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

(The State Murder Reference No. 104 of 2019
 versus Muhammad Nasir @ Bhola)

(Muhammad Nasir @ Bhola *versus* The State.)

JUDGMENT

Date of hearing: 03.04.2023.

Appellant by: Ms. Sumaira Hussain and Ms. Mariam Aisha Sherazi,
Advocates.

State by: Mr. Muhammad Waqas Anwar, Deputy Prosecutor
General.

Complainant by: Rana Muhammad Amjad, Advocate.

AALIA NEELUM, J:- The appellant-Muhammad Nasir alias Bhola, son of Rasheed Ahmad, caste Rajput, resident of Street No.10, Mohallah Jamil Park, District Faisalabad, was involved in case F.I.R. No.876 of 2018, dated 08.11.2018, an offence under Section 302 P.P.C., registered at P.S. Jhang Bazar, District Faisalabad and was tried by the learned Sessions Judge, District Faisalabad. The trial court seized with the matter in terms of the judgment dated 17.04.2019, convicted Muhammad Nasir @ Bhola (the appellant) under Section 302(b) PPC, and sentenced him to Death for committing Qatl-e-Amd of Shabana Kausar (the deceased), with the direction to pay compensation of Rs.10,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to further undergo 06-months imprisonment.

2. Feeling aggrieved by the judgment of the learned trial court, Muhammad Nasir alias Bhola, the appellant has assailed his conviction by filing the instant appeal bearing Criminal Appeal No.44570 of 2019. The

learned trial court also referred **M.R. No.104 of 2019** (The State. Vs. **Muhammad Nasir @ Bhola**) to confirm the death sentence awarded to the appellant-Muhammad Nasir alias Bhola. The matters arising from the same judgment of the learned trial court are being disposed of through a single judgment.

3. The prosecution story, as alleged in the F.I.R (Ex. PD/1) lodged on the written application (Ex.PD) of Shahid Ali-the complainant (PW-6), is that he was resident of Chak No.60-JB and her sister, namely Mst. Shabana Kausar, aged about 18/20 years, was married to Muhammad Rasheed Ahmad, and during their wedlock, four daughters and one son were born, but his sister's husband expired two years back. On the fateful date at about 3:00 P.M, he (PW-6), along with Shahid Imran (PW-8) and Muhammad Ashraf (PW-7), went to see his sister in Street No.10, Mohallah Jamil Park, and were talking with his sister. In the meanwhile, the appellant Nasir, while armed with a pistol 30-bore, forcibly entered the house of his sister and raised *Lalkara* that he (the appellant) would teach her a lesson for not contracting marriage with him and made fire shots at her face to kill her, which hit on her head and mouth, who fell on the ground in an injured condition. While brandishing his pistol, the appellant fled away from the place of occurrence by extending threats to the complainant and PWs. The motive behind the occurrence was that the appellant used to tease and cause harassment to his sister and was forcing her to enter into a marriage. Due to the refusal of her sister, the appellant murdered his sister.

4. After the occurrence, the complainant reported the matter to the police through the written application (Ex.PD); after that, formal F.I.R (Ex.PD/1) was chalked out by Muhammad Naveed Aslam No.4232-HC (PW-2). After registration of this case, the investigation was conducted by Idrees Iqbal, S.I (PW-10), who, having found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C., and sent the same to the court of competent jurisdiction. On 18.03.2019, the learned trial court formally charged the appellant, to which he pleaded not guilty and claimed trial. In

support of its version, the prosecution produced as many as ten (10) witnesses.

5. Ocular account, in this case, has come out from the statements of Shahid Ali (PW-6)-the complainant, Muhammad Ashraf (PW-7), and Shahid Imran (PW-8), whereas Dr. Sadia Farooq, Women Medical Officer (PW-1), conducted postmortem examination on the dead body of the deceased-Shabana Kausar and found the following injuries on her person: -

INJURIES

- 1) A lacerated wound measuring 3 cm x 1.5 cm muscle deep on the left side of face 1.5 cm from the angle of mouth, 3 cm from chin.
- 2-A) A lacerated firearm wound measuring 3 cm x 2 cm on the left angle of the mouth, burning blackening, and tattooing was present on the upper and lower lip.
- 2-B) A firearm wound of exit measuring 4 cm x 3 cm on top of the head.
- 3-A) A firearm wound of entry on the middle of the mouth of the lower and upper lip measuring 2 cm x 2.5 cm burning blackening and tattooing was present on and around the lips.
- 3-B) A firearm wound of exit measuring 4 cm x 2 cm back of left side of the neck just on the neck's hairline. On dissection, lips were damaged, teeth were damaged; the mandible fractured, the tongue was damaged, the skull base was damaged, eggshell was fractured of skull. Brain and spinal cord damage.

OPINION

In my opinion, the cause of death, in this case, was due to injuries No.2 and 3, which caused damage to the brain and spinal cord. These injuries were sufficient to cause death in the ordinary course of nature. Injuries No.2 and 3 were inflicted by

firearm means, and injury No.1 was inflicted by blunt means. Injury No.1 was also an ante-mortem.

The statements of the remaining prosecution witnesses are formal in nature.

6. On 10.04.2019, the learned Deputy District Public Prosecutor gave up PW Mujahid Ali as unnecessary, and on 12.04.2019, after tendering Punjab Forensic Science Agency, Lahore regarding D.N.A and Serology Analysis report (Ex. PL, Ex. PL/1) and the report of Punjab Forensic Science Agency, Lahore regarding firearm and tool marks examination Ex.PM closed the prosecution evidence.

7. The appellant was also examined under Section 342 Cr.P.C., wherein he did not opt to appear as his own witness in terms of Section 340(2) Cr.P.C. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

"I have been falsely implicated in this case as Mst. Shabana Kausar was offering me to contract marriage with her for which I refused and she nourished the grudge against me. At the time of occurrence, I was present at a turner shop which was run by me as a partnership with one Umar and one Bilal also used to work there. I came to know about this occurrence from above mentioned Umar, my partner, that my father has been arrested by the police in this case at which I myself surrendered before the police in this case on the next day through the Councilor of my Mohallah at which my father was released and I was arrested. I am sole bread winner of my family. My father is an old man."

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

9. We have given our anxious and most thoughtful consideration to both sides' rival submissions. We have minutely gone through the evidence on record.

10. The incident took place on 08.11.2018 at 03:00 p.m. in the house of Shabana Kausar (the deceased), situated in street No.10, Mohallah Jameel Pak, within the area of Police Station, Jhang Bazar, District Faisalabad, which is at a distance of 4.5-kilometers from the place of occurrence. Shahid Ali (PW-6)-the complainant reported the incident through written complaint (Exh.PD) to Idrees Iqbal, S.I. (PW-10) at 04:35 p.m., who reached the place of occurrence on receiving information and he (PW-10) incorporated police proceedings (Ex.PD/2) at the bottom of the written complaint (Exh.PD) and referred the written application (Ex.PD) through Umar Farooq 275/C (not cited as PW) to the police station, based on which, formal F.I.R. (Exh. PD/1) was chalked out on the same day at 05:00 p.m. by Muhammad Naveed Aslam 4232/H.C (PW-2). Shahid Ali (PW-6)-the complainant took one hour and 35 minutes to report the incident to the police. The evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when it creates a suspicion that the informant had sufficient opportunity to concoct a story and falsely implicate the accused. Therefore, an adequate explanation for the delay would depend on various circumstances. In the present case, the prosecution has not given a reason for the delay in lodging the First Information Report (Exh.PD/1). It can be found from the First Information Report (Exh. PD/1) that it was not mentioned therein that Shahid Ali (PW-6)-the complainant went to the police station to report the incident, nor was it mentioned that on hearing about the incident, police reached the spot and he (PW-6) reported the incident to the police. The complainant (PW-6) does not explain the reason for not lodging the report with the Police of the incident of murder of his sister, which took place in the house of his sister in his presence. The operative part of the written application (Ex.PD) reads as under: -

"جس رنج کی بناء پر الزام علیہ ناصر مذکورہ نے میری ہشیرہ کو بذریعہ فائزنا حق قتل کر دیا ہے"
قانونی کاروائی کی جاوے۔"

The police proceedings (Exh. PD/2) incorporated at the bottom of the written complaint (Exh. PD) read as under: -

"اکاروائی پولیس: اس وقت من SI معہ محمد قاسم C/5349 - خالد محمود 2994 - عمر
فاروق C/275 - آصف علی C/6000 اطلاع و قصہ پا کر گلی 10 محلہ جیل پارک پہنچا
ہوں تو مسکی شاہد علی مندرجہ پشت مدی مقدمہ نے درخواست ہڈا میرے پیش کی مضمون
درخواست و حالات و اتعات سے صورت جرم 302/ت پ پائی جاتی ہے لہذا بذریعہ تحریر
استقاشہ برائے اندر ارجح مقدمہ بدست عمر فاروق C/275 ارسال تھا ہے۔ مقدمہ درج
کر کے نقل مثل پولیس برائے تفییش میرے عقب بھجوائی جاوے۔ میں موقعہ پر مصروف
تفییش ہوں۔"

Shahid Ali, the complainant (PW-6), has not stated a single word in examination-in-chief about where he (PW-6) reported the incident to the police. Whereas, Idrees Iqbal S.I. (PW-10)-the investigating officer deposed during examination-in-chief that: -

"On 8.11.2018, after receiving information of the instant occurrence, I reached at Mohallah Jamil Park, Street No.10 where Shahid Ali complainant, produced complaint Ex.PD whereupon I wrote my police proceedings Ex.PD/2 and sent the same to police station for the registration of formal FIR through Umar Farooq No.275-C at about 4:35 P.M."

Contrary to the above deposition of Idrees Iqbal S.I. (PW-10)-the investigating officer, Shahid Ali, the complainant (PW-6), deposed during cross-examination that: -

"I presented the complaint Ex. PD in police station Jhang Bazar to SHO of the police station."

The statement made by Shahid Ali (PW-6), the complainant, casts severe doubt about where he reported the incident to the police. Besides, Idrees Iqbal S.I. (PW-10)-the investigating officer deposed during cross-examination that a written complaint (Exh. PD) was given at the spot by Shahid Ali (PW-6)-the complainant, which reads as under: -

"When I received information about the occurrence, I am not sure whether I was in the police station or in the area. I received the information through telephone call perhaps made by SHO P.S. Jhang Bazar. I reached at the place of occurrence at about 4:10 P.M. ----- ----- Complaint Ex.PD was presented to me by the complainant at the place of occurrence which was got written by the complainant through someone else."

The deposition of Idrees Iqbal S.I. (PW-10)-the investigating officer revealed that on receiving information about the murder, he reached the place of occurrence at 04:10 p.m. Even then, Shahid Ali (PW-6)-the complainant, took 25 minutes to report the incident. What we find from the evidence is that Shahid Ali, the complainant (PW-6), has reported the incident of murder of Shabana Kausar, which occurred in the house of his sister in his and eyewitnesses' presence at 04:35 p.m. on 08.11.2018 with the delay of one hour and 35 minutes, which creates doubt about the presence of Shahid Ali, the complainant (PW-6) and eyewitnesses. Delay in lodging the first information report often results in consultation and deliberation, which is a creature of an afterthought. Shahid Ali (PW-6)-the complainant, admitted that he is a resident of Chak No.60/J.B. and on 08.11.2018 at about 03:00 p.m., he (PW-6)-the complainant, along with Muhammad Ashraf (PW-7) and Shahid Imran (PW-8) went to see his sister Shabana Kausar (the deceased). Per the prosecution case, Shabana Kausar (the deceased) resides at Street No.10, Mohallah Jamil Park, District Faisalabad. Per the prosecution's case, the distance between Chak No.60/J.B and Street No.10 Mohallah Jamil Park is 30 minutes on a motorbike. Shahid Ali (PW-6) deposed during cross-examination that: -

"The distance between Shehbaz Pur and place of occurrence is of 30 minutes on motorbike"

Whereas, Shahid Imran (PW-8)-the eye witness deposed during cross-examination that: -

"It took 30 minutes to us to reach at the place of occurrence from Mohallah Shehbaz Pur on the day of occurrence."

The evidence of a chance witness requires careful and close scrutiny, and a chance witness must adequately explain his presence at the place of occurrence. The witnesses, i.e., Shahid Ali (PW-6)-the complainant Muhammad Ashraf (PW-7), are chance witnesses. The evidence of chance witnesses can be accepted. The statements of such witnesses adequately explain the presence of witnesses, and such evidence stands the test of caution and scrutiny. It can only be relied upon if the proof has a ring of truth and is cogent, credible, and trustworthy. Similarly, the conduct of the chance witnesses is also a relevant factor while appreciating his evidence. The occasion for the presence at the time of occurrence, the opportunity to witness the crime, the normal conduct of the witness to the victim, and his predisposition towards the accused, are some of the circumstances to be kept in view to weigh and accept the ocular evidence of chance witnesses. It is not the quantum of the evidence but the quality and credibility of the witnesses that lends assurance to the court for acceptance. The prosecution witnesses, i.e., Shahid Ali (PW-6)-the complainant, and Muhammad Ashraf (PW-7), have not stated the reason for their visit to the house of the deceased along with one outsider, i.e., Shahid Imran (PW-8). Muhammad Ashraf (PW-7) stated they had gone to see Shabana Kausar (the deceased) as she was his daughter. Muhammad Ashraf (PW-7) deposed during cross-examination that: -

“We had gone to see the deceased as she was my daughter. We all three had come on one motorcycle driven by Shahid Imran who runs a motorcycle workshop.”

The conduct of the witnesses, i.e., Shahid Ali (PW-6)-the complainant, Muhammad Ashraf (PW-7), and Shahid Imran (PW-8), is also relevant. It is to be seen that Shahid Imran (PW-8) has been acting as a pocket witness for the deceased's family. As per prosecution witnesses, the incident took place in their presence. They were thus chance witnesses as by coincidence or chance they were present at the place of occurrence when the incident took place; they could not usually be there when they profess to have been. But the prosecution failed to establish that the chance witnesses informed the police about the incident, upon which Idrees Iqbal S.I. (PW-

10)-the investigating officer, reached the spot. There are contradictions between the statements of the prosecution witnesses who informed the police about the incident. Shahid Ali (PW-6)-the complainant deposed during cross-examination that: -

“I myself did not make call to rescue 15.
Volunteered that on hearing our hue and cry
any person from the vicinity made the call at
Rescue 15.”

Contrary to the deposition of Shahid Ali (PW-6)-the complainant, Shahid Imran (PW-8)-the eye witness deposed during cross-examination that: -

“Call at rescue 15 was made by Shahid Ali
complainant.”

The statements of Shahid Ali (PW-6)-the complainant, Shahid Imran (PW-8)-the eye witness; and Idrees Iqbal S.I. (PW-10)-the investigating officer, create doubt about who informed the police about the incident. The accused was unknown to Muhammad Ashraf (PW-7) and Shahid Imran (PW-8). Muhammad Ashraf (PW-7), the father of the deceased, deposed during cross-examination that: -

“Accused Nasir was not previously known to
me. ----- The name of the accused was
told to me by the people who were attracted to
the scene of occurrence.”

Muhammad Ashraf (PW-7) has not stated that the name of the accused was disclosed to him by Shahid Ali (PW-6)-the complainant. Shahid Imran (PW-8), deposed during cross-examination that: -

“Accused Nasir was not seen by me prior to the
occurrence. The name of accused as Nasir was
told to me by Shahid Ali complainant.”

Based on the information given by Mohallah Dars and Shahid Ali (PW-6)-the complainant, both the witnesses, i.e., Muhammad Ashraf (PW-7) and Shahid Imran (PW-8) deposed the name of accused Muhammad Nasir alias Bhola (the appellant) as the murderer. The accused was unknown to the PWs, i.e., Muhammad Ashraf (PW-7) and Shahid Imran (PW-8).

Looking at these facts, we are of the opinion that the prosecution has withheld the genuineness of the occurrence. Besides, Dr. Sadia Farooq (PW-1), during the external examination of the body of Shabana Kausar (the deceased), specifically mentioned that “mouth opened, eyes closed.” If the prosecution witnesses, i.e., Shahid Ali (PW-6)-the complainant, Muhammad Ashraf (PW-7), and Shahid Imran (PW-8) attended to the deceased soon after the occurrence, there was no reason for the mouth to be open. At this juncture, it is relevant to mention the chemical changes that would occur when the dead body of a human being is exposed to different environmental situations. Autolysis (self-destruction) is an intrinsic activity brought about by the breakdown of cells and tissues of the human body because of the constituents of the said cells. The cell membranes break down after death and release enzymes that start self-digestion. After 30 minutes of death, the body starts to get stiff, and after that, if the mouth of the dead body remains open, it's difficult to secure it back. The deceased person's mouth remains open at the time of death; any relative or person nearby can close the mouth soon after, as the decomposition process begins after 10 to 30 minutes. It suggests that if Shahid Ali (PW-6)-the complainant, and Muhammad Ashraf (PW-7) were present at the place of occurrence and tried to close the mouth of the deceased, then there was no reason the same should not be closed. Besides, the family members had not accompanied the dead body of the deceased to the mortuary. Shahid Ali (PW-6)-the complainant, the brother of the deceased, deposed during his court statement that Shabana Kausar was married 18/20 years ago and had four daughters and one son, whereas her husband died two years ago. During cross-examination Shahid Ali (PW-6)-the complainant, deposed that the son of the deceased was working in a workshop, whereas her daughters had gone to attend tuition. The son (name not mentioned) of Shabana Kausar could accompany the dead body of Shabana Kausar. But he did not go with the dead body rather, Muhammad Azeem (PW-9) and Mujahid Ali (given up PW) went with the dead body of Shabana Kausar (the deceased) to identify her dead body. It is strange that at the time and the place of occurrence, Shahid Ali (PW-6)-the complainant, and Muhammad Ashraf (PW-7), the brother and father of the deceased, were

present. Still, none of them has accompanied the dead body of Shabana Kausar (the deceased). Muhammad Azeem (PW-9) has not stated his relationship with the deceased Shabana Kausar. Thus, the prosecution witnesses, i.e., Shahid Ali (PW-6)-the complainant, Muhammad Ashraf (PW-7), and Shahid Imran (PW-8), failed to prove their presence on the spot. Such evidence can be created at any moment. Shahid Ali PW-6)-the complainant deposed during cross-examination that: -

“At the time of occurrence, my deceased sister was sitting at a cot whereas I was sitting on a chair. The police had taken into possession the said cot and the chair.”

Whereas, Idrees Iqbal S.I. (PW-10)-the investigating officer deposed during cross-examination that: -

“At the time of my inspection to the place of occurrence, the cot was not available there. Again said I don’t remember whether the cot was available alongwith the dead body or not. It is correct that I have shown the existence of cot in the site plan Ex.PK.-----It was not necessary for me to secure into possession the cot at which the deceased was lying at the place of occurrence.”

Muhammad Ashraf (PW-7) deposed during cross-examination that: -

“On receiving fire shots Mst. Shabana Kausar fell on the ground.”

However, Idrees Iqbal S.I. (PW-10)-the investigating officer, deposed during cross-examination that: -

“The dead body was lying on the ground.”

Column No.24 of the inquest report (Ex.PC) reveals that the dead body was not lying on the ground but was lying on the cot. With this background, the presence of the alleged eyewitnesses, i.e., Shahid Ali (PW-6)-the complainant, Muhammad Ashraf (PW-7), and Shahid Imran (PW-8) at the time and place of the incident, seems to be doubtful.

11. There is yet another serious infirmity that further deepens the suspicion and casts a cloud on the credibility of the complainant (PW-6) and the prosecution story. Idrees Iqbal S.I. (PW-10)-the investigating officer deposed during examination-in-chief that after referring the written complaint (Ex.PD) to the police station through Umar Farooq 275/C at 04:35 p.m., he (PW-10) inspected the dead body of the deceased Shabana Kausar and prepared injury statement (Ex. PB), inquest report (Ex. PC) and handed over the dead body of Shabana Kausar (the deceased) along with relevant documents to Asif Ali 6000/C (PW-4). In column No.3 of the inquest report (Ex. PC), the date and time of receiving death information were mentioned as “8.11.2018 at 04:00 p.m.” The unexplained discrepancies in the timings and reference of FIR in the column of brief history in the inquest report (Exh.PC) must be considered. As per the prosecution case, inquest proceedings were conducted at 04:00 p.m. on 8.11.2018, in the column relating to the brief history of the case of inquest report (Ex. PC) particulars of the FIR (Ex.PD/1) were mentioned, and the same reads as under:-

قانونی کاروائی کی جائے جس پر مقدمہ نمبر 8/876 مورخ 18/11/2018

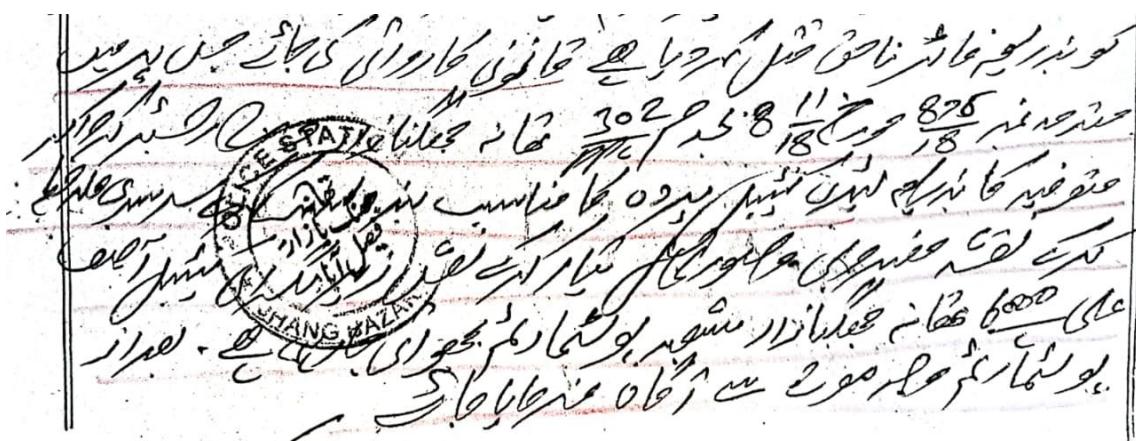
 PPC تھانہ جنگ بازار درج رجسٹر کرو اکر متوفیہ کا بذریعہ لیدی کائنٹلیل پر دہ کا مناسب

 بندوبست کر کے سرسری ملاحظہ کر کے نقشہ مضروبی و صور تحال تیار کر کے لعش زیر نگرانی

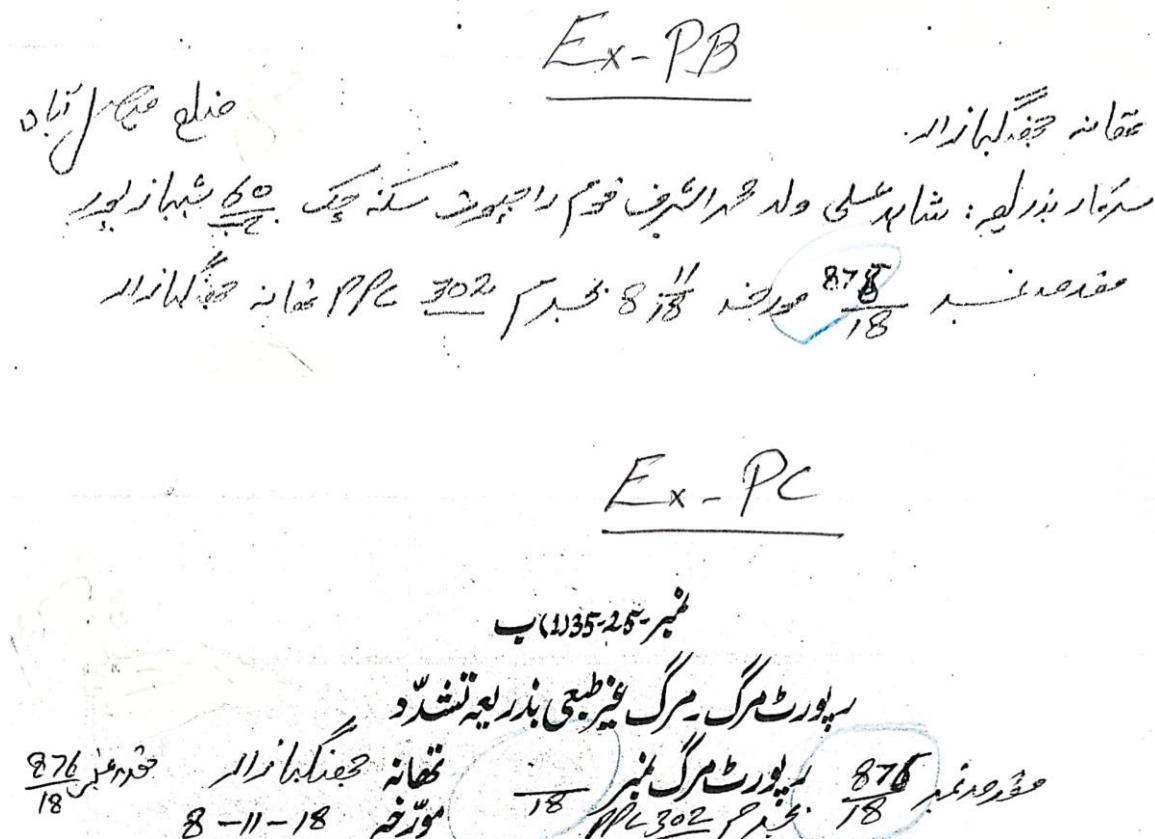
 کائنٹلیل آصف علی 6000/C تھانہ جنگ بازار شعبہ پوسٹ مارٹم بھجوائی جا رہی ہے بعد از

 پوسٹ مارٹم وجہ موت سے آگاہ فرمایا جائے۔

It is also relevant to mention here that on the face of the inquest report (Ex.PC) and in the column of a brief history of the case, there is overwriting on the number of FIR. The bare reading of the number of FIR reveals that the FIR number was written as 875/18, which was overwritten as 876/18, which is as under:-



The same fact also reflects in the injury statement (Ex.PB), which casts doubt about the time of reporting the incident as well as the registration of FIR. The overwriting on the number of FIR in injury statement (Ex.PB) and in the inquest report (Ex.PC) reads as under: -



The facts indicated that the prosecution story was still in the embryo and had not been given any shape. The FIR was recorded later after due deliberations and consultations and then ante-timed to give it the color of a promptly lodged FIR. The second external check that is equally important is sending a copy of the FIR along with the dead body for postmortem examination and its reference in the inquest report. Dr. Sadia Farooq (PW-1) deposed during examination-in-chief that: -

"I also endorsed the injury statement Ex.PB and inquest report Ex.PC."

The doctor handed over the dead body of Shabana Kausar (the deceased) and relevant documents to Asif Ali 6000/C (PW-4). Asif Ali 6000/C (PW-4), deposed during cross-examination-in-chief that: -

"Dead body was delivered to me on 8.11.2018 at about 5:10 P.M"

Whereas, during the examination in chief, he (PW-4) deposed that the dead body was placed in the mortuary of Allied Hospital Faisalabad at 06:20 P.M. Per the prosecution case, a written complaint (Exh. PD) was handed over to Idrees Iqbal S.I. (PW-10)-the investigating officer, at 04:35 p.m. If it was so, it was required to be explained by Idrees Iqbal, S.I. (PW-10)-investigating officer, by plausible evidence on the record as to how the inquest was undertaken at 04:00 p.m. and after the preparation of the inquest report (Ex.PC), injury statement (Ex.PB), Idrees Iqbal S.I. (PW-10)-the investigating officer entrusted the dead body of Shabana Kausar (the deceased) to Asif Ali 6000/C (PW-4) for taking to the mortuary for postmortem examination. In the instant case, formal FIR (Ex.PD/1) was chalked out at 05:00 p.m., whereas reference to the same was given in the column of a brief history of inquest report (Ex. PC). There is overwriting on the number of the FIR in the injury statement (Ex.PB) and inquest report (Ex.PC). It also gets support from the testimony of Dr. Sadia Farooq (PW-1), who conducted post-mortem on 09-11-2018 at 8:15 a.m. upon the dead body of Shabana Kausar (the deceased). As per the prosecution case, FIR (Ex.PD/1) was registered at 05:00 p.m., and the dead body was placed in the mortuary of Allied Hospital, Faisalabad, at 06:20 p.m. along with documents, but Dr. Sadia Farooq (PW-1) deposed during examination-in-chief that:-

“According to police papers, death occurred on 8.11.2018 at 4:00 P.M. I received police documents on the same day at 8:00 P.M. I conducted autopsy on 9.11.2018 at 8:15 A.M.”

She reaffirmed during cross-examination that she received the dead body on 08.11.2018 at 6:20 p.m. and received complete police papers on 08.11.2018 at 08:00 p.m. This also created doubt about the time of registration of FIR. Learned counsel for the complainant submitted that due to the non-availability of a lady doctor, a postmortem could not be conducted soon after receiving the dead body and the documents from the police. The deposition of Dr. Sadia Farooq (PW-1) negates the plea of learned counsel for the complainant, when she (PW-1) stated that she received the dead body of the deceased at 06:20 p.m. and complete

documents at 08:15 p.m. on 08.11.2018. Dr. Sadia Farooq (PW-1) admitted her presence and availability on the evening of 08.11.2018. But the prosecution did not explain the delay in conducting the postmortem examination. Dr. Sadia Farooq (PW-1) conducted Autopsy on the dead body of Shabana Kausar at 08:15 a.m. on 09.11.2018, with a delay of about 15 hours and fifteen minutes from the time of registration of FIR. The fact, however, remains that the post-mortem examination was delayed for fifteen hours and fifteen minutes. The prosecution did not explain the delay in conducting the postmortem examination. Dr. Sadia Farooq (PW-1) has deposed explicitly during examination in chief that: -

“Since body was placed in refrigerator, so I cannot comment on time elapsed since death.

The facts above themselves are sufficient to create serious doubt about the prosecution story that till the postmortem examination, the FIR (Exh.PD/1) was not in existence until the postmortem examination. So, no reliance can be placed on such testimony to establish the appellant's guilt, which would form the basis for conviction.

12. The Investigating Officer has conducted the investigation of the case in a faulty manner. Idrees Iqbal S.I. (PW-10)-the investigating officer has not mentioned the distance between different points in the un-scaled site plan (Ex.PK) prepared on 08.11.2018. Whereas, the distance between different points has been mentioned in the scaled site plans (Ex.PE and Ex.PE/1) prepared by Asif Jahan draftsman (PW-3) on 10.11.2018. The scaled site plans (Ex.PE and Ex.PE/1) were prepared to bring the prosecution version in line with the postmortem examination report (Exh.PA). As per the postmortem report (Ex.PA), there was burning, blackening, and tattooing on the injuries. Admittedly, an autopsy was conducted on 09.11.2018, and the draftsman visited the place of occurrence on 10.11.2018, and after that, he prepared site plans. So, mentioning distance by the draftsman in scaled site plans becomes immaterial. The investigating officer's conduct and investigation are not above board.

13. As far as motive is concerned, it is a double-edged sword that cuts both sides/ways. In the instant case, the prosecution, to establish the motive part of the incident, produced Shahid Ali (PW-6)-the complainant, who deposed in his examination in chief that: -

“Motive behind the occurrence was that after the death of the husband of my sister two years prior to the occurrence, accused used to pursue my sister rather forced her to enter into marriage with him.”

During cross-examination, Shahid Ali (PW-6)-the complainant, deposed that:-

“My deceased sister had told me that accused Nasir used to tease her which was conveyed to the father of the accused and his inmates by me.-----I did not make any complaint to the police station in respect of teasing of the accused to my sister.”

Shahid Imran (PW-8)-the eye witness deposed during cross-examination that: -

“Shahid Ali complainant had told to me that accused Nasir used to come to the house of deceased and also used to tease her.”

In his statement under section 342 of Cr.P.C., the appellant stated that the deceased made an offer to him for Nikah, so he was involved in the instant case. The well-known enmity is a double edged weapon that cuts both ways. If, on the one hand, it provided a motive for the accused to commit the occurrence in question, on the other hand, it equally provided to the first informant to implicate his rival. Based on the motive to commit the crime, the accused cannot lead a judgment of conviction. Prove of motive by itself may not be a ground to hold the accused guilty.

14. So far as recovery of the weapon of offence, i.e., pistol 30-bore (P-4) from the possession of the accused/appellant and positive report of Punjab Forensic Science Agency (Ex. PM), are concerned, as per the prosecution case, on 16.11.2018, the accused was arrested. On 19.11.2018, upon his disclosure, pistol 30-bore (P-4) was recovered from his residence.

Idrees Iqbal S.I. (PW-10)-the investigating officer secured the same through a recovery memo (Ex.PJ). Idrees Iqbal S.I. (PW-10)-the investigating officer deposed during examination-in-chief that on 19.11.2018, he handed a sealed parcel of the recovered pistol to Moharrar Tauqeer for keeping it in safe custody in the makhana. Contrary to the deposition of Idrees Iqbal S.I. (PW-10)-the investigating officer, Touqeer Ahmad 5691/H.C. (PW-5), deposed during examination-in-chief that Idrees Iqbal S.I. (PW-10)-the investigating officer sent the sealed parcel said to contain pistol 30 bore for safe custody, but Touqeer Ahmad 5691/H.C. (PW-5) did not name the person who handed over said sealed parcel to him. Besides, Shahid Ali (PW-6)-the complainant, deposed during cross-examination that:

“Accused was arrested by the police on the day of occurrence.”

The statement of Shahid Ali (PW-6)-the complainant, throws clouds of doubt on the recovery of the pistol 30-bore (P-4). It creates doubt about the recovery of the pistol 30-bore (P-4). In these circumstances, the recovery of the weapon of offence and a positive report is not of any consequence.

15. As it is difficult to rely upon the testimonies of PWs 6, 7, and 8 and for other reasons enumerated hereinbefore, we are persuaded to hold that the prosecution had not been able to prove its case against the appellant beyond any shadow of a doubt as there were many dents in the prosecution story. The conviction and sentence that learned trial court recorded could not be sustained. It is held in the case of **“Muhammad Akram v. The State” (2009 SCMR 230)** that: -

“It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of “Tariq Pervez v. The State” (1995 SCMR 1345) that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the

accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

16. The upshot of the above discussion is that the prosecution had severely failed to bring home a charge against the appellant beyond any reasonable doubt; therefore, in the interest of the safe administration of Criminal Justice, Crl. Appeal No.44570 of 2019, filed by Muhammad Nasir alias Bhola, the appellant, is **accepted in toto.** The sentence awarded by the learned Sessions Judge, Faisalabad, vide judgment dated 17.04.2019, is **set aside.** **The** appellant is **acquitted** of the charge in case FIR No.876/2018 dated 08.11.2018, registered under section 302 PPC, at P.S. Jhang Bazar, District Faisalabad. The appellant-Muhammad Nasir @ Bhola, son of Rasheed Ahmad, is ordered to be **released forthwith**, if not required in any other case.

17. **Murder Reference No.104 of 2019**, forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, which is answered in **Negative**.

(Muhammad Waheed Khan)
Judge

(Aalia Neelum)
Judge

Approved for Reporting

Judge

Judge

*This judgment has been -
dictated, pronounced on
03.04.2023 and signed
after its completion on
10.04.2023.*

Ikram