

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

**CRIMINAL APPEAL NO. 09 OF 2016**

Muhammad Rashid

Versus

The State, etc.

Appellant by : Mr. Basharat Ullah Khan, Advocate.

Complainantby : Mr. Noroz Khan and Mr. Muhammad Zahid Khan Hoti, Advocates.

State by : Hafiz Muhammad Atif Khokhar, State Counsel.

Date of Hearing : 15-04-2020.

**ATHAR MINALLAH, CJ.-** Muhammad Rashid, son of Janab Ali (hereinafter referred to as the "**Appellant**"), has preferred Criminal Appeal no. 09/2016 titled "*Muhammad Rashid Vs. The State, etc.*" assailing judgment, dated 16.01.2016, passed by the learned Additional Sessions Judge, West Islamabad, whereby he was convicted and sentenced in the following terms:

***"Since the prosecution has succeeded to prove and establish its case against the accused Muhammad Rashid, therefore, he is found guilty of murder of***

***Nazaar Ali and he is convicted under section 302(b) PPC and sentenced to Death as Ta'zir and the accused is further directed to pay Rs.200,000/-(two lac) as compensation to the legal heir of the deceased Nazaar Ali as required under section 544-A Cr.P.C. In case of non-payment of the compensation amount it shall be realized as arrear of land revenue. In case of non-realization of the said amount the convict shall have to undergo six(06) months S.I. The accused Muhammad Rashid is also found guilty of murder of deceased Zawar Ali and he is also convicted under section 302(b)/34 and is sentenced to Death as Ta'zir. The accused is further directed to pay Rs.200,000/- (two lac) as compensation to the legal heir of the deceased Nazaar Ali as required under section 544-A Cr.P.C. In case of non- payment of the compensation amount it shall be realized as arrear of land revenue. In case of non-realization of the said amount the convict shall have to undergo six(06) months S.I. He be hanged by his neck till he is dead. However, the death sentences awarded to the accused Muhammad Rashid will be subject to confirmation by the Hon'ble Islamabad High Court, Islamabad."***

2. The learned trial Court has sought confirmation of the capital sentence through Reference no. 01/2016 titled "The State

*vs. Muhammad Rashid*". Through this consolidated judgment we shall decide the appeal and answer the Reference forwarded under section 374 of the Criminal Procedure Code, 1898 (hereinafter referred to as the "**Cr.P.C**").

3. Briefly stated, the facts are that pursuant to the complaint (Ex.PE) of Sabir Ali, son of Farman Ali (hereinafter referred to as the "**Complainant**"), FIR no. 619, dated 18.12.2013 (Ex PE/1), was registered under section 302 read with section 34 of the Pakistan Penal Code, 1860 (hereinafter referred to as the "**PPC**") at the Police Station Sabzi Mandi, Islamabad (hereinafter referred to as the "**FIR**"). According to the assertions stated in the FIR, the Complainant, who is a resident of Mohallah Juna Khel, Gumbet, Tehsil and District Mardan in the province of Khyber Pakhtunkhwa, was visiting his three brothers living in Islamabad and working as labourers on daily wage basis. The case is regarding the murder of two brothers of the Complainant, namely Nazar Ali and Zavar Ali (hereinafter referred to as "*Deceased no.1 and Deceased no.2, respectively, while collectively they shall be referred to as the "Deceased"*"). The Complainant's brothers had rented a residential quarter in Dhoke Qadir Bakhsh, Mauza Nathia and the latter had arrived two days prior to the occurrence. He was present in the rented quarter along with his younger brother Moaz Ullah and cousin Sardar Hussain. While they were preparing a meal at about 4:30 p.m. on 18.12.2013, they heard distressful noises and when they came outside from the quarter, they saw

Rashid and Khalid, both sons of Janab Ali and Ejaz, son of Ali Rehman, attacking the complainant's brothers. They were armed with firearm weapons. Ejaz Ali fired at Zawar Ali which hit him on the chest and the latter fell down after taking a few steps towards the wall of the graveyard. Khalid and the Appellant fired at Deceased no.1, which hit his chest, injuring him fatally and according to the complaint he immediately fell on the ground. In the meanwhile, the Complainant and the others accompanying him tried to apprehend the aggressors. Moaz Ali tried to grab Khalid by the arm and during the scuffle the pistol fell from his hand without its magazine. After the incident, several people had gathered at the crime scene and the Complainant sent his brother, namely Moaz Ali, to get some transport for taking the injured to the hospital. Deceased no. 2 succumbed to his injuries at the crime scene, while Deceased No. 1 was taken to the hospital in an injured condition. The dead body of Deceased no.2 and the injured Deceased no.1 were taken to the Pakistan Institute of Medical Sciences (hereinafter referred to as the "**Hospital**") in taxis, which were brought by Moaz Ali. The motive for the attack was stated to be enmity between the parties which had developed after the commission of a murder in their native village. Muhammad Bashir, Sub Inspector, PW-10, reached the Hospital pursuant to receiving information. After examining the bodies of Deceased no.1 and Deceased no.2, he prepared inquest reports, Ex.P/D and Ex.P/B, respectively. He prepared and submitted two separate applications, Ex.P/K and Ex-P/L, for conducting the postmortems

of Deceased no. 2 and Deceased no. 1, respectively. The bodies of both the Deceased were kept in the mortuary and autopsies were conducted the next day at 10.00 a.m. The respective autopsies of the Deceased were conducted by Dr. Farrukh Kamal, PW-1 and the latter recorded his opinion. To the extent of Deceased no.1, the description of injuries in the report, Ex-PC, was as follows:

*"Following injuries were noted on the body of the deceased:*

- 1. Injury no.1 entry wound 2x1 cm circular avorted margins blood stained, 24 cm from sternal notch in the center of chest front. Blackening present.*
- 2. Injury no.2 exit wound 2x1.5 cm irregular avorted margins, blood stained, 40 cm from above, 15 cm from mid line right back.*
- 3. Injury No.3 entry wound 4x2 cm circular inverted margins, blood stained, 29 cm from above, 4 cm from mid line left front of chest, blackening present.*
- 4. Injury no.4 exit wound 3x3 cm irregular avorted margins, blood stained, 28 cm from above, 10 cm from mid line, left front of chest. Rigor mortis and postmortem levedity present."*

The Investigating Officer visited the crime scene on the date of occurrence and prepared a rough site plan, Ex.P/N, and collected blood stained earth. The samples were taken into possession vide recovery memo Ex.P/H and Ex.P/H-1. Five empties of a 30-bore firearm pistol were taken into possession vide recovery memo Ex.P/H-3 along with one live bullet. One Gul Khan Afghani had handed over a 30-bore pistol to the Investigating Officer and the

former had stated that the same was found lying at the crime scene by his daughter who was about four or five years old. It was taken into possession vide recovery memo Ex.P/J. A postmortem was conducted at 10.00 a.m. on 19.12.2013. The Investigating Officer took the Draftsman, namely Amir Shahzad, to the crime scene who prepared a scaled site plan. Four sealed parcels were sent to the Punjab Forensic Science Agency, Lahore (hereinafter referred to as the "**Laboratory**"). The Laboratory, vide report dated 22.01.2015, Ex.P/Q, confirmed that two empties had matched with the recovered pistol while three did not. Likewise, the report of the Laboratory, Ex.P/Q-1, dated 26.02.2014, confirmed that the samples of blood-stained earth contained human blood. The Daily Diary reports i.e. Rappats no. 18 and 14, dated 18.12.2013, were also brought on record. The Appellant, after obtaining pre-arrest bail, surrendered himself before the Investigating Officer on 07.01.2014. According to the testimony of the Investigating Officer, when he had visited the crime scene immediately after the occurrence several people were present, but no one was willing to stand as a witness. The other two accused, namely Khalid and Ejaz Ali, did not surrender before the Investigating Officer nor have they been traced till date. They were proceeded against and declared as proclaimed offenders. The charge against the Appellant was framed on 28.01.2015 to which he did not plead guilty. During the trial the prosecution produced eleven witnesses. Two witnesses appeared pursuant to summons issued by the learned trial Court. The appellant preferred not to be

examined under oath and, therefore, his statement under section 342 of the Cr.P.C was recorded. Nine witnesses deposed as defence witnesses. After the recording of evidence and affording an opportunity of hearing to the parties, the learned Additional Sessions Judge, West, Islamabad, vide judgment dated 16.01.2016, convicted and sentenced the Appellant in the terms which have been reproduced above. The learned trial Court has sent Reference no. 01/2016 for confirmation of the capital punishment.

4. The learned counsel for the Appellant has contended that; autopsies were conducted after considerable delay; the blackening around the injuries has not been explained; the ocular testimony is not corroborated by the evidence brought on record; the Complainant had stated that the firearm weapon with which Khalid had fired upon Deceased no. 1 fell from his hand during the scuffle; there were only two entry wounds on the body of Deceased no.1; five empties were recovered from the crime scene; two empties matched the pistol that had fallen from the hand of Khalid at the crime scene; it is obvious that since there were only two injuries, suggesting that two bullets had hit the body of Deceased no.1, therefore, both could only have been fired from the pistol, which was in the possession of Khalid at the time of the commission of the offence; the medical evidence does not support the ocular account; the delay in taking Deceased no.1 to the Hospital when he was alive has not been explained; the

Draftsman who had prepared the scaled site plan of the crime scene was given up; likewise, other important witnesses were also given up by the prosecution; the prosecution failed to prove its case beyond a reasonable doubt; the Complainant deliberately refused to give his cellular phone number otherwise his location would have been ascertained; the Investigating Officer, in his testimony, had stated that he had contacted the Complainant on his cellular phone and the number was also mentioned by him.

5. The learned counsel for the Complainant has argued that; the Appellant was employed in the Department of Police of Islamabad Capital Territory as a Constable and, therefore, the investigation was maneuvered in order to protect him and thus divert the course of justice; the Department was bending over backwards to save the Appellant by unsuccessfully attempting to establish that the latter was performing special duties at the time of the commission of the offence; the giving up of the Draftsman was merely to protect the Appellant from being convicted; the scaled site plan prepared by the Draftsman is available on the record and can be examined by this Court, despite the same not having been exhibited; the blackening on the injuries can be caused if special bullets are used; there was no delay in the registration of the FIR; the plea of the alibi could not be proved; the record maintained by the Department was manipulated so as to save the Appellant from being convicted; the prosecution has established its case beyond reasonable doubt.



6. The learned State Counsel has also been heard. He has adopted the arguments advanced by the learned counsel for the Complainant and has stated that the prosecution had proved its case by bringing reliable and unimpeachable evidence on record.

7. The learned counsels and the learned State Counsel have been heard and the record perused with their able assistance.

8. The admitted facts are that the parties belong to the same area and that there was a history of enmity amongst them. The Appellant was employed as a constable in the Police Department of Islamabad Capital Territory. The Complainant is a permanent resident of and resides in his village in the province of Khyber Pakhtunkhwa. According to the latter's testimony, he had come to Islamabad to visit his three brothers who were working as labourers on a daily wage basis. According to the prosecution's story the Complainant, his brother Moaz Ali and cousin were preparing food for the evening in the rented quarter when they heard noises from outside. They came out and saw that Deceased no.2 was being fired upon by Ejaz Ali while Deceased no.1 was fatally injured by shots fired from the firearm weapons used by the Appellant and one Khalid. Neither Khalid nor Ejaz Ali surrendered before the Investigating Officer nor have been apprehended till date. They were declared as absconders. The Appellant had surrendered before the Investigating Officer on 07.01.2014 after getting ad interim anticipatory bail and, since it was not confirmed, therefore, he was arrested. According to the

testimony of the Complainant and the prosecution's story the crime weapon used by Khalid fell from his hand when Moaz Ali tried to apprehend him at the crime scene shortly after the commission of the offence. The weapon i.e. a 30-bore pistol was handed over to the Investigating Officer by one Gul Khan Afghani, who did not enter the witness box nor could his whereabouts be traced by the Investigating Officer. It is the prosecution's story that the Investigating Officer was informed by Gul Khan Afghani that the latter's minor daughter, who according to the Investigating Officer was four to five years old, had found the weapon at the crime scene. According to the medical evidence there were two injuries on the body of Deceased no. 1, suggesting that two bullets had hit him. The Investigating Officer had collected five crime empties from the crime scene and the Laboratory had recorded its opinion in the report, dated 22.01.2015, Ex-PQ that two had matched with the crime weapon. It is, therefore, obvious that according to the evidence brought on record by the prosecution, the two fatal injuries on the body of Deceased no.1 appear to have been caused by a firearm weapon. It was stated in the complaint (EX PE) that Deceased no. 1 was fired upon by one Khalid and the Appellant. The medical evidence, the report of the Laboratory, the recoveries made during the course of investigations and the ocular account suggest that the two injuries on the body of Deceased no. 1 which had led to his death were caused by Khalid. There was no third injury that could be attributed to the Appellant and no recovery was made from the

latter either. The Complainant had stated in the complaint (Ex PE) that the Deceased had fallen on the ground after being injured and that his other brother, namely Moaz Ali, had tried to apprehend Khalid and during the scuffle the recovered pistol fell from his hand. However, he gave an altogether contradictory narration of events/facts in his testimony when he appeared as PW 6. Moreover, he had deposed that Deceased no. 1 was conscious and had talked to him despite being severely injured. The testimony of Moaz Ali, PW 7, also contradicts the narration of events deposed by the Complainant. It also appeared from the testimony of the latter that on the day of occurrence he was using his brother's cellular phone, while the Investigating Officer in his testimony deposed that he had contacted the Complainant on his cellular phone number. Deceased no.2 had admittedly succumbed to his injuries at the crime scene soon after he was shot. A reasonable prudent person would have spared no time in rushing the injured to the Hospital rather than giving preference to the body of a deceased person. The evidence suggests that this did not happen in the case in hand. According to the testimony of the witnesses i.e PW 6 and PW 7, both the Deceased were taken to the Hospital almost at the same time and, that too, after a delay of about three hours. However, this version was contradicted by Dr. Farrukh Kamal, PW-1, who in his deposition unequivocally stated that Deceased no.1 was brought to the Hospital at 07:49 p.m. while the body of Deceased no.2 was received at 04:48 p.m. Deceased no.1 had succumbed to the injuries some time after reaching the

Hospital. The delay in bringing him to the Hospital does not appeal to a prudent mind. The testimony of the witnesses who gave the ocular account i.e. Sabir Ali, PW-6 and Moaz Ali, PW-7, do not inspire confidence and are not corroborated by independent evidence. There is also a contradiction between the events narrated in the complaint, the testimonies of the witnesses and the medical evidence. The ocular account is not supported by the rough site plan (Ex PN) prepared by the Investigating Officer. There is also no reason for giving up the Draftsman as a witness who had prepared a scaled site plan. The scaled site plan is available on the record and is a more detailed version of the rough site plan prepared by the Investigating Officer. The rough site plan (Ex PN) contradicts the facts narrated in the complaint as well as the ocular account described by PWs 6 and 7. No objection was raised from the defence side in the context of the rough site plan (Ex PN). The unscaled plan shows the place where Deceased no. 1 had received injuries and where the scuffle took place with the Appellant and Khalid as distinct and thus contradicts the testimonies of PW 6 and PW 7. Point no. 6, where the scuffle is shown to have taken place, is at a considerable distance from points no. 4 and 3. The nature of the injuries i.e. the blackening, is also not satisfactorily corroborated. Was it a case of the investigation lacking probity and having been conducted so as to protect the Appellant? Why important and relevant witnesses were given up is a question that raises serious questions regarding the quality of both the investigation and the prosecution. But the

evidence discussed above was certainly not sufficient for handing down a conviction. The failure of the State to apprehend the two absconding accused should be a serious concern because it undermines the rule of law and is a reflection of the incompetence, if not complacency, on the part of the authorities, particularly the police officials led by the Inspector General, Islamabad Capital Territory.

9. There is no cavil to the proposition that proof beyond reasonable doubt ought to be based on reasons and common sense, which must be logically based on the evidence or lack of evidence as has been held by the august Supreme Court in the case titled "*Muhammad Asghar alias Nannah and another vs. The State*" [2010 SCMR 1706]. The august Supreme Court has further observed that reasonable doubt cannot be based on sympathy or prejudice, nor could it be imaginary or frivolous. The prosecution is not required to prove its case to an absolute certainty because considering such a high standard is not only unrealistic but could seldom be achieved. It is not proof beyond all doubts but reasonable doubt.

10. We have carefully gone through the recorded evidence and, for reasons discussed above, we are satisfied that there is reasonable doubt as to the guilt of the accused. In the facts and circumstances of the case in hand and having regard to the evidence brought on record by the prosecution, we are satisfied that the benefit of doubt ought to be extended to the Appellant.

Consequently, Criminal Appeal No.09/2016, titled "Muhammad Rashid vs. The State, etc." is hereby allowed and the judgment, dated 16.01.2016, is accordingly set aside. The Appellant stands acquitted from the charge framed by the learned trial Court vide order, dated 28.01.2015, by extending him the benefit of doubt. The reference is, therefore, answered in the negative. The Appellant shall be released forthwith if not required to be detained in any other matter.

11. We direct the Inspector General of Police, Islamabad Capital Territory to inquire into the manner in which this case has been dealt with at the stages of investigation and prosecution, as highlighted above. We expect that those found responsible for allowing the perpetrators of the gruesome murders of two innocent persons to go unpunished will be made accountable. We further expect that the inquiry will be completed and a report submitted to the Registrar of this Court within forty five days from the date of receiving a certified copy of this judgment. We direct the office of this Court to send a certified copy of this judgment to the Inspector General of Police, Islamabad Capital Territory for compliance.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)  
JUDGE

Announced in the open Court on 04-05-2020.

JUDGE

CHIEF JUSTICE

Saeed\*

*Approved for reporting.*