Stereo. H C J D A 38

Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
(JUDICIAL DEPARTMENT)

Criminal Appeal No.85622-J of 2023

Ahmad Bilal	versus	The State etc.
Date of hearing		**27.11.2025**
Appellant by		M/S Malik Muhammad Irfan, Syed Suleman Shah, Sajjad Bhutta and Rana Waqas, Advocates.
The State by		Ms. Samra Irshad, ADPP
Complainant by		Syed Muhammad Murtaza Malih Shah, Advocate.

=======

Asjad Javaid Ghural- J. Through the afore-titled criminal appeal, appellant Ahmad Bilal has challenged the vires of judgment dated 30.11.2023 passed by the Additional Sessions Judge/Juvenile Court, Khushab in case FIR No.200/2023, dated 13.03.2023, in respect of an offence U/S 302 PPC registered at P/S City Jauharabad, District Khushab whereby he was convicted and sentenced as under:-

Under Section 302(b) PPC

Imprisonment for life as Ta'zir and to pay the compensation amounting to Rs.2,00,000/- to the legal heirs of deceased Aman under Section 544-A Cr.P.C. and in default thereof, to further undergo SI for six months.

Benefit of section 382-B Cr.P.C. was extended to the convict.

2. The prosecution story unfolded in the crime report (Ex.PH) registered on the complaint of complainant Muhammad Suleman (PW-1) was that on 13.03.2023 at about 10.30 a.m. he alongwith his son Muhammad Aman, aged about 16/17 years (deceased), Atta Muhammad (PW-2) and Muhammad Hanif (given up PW) were present in front of the shop of Rab Nawaz blacksmith, when all of sudden, appellant Muhammad Bilal, armed with pistol came there and raised *Lalkara* to teach him lesson for disgracing him and made successive fire shots on the front side of chest of his son, who fell down on the ground. Appellant while brandishing ammunition skipped

from the spot. They shifted the injured on rickshaw to Jauhar Abad, Hospital where he breathed his last. Motive behind the occurrence was altercation took place between the deceased and appellant two days prior to the occurrence, which the deceased brought into the notice of father of the appellant. Appellant committed the occurrence on the abetment of his father Muhammad Habib.

3. Appellant was arrested on 21.03.2023, who during the course of investigation led to the recovery of pistol (P-6). During investigation, he was found fully involved in the occurrence, as such he got prepared report U/S 173 Cr.P.C. and submitted in the Trial Court.

4. Appellant was formally charge sheeted to which he pleaded not guilty and claimed trial. Prosecution has examined as many as eleven witnesses besides the reports of Punjab Forensic Science Agency, Lahore (Ex.PP & Ex.PQ). Appellant in his statement recorded U/S 342 Cr.P.C. denied all allegations of facts levelled against him. He opted not to appear as his own witness as required U/S 340(2) Cr.P.C., however, produced his bail order (Ex.DB) and record of shifting of dead body of deceased by rescue 1122 (Ex.DC) in his defence.

5. After conclusion of the trial, the Trial Court convicted and sentenced the appellant as stated above. Hence, this appeal.

6. I have heard learned counsel for the appellant, learned Law Officer appearing for the State assisted by learned counsel for the complainant and perused the record with their able assistance.

7. This unfortunate incident took place on 13.03.2023 at about 10:30 a.m. and the formal FIR (Ex.PH) was chalked out on the same day at 12.05 p.m. i.e. within one hour and thirty five minutes. This promptness in lodging the crime report not only confirms the presence of eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case. Reliance is placed on case reported as ***Noor Sultan and others ..Vs.. The State*** **(2021 SCMR 176)**, wherein it has been laid down as under: -

> "The instant occurrence has taken place on 6.15 p.m. while the matter was reported to the police within 2.15 hours whereas inter-se distance between the place of occurrence and police station is 16 kilometers. Promptness in

> reporting the matter to the police reflect that there is no chance of consultation or deliberation at the part of the prosecution."

Similarly, in case reported as ***Shaheen Ijaz alias Babu ..Vs.. The State*** **(2021 SCMR 500)**, it has been laid down as under: -

> "…. petitioner's nomination in a broad day light incident by resident witnesses hardly admits a space to entertain any hypothesis of mistaken identity or substitution. Prompt recourse to law straight at the police station excludes every possibility of deliberation or consultation."

In case reported as ***Muhammad Waris ..Vs.. The State*** **(2008 SCMR 784)** it has been laid down as under: -

> "The names of the said two eyewitnesses could not have been mentioned in such a promptly lodged F.I.R. if they had not been with the deceased persons at the time of their death."

8. In order to prove ocular account, Muhammad Suleman (PW-1)/complainant/ father and Atta Muhammad (PW-2)/eye-witness, by appearing in the dock in the court room unanimously deposed that on the fateful day at about 10.30 a.m. they alongwith Muhammad Aman (deceased) were present in front of the shop of Rab Nawaz, when all of sudden appellant while armed with pistol came there, raised *Lalkara* and made two fire shots on the right side of chest of deceased, due to which he fell down. They shifted the deceased to the hospital on a rickshaw but he succumbed to the injuries at the spot. Both the witnesses were subjected to cross-examination but they remained firm and consistent on all material aspects of the case qua the date, time, place, mode and manner of the occurrence, name of the appellant with his specific role and the weapon of offence used in the occurrence and the defence could not shatter their credibility on material points.

Learned counsel for the appellant strenuously argued that on the fateful day, there was marriage ceremony of son of Atta Muhammad (PW-2), therefore his presence at the venue of occurrence at the relevant time was improbable. This submission is repelled for the reason that the unfortunate incident has taken place in the morning at 10.30 a.m. This witness by appearing in the witness box during cross-examination deposed that his residence was situated just 750 meters away from the place of occurrence

and marriage ceremony of his son was to be held at Grand Castle Marriage Hall. It is a matter of common observance that where the marriage functions were being held at marriage halls, generally the participants including the hosts went to such halls at noon time. Event of marriage in the house of the acclaimed eye-witness does not mean that he could not come to the place which was situated at few paces away from his house. It is well known that host of a marriage ceremony frequently goes in and out of the house for one purpose or the other, therefore, presence of such person in the Bazar at the relevant time cannot be seen with doubt. Even otherwise, this witness was questioned at length in this regard but nothing favourable to the defence could be elicited from his mouth. Moreso, it was a day light occurrence took place in the Bazar, which cannot be said to be an unseen or unwitnessed occurrence.

Learned defence counsel while referring to report of Rescue 1122 (Ex.DC) laid much emphasis that according to said report, the deceased while in injured condition was shifted to hospital by the Rescue 1122, which belies the claim of eye-witnesses for shifting the deceased to the hospital in rickshaw. This piece of evidence does not advance any purpose to the defence for the simple reason that the said report does not disclose from where rescue 1122 shifted the deceased while in injured condition to the hospital. Khalid ur Rehman, Inspector, (PW-9)/Investigating Officer during cross-examination deposed that initially the injured was boarded on rickshaw but on the way to the hospital he was shifted to the vehicle of rescue 1122. If that was not the case, it was very easy for the defence to get examine the relevant person of rescue 1122 to confirm that the injured was picked from the place of occurrence but no such effort was made in the absence whereof no benefit can be extended to the appellant on the basis of such report. It is understandable that a father of deceased to whom bullet hit cannot be expected to wait till the arrival of vehicle of rescue 1122. His first and foremost wish would be to save the life of his son and for that purpose if he boarded him on rickshaw but on the way vehicle of rescue 1122 met him upon which the deceased while in injured condition was shifted, it was not incumbent upon him to disclose such fact in the crime report and this

omission cannot belied presence of eye-witnesses at the venue of occurrence at the relevant time.

9. Dr. Khurram Shahzad, (PW-3) held autopsy on the dead body of deceased Yasir Ali on 13.013.2023 at 12.15 p.m. and observed three fire arm injuries including an exit wound on his person. According to his opinion duration between injuries and death was within five to ten minutes, whereas, death and post mortem examination about one and half hour.

Learned counsel for the appellant laid much emphasis that in the crime report, the complainant (PW-1) alleged that the appellant made successive fire shots upon the deceased but the Medical Officer observed only two entry wounds, as such medical evidence lends no support to the ocular account. I am not in agreement with this submission. The term "successive fire shots" rules out the possibility of single fire shot and clearly suggests more than one. It may reasonably be understood to mean two fire shots. In fact, the complainant used a phrasal expression rather than a precise, figurative description, therefore, on that account it cannot be said that medical evidence contradicts ocular account. The post mortem examination was held within ten minutes of lodging of the crime report. The locale, nature and duration of injuries and weapon of offence used for causing these injuries is exactly in line with the ocular account and as such the medical evidence lends full support to the ocular account.

10. Appellant was arrested on 21.03.2023 and during investigation he led to the recovery of pistol 30-bore (P-6), which was taken into possession vide recovery memo (Ex.PN) and sent to the office of Punjab Forensic Science Agency, Lahore for comparison with the already secured crime empty and the report of said office (Ex.PP), the crime empty secured from the spot has been identified to be fired from the pistol got recovered by the appellant, as such recovery also lends support to the ocular account.

11. Motive behind the occurrence, as set out in the crime report was that two days prior to occurrence hot words were exchanged between the appellant and deceased and the deceased complained about it to the father of the appellant, however, no independent witness of such altercation was examined by the prosecution in order to establish motive part of the occurrence. Even otherwise, mere hot words cannot be a basis of such

gruesome incident. What happened at the spot remained shrouded in mystery.

12. On being unsuccessful in creating any dent in the prosecution evidence, the learned counsel for the appellant as a last resort, while referring to Section 15 (c) of the Juvenile Justice System Act, 2018 (JJSA), submitted that at the time of occurrence the appellant was less than sixteen years of age, therefore, he may be released on probation. This submission was strongly opposed by learned counsel for the complainant primarily on the ground that no such request had been made before the trial court; that the appellant has already undergone more than two years of sentence after pronouncement of judgment by the Trial Court and likely to attain the age of eighteen years in the near future, as such no benefit can be extended to him in the light of cited provision of law.

13. I have given anxious consideration to the respective submissions. Before proceeding further it is appropriate to go through sub section (c) of Section 15 of JJSA, which for ease of reference is reproduced as under:-

> "**15. Powers of Juvenile Court to order for release.**—On receipt of report under section 14 and on conclusion of an inquiry, investigation or trial, the Juvenile Court may, keeping in view the best interest of the child—
>
> (a)------
>
> (b)-------
>
> (c) direct the juvenile offender to be released on probation for good conduct and place such juvenile offender under care of a guardian or any suitable person or such Juvenile Rehabilitation Centre established or certified for the purposes of this Act for any period not exceed the period of confinement awarded to such juvenile;
>
> (d)------
>
> (e)------ (underlining is mine)"

Bare perusal of the above provisions makes it manifestly clear that the same would come into play only upon submission of report by the Probation Officer at the time of conclusion of inquiry, investigation or trial. Neither any such report was sought or placed on record at the relevant stage, nor request was made before the Trial Court to invoke said mechanism. The

appellant has served more than two years of his substantive sentence after conclusion of the trial, therefore, at this stage, when he is likely to attain the age of eighteen years in the near future benefit contemplated under Section 15 of the Act ibid cannot be extended to him.

14. Even otherwise, in the Act ibid no prohibition was laid down that an offender of less than sixteen years of age cannot be committed to prison, as has been done under Section 16 of the Act ibid where clear prohibition has been laid down that neither death penalty can be awarded to juvenile offender nor he can be ordered to labour etc. and only a discretion has bestowed upon the Juvenile Court to release juvenile offender on probation in appropriate cases. To my mind such discretion is not unfettered and cannot be exercised in cases of heinous offences, such as intentional murder or rape etc. Extending probation in such matters may lead to serious misuse of the law, as adult offenders could exploit minors to execute their nefarious design and thereafter seek shelter under the protective provisions meant for genuine rehabilitation. The beneficent intent of juvenile legislation, therefore, cannot be stretched to the extent of undermining public safety or allowing the criminal justice system to be manipulated. Here in the instant case, appellant while armed with fire arm, reached at the spot, made two fire shots on the most vital parts i.e. chest i.e. chest of victim, who was also 16/17 years old and then decamped from the spot. Therefore, keeping in view, the mode and manner adopted by the appellant in committing the murder of the deceased, its heinousness and the need of deterrence, no benefit of cited provision can be extended to him.

15. Gathering all these facts and circumstances of the case, I am of the considered view that the prosecution has successfully proved the charge against the appellant by producing cogent, reliable and confidence inspiring evidence. The matter was reported to the police promptly which not only established the presence of witnesses of ocular account but also rules out every possibility of fabrication and consultation. Medical evidence lends full support to the ocular account. It was a day light occurrence took place in the street. Parties were previously known to each other as such question of mistaken identification does not arise. There was no previous enmity between the parties as such it seems highly improbable that the complainant

would falsely involve the appellant in the occurrence while letting off real culprits. Even otherwise, substitution of real culprit where the eye-witnesses lost their close kith and kin is a rare phenomenon. Reliance is placed on case reported as *"Altaf Hussain .V. The State (2025 SCMR 1427)"* wherein it has been laid down as under:-

> "The principle that substitution of the actual perpetrator in place of innocent individual particularly where close relatives are killed in the presence of family members is an improbable proposition and finds consistent affirmation in the jurisprudence of this Court."

Resultantly, instant appeal being devoid of any force stands **dismissed.**

(Asjad Javaid Ghural)
Judge

Approved for Reporting

JUDGE

Azam *