Judgment Sheet

IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
JUDICIAL DEPARTMENT

Criminal Appeal No.95-J of 2016
(Muhammad Imran alias Amanat Ali alias Maani v. The State)

&
Criminal Revision No.172 of 2016
(Abdul Waheed v. Muhammad Imran alias Amanat Ali alias Maani etc.)

JUDGMENT

Date of hearing:	31.01.2023
Appellant by:	Mr. Qasim Haroon Cheema, Advocate (defence counsel at State expense)
State by:	Mr. Shahid Aleem, District Public Prosecutor
Complainant by:	Mr. Khalid Ibn-e-Aziz, Advocate

Muhammad Tariq Nadeem. J:- Appellant Muhammad Imran alias Amanat Ali alias Maani with the allegation of committing robbery and murder of Shahid Saeed (deceased) faced trial in case FIR No.66 dated 28.02.2013 in respect of offences under sections 302, 392, 394, 411, 34 PPC, registered at Police Station Dera Rahim, District Sahiwal and at the conclusion of trial in the said case, *vide* judgment dated 17.03.2016, the learned trial court convicted and sentenced him as under:-

- **Under section 302(b) PPC** life imprisonment as Ta'zir for committing the murder of Shahid Saeed (deceased) and to pay compensation of Rs.1,00,000/- under section 544-A Cr.P.C. to the legal heirs of deceased, which shall be recoverable as arrears of land revenue. He was also awarded fine of Rs.1,00,000/-, failing which he would suffer six months S.I.

- **Under section 392 PPC** seven years R.I. along with fine of Rs.50,000/- and in case of default thereof to further undergo three months S.I.

- **Under section 411 PPC** two years R.I. along with fine of Rs.20,000/- and in case of default thereof to further undergo one month S.I.

  The amount of compensation and fine were ordered to be paid to the legal heirs of deceased, if recovered so. All the sentences were ordered to run concurrently and the benefit of section 382-B, Cr.P.C. was also extended to him.

Aggrieved by the said judgment, the appellant has filed the titled appeal against his convictions and sentences before this Court, whereas a criminal revision has also been filed by Abdul Waheed petitioner/complainant for enhancement of sentences of the appellant.

Since common questions of law and facts are involved, therefore, supra mentioned matters are being disposed of by means of this single judgment.

2. Narrating the prosecution story in FIR (Exh.PB/1), Abdul Waheed complainant (PW.2) stated that he was a resident of Chak No.117/9-L Kangni Wala and had established an oil agency at Bhallay Wala More. On 27.02.2013, his nephew Shahid Saeed son of Saeed Ahmad, caste Noon, resident of Chak No.117/9-L, proceeded from Bhallay Wala Kothi on Honda CD70 motorcycle bearing registration No.SLM-11/8297 to pay the price of milk amounting to Rs.1,00,000/- to complainant's brother-in-law Muhammad Mushtaq resident of Chak No.96/D. At about 03:00 p.m. when Shahid Saeed reached at a deteriorated metalled road within the area of Chak No.112/9-L Budh Dhakku Haji Jalal Din Dhakku, he was intercepted by three unknown accused, ages between 20 to 30 years, who were boarded on China model motorcycle No.4470. They stopped him on the strength of firearms and started giving butt blows to him. One of them snatched cash Rs.1,00,000/-, identity card and other documents from him and when he captured one of them, the other accused fired a pistol shot which landed on his chest and he fell on the ground. In the meanwhile, the complainant along with Muhammad Mushtaq Ahmad son of Sher Ahmad, caste Noon, resident of Chak No.90/9-L Wahdat Colony,

Arifwala Road, Tehsil and District Sahiwal, who were going to Chak No.96/D to meet his brother-in-law, also reached there and witnessed the occurrence. The accused gave murder threats to them and decamped towards Chak No.112/9-L on their motorcycle. Shahid Saeed was seriously injured and was shifted to Civil Hospital Sahiwal in the vehicle of Rescue 1122, where local police also arrived after gaining information about the occurrence. Due to Shahid Saeed's critical condition, he was admitted in the hospital; hence, this FIR.

3. Initially, the crime report was lodged for the offences under sections 392, 394 PPC, but on sad demise of Shahid Saeed, offence under section 302 PPC was inserted therein. During investigation, Javed Iqbal co-accused was apprehended and presented before the learned trial court to face trial, but he was acquitted of the charge on the basis of compromise *vide* judgment dated 22.05.2014 passed by the learned Additional Sessions Judge, Sahiwal.

The appellant was implicated in this case on the basis of disclosure of Javed Iqbal co-accused, but he could not be apprehended due to which report under section 512 Cr.P.C. was submitted before the learned trial court on 03.10.2013 after placing his name in column No.2 with red ink. Subsequently, the appellant was arrested in this case and after completion of investigation against him, report under section 173 Cr.P.C. was prepared and submitted before the learned trial court.

4. After observing all the pre-trial codal formalities, on 08.06.2015 the charge under sections 392, 394, 302, 34 PPC was framed against the appellant to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced as many as thirteen witnesses during the trial. Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) have furnished the ocular account. Muhammad Zahid Ali, draftsman appeared as (PW.1), who sketched the scaled site plan (Exh.PA) of

the place of occurrence. Muhammad Arshad 873/C (PW.4) got Shahid Saeed (deceased) medically examined while he was in injured condition and after his death, his dead body along with police papers was brought before the doctor by this witness for post mortem examination. Muhammad Shehzad Akbar 1071/MHC (PW.5) lodged FIR (Exh.PB/1) on receipt of complaint (Exh.PB) without any addition or omission on his part. Liaqat Ali 354/C (PW.8) transmitted sealed parcels containing blood stained earth, crime empty of pistol 30 bore and led bullet to the office of PFSA Lahore. Imdad Ali (PW.9) identified the dead body of Shahid Saeed (deceased) at the time of post mortem. Rana Aneel Arshad, learned Judicial Magistrate (PW.10) supervised the proceedings of identification parade of the appellant. Muhammad Rustam Inspector (PW.12) and Sakhawat Ali SI (PW.13) being investigating officers stated about various steps taken by them during investigation of the case.

Medical evidence was furnished by Dr. Shakeel David, MO (PW.6), who conducted post mortem examination on the dead body of Shahid Saeed (deceased) and prepared autopsy report (Ex.PJ) and Dr. Ejaz Hussain Awan (PW.11) who had medically examined Shahid Saeed (deceased) while he was in injured condition and issued MLC (Exh.PQ).

Rest of the prosecution witnesses are, more or less, formal in nature. The prosecution gave up Mushtaq Ahmad son of Mudaee, Husnain Ahmad, learned Judicial Magistrate and Saeed Ahmad S.I. being unnecessary and closed its evidence after tendering the reports of Punjab Forensic Science Agency Lahore regarding blood stained earth (Exh.PBB) and regarding crime empty and pistol (Exh.PCC).

5. On completion of prosecution evidence, the appellant was examined under section 342 Cr.P.C. whereby he once again denied the allegations leveled against him and professed his innocence.

While answering to a question, "*why this case against you and why the PWs have deposed against you?*, he stated as under:-

> *"It is a fake case. The PWS are related inter-se and with the deceased and they had made false statements against me. It was a blind murder and an un-witnessed occurrence. The deceased was going alone on the motorcycle when he was done to death by unknown culprits. None of the alleged eye witnesses including the complainant was present at the spot at the time of occurrence. I was arrested by the local police of police station Sadder Arifwala in another false case. Sakhawat Ali S.I the I.O of this case when learnt about my arrest by Arifwala police, he took Abdul Waheed the complainant and Muhammad Mushtaq Ahmad PW with him to Arifwala where the 1.O showed me to the alleged eye witnesses of this case to facilitate them to identify me in the test identification parade. Sakhawat Ali S.I, the I.O of this case in order to show his efficiency in tracing out a blind murder fabricated all the evidence against me. In fact, I am innocent and I had not murdered the deceased. All the alleged recoveries of pistol P-1, 03-live bullets P-2/1-3, identity card of the deceased P-3, school leaving certificate of the deceased P-4 and a copy of domicile of the deceased P-5 are fake and planted. The police and the complainant party had suspected many persons for the murder of the deceased and in this respect such persons were hauled up by the police and an arbitration deed was executed to decide the involvement of such person in this case as is admitted by the complainant in his statement."*

The appellant neither opted to make statement on oath as provided under Section 340(2) Cr.P.C. nor produced any evidence in disproof of the allegations leveled by the prosecution against him.

6. The learned trial court, on conclusion of trial *vide* judgment dated 17.03.2016, convicted and sentenced the appellant as mentioned hereinabove.

7. Learned defence counsel argued that the FIR in this case was lodged with the delay of nine hours and forty minutes after the incident, which conclusively proved that it was an unseen occurrence; that despite considerable delay in lodging FIR, the appellant was not nominated therein and even no features of the assailants were mentioned in it; that the implication of the appellant in this case is nothing less than a mystery as the prosecution itself is

confused as to whether he was nominated through some sort of supplementary statement of the complainant or on the basis of disclosure of co-accused; that proceeding under section 87, Cr.P.C. was initiated against the appellant prior to causing his arrest in this case and followed by identification parade, which shows that his identity was an open secret for alleged eye witnesses; that under the attending circumstances of the case, the identification parade of the appellant does not carry any legal worth for the purpose of maintaining appellant's conviction and sentences; that the alleged eye witnesses could not justify their presence at the place of occurrence at relevant time and they even contradicted each other while describing the role of appellant during the occurrence; that the alleged eye witnesses also made material improvements to their earlier statements, which made them unreliable witnesses and more importantly the story of occurrence narrated by them does not appeal to any prudent mind; that the recoveries of weapon of offence and other articles were planted upon the appellant only to strengthen the prosecution case against him. Lastly contended that the prosecution has miserably failed to prove the case against the appellant and has prayed that the appellant may be acquitted of the charge leveled against him by accepting the instant appeal.

8. Conversely, learned Law Officer assisted by learned counsel for the complainant argued that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt through convincing, unimpeachable and overwhelming evidence. The appellant has been duly identified by the PWs in the identification parade. The prosecution has proved its case upto the hilt. Learned counsel for the complainant added that the appellant had committed the murder of an innocent person during an occurrence of robbery, but the learned trial court has taken leniency while deciding the quantum of sentences, therefore, keeping in view the gravity of offence the quantum of sentences already awarded to

the appellant even liable to be enhanced as per law. Both have prayed for dismissal of appeal.

9. After hearing the learned defence counsel as well as learned Law Officer assisted by the learned counsel for the complainant and examining the record, it is observed that according to FIR (Exh.PB/1), the unfortunate incident had reportedly taken place on 27.02.2013 at about 03:00 p.m. but despite the fact that the police station was merely six miles away from the place of occurrence, neither police itself came to the crime scene nor the complainant bothered to inform the police about the occurrence with promptitude. According to police proceedings on written application (Exh.PB) for registration of crime report, Muhammad Ashraf S.I. along with other police officials arrived at DHQ Hospital, Sahiwal and received written application (Exh.PB) from Abdul Waheed complainant (PW.2) at 11:50 p.m. (night), where-after the FIR (Exh.PB/1) was chalked out at 12:40 a.m. (night) on 28.02.2013 with the delay of 09 hours and 40 minutes of the occurrence. There is no explanation at all that if Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) had witnessed the incident which took place at about 03:00 p.m. on 27.02.2013, then what had impeded them from reporting the incident to the police within reasonable time. Keeping in view the significant delay in lodging the FIR (Exh.PB/1), I am convinced that the matter was reported to the police after due deliberation and consultation and the intervening time was consumed in calling the relatives of the deceased. While holding so, I am guided by the dictum of law laid down by the apex Supreme Court of Pakistan in the case of *"Ghulam Abbas and another v. The State and another"* **(2021 SCMR 23)**, in paragraph No.4 of which it has been held as under:-

> *"4. As per contents of FIR, the occurrence in this case took place on 19.06.2008 at 01.40 a.m. and the matter was reported to the Police on the same morning at 07.00 a.m. and as such there is a delay of more than five hours in reporting the crime to the Police whereas Police*

> *Station was situated at a distance of just six kilometers from the place of occurrence. No explanation whatsoever was furnished by the complainant for this delay in reporting the crime to the Police. Hameed Ullah Khan SI (PW.15) who investigated the case stated during his cross-examination that he reached at the place of occurrence at about 05.00 a.m. and he had completed the police proceedings by 06.30 p.m. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out."*

I have also fortified my above view regarding delay in lodging FIR from the case reported as *"Pervaiz Khan and another v. The State"* **(2022 SCMR 393)**.

10. It further manifests from the record that the appellant is not named in any capacity as an accused in FIR (Exh.PB/1) wherein it is mentioned that the occurrence was committed by three unknown accused. Since the appellant was not nominated in FIR (Exh.PB/1), the prosecution has heavily relied upon the evidence of identification parade in order to prove his culpability in this case. In this context, Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) being purported eye witnesses, Rana Aneel Arshad learned Judicial Magistrate (PW.10) who supervised identification parade and Sakhawat Ali S.I./I.O. (PW.13) are the relevant witnesses.

First comes the statements of Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3). A critical analysis of the said statements made it crystal clear that they could not mention any features of the assailants during investigation before the police as well as before the learned trial court except that their ages were between 20 to 30 years. During his cross-examination, Abdul Waheed complainant (PW.2) stated as under:-

> *"…… I have not mentioned the face features of the culprits in Ex.PB. I have not mentioned the body features of the culprits in Ex.PB. I have not mentioned the complexion of the culprits. I have not mentioned the heights of the culprits in Ex.PB……"*

Same is the position of Muhammad Mushtaq Ahmad (PW.3), who stated during his cross-examination as infra:-

> *"…… I had not stated the face features of the assailants to the I.O in Ex.DC. I had not stated the body features of the assailants in Ex.DC. I had not mentioned the face colour/complexion of the assailants in Ex.DC. I had not mentioned the heights of the assailants in Ex.DC……"*

I may observe here that the above noted material discrepancy, alone, is sufficient to diminish the evidentiary value of identification parade and while holding so, I am fortified from the dictum laid down by the Hon'ble Supreme Court of Pakistan in the case of *"Sabir Ali alias Fauji v. The State"* **(2011 SCMR 563)**, wherein it has been settled that identification test parade is of no value when description/ features of accused is not given in the contents of the FIR. Further guidance can also be sought from the case of *"Javed Khan alias Bacha and another v. The State and another"* **(2017 SCMR 524)**, wherein the august Supreme Court of Pakistan has laid down the following principle:-

> *"8. The Complainant (PW-5) had not mentioned any features of the assailants either in the FIR or in his statement recorded under section 161, Cr.P.C. therefore there was no benchmark against which to test whether the appellants, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits. Neither of the two Magistrates had certified that in the identification proceedings the other persons, amongst whom the appellants were placed, were of similar age, height, built and colouring. The main object of identification proceedings is to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection or impression, that is, of an old, young, tall, short, fat, thin, dark or fair suspect. There is yet another aspect to the matter of identification of the culprits of this case. The Complainant had named three other persons who could recognize the assailants, but he did not mention Subedar Mehmood Ahmad Khan (PW-6) as one of them. Nonetheless Subedar Mehmood Ahmad Khan came forward to identify the appellants. Significantly, none of the three persons mentioned by the Complainant participated in the identification proceedings and two were not even produced as witnesses by the Prosecution. During the identification*

> *proceedings both the appellants had informed the Magistrates who were conducting the identification proceedings, and before the identification proceedings commenced, that they had earlier been shown to the witnesses. The Magistrates recorded this objection of the appellants in their reports but surprisingly did not attend to it, which can only be categorized as a serious lapse on their part. Therefore, for all these reasons reliance cannot be placed upon the report of the identification proceedings in which the appellants were identified."*

11. Another intriguing aspect of the case which badly shattered the evidentiary value of identification parade is that on 22.10.2013, Sakhawat Ali S.I./I.O. (PW.13) received information regarding the arrest of appellant in case FIR No.492 of 2013 registered for the offences under sections 457, 380, 411 PPC, at Police Station Saddar Arifwala and on 29.10.2013, he submitted an application (Exh.PT) before the DPO Sahiwal for transferring the appellant in this case and on behalf of the DPO Sahiwal, a letter No.4272/L dated 29.10.2013 (Exh.PU) was submitted before the worthy Sessions Judge, Sahiwal. On 18.11.2013, the investigating officer submitted an application (Exh.PV) before the learned Area Magistrate of Police Station Saddar Arifwala for obtaining permission to join the appellant in the investigation, which was allowed and the appellant was joined in the investigation and also formally arrested by him in this case. Thereafter, the investigating officer submitted another application (Exh.PW) for summoning the appellant before the learned Area Magistrate of Police Station Saddar Arifwala for 20.11.2013 and on this date i.e. 20.11.2013, he obtained transitory remand of appellant through application (Exh.PX) and produced him before the court of learned Area Magistrate of Police Station Dera Rahim Sahiwal with the application (Exh.PY) that the appellant be sent to judicial lock-up for identification parade. On 23.11.2013, the investigating officer submitted another application (Exh.PZ) before the learned Area Magistrate of Police Station Dera Rahim, Sahiwal, upon which a date i.e. 26.11.2013 was fixed for identification of appellant.

It can be easily visualized from the above highlighted exercise of the investigating officer that the name of the appellant had already come to light in this case as an accused much prior to holding his identification parade. Even Sakhawat Ali S.I./I.O. (PW.13) during the course of his cross-examination stated as under:-

> *"When the file of this case was entrusted to me for investigation, Imran accused present in the court had already been nominated as accused in this case."*

Besides above, it is discernable from the narration of application for transitory remand of the appellant in the case in hand (Exh.PT) and remand judicial application for identification parade (Exh.PY) that Javaid Iqbal, co-accused of the appellant made discloser at the time of his arrest under section 54 Cr.P.C. in this case that he committed the occurrence along with Muhammad Imran appellant. Thereafter, above said Javaid Iqbal, co-accused was challaned in this case and appellant was declared proclaimed offender. In the eventuality of above mentioned circs, identification parade after appellant's nomination in this case is highly doubtful and the same carries no legal worth.

12. It cannot be ignored that the appellant was aged about 35 years at the time of his arrest, which was caused about nine months after the occurrence, but according to prosecution's own showings, the assailants who committed the occurrence were aged about 20 to 30 years whereas ages of all the nine dummies were 32 to 38 years. Moreover, no features of the dummies have been mentioned in the report of identification parade (Exh.PP) and this fact has also been endorsed by Rana Aneel Arshad, learned Magistrate (PW.10), who supervised the proceeding of identification parade. Relevant portion of cross-examination upon him is mentioned below:-

> *"..It is correct that I did not mention the specific features of Dummies who joined the test identification parade in my report Ex.PP…"*

The above-mentioned shortcoming during identification test parade makes the whole process null and void. Reliance is respectfully placed on the case of *"Muhammad Ayaz and others v. The State"* **(2011 SCMR 769)**, wherein the Hon'ble Supreme Court of Pakistan has held as under:-

> *"17. The test identification parade was held on 21-8-2002 in Adyala Jail. The report of the said proceedings supervised by Mr. Amjad Saeed, Special Judicial Magistrate (P.W.22) are available on record as Exh.PYY/1. The, said report mentions the names of twenty one persons (the dummies) with whom the three appellants were mixed for the purpose. The description of these twenty one dummies is confined only to their names and their parentage and it is not discernible from the said description whether they were the inmate prisoners of the jail or had been imported from elsewhere"*

Further reference in this respect may be made to the case titled as *"Mian Sohail Ahmad and others v. The State and others"* **(2019 SCMR 956).**

13. I have noted that initially, the appellant was nominated in this case on the basis of disclosure of co-accused Javaid Iqbal as evident from the contents of application for holding identification parade of appellant (Exh.PN) and application for transfer of appellant (Exh.PT) but such type of evidence, I am afraid, is hit by the provision of Article 38 of Qanun-e-Shahadat Order, 1984, and cannot be used as evidence against the appellant. Reliance is placed on the case of *"Shafqat Abbas and another v. The State"* **(2007 SCMR 162)**, wherein the following principle has been laid down by the august Supreme Court of Pakistan:-

> *"The attributed disclosure made by accused Nazar Abbas before the Investigating Officer in presence of P.W. Muhammad Sharif during interrogation, involving appellants Shafqat Abbas, Mujahid Hussain and others in the commission of the offence, not leading to the discovery of a particular relevant fact or incriminating material is inconsequential and inadmissible, therefore, in view of the above discussion and reasons by extending benefit of doubt in favour of the appellants in the given facts and circumstances of the case, they have been found entitled to*

> *earn acquittal. Resultantly, their convictions and sentences awarded by the learned trial Court under sections 302/324/34, P.P.C. and maintained by the learned High Court in appeal filed by the appellants were set side vide our short order. Accordingly, they have been acquitted of the charges and their appeal accepted"*

14. It is noteworthy that Muhammad Imran appellant was arrested in this case on 20.11.2013 after eight months and twenty three days of the occurrence and identification parade was conducted on 26.11.2013 with the delay of six days after his arrest. Such noticeable delay in conducting the identification parade makes it doubtful in nature. I may fortify my view from the dictum laid down in case titled as *"Sabir Ali alias Fauji v. The State"* **(2011 SCMR 563)** wherein it has been held by the august Supreme Court of Pakistan as under:-

> *"....Identification parade was held after about six months from the date of occurrence and also conducted after a delay of 09 days after the arrest of the accused. This delay per se in both counts create lot of doubt regarding the identification parade as witnesses had various opportunities to see the accused persons..."*

15. Another important aspect of this case which has also shattered the authenticity of identification parade is that the appellant made objection before Rana Aneel Arshad, learned Judicial Magistrate (PW.10) at the time of proceeding of identification parade that when he was arrested, complainant and PWs were accompanying the local police and they also knew him previously. He filed petitions against the complainant as well as local police in the court of learned Sessions Judge, Sahiwal and Lahore High Court Lahore wherein SHO concerned was summoned by the court and due to this grudge, complainant and local police entangled him in this case. It is noteworthy that Rana Aneel Arshad, learned Judicial Magistrate (PW.10) has not decided the supra-mentioned objection of the appellant. In this way, there is serious lapse on his part. Reference can be made to the case law titled as *"Javed Khan alias Bacha and another v. The State and another"* **(2017 SCMR 524).**

16. Ocular account in this case came out from the mouths of Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3). In addition to the considerable delay in lodging the FIR which apparently dislodged the presence of above mentioned prosecution witnesses at the place of occurrence at relevant time, there are certain other circumstances which create serious doubt qua their veracity and truthfulness. In this regard, it is observed that both Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) throughout took the stance that they had attended Shahid Saeed (deceased), then injured, immediately after the occurrence and had shifted him to DHQ Hospital through the vehicle of Rescue 1122, but Dr. Ejaz Hussain Awan, SMO (PW.11), who had medically examined Shahid Saeed (deceased), in an injured condition, stated during the course of his cross-examination as under:-

> *"It is correct that I signed and sealed with stamp the injury statement which is Ex.PR. According to the injury statement of Shahid Saeed deceased Ex.PR the injured firstly went to the police post Shareenwala More where Zahoor Hussain ASI prepared the said injury statement Ex.PR and then Muhammad Arshad constable No.873-C took Shahid Saeed to the DHQ Hospital Sahiwal in injured condition…."*

Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) also could not explain the circumstance whereby the deceased, then injured, was taken to Police Post Shareenwala before bringing him to DHQ Hospital Sahiwal for medical examination. Furthermore, they contradicted each other while attributing role to the appellant at the time of his identification parade as according to Abdul Waheed complainant (PW.2), the appellant had snatched the amount and his co-accused had caused firearm injury on the person of deceased, but according to Muhammad Mushtaq Ahmad (PW.3), the appellant had made the fire shot. Relevant portions of their statements recorded by Rana Aneel Arshad, learned Judicial

Magistrate (PW.10) at the time of conducting identification parade are reproduced as under:-

عبدالوحید مدعی:

----- ملزم عمران نے مقتول شاہد سے پیسے چھینے اور دوسرے ملزم نے شاہد کو فائر مارا جو کہ اسکی پسلی میں لگا۔

محمد مشتاق گواہ:

----- ملزم عمران نے لڑائی جھگڑے کے دوران پسٹل نکالی اور شاہد کو فائر مار دیا۔

Another important circumstance which prompted this Court to discredit the testimonies of Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) is that according to their own version, they were nothing but chance witnesses who had miserably failed to advance any plausible reason for their presence at the place of occurrence at relevant time. Abdul Waheed complainant (PW.2) while recording his examination-in-chief, has stated that on the eventful day at about 02:45 p.m. he handed over Rs.1,00,000/- to his nephew Shahid Saeed (deceased) for onward transmission to his brother-in-law Muhammad Mushtaq son of Mudaee Khan (jettisoned witness) resident of Chak No.96/D in lieu of price of milk and after about ten minutes, he along with Muhammad Mushtaq Ahmad (PW.3) also proceeded to Chak No.96/D to meet his brother-in-law Muhammad Mushtaq son of Mudaee Khan (jettisoned witness), but when Shahid Saeed reached within the area of Chak No.112/9-L, he was targeted by robbers who also committed his murder. Muhammad Mushtaq Ahmad (PW.3), in an attempt to establish his presence at the place of occurrence, also deposed in almost similar manner. It is important to mention here that above said PW.3 while recording his statement before learned Magistrate (PW.10) at the time of identification parade of appellant (Exh.PP) stated that his nephew was going after taking the payment of milk, accused persons stopped him near Chak No. 112/9-L and

started quarreling with him. They were also chasing the deceased as they were going in connection with some other job but they were not aware that their nephew was travelling ahead of them. During the scuffle accused Imran (appellant) took out pistol and inflicted fire shot upon Shahid Saeed deceased. It is crystal-clear that the place of occurrence in this case was the one where Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) should have not normally been present exactly at the time of occurrence and when this fact is taken into account along with considerable delay of nine hours and forty minutes in lodging the FIR, I find no option but to declare them related, interested and chance witnesses and as such their evidence is not free from doubt. Reference in this respect may be made to the cases titled as *"Mst. Mir Zalai v. Ghazi Khan and others"* **(2020 SCMR 319),** *"Ibrar Hussain and another v. The State"* **(2020 SCMR 1850)** and *"Liaqat Ali and another v. The State and others"* **(2021 SCMR 780).**

Another fact which cannot be ignored is that the narration of incident itself made the presence of Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) at the place of occurrence at relevant time highly doubtful as if Abdul Waheed complainant (PW.2) along with Muhammad Mushtaq Ahmad (PW.3) had to proceed to Chak No.96/D to see his brother-in-law Muhammad Mushtaq (jettisoned witness) just within ten minutes of departure of his nephew Shahid Saeed (deceased), then there was no reasoning for Abdul Waheed complainant (PW.2) to handover the amount of Rs.1,00,000/- to the deceased for its onward payment to Muhammad Mushtaq (jettisoned witness) at Chak No.96/D. The story narrated by the prosecution witnesses, particularly in respect of their presence at the place of occurrence at relevant time, is clearly farfetched and absolutely not comprehendible to human prudence.

17. I have also noticed with grave concern that prosecution itself was not certain regarding the culprits as Abdul Waheed complainant

(PW.2) categorically admitted during his cross-examination that he had suspicion upon one Muhammad Riaz son of Sher Muhammad for the murder of Shahid Saeed (deceased) and in this regard, a "panchait" (پنچایت) was convened and an arbitration deed was also executed regarding the innocence of above said Muhammad Riaz. If such was the state of affairs after the happening of occurrence, there can be no second thought that Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) are not truthful or reliable witnesses.

18. It is further discernable from the evidence on the file that Abdul Waheed complainant (PW.2) and Muhammad Mushtaq Ahmad (PW.3) have made blatant and dishonest improvements to their earlier statements. In this regard, relevant portion from the statement of Abdul Waheed complainant (PW.2) is reproduced as under:-

> *"I have not mentioned that Imran accused present in the court had snatched the amount from Shahid Saeed deceased and other accused made fire upon Shahid Saeed deceased. Confronted with Ex.DB wherein it is so recorded in portion A to A. The witness volunteered that the other accused snatched the amount from the deceased and Imran accused present in the court made fire upon Shahid Saeed deceased.*
>
> *I have mentioned in my statement Ex.PB the description and features of the culprits. Confronted with Ex.PB wherein the features are not mentioned. ……*
> *……I have stated in Ex.PB that I and Shahid Saeed deceased used to run an Oil Agency at Bhalleywala More jointly. Confronted with Ex.PB where specifically runs an Oil Agency jointly is not mentioned. I have stated in my statement Ex.PB that on the day of occurrence I and Shahid Saeed deceased were present at Adda Bhalleywala More and I handed over Rs.1,00,000/- to Shahid Saeed deceased for onward transmission to my brother-in-law. Confronted with Ex.PB wherein it is not so recorded. I have stated in my statement Ex.PB that the deceased left Bhalleywala More at about 2:45 p.m. Confronted with Ex.PB wherein time i.e. 2:45 p.m is not mentioned. I have stated that after 10 minutes for the departure of the deceased from Bhalleywala More, I and Mushtaq Ahmad PW also proceeded to Chak No.96/D on motorcycle. Confronted with Ex.PB where our departure after 10-*

> *minutes from the departure of the deceased is not mentioned. I have stated in my Ex.PB when we reached in the area of Chak No.112/9-L "Budh Dhakoo". At that time, Shahid Saeed deceased ahead from us. Confronted with Ex.PB wherein it is not so recorded. I have stated in my statement that in our view the accused persons gave beating to him. Confronted with Ex.PB wherein it is not so recorded. I have stated in my statement that after the occurrence the accused persons fled away from the spot along with their respective weapons and looted amount on a motorcycle. Confronted with Ex.PB where weapons and looted amount is not mentioned……"*

Similarly, relevant portion of dishonest improvements from the statement of Muhammad Mushtaq Ahmad (PW.3) is described infra:-

> *"……I have stated in my police statement that on the day of occurrence, I went to Bhalleywala More at about 2:45 p.m on the day of occurrence. Confronted with Ex.DC wherein it is not so recorded. I have stated in my police statement that Abdul Waheed complainant runs an Oil Agency at Adda Bhalleywala More. Confronted with Ex.DC wherein it is not so recorded. I have stated in my police statement that on the day of occurrence I and Abdul Waheed complainant started journey towards 96/D. Confronted with Ex.DC wherein it is not so recorded. I have stated in my police statement that when we reached within the limits of Bhud Dhakoo in our view 03-unknown persons grappled with Shahid Saeed deceased and they beating him. Confronted with Ex.DC wherein when we reached within the limits of Bhud Dhakoo in our view is not mentioned. I have stated in my police statement that the unknown accused persons snatched domicile and school leaving certificate from the deceased. Confronted with Ex.DC wherein it is not so recorded. However, it is mentioned that the unknown accused persons snatched identity card of the deceased and some documents from the deceased. I have mentioned in my police statement that the accused persons fled away from the spot along with their respective weapons and looted amount. Confronted with Ex.DC wherein the weapon and looted amount is not mentioned. I have stated in my police statement that the deceased died when he reached at DHQ Hospital Sahiwal. I have stated in my police statement that Shahid Saeed deceased died on the following day of the occurrence. Confronted with Ex.DC wherein it is not so recorded. I have mentioned the features and description of the unknown assailants. Confronted with Ex.DC wherein description and features are not mentioned. However, there is mentioned only the ages of the assailants 20/30 years. ……. I had stated in*

> *my police statement that who assailant snatched the amount from the deceased with his features, who assailant made fire towards the deceased with his feature. Confronted with Ex.DC wherein specifically features with role are not mentioned. ……..*
>
> *I have got recorded my statement to the learned Area Magistrate at the time of test identification. I have stated before the learned Area Magistrate that the unknown culprits snatched Rs.1,00,000/- from the deceased. Confronted with Ex.DD wherein it is not so recorded. ……"*

It is obvious that the said witnesses have improved their statements in order to establish their presence at the crime scene and to strengthen the prosecution case against the appellant, but such an attempt is not tenable under the law. There is no cavil to the proposition that when the witnesses improve their statements to strengthen the prosecution case and the moment it is concluded that improvements were made deliberately and with *mala fide* intention, the testimonies of such witnesses become unreliable. The Hon'ble Supreme Court of Pakistan has observed in a plethora of judgments that the witnesses who made dishonest improvements in their statements on material aspects of the case in order to fill the lacunas of the prosecution case or to bring their statements in line with other prosecution evidence are not worthy of reliance. Reference in this respect may be made to the judgment reported as *"Muhammad Arif v. The State"* (**2019 SCMR 631**) wherein the Hon'ble Supreme Court of Pakistan has enunciated the following principle:-

> *" It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge."*

I have also fortified my above view from the dictum laid down in cases titled as *"Khalid Mehmood and another v. The State"*

(**2021 SCMR 810)** and *"Rafaqat Ali Vs. The State"* **(2022 SCMR 1107).**

19. Coming to the evidentiary worth of medical evidence, it is settled law that medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of offence. Reference in this respect may be made to the cases titled as *"Sajjan Solangi v. The State"* **(2019 SCMR 872)** and *"Naveed Asghar and 2 others v. The State"* **(PLD 2021 SC 600).**

20. So far as recovery of pistol (P1) at the pointation of the appellant from his residential house taken into possession through seizure memo (Exh.PC) by Sakhawat Ali, SI/I.O (PW.13) and positive report of Punjab Forensic Science Agency, Lahore (Exh.PCC) are concerned, I have noted that the investigating officer while effecting the recovery from the possession of appellant has not associated any witness of vicinity, which makes the recovery of pistol at the instance of the appellant highly doubtful. Reliance is placed upon the case law titled as *"Muhammad Ismail and others v. The State"* **(2017 SCMR 898).**

I have further observed that the occurrence took place on 27.02.2013 whereas the recovery of pistol (P1) was effected *vide* possession memo (Exh.PC) on 08.12.2013 i.e. nine months and nine days after the occurrence, however, the fact would not appeal to any prudent mind that once the appellant decided to conceal the weapon, then there is no point that he would keep the same in his house in such safe custody so as to get recover the same at a subsequent point of time as a souvenir. Reliance can be placed on the case law titled as *"Basharat and another v. The State"* **(1995 SCMR 1735).**

As I have already disbelieved the ocular account in supra mentioned paragraphs of this judgment, therefore, recovery of pistol (P1) at the pointation of appellant is of no avail to the prosecution

because the recovery of weapon of offence is only a corroborative piece of evidence and it is settled proposition of law that unless direct or substantive evidence is brought on record, a conviction cannot be recorded on the basis of such evidence, howsoever convincing it may be. Reliance is placed upon the cases titled as *"Muhammad Irshad v. Allah Ditta and others"* **(2017 SCMR 142),** *"Muhammad Mansha v. The State"* **(2018 SCMR 772)** and *"Naveed Asghar and two others v. The State"* **(PLD 2021 SC 600),** in paragraph No.29 of which the Hon'ble Supreme Court of Pakistan has held as under:-

> *"29. Even otherwise, recovery of weapon of offence is only a corroborative piece of evidence; and in absence of substantive evidence, it is not considered sufficient to hold the accused person guilty of the offence charged. When substantive evidence fails to connect the accused person with the commission of offence or is disbelieved, corroborative evidence is of no help to the prosecution as the corroborative evidence cannot by itself prove the prosecution case."*

21. Epitome of the above comprehensive discussion is that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt rather the shadows of doubt are looming in this case. It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The

prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession. Reference is made to the cases titled "*Mst. Asia Bibi v. The State and others"* **(PLD 2019 SC 64),** *"Najaf Ali Shah v. The State*" **(2021 SCMR 736)**, *"Sajjad Hussain v. The State and others"* **(2022 SCMR 1540)** and *"Tajamal Hussain Shah v. The State and another"* **(2022 SCMR 1567).**

22. For the foregoing reasons, Criminal Appeal No.95-J of 2016 filed by Muhammad Imran alias Amanat Ali alias Maani (appellant) is **accepted**, convictions and sentences awarded to him *vide* judgment dated 17.03.2016 passed by the learned trial court is **set aside** and he is acquitted of the charge leveled against him while extending the benefit of doubt in his favour. He shall be released from jail forthwith if not required to be kept therein in connection with any other case.

23. In light of above findings, **Criminal Revision No.172 of 2016** filed by the complainant for enhancement of sentences of respondent No.1 (appellant) is hereby **dismissed.**

(Muhammad Tariq Nadeem)
Judge

Approved for reporting

Judge

Muqaddas