

JUDGMENT

ATHAR MINALLAH, C.J.---Through this judgment we will answer Murder Reference No.11 of 2011 and decide Jail Appeal No.29 of 2011, since both stem from the judgment dated 10-03-2011, rendered by the learned Additional Sessions Judge, Islamabad, whereby Muhammad Miskeen son of Sher Zaman (hereinafter referred to as the "Appellant") has been convicted and sentenced in the following terms:-

"(a) Under section 302(b), P.P.C. for commission of qatl -i-amd of Mst. Zahida Parveen and Munir Mughal and he is sentenced to death on two counts for the murder of each deceased. He shall be hanged by neck till his death. He is also liable to pay Rs.1,00,000/- as compensation under section 544-A, Cr.P.C., to the legal heirs of each deceased which shall be recovered as arrears of land revenue and in default of payment he shall further undergo for six (6) months' S.I. each.

(b) Accused Muhammad Miskeen is also convicted under section 324, P.P.C. for inflicting fire arm injuries on the person of Muhammad Ramzan PW-6 in such circumstances that if he had died, the accused would be guilty of his qatl-i- amd and I sentence him 10 years' R.I. with fine of Rs.50,000/- and in default of payment of amount of fine, he shall further suffer three months' S.I.

(c) Accused Muhammad Miskeen is further convicted under section 337-F(iii), P.P.C. for inflicting injury "Ghair Jaifah Mutalahimahr", on the person of Muhammad Ramzan PW-6, as Ta'zir with further direction that the convict will pay Rs.20,000/- as Daman to the victim."

It is noted that the co-accused namely, Sher Zaman son of Feroz Khan was acquitted.

2. The facts, in brief, are that pursuant to facts narrated by Imran Munir Mughal son of Muhammad Munir Mughal (hereinafter referred to as the "Complainant") (PW-5), a written complaint (Ex-PH) was sent to Police Station, Bhara Kahu and consequently FIR No.27, dated 02.03.2007 was registered (hereinafter referred to as the "FIR") (Ex.CW-5/1). The Complainant and the Appellant lived on the same street and so did the latter's father in law. The former, upon hearing loud voices and shots fired from a firearm weapon, went out on the street along with his father, namely, Muhammad Munir Mughal (hereinafter referred to as the "Deceased No.1"). The Complainant asserted that he saw Haji Muhammad Ramzan and Shahid Iqbal, father in law and brother in law, respectively, of the Appellant, lying on the ground in an injured state. The injuries were attributed to the Appellant with a firearm weapon described as a 30 bore pistol. In the meanwhile, another neighbor, i.e. Arsian Arshad, also came to the crime scene with his mother, namely, Zahida Parveen, widow of Muhammad Rasheed (hereinafter referred to as the "Deceased No.2"). Other neighbours also reached the crime scene upon hearing the loud noise. The Complainant, his father and others were warned by the Appellant when they tried to put the injured in a vehicle and he also tried to fire with the firearm weapon but it did not function. The Appellant, while standing on the stairs of his house, threatened to harm anyone who tried to rescue the injured. The Complainant's father asked him to return to his house and while returning he looked back and saw that the Appellant was hitting Deceased No.2 on the head with a hatchet as a result of which she fell on the ground. The Complainant's father i.e. Deceased No.1, tried to rescue Deceased No.2 but he was also attacked by the Appellant. The Deceased No.1 was hit by the Appellant on his head and face with the hatchet and he too fell on the ground. The Appellant had a strained relationship with his wife and in-laws, which was the cause of the occurrence on 02-03-2007. Deceased No.2, who was in a critical condition, was rushed to the Polyclinic Hospital, Islamabad. Shaukat Ali S.I. reached the Polyclinic Hospital. Because of the condition of Deceased No.2, she was referred to the Pakistan Institute of Medical Sciences (hereinafter referred to as the 'Hospital'). However, the latter succumbed to her injuries at the Hospital. In the meanwhile the body of Deceased no. 1 also was taken to the Hospital. Shaukat Ali Si (PW-4) filed applications for a postmortem examination of both the deceased. Muhammad Ahmed, S.I. (CW-6) on receiving information had visited the crime scene and he was the one who had sent the body of Deceased No.1 to the Hospital. He took into possession the hatchet/axe (Exh.P-1) vide recovery memo (Exh.P-L). Blood stained earth, blood stained cotton wool and two firearm empties were also

taken into possession vide recovery memos i.e. Exh.P-J, Exh.P-K and Exh.P-L respectively. The Inquest Report relating to Deceased No.1 was prepared. The statement of the Complainant was reduced to writing and sent to the Police Station for registration of the FIR. A rough site plan (Exh.CW-6/A) was prepared. The Inquest Report of Deceased No.2 (Exh.CW-6/B) was also prepared. Dr. Waseem Khawaja, MLO (PW-8) handed over two separate autopsy reports, which were taken into possession vide recovery memos i.e. Exh.P-C and Exh.P-T respectively. The Appellant was arrested on the date of occurrence and the latter led the Investigating Officer to the recovery of the crime weapon i.e. the 30 bore pistol (Exh.C-3/1). The said weapon, along with two live and one misfired bullets, were taken into possession vide recovery memo (Exh.C-3/A). The Medico-Legal Certificate of Haji Ramzan and Shahid Iqbal i.e. Exh.P-B and CW-6/E, respectively, were taken into possession on 08-03-2007. On 12-03-2007, the Investigating Officer took into possession the site plan prepared by the Draftsman (Exh.PD and Exh.P-D/1). The Chemical Examiner for Punjab, Lahore, vide report dated 12-03-2007 (Exh.PW), confirmed that the blood stained cotton wool, blood stained earth and blood stained hatchet/axe were stained with blood. On 08-05-2008, the learned trial Court framed charges to which both the accused did not plead guilty. An amended charge was framed on 04-03-2011 against the Appellant and his father, namely, Haji Sher Zaman son of Feroz Khan to which again they did not plead guilty. The prosecution produced seven witnesses while six entered the witness box as Court witnesses. The Appellant and Haji Sher Zaman, son of Feroz Khan, preferred not to be examined under oath and, therefore, their respective statements were recorded under section 342 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the 'Cr.P.C.'). After hearing the parties and perusing the record the learned trial Court convicted and sentenced the Appellant in the above terms vide judgment, dated 10-03-2011. However, Haji Sher Zaman son of Feroz Khan was acquitted. The said acquittal has not been challenged.

3. The learned Counsel for the Appellant has been heard at great length. He has argued that; prosecution could not prove its case beyond a reasonable doubt; the learned Counsel stressed that it was not a case warranting handing down the maximum sentence; in this regard he has argued that the prosecution could not prove motive against the Appellant because, admittedly, the dispute was between the latter and his in-laws and there was no reason for killing the two deceased; the witnesses also did not attribute any motive for killing both the deceased; the Appellant had acted under the influence of his father and, therefore, in the facts and circumstances of the case death sentence was not warranted; reliance has been placed on the cases of 'Muhammad Rafique and other v. The State and others' [2010 SCMR 385], 'Riaz Ahmed v. The State' [2010 SCMR 846], 'Ahmed v. the State' [2015 SCMR 993], 'Naveed alias Needu and others v. The State' [2014 SCMR 1464], 'Muhammad Mumtaz and another v. The State and another' [2012 SCMR 267], 'Iftikhar Mehmood and another v. Qaiser Iftikhar and others' [2011 SCMR 1165], 'Muhammad Ikram and another v. The State' [2011 SCMR 1133], 'Abld Hussain v. The State' [PLD 1994 SC 641], 'Vali Muhammad v. Bajoo and others' [1978 SCMR 257], 'Muhammad Ilyas and others v. The State' [2011 SCMR 460], 'Mazhar Abbas alia Baddi v. The State' [2017 SCMR 1884], 'Ijaz Ahmad v. The State' [2017 SCMR 1941], 'Ali Bux and others v. The State' [2018 SCMR 354], 'Aslam Pervaiz and another v. The State and others' [1989 SCMR 389], 'Haq Nawaz v. The State' [2018 SCMR 21].

4. The learned Counsel for the Complainant, on the other hand, has argued that; the age of the Appellant was more than 50 years old and, therefore, his acts were deliberate; the Appellant had acted with full responsibility; he was mature enough not to be influenced by his father; reliance has been placed on the case of 'Malik Muhammad Mumtaz Qadri v. The State' [PLD 2016 SC 17], 'Mansha v. The State' [1986 SCMR 543]; the Court is not bound to award lesser punishment even if the offence has been committed under influence; reliance has been placed on the case of 'Asad Mahmood v. Akhlaq Ahmed and another' [2010 SCMR 868]; the appellant was not of tender age and, therefore, he does not deserve a lesser sentence; reliance has been placed on the cases of 'Mehmood Rashid and others v. The State' [2003 SCMR 581], 'Ahmed Nawaz v. The State' [2009 SCMR 399].

5. The learned State counsel has adopted the arguments advanced by the learned counsel for the Complainant and has stated that the prosecution had established its case beyond reasonable doubt.

6. The learned counsel for the parties and the learned State counsel have been heard and the record perused with their able assistance.

7. The presence of the Appellant at the crime scene at the time of occurrence is not disputed. It is also not disputed that the Appellant had a strained relationship with his in-laws who were living in the same neighborhood. Both the deceased were also living in the proximity of the house of the Appellant. Indeed, the Appellant and his in laws were fighting in the street and the loud voices had led the Complainant and both the deceased to come to the crime scene. The evidence brought on record establishes beyond doubt that the Appellant was in a rage and was not allowing anyone to rescue the injured who were lying on the ground. The deceased were helping the injured to be put in the vehicle so that they could be rushed for medical treatment. This had provoked the Appellant to attack both the deceased. He first attempted to shoot them with a fire arm weapon and, when that misfired, he took the hatchet from his father and caused severe injuries to both the accused. The ocular evidence is unimpeachable, credible and trustworthy. It is corroborated by medical evidence and other testimonies and evidence brought on record by the prosecution. It was probably for this reason that the emphasis of the learned Counsel for the Appellant was to persuade us to reduce the sentence. We have carefully perused the record and we are satisfied that the prosecution had indeed succeeded in proving its case beyond a reasonable doubt. It is an admitted position that at the time of commission of the offence the appellant was not of tender age. He was more than 50 years old and there is nothing on record to indicate that he suffered from any mental disability. The evidence brought on record unambiguously indicates that the Appellant had acted with full responsibility and without caring for the consequences by brutally attacking two innocent neighbors who were trying to help the injured. The prosecution, through unimpeachable, credible and trustworthy evidence, had established that the Appellant had taken the lives of two innocent persons in broad day light and that too in the sight of several other inhabitants of the locality. The learned counsel for the Appellant, despite his able assistance, was not able to persuade us regarding the existence of any mitigating circumstance in order to reduce the sentence awarded by the learned trial Court.

8. It is settled law that no Court could decide a question of law on the basis of fact which itself was not proved or established in terms of the legal requirements. Moreover, ground for mitigation of sentence could not be pressed into service on the basis of something which had never been proved. Reliance is placed on the case of 'Malik Muhammad Mumtaz Qadri v. The State' [PLD 2016 SC 17]. An accused of mature age and understanding for that reason cannot be regarded to have acted on instigation because the principle of influence of elders is confined only to offenders of impressionable ages and that too living under influence of elders. Reliance is placed on the cases of 'Mansha v. The State' [1986 SCMR 543], 'Sher Hassan v. The State' [PLD 1959 SC 480], 'Aurangzeb v. The State' [1978 SCMR 255]. The august Supreme Court in the case of 'Muhammad Ilyas v. Muhammad Sufian and another' [PLD 2001 SC 465] has held that no blanket authority for commission of brutal, gruesome and wanton murder could be granted to grown up and elderly persons under the garb of influence of elders including the father. Reliance is placed on the case of 'Sakhawat v. The State' [2001 SCMR 244]. In view of the discussed precedent law and the facts and circumstances of the instant case, no case is made out for reducing the sentence handed down by the learned trial Court.

9. For what has been discussed above, we answer the Murder Reference No. 11/2011 in the affirmative and consequently dismiss Jail Appeal No. 29/2011.

Disclaimer: The content available on this document are just for Information. Users are advised not to depend on the information and use it for official purpose. Islamabad High Court, Islamabad is not responsible for any damages arising in contract from the use of the content of this site.