

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 274 of 2019

Waris Hussain

Vs

The State

Appellant by : Mr Jan Muhammad Khan, Advocate.

Respondents by : Mr Azhar Hussain Mughal, Advocate.

Mr Fahad Ali, State Counsel.

Mr Muhammad Iqbal, S.I. with record.

Dates of Hearing : 07-02-2022

Athar Minallah, C.J.- We will decide the appeal and answer the Murder Reference No.24/2019 titled "*The State v. Waris Khan alias Mooda*" through this consolidated judgment.

2. Raja Shoaib Khan son of Raja Aitbar Khan (*hereinafter referred to as the "**Complainant**"*) PW-11, submitted a written complaint (Exh.PJ) and pursuant thereto, FIR No.62, dated 06-06-2016 (Exh.PD) was registered. It was alleged that on 06-06-2016, at about 02:00 a.m., the Complainant and other family members woke up due to loud noise from the room of the latter's younger

brother, Shabraiz (*hereinafter referred to as the "Deceased"*). He was witnessed having a scuffle with Waris Hussain son of Ghulam Mustafa (*hereinafter referred to as the "Appellant"*). When the latter saw other family members, he fired a shot from a pistol in his possession. The Deceased received a firearm injury on his chest. The Complainant and other family members tried to apprehend the Appellant but the latter managed to escape from the crime scene. Another brother of the complainant, Raja Tabraiz (PW-12) was also present at the crime scene. The Deceased was taken to the Polyclinic Hospital (*hereinafter referred to as the "Hospital"*) but he succumbed to the firearm injury while on the way. The motive was also described in the complaint and recorded in the FIR.

3. Iftikhar Ali, Constable (PW-8) was performing duties at the entrance of the police station. He was informed regarding the commission of the offence by the person who was taking the Deceased to the Hospital in a taxi. He then informed Mohammad Iqbal, Sub Inspector (PW-13) (*hereinafter referred to as the "Investigating Officer"*). The latter alongwith other police officials reached the Hospital. He received the written complaint (Exh.PJ) and prepared the Inquest Report (Exh.PA). Applications for conducting autopsy and keeping the body of the Deceased in the mortuary were submitted, Exh.PL and Exh.M, respectively. The Investigating Officer then visited the crime scene. He prepared unscaled site plan (Exh.PN). He collected blood, a spent cartridge, two unused bullets and a "sika" i.e. fired bullet. All these items

were taken into possession vide recovery memos, Exh.PO, Ex.PP, Exh.PQ and Exh. PR, respectively.

4. The autopsy was conducted by Dr Durdana Kazmi, Medico-Legal Officer (PW-1) and pursuant thereto she recorded her findings in the postmortem report (Exh.PB). The description of injuries on the basis of external examination was recorded as follows.-

"External appearance

- i. Healthy, young well-built male about 30 years of age. He was naked from above and was wearing black color shalwar soaked in blood.*

Following injuries found the body of the deceased;

- i. Entry wound 3.5 x 3.5 cm just medial to left nipple tattooing around wound and edges inverted.*
- ii. Exit wound 2 x 2 cm at the base of scapula with everted edges.*
- iii. Abrasion on right side of forehead, bruise just above and below the right eye of the face.*
- iv. Bruise on the right forearm.*
- v. Rigor mortis developed.*
- vi. Scalp, skull and vertebrae normal."*

5. Malik Amir Shahzad, Draftsman (PW-3), after visiting the crime scene, prepared the scaled site plan (Exh.DG). The Appellant was arrested on 07-06-2016 and on 10-06-2016, he led the Investigating Officer to the recovery of the crime weapon i.e. 30 bore pistol. The crime weapon was taken into possession vide recovery memo (Exh.P-W). The sealed parcels containing the spent cartridge, unused bullets and the used bullet, respectively

were sent to the National Forensic Science Agency (*hereinafter referred to as the "Agency"*) on 14-06-2016. The sealed parcel containing blood stained cotton was sent to the Punjab Forensic Science Agency, Lahore (*hereinafter referred to as the "Punjab Agency"*). On 22-06-2016, the sealed parcel containing the recovered crime weapon was also sent to the Agency.

6. The Agency vide report, dated 19-07-2016 (Exh.PAA) recorded its opinion. It confirmed that the spent cartridge recovered from the crime scene had matched the firearm crime weapon. Likewise, the Punjab Agency vide report, dated 16-06-2016 (Exh.PAB) confirmed that the blood on the cotton was that of human.

7. It is noted that the Appellant's wife Ms Zareen Bibi, was medically examined by Dr Durdana Kazmi (PW-1) on 08-06-2016 and the latter was of the opinion that her injury was "simple".

8. Charge was framed on 29-09-2016, and in response the Appellant did not plead guilty. Fourteen witnesses entered the witness box on behalf of the prosecution. The Appellant preferred not to be examined under oath and, therefore, his statement was recorded under section 342 of Cr.P.C. After recording of evidence and upon conclusion of the trial proceedings, the learned trial court vide judgment, dated 23-07-2019, convicted and sentenced the Appellant in the following terms.

"For the reasons stated, I have come to the conclusion that the prosecution has fully proved its case against the

accused facing trial to the guilt and thus, I have found the accused facing trial namely Waris Hussain alias Mooda guilty of the offence of committing Qatl-e-Amd of the deceased Shabraiz and no mitigating circumstance could be pointed out on the record. Therefore, the accused facing trial is hereby convicted under section 302(b) PPC and sentenced to normal punishment of death with payment of compensation amount of Rs.100,000/- (one lac) under Section 544-A Cr.P.C. to be paid to the legal heirs of the deceased. The amount of compensation shall be recoverable as an arrears of land revenue and it is further directed that in default of payment or of recovery as aforesaid, the convict shall suffer further imprisonment for a period of 06 months (S.I.) u/s 544-A of Cr.P.c. and in default thereof he shall suffer six months S.I. He shall be hanged by the neck till he is dead. The reference under Section 374 is sent for the confirmation of death sentenced and the sentence of death, however, shall not be executed till it is confirmed by the Honorable Islamabad High Court."

9. Mr Jan Muhammad Khan, learned counsel for the Appellant has argued that; recovery was doubtful; deposition of the Complainant cannot be relied upon because he had given false evidence under oath; the Complainant had changed his stance when he entered the witness box; the site plan contradicts the ocular account and does not support the medical evidence; the most crucial witness was the Appellant's wife but she was not produced by the prosecution; motive was not proved; no road certificate was brought on record; the Inquest Report states that eyes and mouth of the Deceased were open, which raises doubts regarding the prosecution's story; the depositions of the

prosecution witnesses are not confidence inspiring; reliance has been placed on the cases titled "*Sajjan Solangi v. The State*" [2019 SCMR 872] and "*Muhammad Asif v. The State*" [2017 SCMR 486].

10. Mr Azhar Hussain Mughal, learned counsel for the Complainant has contended that the prosecution had established its case beyond a reasonable doubt; the discrepancies pointed out by the learned counsel for the Appellant were not material. The learned State Counsel has adopted the arguments of the latter.

11. We have heard the learned counsels and with their able assistance, the record has been carefully perused.

12. The Appellant was married to the Deceased's sister. The Complainant, another witness (PW-12), and the Deceased were siblings. They all were present at the crime scene on the fateful morning when the gruesome crime was committed. The ocular account was deposed by two witnesses, PW-11 and PW-12, respectively. Their testimonies have been found to be consistent, trustworthy and confidence inspiring. The ocular version deposed by two witnesses was corroborated by recovery of the crime weapon and then its matching with the spent cartridge, which was taken in possession from the crime scene. There is nothing on record to raise a reasonable doubt regarding safe custody of the sealed parcels containing the recovered items or their transportation to and delivery at the Agency or the Punjab Agency,

as the case may be. The medical evidence further supports the ocular account deposed by two prosecution witnesses. There is no plausible explanation why the Complainant and another witness would have falsely deposed against the Appellant who was married to their sister. There is no force in the argument of the learned counsel for the Appellant that the Appellant's wife was a crucial witness and since she did not enter the witness box, therefore, guilt was not proved beyond a reasonable doubt. As already noted, the trustworthy testimonies of two witnesses regarding ocular account and its corroboration through reliable evidence had proved the guilt of the Appellant beyond a reasonable doubt. We are, therefore, satisfied that the prosecution had proved its case beyond a reasonable doubt.

13. For the above reasons, the appeal has been found to be meritless and, therefore, it is accordingly **dismissed**. Consequently the Murder Reference No.24/2019 titled "*The State v. Waris Khan alias Mooda*" is answered in the **affirmative**.

(CHIEF JUSTICE)

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Announced in the open Court on _____

(CHIEF JUSTICE)

JUDGE