

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No. 59174 of 2019

(Muhammad Dilshad versus The State and another)
&

Criminal Revision No. 59075 of 2019

(Rana M. Iqbal versus Muhammad Dilshad and another)

JUDGMENT

Date of hearing	18-10-2024
Appellant by:	Malik Ejaz Hussain Gorcha, Advocate.
State by	Mr. Abdur Rauf Wattoo, Deputy Prosecutor General.
Complainant by:	Ms. Bushra Qamar, Advocate.

Muhammad Tariq Nadeem. J:- Muhammad Dilshad (appellant) was tried in case FIR No. 21 dated 31.01.2018 in respect of offences under sections 302/34, PPC registered at Police Station Noorpur, District Khushab. After conclusion of the trial, the learned trial Court *vide* judgment dated 28.08.2019 convicted and sentenced the appellant as infra:-

Under section 302(b) PPC

life imprisonment for committing the murder of Muhammad Munawar and to pay compensation of Rs.5,00,000/- under section 544-A Cr.P.C. to the legal heirs of deceased and in default thereof to further undergo six months S.I.

Benefit of section 382-B, Cr.P.C. was also extended to him.

The appellant has filed the titled appeal against his conviction and sentence, whereas, Criminal Revision No. 59075 of 2019 has been preferred by Rana Muhammad Iqbal entreating enhancement of sentence of Muhammad Dilshad from life imprisonment to death. Since common questions of law and facts are involved, therefore, both these matters are being decided by mean of this single judgment.

2. The prosecution story as given in the opening paragraph of the impugned judgment passed by the trial court is reproduced as under:-

I am former by profession and resident of Adhi Kot. Accused Dilshad s/o Muhammad Bashir borrowed money from my deceased son Muhammad Monawar aged 25/26 years six months before the occurrence for the marriage expenditure of his sister. My deceased son demanded the borrowed money from accused but accused Muhammad Dilshad behaved reluctantly to return the borrowed money. On 31.01.2018 my deceased son was going to shop from his house. I alongwith Muhammad Sarwar my son and Muhammad Awais s/o Muhammad Sarwar caste Rajpoot PWs were coming behind Muhammad Monawar deceased at some distance. Muhammad Monawar my deceased son when reached on the opposite side of house of Qari Abdul Wahid at about 10:30 a.m. accused persons Dilshad armed with Qamanidar knife, Irshad, Mushtaq sons of Muhammad Bashir caste Rajpoot r/o village Adhi Kot appeared in front of Munawar my deceased son. Muhammad Monawar deceased son demanded to return the borrowed money from accused Muhammad Dilshad, at this accused Mushtaq raised lalkara and said we will taste him to demand borrowed money, meanwhile Dilshad has stabbed knife blow on the right side of the back (Peeth) of deceased Monawar, due to which he fell down on the ground. The occurrence was witnessed by me, Muhammad Sarwar and Muhammad Awais Pws. After seeing us accused Dilshad etc. ran away towards their house. Muhammad Monawar my deceased son was in injured condition, we shifted the injured on private vehicle to THQ hospital Noorpur Thal. Soon after reaching hospital my son Muhammad Monawar succumbed to the injuries in the hospital. Motive behind the occurrence is that accused Muhammad Dilshad borrowed money from my deceased son Muhammad Monawar. My deceased son demanded the same from Dilshad, due to this demand and grudge Dilshad etc. with common intention committed intentional murder of my son Muhammad Monawar. I was ready to go police station for registration of case but in the meanwhile Umar Farooq SI reached at Hospital after receiving the information, who record Farad Bayan Exh-PA on the statement of complainant which was read over to

him and complainant signed it as token of correctness which bears his signatures as Exh-PA/1."

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 nine witnesses amongst whom Muhammad Iqbal complainant (PW1) and Muhammad Sarwar (PW7) have furnished the ocular account. Haji Mirza Muhammad Saeed, draftsman (PW6) prepared scaled site plan of the place of occurrence (Exh.PF and Exh.PF/1). Umar Farooq Shah S.I (PW8) being investigating officer stated about various steps taken by him during investigation of the case. Medical evidence was furnished by Doctor Zain ul Abiden (PW5), who while posted as Medical Officer at THQ Hospital Noorpur, conducted autopsy on the dead body of Muhammad Munawar (deceased) and issued his postmortem report (Exh.PC). The remaining prosecution witnesses, more or less, are formal in nature. The prosecution gave up Nazakat Ali 338/C and Muhammad Asif son of Muhammad Aslam, PWs being unnecessary and after tendering in evidence the reports of Punjab Forensic Science Agency, Lahore as Exh. PO and Exh. PP closed its evidence.

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

"The PWs are inter-see related, they have a criminal history and were having many enemies in the area. The PWs and the complainant have not advanced any reason of their presence at the place of occurrence, nor they adduced any physical circumstance of their presence at the place of occurrence. They are false motive witnesses, moreover, the PWs and the complainant involved our all adult members of

the family in this occurrence. The story of the PWs was found false during the investigation of the case. These witnesses cannot be believed even against me. They have falsely involved me in this case.”

He opted not to appear as his own witness within the scope of section 340(2) Cr.P.C. but produced statement of PW Muhammad Sarwar recorded by I.O. u/s 161, Cr.P.C. on 31.01.2018 as Exh. DA, certified copy of F.I.R No. 301 dated 24.06.2010 of police station Jauharabad u/s 489-F, P.P.C. Exh. PB, copy of F.I.R No. 120 dated 26.09.2003 u/s 341, 342, 506, P.P.C. police station Noorpur Thal Mark-A, copy of F.I.R No. 55 dated 28.03.2014 u/s 337-F(5), P.P.C. of police station Noorpur Thal Mark-B and copy of F.I.R No. 02 dated 26.12.2013 u/s 489-F P.P.C. of police station 18-Hazari, District Jhang Mark-C in his defence.

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

6. I have heard the arguments of learned counsel for the appellant and learned Deputy Prosecutor General assisted by learned counsel for the complainant assiduously and also scanned the record minutely with their able assistance.

7. The ocular account of the incident in question has been furnished by Muhammad Iqbal complainant (PW1) and Muhammad Sarwar (PW7) who were closely related to the deceased inasmuch as PW1 was his father and PW7 was real brother of the deceased. It is noteworthy that presence of the above mentioned eyewitnesses at the relevant time is highly unnatural. According to the statements of supra mentioned PWs the appellant borrowed money from Muhammad Munawar (deceased) for the marriage expenditure of his sister and deceased demanded money back but the appellant behaved reluctantly

to return the borrowed money. On the fateful day the complainant's son namely Muhammad Munawar was going to his shop and complainant as well as his son namely Muhammad Sarwar (PW7) and grandson Muhammad Naeem Ullah Awais (jettisoned PW) were behind him at some distance and when they reached in front of house of Qari Abdul Wahid at 10.30 a.m., the appellant armed with clasp knife (کمانی دار چاقو) along with co-accused Irshad and Mushtaq (since acquitted) emerged in front of Muhammad Munawar (deceased) when Muhammad Munawar (deceased) demanded to return the borrowed money then co-accused Irshad and Mushtaq raised *lalkara* that he be taught a lesson for demanding amount whereupon Muhammad Dilshad appellant stabbed knife on the right side of the back of Muhammad Munawar (deceased), due to which he fell down in injured condition. The PWs shifted Muhammad Munawar to hospital and soon reaching in the hospital, he succumbed to the injuries. I have noted that Muhammad Iqbal complainant (PW1) was aged about 80 years at the alleged time of occurrence and he has not stated that he used to sit at the shop with his son Muhammad Munawar (since deceased). Muhammad Iqbal (PW1) has also described about his other son namely Muhammad Sarwar (PW7) in his cross-examination as under:-

"It is correct that my son Muhammad Sarwar PW is an employee of agriculture department. It is also correct the office of agriculture department is located on Quaidabad Road near Mitha Tiwana mor and at a distance of half an hour from place of occurrence"

Similarly, Muhammad Sarwar (PW7) has stated in his cross-examination as infra:-

"I am permanent employee of the agriculture department. It is correct that the office of the agriculture department is located on the Quaidabad Road near Mitha Tiwana Morr. It is incorrect to suggest that the distance between my office and place of occurrence is

nearly 5KM. Volunteers it is at a distance of half a KM. It is further incorrect to suggest that I was present on my duty in my office on 31.01.2018, i.e date of occurrence. It is incorrect to suggest that I have wrongly stated I was present on the place occurrence on the date of occurrence. I have stated in my statement before the police that I was on leave on the day of occurrence. Confronted with Ex.DA wherein it is not so mentioned.

I have also observed that Umar Farooq Shah, SI (PW8) who was the investigating officer of this case has admitted it correct that Muhammad Sarwar PW was employee of agricultural department. He did not produce any certificate of his leave, if any, before him prior to registration of F.I.R.

It is noteworthy that according to the prosecution evidence complainant and eyewitnesses shifted Muhammad Munawar in injured condition to THQ, Noorpur Thal on a car and that was owned by Muhammad Aslam and it was 2D car. The seats of car did not stain with blood. He (PW.1) has admitted in his cross-examination that they did not try to rap the injury of his son with any piece of cloth, i.e. Dhoti, Turban or other types of clothes. Same was the statement of Muhammad Sarwar (PW7). Relevant portion of his cross-examination reads as under:-

"We did not try to rap any piece of cloth on the injury of our injured brother Muhammad Munawar after the occurrence. Our clothes were not besmeared with the blood while attending Muhammad Munawar in injured condition. The seats of the car were also not stained with the blood."

The above mentioned depositions of the eyewitnesses are not appealing to a prudent mind because how it is possible that when a person will handle any injured person having severe stab wound on his body, the clothes of handling person would not be blood stained and similarly the seat of car wherein the injured person was shifted will not have blood stains, especially in the light of statements of eyewitnesses that they had not rap injury of Muhammad Munawar

(since deceased) in injured condition at the place of occurrence. In the eventuality of above mentioned circumstances, I am quite confident to hold that both the above mentioned PWs were not present at the time and place of occurrence and the story of following the deceased by eyewitnesses just before the occurrence did not appeal to common sense because no reasoning has been given by the above mentioned PWs to go behind the deceased. I may refer here the case of "*Rohtas Khan vs. The State*" (**2010 SCMR 566**) wherein it is held as under:-

"The story narrated by both the PWs is that they came out from the house to inform the deceased to buy some more articles does not appeal to common sense as in such a situation there was no need for two persons to come out from the house. It is usual practice that in such a situation always father will direct the son to do the needful. Further when they came out from the house the deceased was just at 10/15 paces away from them therefore they could have called him to inform to buy other articles. This was the natural conduct of an elder of the house particularly the father but instead thereof they were following the deceased and when the deceased reached near the mosque the incident took place. It is the case of the prosecution that there was a shop near the place of incident but the Investigating Officer in his statement denied the above fact by admitting that there was no shop near the place of occurrence."

Furthermore, the question of paramount consideration is that if such was the state of affairs coupled with the fact as per prosecution's own version the supra mentioned PWs and Muhammad Naeem Ullah Awais (jettisoned PW) were coming behind the deceased, then why they had not physically intervened and attempted to apprehend the appellant especially when he was not armed with any formidable weapon. I have noted that Muhammad Iqbal complainant (PW1) has admitted in his cross-examination that they had not tried to apprehend the accused. Relevant lines of his cross-examination read as under:-

"I, Awais and Muhammad Sarwar did not try to apprehend the accused. Volunteered we were at a distance of thirty feet from the place of occurrence."

Under the circumstances, it can be safely held that both the above mentioned eye witnesses were neither present at the spot at the relevant time nor they had witnessed the occurrence. I may refer here the case of "*Liaqat Ali Vs. The State*" (**2008 SCMR 95**). Similar view was reiterated by the august Supreme Court of Pakistan in the cases of "*Pathan Vs. the State*" (**2015 SCMR 315**), "*Zafar Vs. The State and others*" (**2018 SCMR 326**) "*Shaukat Hussain Vs. The State*" (**2022 SCMR 1358**) and "*Jahangir and another Vs. The State and others*" (**2024 SCMR 1741**).

8. Another important aspect of this case which cannot be lost sight of is that according to the prosecution story Muhammad Iqbal complainant (PW1) and Muhammad Sarwar (PW7) escorted Muhammad Munawar in injured condition to the hospital but both the above mentioned PWs are not witnesses of identification of deadbody in the inquest report (Exh.PE), similarly, if they were present in the hospital, why they had not identified the deadbody of Muhammad Munawar at the time of his post mortem. This fact has constrained me to hold that supra mentioned PWs were not present at the time and place of occurrence. Reliance is placed upon the following case laws titled as "*Abdul Jabbar alias Jabri v. The State*" (**2017 SCMR 1155**) and "*Nadeem alias Kala v. The State and others*" (**2018 SCMR 153**) and "*Liaqat Ali and another Vs. The State and others*" (**2021 SCMR 780**).

9. Though, the medical evidence which is in the shape of statement of Dr. Zain ul Abiden, (PW5), who conducted autopsy on the dead body of Muhammad Munawar (deceased) and issued PMR (Exh.PC) is available but no other trustworthy direct or indirect evidence is available against the appellant, which could be supported by the medical evidence. It is by now well settled that medical evidence is a type of supporting evidence, which may confirm the

prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant. Reference in this context may be made to the cases of "*Muhammad Hassan & another v. The State & another*" (**2024 SCMR 1427**) and "*Iftikhar Hussain alias Kharoo v. The State*" (**2024 SCMR 1449**).

10. So far as recovery of blood stained knife P-5 at the instance of the appellant, vide recovery memo (Exh.PL) from his residential house and the positive report of Punjab Forensic Science Agency, Lahore (Exh.PO) are concerned, the same are not helpful to the prosecution as I have noted that the occurrence in this case took place on 31.01.2018, whereas, knife P-5 was allegedly recovered on 23.02.2018 from residential house of appellant. According to the statement of Umar Farooq Shah, SI/I.O. (PW8) the appellant was arrested on 16.02.2018, i.e. almost 16 days after the occurrence, therefore, preserving the crime weapon in his own house by appellant is against the nature, especially once the appellant decided to conceal the weapon, as is the case of the prosecution then there was no occasion that he would keep the same in such safe custody so as to get recover the same at a subsequent point of time and hand over to police as a souvenir, therefore, the alleged recovery of knife P-5 is not helpful to the prosecution. The Supreme Court of Pakistan in the case of "*Basharat and another v. The State*" (**1995 SCMR 1735**) disbelieved the evidence of blood-stained knife which was allegedly recovered from the house of accused after ten days of the occurrence. Relevant part of the said judgment is reproduced hereunder for ready reference:-

" The occurrence took place on 20.04.1988. Basharat appellant was arrested on 28.04.1988. The blood-stained Chhuri was allegedly recovered from his house on 30.04.1988. It is not believable that he would have kept blood stained chhuri intact in his house for ten days when

he had sufficient time and opportunity to wash away and clean the blood on it"

I have noted that the witness of recovery Amir Shahzad 497/C (PW9) is a police employee and while effecting the above mentioned recovery of knife P-5 Umar Farooq Shah, SI/I.O. (PW8) has not made any effort to associate the people of the vicinity. He in his cross-examination has also conceded this aspect as infra:-

"I have not associated any Lumberdar or Councilor during recovery proceedings of the knife allegedly made by the accused. I have also not summoned any person from vicinity of the place of recovery to witness the recovery proceeding of knife."

In the light of above circumstances, I am of the considered view that while effecting the above mentioned recovery the mandatory provision of section 103, Cr.P.C. has blatantly been violated. Reference in this context may be made to the case of "***Muhammad Ismail and others vs. The State***" (2017 SCMR 898).

Now adverting to the positive report of Punjab Forensic Science Agency, Lahore (Exh. PO) I have noted that Umar Farooq Shah, SI/I.O. (PW8) has not stated in his evidence that knife P-5 was blood stained. For the purpose of clarity relevant portion of his examination-in-chief is described below:-

"On 23.02.2018 Muhammad Dilshad accused was interrogated by me in this case and during interrogation he made disclosure regarding the knife (weapon of offence) (objected by defence counsel) and as a result of aforesaid disclosure Muhammad Dilshad accused led to the recovery of knife from inside the residential room of his house from an iron box. Knife P-5 sealed the same into parcel and took into possession through recovery memo Exh. PL attested by Amir Shahzad 497/C and Nazakat Ali 348/C. I also prepared rough site plan Exh. PM of the place of recovery of knife and recorded the statement of attested witnesses"

In the light of above mentioned circumstances, when this Court has already disbelief the recovery of knife P-5 and Umar Farooq Shah, SI/I.O. (PW8) has not stated in his evidence that knife P-5 was blood stained then the report of Punjab Forensic Science Agency, Lahore (Exh. PL) has lost its significance and, in this way inconsequential to the prosecution case.

12. Now the next piece of evidence which still remains in the field is the motive advanced by the prosecution behind the unfortunate incident, which, as per prosecution case was that the appellant borrowed money from Muhammad Munawar (deceased) and when deceased demanded money back the appellant committed the murder of Muhammad Munawar son of the complainant. I have noted that motive was only an oral assertion of the complainant because no date, time and place as well as figure of borrowed money from the deceased by the appellant has been described by the PWs. Muhammad Iqbal complainant (PW1) has stated in his cross-examination as under:-

“while lodging the FIR I did not mention the amount of the borrowed money as the police said you might depose the amount Rs. 50,000.- before the court.”

Similarly, Muhammad Sarwar (PW7) has stated in his cross-examination as infra:-

“I stated about the borrowed amount in my statement before the Police. Confronted with Ex.DA wherein it is not so recorded. I also stated in my statement before the police about the place and time where the transaction of the borrowed amount took place. Confronted with Ex.DA wherein all these details are not mentioned. ”

Whereas, Umar Farooq Shah, SI/I.O. (PW8) has stated in his cross-examination that the complainant did not provide any details of money and also did not produce any witness for this outstanding amount. No detail regarding time and place for this outstanding amount was provided to him. In the light of above mentioned circumstances, no material has been produced by the prosecution to

substantiate the motive alleged by the prosecution, *hence*, I feel no hesitation to hold that the prosecution has failed to prove the motive part of the unfortunate occurrence. Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused. Reliance is placed upon the cases titled as “*Tajamal Hussain Shah Vs. The State and another*” (**2022 SCMR 1567**), “*Amir Muhammad Khan vs. The State*” (**2023 SCMR 566**), *Sarfraz and another vs. The State* (**2023 SCMR 670**) and “*Maqsood Alam and another v. The State and others*” (**2024 SCMR 156**).

13. After analyzing the prosecution case from every angle, I have concluded that the case against the appellant is replete with doubts and his conviction and sentence cannot be upheld on the basis of such shaky and untrustworthy evidence. The Apex Court of the country time and again held that in the event of a doubt, the benefit must be given to the accused not as a matter of grace, but as a matter of right. Reliance is placed upon the following case laws titled as “*Muhammad Riaz vs. Khurram Shahzad and another*” (**2024 SCMR 51**) “*Muhammad Nawaz & another v. The State and others*” (**2024 SCMR 1731**) and “*Rehmat Ullah & 2 others v. The State & others*” (**2024 SCMR 1782**).

14. For the foregoing reasons, Criminal Appeal No.59174-J of 2019 is accepted and Muhammad Dilshad, appellant is acquitted of the charge by extending benefit of doubt to him. Muhammad Dilshad appellant is in jail; he be released forthwith if not required in any other case.

15. After accepting the appeal of respondent No. 1 and setting aside the impugned judgment this Criminal Revision No. 59075 of 2019 for enhancement of sentence is dismissed.

(Muhammad Tariq Nadeem)
Judge

Approved for reporting

Judge

*Announced, dictated on 18.10.2024 but prepared
and signed on 29.10.2024*

Khurram