonment for Life** with the direction to pay compensation for an amount of Rs.2,00,000/- to the legal heirs of Muhammad Ijaz (deceased) as provided under section 544-A Cr.P.C. The amount of compensation was ordered to be recovered from the appellant as arrears of land revenue and if recovered, the same shall be distributed amongst the legal heirs of deceased according to their Shari shares and in case of default thereof, the appellant shall further undergo simple imprisonment for six months. However, he was given the benefit of section 382-B Cr.P.C.

Feeling aggrieved from the judgment of the trial court, the appellant has assailed his conviction and sentence through the captioned criminal appeal.

2. Brief facts of the case as narrated by Abdul Majeed complainant (PW.3) in complaint (Exh.PA) on the basis of which FIR (Exh.PA/1) was registered are that on 31.07.2015, he was away from his house in connection with some work. At about 06:00 p.m. Muhammad Saddique telephonically informed that Shahid *alias* Makhi (appellant), by giving kicks and fists blows to his son Muhammad Ijaz in front of house of Abdul

Rehman, made him unconscious and asked the complainant to reach at the clinic of Doctor Kamran where Muhammad Saddique and Basit were going to shift the injured for medical treatment. When he (complainant) reached the clinic, his son Muhammad Ijaz had breathed his lost. Shahid Ali *alias* Makhi and three unknown accused persons took to their heels while raising *lalkaras*. Hence, the above-mentioned crime report.

3. After completion of investigation, report under section 173 Cr.P.C. was submitted against the appellant. On indictment, the appellant pleaded not guilty and claimed trial. In order to bring home the guilt of the appellant, the prosecution got examined as many as ten witnesses amongst whom Muhammad Saddique (PW.1) and Basit Ali (PW.2) have furnished the ocular account. Abdul Majeed complainant (PW.3) reiterated the contents of complaint (Exh.PA). Syed Muhammad Younus Bukhari, draftsman (PW.6) prepared scaled site plan of the place of occurrence (Exh.PD and Exh.PD/1). Asghar Ali S.I (PW.8) being investigating officer stated about various steps taken by him during investigation of the case. Medical evidence was furnished by Doctor Muhammad Akmal Karim (PW.9), who while posted as Demonstrator, KEMU, Lahore, conducted autopsy on the dead body of Muhammad Ijaz (deceased) and issued his postmortem report (Exh.PK).

The remaining prosecution witnesses, more or less, are formal in nature. The prosecution gave up Gulzar Ahmad S.I (being dead), Ahmad Namdar 13486/C and Muhammad Nadeem, PWs being unnecessary and after tendering in evidence the Forensic Toxicology Analysis Report (Exh.PL) and Forensic Histopathology Report (Exh.PM), closed its evidence.

4. After completion of prosecution evidence, statement under section 342 Cr. P.C. of the appellant was recorded wherein he denied the allegations levelled against him and claimed his innocence. While answering to a question, "*why this case against you and why the PWs have deposed against you?* appellant replied as under:-

> *"I am innocent. Son of the complainant was done to death by beating of three unknown persons but complainant did not nominate said three unknown persons because the complainant taken huge money from them. The name of three unknown persons who beaten the complainant's son Ijaz i.e.*

> *Sakhi son of Allah Rakha, Majid son of Rafique Ali and Mudassar alias Jassy son of Yousaf Ali. Complainant and other PWs have previous enmity with me. Complainant and other PWs conceal the real facts and due to previous enmity involve me falsely in this case. Complainant, Basat Ali and Saddique they were not eye witnesses of the occurrence. Due to strong relation and conspiracy with each other involved me in this case. During the investigation nothing was recovered by me. I have no link with this occurrence… "*

He neither opted to appear as his own witness within the scope of section 340(2) Cr.P.C. nor produced any evidence in his defence.

5. The trial court *vide* judgment dated 30.06.2018 held the appellant guilty, convicted and sentenced him as mentioned above, hence, this criminal appeal.

6. Learned counsel for the appellant contended that the appellant is absolutely innocent and has been involved in this case by the complainant and other prosecution witnesses on the basis of their *mala fide* intentions and ulterior motives; that in fact the occurrence was committed by three accused namely Sakhi, Majid and Mudassar *alias* Jassy, but they were never nominated by the complainant party, however, the appellant has been made a scapegoat because of his previous enmity with the complainant party. He further contended that Abdul Majeed complainant (PW.3) was not an eye witness of the occurrence and his evidence was based on hearsay whereas remaining two private witnesses of the prosecution namely Muhammad Saddique (PW.1) and Basit Ali (PW.2) were also not present at the time and place of occurrence. He added that postmortem examination on the dead body of deceased was conducted with the delay of seventeen hours, which strongly indicates that time was consumed in arranging eye witness account and then a story qua the occurrence was fabricated by complainant party just to falsely implicate the appellant. He further maintained that the prosecution has miserably failed to substantiate the factum of accusation by producing worthy of credence evidence which aspect of the matter went unnoticed, causing serious prejudice against the appellant. It is also argued that the medical evidence also goes against the stance of the appellant and it does not prove that the deceased in this case met with an unnatural death. Lastly prayed

that the appeal be accepted and the appellant may be acquitted of the charge.

7. On the other hand, learned Deputy Prosecutor General assisted by learned counsel for the complainant vehemently opposed the contentions raised by learned counsel for the appellant and *inter alia* argued that the appellant is named in a promptly lodged FIR with specific role which is fully established by the medical evidence. Further argued that the complainant and the eye witnesses had no earthly reason whatsoever to falsely implicate the appellant in this case and although appellant has alleged about existence of his previous enmity with the complainant party, but he has not brought on record a single iota of evidence to establish this fact. Next argued that the complainant and the eye witnesses were blood relatives of the deceased and being so, they cannot be expected to falsely implicate the appellant that too by letting off the actual perpetrator of offence. It is strenuously argued that the eye witnesses have successfully proved their presence at the spot as well as having seen the tragedy with their own eyes with the role played by appellant during the occurrence is proved and it is also established that the deceased had met with an unnatural death due to the injuries caused by the appellant. Finally, they argued that since the prosecution has proved its case against the appellant beyond any shadow of reasonable doubt, therefore, the appeal filed by him merits dismissal.

8. I have given anxious hearing to the arguments of learned counsel for the appellant as well as learned Deputy Prosecutor General assisted by learned counsel for the complainant and perused the record with their able assistance.

9. It is a matter of record as mentioned in FIR (Exh.PA/1) that on 31.07.2015 at about 06:00 p.m. Abdul Majeed complainant (PW.3) received a telephonic call from Muhammad Saddique (PW.1) to the effect that his son Muhammad Ijaz had become unconscious as a result of kicks and fists blows given by Shahid Ali *alias* Makhi appellant. In this way, occurrence in the present case had taken place just prior to 06:00 p.m. on 31.07.2015 and on the same evening, the matter was reported to the police by Abdul Majeed complainant (PW.3) at 06:15 p.m. through written

application (Exh.PA) and thereafter FIR (Exh.PA/1) was chalked out at 06:30 p.m. at Police Station Hair, Lahore, which was located at a distance of seven kilometers from the place of occurrence. In FIR (Exh.PA/1), the name of Shahid Ali *alias* Makhi appellant with his role of giving kicks and fists blows to the deceased has been specifically mentioned. I am, therefore, of the view that the matter in this case was reported to the police within reasonable time which hardly left any chance of consultation or deliberation in the intervening period. Reliance is placed upon the case-laws titled as *"Muhammad Bashir and another vs. The State and others"* (**2023 SCMR 190)** and *"Abdul Wahid vs. The State"* (**2023 SCMR 1278).**

10. According to the narration of FIR (Exh.PA/1) itself, it can be seen that Abdul Majeed complainant (PW.3) had not himself witnessed the tragedy rather he was informed by Muhammad Saddique (PW.1) about the incident, however, he (PW.3) has specifically mentioned therein the names of Muhammad Saddique (PW.1) and Basit Ali (PW.2) as the witnesses, who were present at the place of occurrence at relevant time and had seen the appellant while giving kicks and fists blows to the deceased on the backdrop of a grudge of their previous altercation and even while appearing in the witness box before the trial court, he did not back-away even an inch from his stance. In this way, Abdul Majeed complainant (PW.3) has shown his *bona fide* by not standing up as an eye witness of the occurrence regarding the murder of his real son Muhammad Ijaz.

11. As noted above, Abdul Majeed complainant (PW.3) was not an eye witness of the occurrence, therefore, the prosecution has mainly relied upon the statements of two eye witnesses namely Muhammad Saddique (PW.1) and Basit Ali (PW.2), who happened to be the close relatives of Muhammad Ijaz (deceased) inasmuch as PW.1 was his paternal uncle whereas PW.2 was his paternal cousin. While appearing in the witness box before the trial court, they remained in comfortable unison with each other on all aspects of the case. They vigorously pointed their accusing fingers towards the appellant with specific attribution of giving kicks and fists blows to the deceased and despite lengthy cross-examination by the defence counsel, nothing favourable to the appellant could be extracted from their mouths.

So far as the contention of learned counsel for the appellant that none of the eye witnesses produced by the prosecution before the trial court were present at the time and place of occurrence is concerned, I have observed that both Muhammad Saddique (PW.1) and Basit Ali (PW.2) have given specific reasoning qua their presence at the time and place of occurrence, which even otherwise could not be shattered by the defence while conducting cross-examination on them. Furthermore, it was a daylight occurrence and the parties being the residents of same locality were also previously known to each other, therefore, there was no chance of misidentification of the appellant. Muhammad Saddique (PW.1) has stated in his examination-in-chief as under:-

> *"On 31.07.2015 at about 06:00 p.m. I alongwith Basit Ali son of Muhammad Latif were present at my shop situated at Natha Sigh Wala. We heard voice. We attracted towards the place of noise and saw accused Shahid alias Makhi was present near the gate of Abdul Rehman and he was giving kicks and fists to Muhammad Ijaz."*

During the cross-examination, he (PW.1) stated about his abode and shop as infra: -

> *"Distance between the place of occurrence and my house is 50/60 feet.*
> *……*
> *……*
> *Distance between my shop and place of occurrence is 16/17 karams."*

I have noted that almost same is the statement of Basit Ali (PW.2). Relevant lines of his examination-in-chief read as under:-

> *"On 31.07.2015 (Friday) at about 06:00 p.m. I alongwith Saddique son of Ahmad Din were present at the shop of Saddique situated at Natha Singh. We heard noise and upon listening ran towards the place of noise. We saw Shahid Ali Makhi was giving physical torture to Ijaz with kicks and fists near the gate of Abdul Rehman Lambardar……"*

More so, upon the cross-examination by defence counsel, he (PW.2) further explained the distance of his house and place of his presence from where he reached at the place of occurrence. Relevant lines of his replies in cross-examination are mentioned below: -

> *"My house is situated at a distance of 10 karams from place of occurrence and there are two streets in between. It is incorrect that my house is at a distance 3/4 acres from the place of occurrence. I also work as electrician.*
> *……*
> *……*
> *It is incorrect to suggest that distance between Saddique shop and my house is 1500/2000 feet. There is distance of 15/16 karams between shop of Muhammad Saddique and place of occurrence. The*

shop of Saddique remains open during week days however, it is closed in case of any acute need."

In the light of above mentioned circumstances, I am quite confident to hold that Muhammad Saddique (PW.1) and Basit Ali (PW.2) are truthful witnesses and their presence at the spot at the time of occurrence is natural. Reliance is placed upon the case-laws titled as *"Muhammad Akram alias Akrai vs. The State"* **(2019 SCMR 610),** *"Ghaffar Mahesar vs. The State through P.G Sindh and others"* **(2022 SCMR 1280)** and *"Muhammad Yasin and another vs. The State and others"* **(2024 SCMR 128).**

Learned counsel for the appellant has also brought the depositions of eye witnesses under attack on account of their close relationship with the deceased as well as existence of their previous enmity with the appellant. With regard to the objection qua close relationship, it is settled proposition of law that mere relationship of eye witnesses with the deceased by itself is no ground to disbelieve their evidence. Similarly the contention of learned counsel for the appellant about existence of previous enmity between the appellant and the complainant party is merely an oral assertion which could not be established by the defence during the trial. Not a single piece of convincing evidence has been brought on the record by the defence to substantiate that the complainant or the eye witnesses had deposed falsely due to their close relationship with the deceased or existence of their previous enmity with the appellant rather I am convinced that their evidence is consistent, straightforward, trustworthy, confidence inspiring and reliable and as such, their evidence against the appellant cannot be discarded merely on the basis of aforementioned oral assertions of learned counsel for the appellant. Guidance in this respect has been sought from the case-laws titled as *"Ali Asghar alias Aksar vs. The State"* (**2023 SCMR 596),** *"Aman Ullah and another vs. The State and others"* (**2023 SCMR 723),** *"Imran Mehmood vs. The State and another"* (**2023 SCMR 795)** and *"Khalid vs. The State through PG Sindh"* (**2024 SCMR 1474).**

More so, I am of the view that in the absence of any previous ill-will, malice, animosity or grudge against the appellant, it was highly unlikely for the complainant or the eye witnesses to make the appellant a

scapegoat by letting off the actual perpetrators of the offence. It is by now well settled law that substitution of real culprits especially in cases where the eye witnesses lost their kith and kin before their own eyes is rare phenomenon. Reliance is placed on the cases titled as *"Aqil vs. The State"* **(2023 SCMR 831),** *"Muhammad Ijaz vs. The State"* **(2023 SCMR 1375)** and *"Muhammad Shafique vs. The State Muhammad Imran and another"* **(2024 SCMR 814).**

12. Although, the appellant has seriously criticized in his statement under section 342 Cr.P.C. that instead of him, three other accused had committed the murder of deceased. In this regard, I may observe here that the eye witnesses remained consistent throughout that the appellant was principal accused who gave kicks and fists blows to the deceased and subsequently medical evidence proved that one of those kicks and fists blows proved fatal and left no room for the survival of deceased. The defence miserably failed to shatter the evidence of above-said witnesses. The above version adopted by the appellant appears to be an afterthought story fabricated by him in order to save his skin. I may also observe here that when an accused takes particular stance, onus to prove such stance shifts upon him but in this case, the defence did not produce any evidence in support of the plea of the appellant. Hence, I am of the view that defence has failed to substantiate its version.

13. Apart from the unblemished depositions of eye witnesses namely Muhammad Saddique (PW.1) and Basit Ali (PW.2), I have observed that medical evidence is in complete harmony with the ocular testimonies and no conflict could be pointed out to create dent in the prosecution case. The injuries attributed by the eye witnesses to the appellant were duly observed by the doctor on the person of Muhammad Ijaz (deceased) at the time of conducting autopsy on his dead body and issuing postmortem report (Exh.PK). Furthermore, ocular evidence about the time of incident as well as the nature of injuries as narrated by the eye witnesses has also fully tallied with medical evidence. It may be observed here that Doctor Muhammad Akmal Karim (PW.9) was also subjected to grueling cross-examination but nothing beneficial to the appellant could be extracted from him.

14. Much emphasis has been laid by learned defence counsel upon the delay in conducting autopsy on the dead body of deceased. Although, it is an undisputed fact that the autopsy in this case was conducted about seventeen hours after the occurrence but the question of paramount consideration still remains that whether intervening time was consumed by the prosecution in fabricating any story or arranging eye witness account of the case. To resolve this controversy, I have observed that the FIR (Exh.PA/1) had been chalked out by Muhammad Kamran ASI (PW.4) on the basis of written application (Exh.PA) of Abdul Majeed complainant (PW.3) within about half an hour after the occurrence. In his examination-in-chief, Muhammad Kamran ASI (PW.4) has stated as under:-

> *"On 31.07.2015, I was posted at Police Station hair. On the same day, complaint Ex-PA was received by me through Niaz Ahmad 21116/C to the police station for registration of FIR on the basis of which I drafted the FIR No. 336/15 Ex-PA/1 for the offence under section 302/34 PPC at Police Station Hair. I registered the same without any omission or deletion."*

During cross-examination upon Muhammad Kamran ASI (PW.4) not a single question has been put to him that the FIR (Exh.PA/1) was not chalked out on the date and time mentioned in the relevant column. The whole cross-examination conducted by the defence on Muhammad Kamran ASI (PW.4) is also reproduced hereunder:-

> *"Niaz Ahmad constable brought complaint before me for registration of FIR. He came to me at 06:30 p.m. I immediately lodged FIR. Niaz Ahmad constable submitted a single application."*

The above fact emphatically explains that the FIR (Exh.PA/1) had been registered prior to escorting the dead body of deceased to mortuary and in FIR (Exh.PA/1), all the details regarding the occurrence particularly the time, place and mode of occurrence as well as the names of assailant, deceased and eye witnesses have been sufficiently explained in a natural manner.

However, if relying on the contention of learned counsel for the appellant, it is still presumed for the time being that the intervening time of occurrence and autopsy was used in fabricating a story and maneuvering the eye witness account, then it must have been for Abdul Majeed complainant (PW.3) himself to step forward as an eye witness of the tragedy and implicate maximum persons from appellant's family after

noticing as many as nine injuries on the body of his deceased son, however, Abdul Majeed complainant (PW.3) simply stated that he was away from the place of occurrence and was telephonically informed by one of the eye witnesses namely Muhammad Saddique (PW.1) that the appellant, alone, had caused all the injuries by giving kicks and fists blows on the body of deceased and on seeing the eye witnesses namely Muhammad Saddique (PW.1) and Basit Ali (PW.2), he took to his heels while leaving the deceased unconscious.

Besides, it is also a circumstance that the dead body of deceased was shifted in the mortuary of King Edward Medical University, Lahore, on 31.07.2015 at 08:20 p.m. where senior doctors usually do not remain available during night-time and on the next morning i.e. 01.08.2015 at 11:00 a.m. autopsy was conducted by Doctor Muhammad Akmal Karim (PW.9), who was a Demonstrator in Department of Forensic Medicine and Toxicology at King Edward Medical University, Lahore. It seems that conducting of autopsy on the dead body of deceased was deferred for following day to wait the concerned doctor. Keeping in view the above highlighted facts of the case, I am satisfied that the time between the happening of occurrence and conducting autopsy was not consumed by the prosecution in fabricating any story or arranging eye witness account of the case. Even otherwise, I am not inclined to discard the overwhelming eye witness account which is evenly supported by the medical evidence, merely because of a single circumstance that autopsy in this case was conducted about seventeen hours after the occurrence without there being any element of concoction or fabrication of prosecution's case against the appellant. While dealing with almost identical proposition, learned Division Bench of this Court in the case titled as *"Zaheer Ahmad vs. The State"* **(2014 YLR 967)** has held as under:-

> *"It has been observed by us that the matter was reported to the police on the application submitted by Muhammad Latif complainant without any delay as the occurrence took place in this case on 4-4-2006 at 1-20 pm and the F.I.R. had been chalked out al the same day at 1-50 p.m. within a span of thirty minutes whereas the Police Station is 2 kilometers away towards North from the place of occurrence. So the matter has been reported in this case with sufficient promptitude and there is no unconscionable or inexcusable delay in registration of the F.I.R. While referring the Post-mortem Examination Report the learned counsel for the appellant seriously contend that the Dr. Rafaqat Ali (P.W.7) had conducted the post-mortem of the deceased on 5-4-2006 at 12-15 p.m. with*

> *one day delay which shows that first the matter was consulted and thereafter with active connivance of the police the F.I.R. was lodged. In this context we have minutely perused the Post-mortem Examination Report of the deceased wherein it has specifically been mentioned that the deadbody was lodged in hospital on 4-4-2006 at 4-15 p.m. If there is any delay that is on the part of doctor and delay alone cannot destroy the prosecution case in presence of the confidence inspiring evidence. Thus, we have not seen any element of consultations or deliberations over the matter on the part of the prosecution"*

I am also fortified from the wisdom laid down by the Supreme Court of Pakistan in the cases titled as *"Muhammad Saleem vs. The State"* **[PLJ 2019 SC (Cr.C.) 425],** *"Muhammad Asif and others vs. Mehboob Alam and others"* **(2020 SCMR 837)** and *"Maskeen Ullah and another vs. The State and another"* (**2023 SCMR 1568).**

15. Learned counsel for the appellant has argued with vehemence that if for the sake of arguments the prosecution is believed to have proved its case whereby the prosecution has saddled the appellant merely with the responsibility of giving kicks and fists blows to the deceased, even then the appellant cannot be held responsible for his murder, because, it was a case of natural death caused by heart attack in the light of prosecution's own medical evidence. In this context, it is noteworthy that the autopsy on the dead body of Muhammad Ijaz (deceased) was conducted by Doctor Muhammad Akmal Karim (PW.9), who observed nine injuries in the shape of multiple bruises and an abrasion on different parts of body of deceased, which are reproduced as infra:-

> ***Injury No. 1***
>
> *A bruised area measuring 1.3 x 0.8 cm present on left ear pinna.*
>
> ***Injury No. 2***
>
> *Multiple bruised area 5 in number present on left side of chest on front latterly spread in an area measuring 10 x 12 cm. Smallest measuring 0.5 x 0.5 cm and largest measuring 1 x 1 cm.*
>
> ***Injury No. 3***
>
> *Multiple bruised areas on front of left arm 4 in number, the smallest measuring 0.5 x 0.5 cm and largest measuring 0.7 x 0.7 cm. Spread in an area measuring 7 x 5 cm.*
>
> ***Injury No. 4***
>
> *A bruised area measuring 1 x 1 cm on left side of abdomen, 6 cm from left iliac rest, 7 cm from umbilicus.*
>
> ***Injury No. 5***

A bruised area measuring 2.5 x 2 cm on front of upper part of left thigh, 5 cm below iliac rest on front, 30 cm above left knee.

Injury No. 6

A abrasion measuring 0.5 x 0.3 cm on the inner malleolus of left leg.

Injury No. 7

A bruised area measuring 4 x 5 cm on inner side of right thigh and adjacent area on front of thigh at upper most part, 13 cm above right knee.

Injury No. 8

A bruised measuring 3 x 2 cm on inner side of right thigh, 10 cm below inner side of thigh, 11 cm above knee.

Injury No. 9

A bruised measuring 1.8 x 1 cm present on left scrotum."

After postmortem examination, the doctor waited for the reports of Toxicology and Histopathology Sections of Punjab Forensic Science Agency, Lahore, and upon receipts of aforementioned reports, he gave his final opinion as under: -

Final Opinion:-

I have perused the reports received from toxicology section and histopathology section of Punjab Forensic Science Agency, Lahore and my final opinion is as under: -

The circumstances of death autopsy findings, negative forensic toxicology report and unremarkable findings in histopathology report mentioned supra are suggestive of death due to vasovagal shock consequent of blunt trauma to testis under injury No.9 mentioned in autopsy report.

The expression "vasovagal" has been defined in Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology (for Classrooms and Courtrooms) as under: -

*"**Syncope:** This is death from failure of function of the heart resulting in hypo- perfusion and hypoxia of the brain. It is due to (1) heart disease, (2) haemorrhage, (3) pathological states of blood, (4) exhausting disease, or (5) poisoning due to digitalis, potassium, aconite or oleander. At autopsy, the heart appears contracted. It contains very little blood, if death is due to haemorrhage. The viscera appear pale and the capillaries congested.*

A syncopal type of death may also result from reflex cardiac arrest due to:

1. Vagal stimulation, commonly known as vasovagal shock, vagal inhibition or neuro-genic shock.

> *2. Rarely ventricular fibrillation due to cardiac problems or spontaneous sympathetic nervous discharge.*
>
> *Vagal inhibition is important in certain cases of accidental hanging; throttling (manual strangulation); blow to the epigastrium; abortion; emotional tension; sudden immersion of the body in cold water; insertion of an instrument into the uterus. Bladder, rectum or any other body cavity; and light anaesthesia. In these conditions, as the trauma may be very trivial, the injury is not visible. Therefore, there are no characteristic post-mortem appearance and the cause of death is inferred from the history and negative findings, viz. no natural disease, injury or poisoning, to account for the cause of death."*

In another Textbook of Forensic Medicine Principles and Practice (First Edition of 2001), authored by Krishan Vij, Professor and Head of the Department of Forensic Medicine, Government Medical College, Chandigarh, the term “Vagal Inhibition” has been defined as follows: -

> *"**Vagal Inhibition:** -- Also variously known as Vasovagal attack, reflex cardiac arrest, nervous apoplexy, instantaneous physiological death or syncope with instantaneous exitus-or primary neurogenic shock. This state is characterised by sudden stoppage of heart following reflex stimulation of vagus nerve endings. There is a wide network of sensory nerve supply to the skin, pharynx, larynx, pleura, peritoneum covering the abdominal organs or extending to the sprermatic cord, uterine cervix, for the reflex action and pass through the lateral tracts of spinal cord, effect the local reflex connections over the spinal segments and then travel to the vagus nucleus in the brain. The vagus nucleus has connections with sensory cerebral cortex and thalamus, besides the spinal cord, as stated. The efferent then originate from there and affect the heart through the related branches.*
>
> *Such deaths occur with dramatic suddenness within seconds or at the most in a few minutes. The loss of consciousness is usually instantaneous on these occasions and death follows soon afterwards. Consequently, the mobility is negligible and the victim is likely to be found in the posture/position in which he/she was at the time of death. The condition, therefore, is characterised by fulminating circulatory failure which may be attributed either to reflex slowing/stoppage of heart, reflex vasodilatation leading to profound fall in blood pressure or a varying combination of both the mechanisms. The victims are usually young adolescents of nervous temperament but anyone may be susceptible. The factor responsible for initiating or triggering the vaso-vagal phenomenon may be aminor trauma or relatively simple and harmless peripheral stimulation at the vulnerable sites upon the body as described earlier. Obviously therefore, a variety of circumstances have been incriminated as precipitating factors, as outlined below:*

> *Sudden pressure over the neck especially over the region of carotid sinuses as may be operating in occasional cases of strangulation and hanging (Carotid sinus is a dilated part of the wall of the carotid artery and contains numerous nerve ending from the glossopharyn-geal nerve and communicates with the medullary cardiovascular center and dorsal-motor nucleus of vagus in the brain, related with the control of blood pressure and regulation of heart-activity). Such deaths are of considerable medicolegal significance as death may ensue under the circumstances in which there had been no intention to kill. In some instances it may be reasonable to regard such deaths as borderline between a natural and an accidental death. Sudden blow on the abdomen or scrotum, larynx or genital organs. During intubation of, or from impaction of food/some other material into the larynx....."*

In Jaising P. Modi's Textbook of Medical Jurisprudence and Toxicology (Twenty Seventh Edition), vagal inhibition has been explained as infra: -

> *" **Vagal Inhibition***
> *Vagal inhibition causes sudden cardiac arrest from fright or terror, or it may be caused during a sudden and unexpected fall in the water, often the water striking against the chest and the pit of the stomach. The sudden impingement of unduly cold water on the nasopharyax, can result in vagal inhibition. The ability to swim in ice-cold water (4.7°C) is much less than in warm water due to increased respiratory reflexes causing breathlessness in the thin man, and hypothermia in the fat person. This may explain sudden death in cold water.**"***

Dr. K.S. Narayan Reddy in his Book "Medical Jurisprudence and Toxicology (Law Practice & Procedure) has elucidated the "reflex vagal inhibition" in the following words: -

> *"**(2) Reflex Vagal Inhibition:** In this, there may not be visible external injury.*
>
> ***(3) SHOCK:** Shock is a circulatory disturbance characterised by hypoperfusion of cells and tissues due to reduction in the volume of blood or cardiac output, or redistribution of blood resulting in a decrease of effective circulating volume.*
>
> *Primary Shock: Primary or neurogenic shock (vaso-vagal shock or reflex cardiac arrest) results from a sudden reduction of venous return to the heart due to neurogenic vasodilation with pooling of blood in the peripheral vascular bed, especially in the subclavian area. There is yawning, sighing respirations, nausea and vomiting followed by unconsciousness, but the attack rarely lasts for more than a few minutes. There is pallor, coldness of the extremities, weak rapid pulse and low blood pressure. The cardiac output is unchanged. It may follow any form of stress. Psychological factors, such as fear, grief, anxiety, emotion and pain due to*

> *various causes also play a large part. It may occur when a few ml. of blood are withdrawn, or from the sight of blood or an anticipation of injection.*

Coming to the contention raised by learned counsel for the appellant that it was a case of natural death, at the cost of repetition it is mentioned here that as per final opinion given by Doctor Muhammad Akmal Karim (PW.9), Demonstrator, King Edward Medical University Lahore, blunt trauma to testis under injury No.9 (mentioned above) had resulted in vasovagal inhibition/shock and death of Muhammad Ijaz (deceased), therefore, keeping in view the above legal and factual position of the case, death due to vasovagal inhibition/shock cannot be termed as natural. I am of the view that no doubt is left that it is a case of homicidal death of Muhammad Ijaz (deceased) due to the assault extended by the appellant by giving kicks and fists blows on different parts of his body, particularly his left scrotum which is one of the most sensitive parts of male human's body.

16. Having reappraised the prosecution evidence, I have come to an irresistible conclusion that the prosecution has produced sufficient tangible and confidence inspiring ocular account furnished by eye witnesses namely Muhammad Saddique (PW.1) and Basit Ali (PW.2) which is explicitly supported by the medical evidence that successfully brought home the guilt of the appellant on the charge of giving kicks and fists blows to Muhammad Ijaz (deceased) which ultimately led to the latter's unnatural death. However, I am not satisfied with appellant's conviction and sentence on the charge under section 302(b) PPC because in the light of facts and circumstances of the case, I am of the view that the mischief for which the appellant has been handed down a guilty verdict does not come within the purview of "qatl-i-amd" as defined in section 302 PPC rather keeping in view the mode and manner in which the appellant had committed the occurrence by giving kicks and fists blows to the deceased on the backdrop of a grudge of their previous altercation, I am convinced that his case falls within the scope of "qatl shibh-i-amd" as defined in section 315 PPC and made punishable under section 316 PPC, which

along with an illustration, for the purpose of reference, are mentioned below:-

> ***"315. Qatl shibh-i-amd:*** *Whoever, with intent to cause harm to the body or mind of any person, causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit qatl shibh-i-amd.*
>
> *Illustration*
>
> *A in order to cause hurt strikes Z with a stick or stone which in the ordinary course of nature is not likely to cause death. Z dies as a result of such hurt. A shall be guilty of Qatl shibh-i-amd"*
>
> ***316. Punishment for Qatl shibh-i-amd:*** *Whoever commits qatl shibh-i-amd shall be liable to diyat and may also be punished with imprisonment of either description for a term which may extend to [twenty-five years] years as ta'zir.*

17. As a result of what has been discussed above, the conviction and sentence awarded by the trial court to the appellant on the charge under section 302(b) PPC is set aside and while convicting him under section 316 PPC, I sentence him to undergo rigorous imprisonment for a period of 10-years on account of committing "qatl shibh-i-amd" of Muhammad Ijaz (deceased) and in addition thereof, he is also held liable to pay Diyat to the legal heirs of deceased. So far as the question that whether convict is liable to pay amount of Diyat prevailing in the year when the occurrence had taken place or the year when the matter is decided is concerned, I am of the view that the appellant has to pay the amount of Diyat determined by the Federal Government for the current fiscal year. While holding so, I am guided from the dictum laid down by the Supreme Court of Pakistan *"in the matter of Suo Motu Action Regarding Non-Payment of the compensation amount to the poor electrician, who has been pressurized by the political figure of PML(N) as well as by the police to enter into a compromise with the accused murderers of his 12 years old son"* **(2012 SCMR 437)**, wherein it has been held as under:-

> *"Now turning towards the proposition of amount of DIYAT, it is to be noted that under section 323 of P.P.C., the object and purpose of recovery of DIYAT amount is that the victim should be compensated according to the rate which is prevailing at the time when the compromise is effected. The learned Attorney-General for Pakistan as well as the learned Additional Advocate General, Punjab, both have agreed that the date of compromise could be relevant for the purpose of determining the amount of compensation and not the date, when the offence was committed. In this behalf, reference is made to Abdul Ghafoor v. State (1992*

> *SCMR 1218), Ali Sher v. State (1992 PCr.LJ 1583), Safdar Ali v. State (PLD 1991 Supreme Court 202), Niaz v. State (2009 PCr.LJ 1479). However, there is a judgment of Federal Shariat Court reported as Ali Dost v. State (2006 PCr.LJ 80) wherein fixation of amount of DIYAT and payment of amount of DIYAT in instalments was allowed, but we are of the view that while delivering the judgment by the Federal Shariat Court, the judgments noted hereinabove, were not considered. The minimum rate of the compensation of DIYAT amount is to be fixed by the Court, according to the notification, issued by the Federal Government, on every financial year, therefore, we are not inclined to agree with the opinion expressed in the judgment of the Federal Shariat Court. However, following the law laid down by this Court, referred to hereinabove, we declare that as far as the amount of DIYAT is concerned, the same shall be determined according to the prevailing rate of DIYAT at the time when the compromise is effected, because it is the accused who actually requests the victim party to favour him and if, as a result such favour is extended then according to the law, the payment of compensation should be determined and made at the rate prevailing at the time when the compromise is effected and executed by the Court*

Therefore, the appellant is held liable to pay an amount of Rs.81,03,955/- (Rupees eight million one hundred three thousand nine hundred and fifty five only) to the legal heirs of deceased as Diyat for the fiscal year 2024-25

18. With the above modification in the conviction and sentence of the appellant, his appeal is hereby ***dismissed***.

(Muhammad Tariq Nadeem)
Judge

APPROVED FOR REPORTING.

(Muhammad Tariq Nadeem)
Judge

(Announced and dictated on 01.10.2024
Prepared and signed on 21.10.2024)
مقدس