

Form No: HCJD/C-121
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

CAPITAL SENTENCE REFERENCE NO. 02-T of 2011

The State

Versus

Muhammad Siddique and another

Appellant by : Syed Javed Akbar Shah, Advocate.

State by : Malik Awais Haider, State Counsel.
Mr. Arshad Ali, Inspector and
Muhammad Manzoor, S.I, P.S
Golra Sharif, District Islamabad.

Date of Hearing : 14-03-2019.

ATHAR MINALLAH, CJ.- Through this consolidated judgment we will answer Reference No. 2-T of 2011 and decide Criminal Appeal No. 77 of 2011 titled "*Muhammad Siddique and another v. The State*" preferred by Muhammad Siddique son of Noor Muhammad (hereinafter referred to as "**Appellant no.1**") and Muhammad Safeer son of Muhammad Siddique (hereinafter referred to as "**Appellant no.2**"), against convictions and sentences handed down by the learned Judge Anti Terrorism Court-1, Rawalpindi vide

judgment, dated 30.06.2011. Both the appellants were convicted and sentenced in the terms which are mentioned in paragraph 10 (ten) of the impugned judgment.

2. The facts, in brief, are that the occurrence took place on 17-06-2010 on the occasion of 'Urs' (annual congregation at the shrine of a religiously revered personality) arranged by the administrators of the shrine of 'Peer Baba Fazal Din' situated in Golra, Islamabad. The administrators of the shrine had not informed the local Police Station nor had they sought the permission of the competent authority. One of the processions had originated from village Bhaika Syedan, District Islamabad. When the procession reached near the shrine, the participants resorted to aerial firing with fire arm weapons. The Incharge of Police Station Golra, Islamabad, namely Mehboob Ahmed, Inspector, PW-11, on receiving information sent Asif Khan, ASI, PW 8, along with other police officials. The latter informed the former that the persons leading the procession, namely Peer Abdul Hanan, Allah Ditta, Haji Ayub, Malik Bashir, Peer Jalal ud Din etc had threatened him and other police officials and indiscriminate aerial firing continued unabated. These persons were mentioned in the FIR. Mehboob Ahmed, Inspector, PW 11, rushed to the crime scene along with the other police officials. When he reached there he saw that Appellant no.1, Appellant no.2 and another accused Akseer (hereinafter referred to as the 'absconding accused' were firing with lethal fire arm weapons. Muhammad Saleem, PW-5, received fire arm injuries attributed to Appellant no.2. The latter was overpowered

and taken into custody and was boarded in an official vehicle. He was disarmed and the 30 bore pistol was taken in possession. This provoked other participants of the procession who gathered around the official vehicle. Meanwhile the absconding accused, namely Akseer, fired at Muhammad Arshad, Constable, PW-4. Likewise, Appellant no.1, using a 30 bore pistol, fired at Muhammad Mushtaq, Constable, who received injuries succumbing thereto. (hereinafter referred to as the "**Deceased**"). The Deceased, at the time, was guarding Appellant no. 2 who had been detained in the official vehicle. In this mayhem the appellants managed to escape. The persons named by PW-11 in his examination-in-chief were arrested. The latter, after examining the body of the deceased, prepared an injury statement and inquest report, Exh.PJ. The body of the Deceased was sent to Pakistan Institute of Medical Sciences for conducting an autopsy. Mehboob Ahmed, Inspector, drafted a written complaint, Exh.PG, which was sent to the Police Station and pursuant thereto FIR No.136, dated 17.06.2010, Exh.PG/1, was registered. The Investigating Officer prepared a rough site plan of the place of occurrence, Ex-PK. He obtained blood on a cotton wool from the official vehicle as well as the road and the same were taken into possession vide recovered memo Exh.PL. Twenty five crime empties of a 30 bore pistol , six crime empties fired from a Kalashnikov, empties fired from a 7mm rifle and a 12-bore gun were also taken into possession vide Exh.PD. The fire arm weapon i.e. the 30 bore pistol recovered from Appellant no.2 was also taken into possession vide recovery memo Exh.PF. The injured police officials, namely Tarab ul

Hassan, Assistant Sub Inspector, Muhammad Saleem, Constable and Muhammad Arshad, Constable were taken to the Hospital for medical treatment. The autopsy on the body of the deceased was conducted by Dr. Farrukh Kamal, MLO, PW-13 and pursuant thereto a report and pictorial diagrams were prepared by him and taken into possession vide recovery memos Exh.PU and Exh.PU/1. The medico legal reports relating to the injured were also prepared and taken into possession by the Investigating Officer. The appellants were arrested on 18.06.2010. On 27.06.2010 Appellant no.1 led the Investigating Officer to the recovery of a 30 bore pistol from his house along with eight live bullets which were taken into possession vide recovery memo Exh.PQ. Malik Aamir Shahzad, Draftsman, PW-12 visited the crime scene on 28.06.2010 and the latter prepared site plan Exh.PR to Exh.PR/1. A joint Investigation Team was constituted. The charge was framed against nine accused vide order dated 11.08.2010, followed by the charge framed vide order, dated 06.11.2010, against eleven accused including the appellants. The latter did not plead guilty. According to the report submitted by the Joint Investigation Team all the accused, except the two appellants and Akseer (absconding accused), were declared as innocent and consequently they were either discharged or acquitted. The prosecution produced twelve witnesses while the appellants preferred not to be examined under oath and their statements under section 342 of the Criminal Procedure Code (hereinafter referred to as "**Cr.P.C**") were, therefore, recorded. After the recording of evidence and affording an opportunity of hearing to the parties, the learned trial Court convicted and sentenced

the appellants in the terms described in paragraph ten of the impugned judgment, dated 30.06.2011. The Appellant no.1 was handed down the maximum sentence of death and, therefore, reference for confirmation has been sent by the learned trial Court.

3. The learned Counsel for the appellants has argued that; the prosecution failed to prove guilt beyond a reasonable doubt; it is a mystery as to how Appellant no.2 had fled from the crime scene when according to the prosecution story he was arrested and kept under detention in the official vehicle; the recovery of the fire arm weapon from Appellant no.2 could not be proved since the recovery memo does not refer to the date on which recovery had been affected; PW-2 Muhammad Safdar, Constable had deposed that he had delivered one parcel containing a fire arm weapon to the Forensic Science Laboratory (hereinafter referred to as the "**Laboratory**") on 26.07.2010; contrary to the said testimony, the report submitted by the Laboratory reflects that parcels were received on 07.07.2010 and 26.07.2010, respectively; the recorded evidence is silent regarding sending of a fire arm weapon to the Laboratory on 07.07.2010. Mehboob Ahmed, Inspector, PW-11 had deposed that a sealed parcel containing a firearm weapon was delivered at the Laboratory on 07.07.2010 and the said statement is not corroborated by the testimonies recorded by the other witnesses; the fire arm weapon was recovered from Appellant no.2 on 17.06.2010 and sent to the Laboratory either on 07.07.2010 or 26.07.2010 i.e. after a considerable delay. PWs 4,5,6,8 and 9 have not uttered a word

regarding the recovery of a fire arm weapon from Appellant no.2; the fire arm weapon stated to have been recovered from Appellant no.2 on 27.06.2010 was not sent to the Laboratory because there is no corroborating evidence; recoveries of empties is also shrouded in mystery and material discrepancies in the testimonies of the witnesses raise serious doubts; the report submitted by the Laboratory further raises doubts; ocular testimonies are in conflict with the medical evidence; witnesses who had entered the witness box as PW-4 and PW-5 did not depose to the effect that they had witnessed Appellant no.1 using a fire arm weapon and causing injury to the Deceased; the prosecution did not establish its case beyond reasonable doubt; reliance has been placed on the cases titled "*Zafar Vs. The State and others* [2018 SCMR 326], "*Kamal Din alias Kamala Vs. The State*" [2018 SCMR 577], "*Muhammad Mansha Vs. The State* [2018 SCMR 772], "*Umer Khursheed and another Vs. Syed Tufail Ahmed and others*" [2018 SCMR 1051].

4. The learned State Counsel has argued that; the prosecution had established its case beyond reasonable doubt by bringing on record unimpeachable and confidence inspiring evidence; on the basis of affidavits submitted by the close relatives of the Deceased, as well as the officials who were injured, ten accused were declared innocent; only the appellants and the accused absconder, namely Muhammad Akseer, were found involved in the commission of the offence; one of the accused, namely Muhammad Akseer, was declared an absconder by the competent Court; Alamgir Khan,

Assistant Sub Inspector, PW-10 had deposed that the Investigating Officer had handed over one fire arm weapon rather than two which was sent to the Laboratory and this was corroborated by the testimony of Muhammad Safdar, PW-2; Both the said witnesses had retracted from the statements recorded under section 161 of the Cr.P.C; the crime empties were sent to the Laboratory and delivered by Muhammad Safdar on 07.07.2010, while two fire arm weapons i.e. 30-bore pistols, were delivered on 27.06.2010; reliance has been placed on case titled "Karamat Hussain Vs. The State" [2018 YLR 685].

5. The learned Counsel for the appellants and the learned State Counsel have been heard and the record perused with their able assistance.

6. The deceased was a police official and was killed while he was in uniform and performing his official duties. Both the appellants as well as the absconding accused, namely Muhammad Akseer, were part of the religious procession bringing a 'Dali' from their village to the shrine for celebrating the 'Urs'. The hierarchy of the police department, particularly the concerned Police Station, had received information that the participants of the procession were resorting to aerial firing using fire arm weapons. Asif Khan, ASI with other officials was first to reach the crime scene. He informed the In charge Police Station, namely Mehboob Ahmed, Inspector, regarding the situation and named the persons who had threatened the officials and on whose behest the participants were illegally resorting to the use of fire

arm weapons. The latter rushed to the crime scene and in his written complaint, Ex PG, he explicitly mentioned all those persons who were leading the procession and instigating participants to illegally resort to aerial firing. All the witnesses who had deposed regarding the ocular account were police officials and it is ironic that three were declared as hostile by the prosecution itself. A joint investigation team was constituted which declared all other accused, except the appellants and the absconding accused, as innocent. Mehboob Ahmed, Inspector, PW 11 in his deposition had stated that the joint investigating team had concluded that the persons mentioned in the FIR and the statements recorded under section 161 of the Cr.P.C were not present at the crime scene. Mohammad Arshad, Constable, PW 4, Mohammad Saleem, Constable, PW 5 and Turab ul Hassan, ASI, PW 9, all police officials and who were on duty retracted from their statements recorded under section 161 of the Cr. P.C, which were exhibited as Ex DB, Ex DC and Ex DA respectively. It appears as though crucial facts were being suppressed for reasons best known to the witnesses. It appears, prima facie, that the witnesses, namely Mohammad Arshad, PW 4, Mohammad Saleem PW 5, Turab ul Hassan, PW 9, Asif Khan, ASI, PW 8 and Mehboob Ahmed, Inspector, PW 11 had falsely deposed under oath by suppressing crucial facts. Their testimonies do not inspire confidence and lack consistency. It is surprising, as appears from the record, that even the legal heirs of the Deceased and the injured police officials were not interested in prosecuting the persons who were named in the FIR and the statements recorded under section 161 of Cr. P. C.

7. The recovery of firearm weapons on the day of occurrence i.e. on 17-06-2010 from Appellant no. 2 and from the house of Appellant no. 1 on 27-06-2010 and their safe custody before being delivered and handed over to the Forensic Science Laboratory, Punjab are not free from doubts. The report of the Laboratory, dated 08-12-2010, Ex PCC, shows that three sealed parcels were received on 07-07-2010 and 26-07-2010. Alamgir Khan, ASI who entered the witness box as PW 10 had deposed that the investigating officer had, inter alia, handed over one sealed parcel said to contain a 30 bore pistol on 17-06-2010 for safe custody which was later handed over to Mohammad Safdar, Constable PW 2. However, the date when it was handed over for delivery to the Laboratory is not mentioned. He has further deposed that the sealed parcels, said to contain crime empties and blood stained earth, were handed over to Ghulam Dastagir, PW 7 on 17-07-2010. The latter confirmed this statement except that he mentioned the date of delivery as 17-06-2010. Likewise, Mohammad Safdar, PW 2, confirmed handing over one sealed parcel said to contain a 30 bore pistol to Alamagir, PW 7 on 26-07-2010. In all the depositions there is no mention of the sealed parcel relating to the recovery of the 30 bore pistol from the house of Appellant no. 1 and led by the latter on 27-06-2010. There is no explanation as to when the said parcel was handed over to the relevant official of the police station for safe custody and then delivered to the Laboratory. It is also not known which parcel with the 30 bore pistol was handed over to

Alamgir, PW 7 on 26-07-2010 for being delivered at the Laboratory. The medical evidence also does not support the ocular account. The depositions do not inspire confidence and thus cannot be relied upon. The prosecution had failed to bring on record unimpeachable evidence to establish the guilt of the appellants.

8. It is alarming to note the manner in which the investigations were conducted and the trial was dealt with by the prosecution. The Deceased was on duty and was shot at while in uniform. The commission of the offence in this case had far reaching consequences for the society and every citizen. It had undermined the rule of law and the authority of the State. The participants of the procession and those who had led and encouraged them to create fear obviously achieved their goal by taking the life of a police official in uniform in broad day light and in the presence of a large number of people. It was a case which definitely attracted the mischief contemplated under the Terrorism Act 1997 and the law enunciated by the august Supreme Court in cases titled "Shahbaz Khan alias Tippu Vs. Special Judge Anti-terrorism Court No.3, Lahore" [PLD 2016 SC 1], "Malik Muhammad Mumtaz Qadri Vs State." [PLD 2016 SC 17], "Khuda-e-Noor Vs. State" [PLD 2016 SC 195] and "Kashif Ali Vs. The Judge, Anti-Terrorism, Court No.II, Lahore" [PLD 2016 SC 951]. However, neither the investigations appear to have been conducted honestly, fairly and in a professional manner and also the prosecution during the trial failed in its duty to bring on record consistent, trust worthy and unimpeachable evidence. The witnesses appear to have,

prima facie, deposed falsely despite one of their colleagues having lost his life while in uniform and performing his duties. It is ironic that the police officials who were present on the occasion appear to have shown cowardice. The investigating officer in this case, namely Mehboob Ahmed, Inspector had turned a blind eye to acts of the persons who were named by him in the FIR and who were alleged to have resorted to, and had instigated rioting and unlawful assembly by persons who were armed with deadly weapons. Moreover, obstruction caused to public servants in discharge of public functions was also ignored. It was not expected from police officials who had witnessed killing of one of their colleagues to depose falsely under oath. In the facts and circumstances of the case in hand, it appears, prima facie, that the witnesses namely, Muhammad Arshad, Constable, PW-4, Muhammad Saleem PW-5, Turab ul Hassan, Sub Inspector, PW-9, Asif Khan, Assistant Sub Inspector, PW-8 and Mehboob Ahmed, Inspector, PW-11 had fabricated evidence and had falsely deposed under oath. The Inspector General of Police, Islamabad Capital Territory is, therefore, directed to ensure personal appearance of the aforementioned police officials to show as to why they may not be ordered to be proceeded against for commission of the offences under section 191 and 194 of PPC. They are directed to appear before this Court on 19.06.2019.

9. For the above reasons the reference is answered in the negative and the appeal is allowed by setting aside the impugned judgment. The appellants are, therefore, acquitted of the charges and,

if not required to be detained in some other case, will be forthwith released.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(CHIEF JUSTICE)

Announced in the open Court on 12.06.2019.

JUDGE

(CHIEF JUSTICE)

Approved for reporting

Saeed*