

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Cri.A. 371 2008.

Titled Abdul Shakoor Vs The State.

(a) Judgment approved for reporting

☒ Yes / ~~No~~

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

~~Yes / No~~

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Initial ~~of~~ the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

1) **Murder Reference No. 52 of 2008,**
The State Versus Abdul Shakoor:

2) **Crl. Appeal No. 371 of 2008,**
Abdul Shakoor Versus The State:

DATE OF HEARING:	<u>7th February, 2012:</u>
APPELLANT BY:	Mr. Muhammad Ilyas Siddiqui, ASC.
COMPLAINANT BY:	Ch. Abdul Aziz Advocate.
STATE BY:	Mr. Rehan-ud-Din Golra, Standing Counsel.

MUHAMMAD ANWAR KHAN KASL, J.

Through this single judgment, we intend to dispose of captioned murder reference and the appeal, which have arisen out of the same Judgment dated 21-08-2008, passed by learned Sessions Judge, Islamabad, whereby appellant Abdul Shakoor was convicted under section 302 (b) PPC and sentenced to death with further direction to pay compensation of Rs. 3,00,000/- to the legal heirs of the deceased. In default of payment, the appellant had to undergo Six Months SI.

2- Reference No. 52 of 2008 was also sent under section 374 Cr. PC for confirmation of death sentence of the appellant.

3. The law in this case was set in motion on 14.12.2000 when Sarwar Muhammad PW-12/brother of deceased Muhammad Mushtaq, at about 04:55 p.m, made statement before Shabbir



Ahmed Anjum ASI/PW-15, who on receipt of information of the present incident had reached the scene of crime i.e. Old Barri Imam Road, Village Saidpur along with other officials including Muhammad Hayat, Naveed Hussain, Bakhtiar Ahmed, Muhammad Akram and Saif-ur-Rehman. The statement of the complainant was reduced into writing by the ASI, which is **Exh. PH**, the contents of which run as under:-

"I am a watchman at Telephone Exchange situated in Sector G-5 near Marriott Islamabad. Today i.e. 14.12.2000 at about 4:00 p.m, I was coming from the side of my house and reached near Barrack No.4, Margalla Road, Katcha passage, it was about 4:15 p.m, when I heard report of firing from the right side of the road and found Suzuki Pickup No. LNH-1908 of my brother Muhammad Mushtaq parked there while on its driver side, Shakoor resident of Mauza Noor who is son in law of Sufi Saeed was frantically firing with 30 bore pistol on my brother.

In the meanwhile, on my hue and cry, a Suzuki pickup bearing No. RIJ-2874 being driven by Abdul Ghafoor s/o Muhammad Ali emerged in which Muhammad Nazir son of Qadir Bukhsh was also sitting, who both witnessed the occurrence and while de-boarding the vehicle, also raised noise upon which Shakoor fled away from the scene.

I, Ghafoor and Nazir went near the vehicle and observed fire-arm injuries on the forehead and face of my brother Muhammad

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Mushtaq, who had died. In the meanwhile, large number of villagers also emerged there.

The motive for the occurrence is that a week ago, Shakoor hurled abuses to Shaukat Mehmood, resident of village, a fruit vendor, at his stall over a dispute of prices of fruit and also took out Churri which was snatched by my brother Muhammad Mushtaq who along with others was present there. Due to this reason, Shakoor extended threats to give taste to my brother. Three days after this incident, said Shakoor intercepted my brother near F-6/3 Inquiry where a scuffle also took place but the matter patched up due to intervention of the people present over there and while leaving said Shakoor again extended threats to my brother and today Shakoor finding an opportunity, has done my brother to death by firing."

4. On the basis of above complaint (Exh-PH), formal FIR (Exh-PH/1) was recorded and after completing all codal formalities, report u/s 173 Cr.PC was submitted against the accused (appellant herein) to face the trial.

5. In support of its case, the prosecution got examined 16 witnesses in all besides tendering report of Chemical Examiner (Exh-PP) and that of Serologist (Exh-PR).

6. Raja Saleem Akhtar, DSP was also examined as CW-1 and thereafter statement of accused was recorded u/s 342 Cr.PC, wherein he denied the prosecution evidence and has taken the plea that it was a blind murder. He was made a



scapegoat. The PWs against him are false and under the pressure of police because the police wanted to get rid of blind murder and show its fake efficiency. It was his stance that on the day of occurrence, he was on Tabligh and that he has also been declared innocent by the DSP CIA, Islamabad Police. In documentary evidence, he tendered certified copies of duty chart of security guards working at PTCL F-5/1 Islamabad showing the duty hours of complainant Muhammad Sarwar.

7. The learned Trial Court, after giving audience to both the sides, convicted & sentenced the appellant as mentioned above which necessitated the filing of instant appeal.

8. The arguments advanced by the learned counsel for the appellant are condensed to the following points:-

i. *That the learned Trial Court erred in convicting and awarding death sentence to the appellant on discrepant, insufficient and wholly unreliable evidence of the interest and inimical chance witnesses;*

ii. *That the learned Trial Court has based his findings on conjectures and surmises instead of looking for independent corroboration for the evidence of so called eye-witnesses.*

iii. *That the evidence of independent and responsible police officer who appeared*

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as CW-1 was disbelieved without assigning any cogent reason.

- iv. That the medical evidence which had knocked the prosecution story out of its bottom was lightly brushed aside.*
- v. That the alleged motive concocted 25 days after the occurrence was ridiculous.*
- vi. That there was no recovery of any weapon of offence to support the tainted prosecution evidence.*
- vii. That the learned Trial Court in short failed to gauge the natural probabilities surrounding the prosecution story. Neither could he resolve the inherent doubts of the case in favour of the appellant.*
- viii. That the appellant was neither properly charged nor was he adequately examined.*
- ix. That the conviction is not sustainable in law and on the facts of the case.*
- x. That the sentence is uncalled for, which is otherwise too harsh.*

9. Conversely, learned counsel for the complainant has vigorously repelled the arguments by maintaining that the prosecution has successfully proved its case against the appellant beyond any iota of doubt and the conviction and sentence inflicted upon him through the impugned judgment does not call for any interference. According to him, both the eyewitnesses have successfully stood the test of

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cross-examination and there is nothing on record through which it could be ascertained that the appellant is innocent and has falsely been roped in this case. The testimony of the two eyewitnesses coupled with the evidence of motive, recoveries and that of medical fully proved the factum of murder of deceased Mushtaq at the hands of appellant in the mode and manner as mentioned in complaint **Exh. PH**. Learned counsel further contends that there arises no question of substitution as it is a promptly lodged FIR in which the appellant, who was a sole accused, had specifically been mentioned. The presence of PW-12 complainant and the other PW-13 Muhammad Nazir, at the relevant time at the place of occurrence is quite natural so they cannot be termed as chance witnesses. Their relationship with the deceased can alone not be made basis for discarding there testimony. It has also been contended that ipsi dixit on the part of police is not binding upon the courts, who have to form their independent opinion after taking into consideration all aspects of the case including the prosecution evidence, the version of the accused, and the other pieces of evidence. In the end, it has been prayed that appeal merits dismissal. In support of his contentions, the learned counsel relied upon case laws cited as 2008 SCMR 1049, 2006 SCMR 456, 2001 P Cr.LJ 9, 1999 SCMR 2389, 2002 SCMR 350, 2000 SCJ 50, PLD 2008 Supreme Court 416, 2008 SCMR 1106, 2008 P Cr.LJ 881 and 2002 SCMR 1578.



10. We have heard at length the arguments of learned counsel for the parties. We have also perused the record in minute details with their assistance.

11. For proper adjudication it is very much essential to scan the prosecution evidence, first.

12. PW-1 Naveed Hussain Constable deposited two sealed parcels containing led bullet and seat cover in the offices of Chemical Examiner and FSL Lahore on 23-12-2000 which he received from Moharrar on 22-12-2000.

PW-2 Muhammad Hussain ASI, on 31-1-2001, witnessed the pointation of place of occurrence by the appellant Shakoor and as such is an attesting witness of pointation memo Ex. PA.

PW-3 Ibrar Hussain ASI partly investigated this case. On 5-1-2001 investigation was entrusted to him, on 9-1-2001 he recorded statements of four PWs and on 20-1-2001, arrested the appellant after dismissal of his bail on the basis of withdrawal. On 21-1-2001, he produced the appellant in the court of Ilaqa Magistrate and on 25-1-2001, he handed over the file to SHO on his transfer. In cross-examination, he admitted that first version of the accused was regarding his innocence.

PW-4 Muhammad Ashraf, on 14-12-2000 identified the dead body of deceased Muhammad Mushtaq at the time of PM examination.

PW-5 Abdul Khaliq on 14-12-2000 witnessed the recovery of Suzuki Pick Up vide

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memo Ex. PB which was taken into possession on 14-12-2000 and according to him, at that time, it was stationed at a distance of half Kilometre from village Said Pur towards west. According to this witness, the dead body of Mushtaq deceased was lying in the said pick up. Said pick up had bullets marks on its body. The left side glass of gate of the Suzuki was found broken. In cross examination he denied to witness any spent bullet lying at the spot. According to him, police remained at the spot for about half hour or 45 minutes.

PW.6 Ghulam Fareed and PW.7 Shaukat Mehmood deposed to prove the motive setup by the prosecution.

PW.8 Muhammad Hayat got conducted PM examination of the deceased and also attested memo Ex.PC through which IO took into possession blood stained clothes of the deceased (Shalwar P-1, Qameez-P2 and Sweater-P3 with half sleeves and sluka P-4).

PW.9 Muhammad Akram draftsman, prepared site plan of the place of occurrence in duplicate which are Exh.PD and Exh.PD/1.

PW.10 Ghulam Rasool Moharrar, on 14.12.2000 kept two sealed parcels of this case in malkhana and on 22.12.2000 transmitted the same to the office of chemical examiner and FSL Lahore.

PW.11 Mukhtar Ahmed Constable, on 14.12.2000 took the complaint to the police station for the registration of formal FIR.

PW.12 Sarwar Muhammad is the complainant as well as eye witness of the case. He deposed to prove the ocular account and the motive setup in complaint Exh.PA. According to him, Abdul Shakoor was firing at the deceased from a distance of 4 to 5 feet. At the time of firing by the accused, they the PWs, were facing each other and could see each other. Abdul Shakoor fired 4 to 5 successive shots thereafter they did not fire. He admitted that magazine of the pistol was de-loaded. None of them tried to catch hold of the accused, as he was armed with pistol.

PW-13 Muhammad Nazir is also an eye witness. He admitted that he is husband of sister of the deceased. He heard 3 or 5 fire reports when they reached the spot, the accused stopped firing.

PW.14 Dr. Muhammad Arshad Khan, on 14.12.2000 conducted PM examination on the dead body of Muhammad Mushtaq deceased and observed following injuries;

- i. *There were three wounds of entry on the middle of the forehead (between the eye brows) and on the base of nasal bridge, surrounded by tattooing, mostly on the right cheek and the nose. The wound of entry at the base of middle bridge was oblong in shape measuring 1.5 CM x 0.5 cm. There was no burning or blackening around the margins of the wound. The other two wounds of entries on the forehead each measuring 0.9 cm diameter. There was no burning or*

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blackening around the margins of the wound.

- ii. Four wounds of entries circular and in the form of chain, on the right side of the chest front, its upper part. All these were muscle deep each measuring 0.5 c.m. in diameter.*
- iii. A wound of exit on the mid of occiput measuring 3 c.m. x 1 c.m. with the brain matter coming out through the wound.*
- iv. A wound of exit on the right side of lower parietal region, measuring 1.5 c.m. diameter with brain matter, coming out.*
- v. A wound of exit on the left side of mid of occiput measuring 1 c.m x 0.8 c.m.*
- vi. Head was completely deformed. There were multiple fracture of the vertex seen and palpated.*

PW.15 Shabbir Ahmad Anjum ASI, is the Investigating Officer of this case who deposed to prove the details of investigation conducted by him.

PW.16 Abdul Hasnain SI, chalked out formal FIR Exh.PH/1 on the basis of complaint Exh. PH.

Report of chemical examiner and that of Serologist are Exh. PP and Exh. PR respectively.

13. The prosecution case is that the appellant made reckless firing at the deceased while standing at a distance of 4/5 feet when the deceased was sitting in his vehicle. While

appearing in the witness box as PW.12 and 13, both the eye-witnesses elaborated that the assailant (appellant) made 4/5 shots and thereafter he did not fire. So according to them, the appellant made 4/5 shots only while standing at a distance of 4/5 feet from the deceased who was sitting in a vehicle on its driver seat. This statement of both the eye-witnesses is completely in contravention to the fact that five empties of .30 pistol Exh.P5/1-5 were recovered from inside the vehicle. There is no explanation at all as to how the five empties of .30 bore calibre were found present and recovered from inside the vehicle when the firing was made at the deceased who was sitting on driver's seat of the vehicle from a distance of 4/5 feet. PW.13 Nazir in his statement admitted the recoveries of five empties from the vehicle. The empties found inside the vehicle and the seat of the injuries at the body of the deceased, tell some other story which, in our view, the prosecution attempted to suppress. The statement of Investigating Officer PW.15 is very important who stated that *"the impression gathered after the examination of the dead body, was not that he was hit by the assailant from the front side of the victim. The front screen of the vehicle i.e Suzuki was noted carry one fire short"*. According to him, he took out the dead body from the vehicle and put it on a cot whereas according to PW.13, the dead body was taken out from the vehicle by Haji Jan Muhammad and Muhammad Ashraf. According to the IO, he prepared the inquest report, Ex.PM after complete examination of the



site and the dead body but its perusal manifestly show that there is no mention of presence of eye-witnesses. According to the eye-witnesses, a large number of people, may be 50 or more than that, attracted at the scene of crime but the investigation of the case is silent as to whether the statement of any one of them was recorded even to the effect that at the place of occurrence, the dead body was found present in the vehicle. It is also an admitted fact that both the eye-witnesses are closely related with the deceased as PW.12 Muhammad Sarwar is real brother and PW.13 Muhammad Nazir is husband of sister of the deceased. So in presence of above glaring discrepancies, the statements of the eyewitnesses, who are closely related with the deceased, cannot be relied upon.

14. Now we have to see whether the medical evidence is in line with the ocular account. According to the eye-witnesses, who have given direct account of the incident, the appellant fired 4 to 5 successive shots with .30 bore pistol on the deceased while standing on right side of the Suzuki loader. They observed bullet marks on forehead and right side of nose beneath the eye of the deceased, whereas according to Dr. Muhammad Arshad Khan PW.14, there were three wounds of entry on the middle of the forehead (between the eyebrows) and on the base of nasal bridge, surrounding by tattooing mostly on the right cheek and the nose. The wound of entry at the base of middle bridge was oblong in shape measuring 1.5 cm x 0.5 cm. There was no



burning and blackening around the margin of wound. The other two wounds of entries on the forehead each measuring 0.9 cm diameter also had no burning and blackening. According to MO, there were four wounds of entries circular and in the form of chain, on the right side of the chest front; its upper part and the same were muscle deep. So medical evidence indicates that deceased received 8 firearm injuries on his body whereas according to eye-witnesses the assailant made only 4/5 shots and thereafter did not fire. Moreover the MO was of the opinion that tattooing is caused for a wound, more with a 12 bore gun cartridge but also with other rifles, as well. There is no explanation by the MO that the injuries were caused with .30 bore pistol. The MO failed to give the nature of the description of firearm used for the injuries. The receipt of three injuries at the forehead within the two eyebrows having tattooing could not be the result of firing with a semi automatic pistol which requires pulling the trigger for every shot. So it is abundantly clear that the medical evidence does not support the ocular account furnished by the two eye-witnesses.

15. No crime weapon was recovered from the possession of appellant and the motive set up by the prosecution is double edged that could be the reason for false implication of the appellant.

16. With this background, when the ocular account is incompatible with the medical evidence, we deem it proper to evaluate the evidence respecting innocence of the appellant



including the statement of CW.1 Raja Saleem Akhtar DSP.

17. PW.12 Muhammad Sarwar admitted in his statement that they showed no confidence on the IO and got the investigation changed from him and transferred it to Raja Saleem DSP CIA. He admitted that Raja Saleem DSP/CW-1 declared the appellant innocent. The second eyewitness Muhammad Nazir admitted that during investigation, the IO gave them time and the accused also produced 44 persons from Mansehra to prove his plea of alibi. They further admitted that they showed no confidence on each and every IO. They got the investigation transferred to Raja Saleem DSP CIA. PW.15 Shabbir Ahmed Anjum ASI/IO, during the investigation conducted the raid at the house of the appellant in order to cause his arrest and he was informed there from that the accused had gone to "Tableegh". In such state of affairs, we deem it essential to examine the statement of CW-1/DSP, who found the appellant innocent during investigation. According to him, one of the reason on the basis of which he formed his opinion regarding innocence of the accused was that some of the injuries on the forehead of the deceased, in his opinion were caused through a shot gun. The second reason for declaring the accused innocent was his plea of alibi stating that he was in Mansehra on the day of occurrence and the time of occurrence. CW-1 also explained that he had conducted the investigation of this case with utmost honesty, diligence, skilfully, with the

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fear of ALLAH Almighty and to the satisfaction of inner self. He was firm in his opinion which, according to him was formed after going through the entire police file, visiting the spot and examining various aspects of the case. He had thoroughly scanned the report and minutely inspected three injuries sustained by the deceased between two eyebrows. According to his estimation, these three shots were possible if inflicted by a 12 bore shotgun which could leave tattooing marks around the injuries. Same was the case of other four injuries found in the shape of chain on the chest of the deceased. According to his investigation, the occurrence had not taken place in any Suzuki and it was an un-witnessed occurrence.

18. The statement of CW.1, if put in combination with other evidence discussed above, speaks volume and retains weight and cannot be brushed aside especially for the reason that medical evidence did not corroborate the ocular account.

19- In the light of above, it is abundantly clear that the witnesses had not seen the occurrence as the version set forth by the prosecution runs counter to medical evidence qua the seat of injuries on the body of the deceased and no corroboration came from the evidence of recovery and the case as attempted to be established is not free from doubt particularly when falsification of the oral testimony through medical evidence takes the bottom out of the prosecution case.



20. The sentence of conviction on capital charge had to rest wholly on ocular evidence which must be of an unimpeachable character. When evidence was offered by witnesses whose independence was not above board rather they were inimical towards accused, their testimony had to be scrutinized cautiously, in the light of surrounding circumstances of case, before fixing responsibility on accused. With due reverence, reliance in this respect is placed upon case "Muhammad Sharif Versus Zulfiqar and 4 others (PLD 1991 Supreme Court 1090)" and 1984 SCMR 930 "Muhammad Iqbal versus The State".

21- The case of the prosecution, in view of above discussion, is not free from doubt. In the case cited as **Tariq Pervaiz Vs. The State (1995 SCMR 1345)**, it was observed:-

"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances crating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. "

22- Many instances of doubt in a case are not necessary and only one doubt about the involvement of accused is enough for his acquittal, if the same appeals to the mind of a prudent person.

23- Resultantly, this appeal is allowed, conviction and sentence awarded to the appellant

by the learned Sessions Judge, Islamabad, vide Judgment dated 21-08-2008 is set aside and he is acquitted of the case. The appellant shall be set at liberty forthwith if not required in any other case. Murder Reference is answered in the negative.

~~MUHAMMAD ANWAR KHAN KASI~~
JUDGE

~~SHAUKAT AZIZ SIDDIQUI,~~
JUDGE

Announced in Open Court on this 5th day
of March, 2012.

~~JUDGE~~

JUDGE

APPROVED FOR REPORTING

M.Suhail