

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 192 of 2016

Noor Hassan alias Noora

Vs

The State

DATE OF HEARING: 14-03-2019.

APPELLANTS BY: M/s Atta Ullah Hakim Kundi and
Mohammad Sadiq Khan Advocates.

RESPONDENTS BY: Malik Awais Haider , State Counsel.

ATHAR MINALLAH, CJ.- Through this consolidated judgment we will decide the instant appeal alongwith Crl. Appeal No. 193 of 2016, titled "Syed Naseer Ahmed Hashmi v. The State" and also answer Murder Reference No. 08 of 2016, titled "The State v. Noor Hassan alias Noora and Syed Naseer Ahmed Hashmi".

2. Noor Hassan alias Noora son of Muhammad Hassan and Syed Naseer Ahmed Hashmi son of Syed Qasim Shah (hereinafter referred to as "**Appellant No. 1 and Appellant No. 2**") respectively) were charged and on conclusion of trial they were convicted and sentenced vide judgment dated 24-11-2016. Both the appellants were handed down death sentences besides other sentences mentioned in the impugned judgment. The appellants have preferred respective jail appeals while the Murder Reference has been referred by the learned trial Court for confirmation of the death sentences.

3. The facts, in brief, are that pursuant to written complaint "Exh.PA" a criminal case i.e FIR No. 484, dated 30-09-2012 "Exh.PA/1", was registered at Police Station Shahzad Town, Islamabad (hereinafter referred to as the "**FIR**"). The complainant, namely Ghazi Khan son of Sawan Khan, had asserted in the written complaint that on 30-09--2012, after he had offered first of the five daily prayers i.e. Fajar prayer, he heard someone knocking and on opening the front door, one of the neighbours, namely Miss Andleeb Arshad daughter of Arshad Mehmood "PW-7", informed him that dacoits had entered their house. The complainant along with his son, namely Muhammad Qasim (hereinafter referred to as the "**Deceased**") rushed to the crime scene. The latter took an iron rod with him and as soon as they entered the house a fire was shot from a firearm weapon which injured the

Deceased and as a result the latter fell down. The complainant was also injured and resultantly he also fell to the ground. The accused escaped from the house and the Deceased along with other injured were taken to the Poly Clinic Hospital, Islamabad (hereinafter referred to as the "**Hospital**") in one of the neighbour's cars. It appears from the record that one Javed Iqbal, Sub Inspector, was entrusted with the investigations of the case. He reached the crime scene and recovered blood on cotton wool vide recovery memo "Exh.PB". He also recovered three empties vide recover memo "Exh.PC". A Cell Phone described in the recovery memo "Exh.PD" and stated to have been left behind by the assailants was also recovered. The autopsy was conducted by Dr Tanveer Afsar Malik, CMO, who entered the witness-box as "PW-5A". He prepared the post mortem report "Exh.PW-5A/1" and the pictorial diagram. The medical legal reports of Ghazi Khan and Tehmina Arshad were also prepared and tendered in evidence as "Exh.PW-5A/2" and "Exh.PW-5A/3", respectively. On 07-11-2012, two sealed parcels containing empties and blood stained cotton wool, respectively, were handed over to Sikandar Ali "PW-3" for being delivered at the Punjab Forensic Science Agency. The parcels were delivered the next day i.e. on 08-11-2012. The Agency submitted its report, dated 04-03-2013, "Exh.PM", confirming that the blood on the cotton wool was human. The investigations were transferred to Muhammad Akram, Sub Inspector, "PW-12" on 23-11-2012. On 03-12-2012 the latter

arrested Appellant No. 1, namely Noor Hassan alias Noora and during interrogation carried out by him he disclosed his involvement in the case of the FIR. There is nothing on record to indicate as to how and in which case he was arrested. According to the deposition of "PW-12", Appellant No. 1 had disclosed names of other co-accused as well. On 11-12-2012, Appellant No. 1 was identified by Arshad Mehmood and his daughter Miss Andleeb Arshad during an identification parade conducted in the presence of Mr Waqas Rasheed, Assistant Commissioner, "PW-11". The Appellant No.1, after his identification, was sent on judicial remand and pursuant to an application submitted by the Investigating Officer his physical remand was ordered. During the physical remand, Appellant No. 1 led the Investigating Officer to the recovery of a 30 bore pistol alongwith live bullets and the same were taken in possession vide recovery memo "Exh.PW-12/17", dated 17-12-2012. The investigations were yet again transferred to another officer, namely Mansoor Ahmed, Sub Inspector, "PW-13", on 20-10-2013. At that time he was also investigating another criminal case i.e. FIR No. 357/2013 wherein the Appellant No. 2, namely Syed Naseer Ahmed Hashmi, was arrested. According to the prosecution story the latter disclosed his role relating to the FIR and, therefore, he was formally arrested on 07-11-2013 in the said case. Appellant No. 2 was identified by Ghazi Khan "PW-1" during an identification parade conducted and supervised by Ms Rabia

Aurangzeb, Additional Deputy Commissioner, "PW-10A". The said identification parade was held on 13-12-2013. The prosecution produced fifteen witnesses while constable Akhtar Abbas entered the witness box as "SW-1". The appellants preferred not to be examined under oath and, therefore, they recorded their respective statements under section 342 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "**Cr.P.C.**"). After the recording of evidence and affording an opportunity of hearing to the parties, the learned Addl. Sessions Judge, Islamabad-East, vide judgment dated 24-11-2016, convicted both the appellants and sentenced them in the terms described in the said judgment. The appellants were handed down death sentences under section 396 of the Pakistan Penal Code, 1860 (hereinafter referred to as the "**PPC**").

4. Mr Atta Ullah Hakim Kundi, Advocate, was appointed at State expense to assist us on behalf of Appellant No. 1. Appellant No. 2 was represented by Mr Muhammad Sadiq Khan, Advocate High Court. Despite repeated notices issued, no one appeared on behalf of the complainant. The case of the prosecution was, however, pleaded by the learned State Counsel.

5. The learned Counsels arguing on behalf of the appellants have contended that; the prosecution could not prove the case against both the appellants beyond a

reasonable doubt; the arrest of Appellant No. 1 is shrouded in mystery; Appellant No. 2 was arrested in some other case and he was falsely implicated in the instant case; the identification parades were not held in accordance with settled principles of law; in both the cases identifications were purportedly made without attributing the role allegedly played by the appellants during the occurrence; the identifications, therefore, cannot be relied upon; reliance has been placed on the case titled "Kamal Din alias Kamala v. The State" [2018 SCMR 577]; it is the case of the prosecution that the incident had taken place at Fajar time and some witnesses have deposed that it was before the call for prayer i.e Azan; it was obviously dark and no evidence has been brought on record to show the source of light; the medical evidence does not support the ocular account; the scaled site plan "Exh.PF" also contradicts the prosecution story; both the appellants are entitled to the benefit of doubt.

6. The learned State Counsel, on the other hand, has argued that; the prosecution had brought on record trust worthy and unimpeachable evidence; the charge was established against both the appellants beyond a reasonable doubt; the appellants were identified by the victims and that the respective identification parades were conducted in accordance with law and in presence of the learned Magistrates; it is not a case which would require extending the benefit of doubt to the appellants.

7. The learned Counsels who have assisted us on behalf of the appellants and the learned State Counsel have been heard and the record perused with their able assistance.

8. The admitted facts are that the time of occurrence was just before sun rise, as was consistently deposed by the witnesses. It was definitely around the time when the call for prayer is announced from the mosques. It was, therefore, dark or in other words there wasn't sufficient light and thus it was a case requiring identification of the source of light. There is nothing on record to identify the source of light at the crime scene. The complainant, in his written complaint, Ex PA, had asserted that the firearm shots were fired as soon as he and the Deceased had entered the house of Arshad Mehmud. There was no mention of the number of persons involved in the commission of the offence. The FIR, Ex PA/1, was registered under section 302 read with section 459 of the PPC. The complainant, namely Ghazi Khan, entered the witness box as PW 1, but did not mention the number of persons who were involved in the commission of the offence. In his examination-in-chief he referred to 'two accused'. His testimony contradicts the scaled site plan Ex PW 14/2 because his presence and that of the Deceased should have been shown near the entry gate/door of the house. This testimony is also contrary to the medical evidence which identifies only one firearm injury with charring on the back

side and no exit wound had been observed. The crime scene was the house of Arshad Mehmud who appeared as PW 6. His daughters Andaleeb Arshad and Tehmina Arshad also testified as witnesses and entered the witness box as PWs 7 and 8 respectively. Their testimonies are not consistent with that of the complainant and the medical evidence. They had deposed that the Deceased was shot when he was entering the room where Arshad Mehmud had been tied up. They were also not sure about the number of accused. There is no explanation for the only injury wound on the back of the Deceased without an exit. The initial investigations from the day of occurrence till 23-11-2012 i.e when they were transferred and entrusted to Mohammad Akbar, SI, PW 12, had been conducted by one Javed Iqbal, Sub Inspector. There is no explanation why the latter was not produced as a witness.

9. It is interesting to note that investigations were entrusted to Mohammad Akbar, SI, PW 12 on 23-11-2012 i.e after almost three months from the date of occurrence and according to his deposition on 03-12-2012 he arrested Noor Hassan, Appellant no. 1, who later confessed his involvement in the instant case. There is nothing on record to ascertain under what circumstances or in connection with which case he was arrested. The latter is stated to be a citizen of the Islamic Republic of Afghanistan. The recovery of the firearm weapon is also shrouded in mystery. According to Mohammad Akbar,

SI the recovery was led by Appellant no. 1 from a plot which was 100 meters away from the crime scene. The weapon was buried in the ground according to the deposition of the latter. It was admitted by the witness that the Punjab Forensic Science Agency report was not available on record. The evidence regarding identification of Appellant no. 1 by Arshad Mehmud and his daughter is also not confidence inspiring. Mohammad Akbar, SI, PW 12 had unequivocally stated during cross examination that the complainant, namely Ghazi Khan, PW 1, had refused to attend the identification proceedings because Appellant no. 1 was neither known to him nor had he seen the accused at the time of occurrence. The deposition of Mohammad Akbar, SI, PW 12 is definitely not trust worthy and rather, prima facie, it appears that he had testified falsely merely to show his performance by solving an undetected crime. It was Mohammad Akbar, SI who had added offences under sections 396 and 397 of the PPC after he had arrested Appellant no. 1.

10. The case of Appellant no. 2, namely Syed Naseer Ahmed Hashmi, stated to be a resident of North Waziristan Agency, further raises doubts regarding the prosecution story. The investigations were transferred and entrusted to Mansoor Ahmed, S1, PW 13 on 20-10-2013. Appellant no. 2 was stated to have been arrested on 07-11-2013 in another criminal case i.e. FIR no. 357/2013 registered at Police

Station, Koral, Islamabad. According to the testimony of Mansoor Ahmed, SI, PW 13, on 07-11-2013, during the course of investigations in the other case, Appellant no. 2 disclosed his involvement in the instant case and was, therefore, formally arrested. On 13-12-2013 an identification parade was conducted and the complainant, namely Ghazi Khan, PW 1, is shown in the record as having identified him. As noted above, Mohammad Akbar, SI, PW 12, who had investigated the case earlier, had unambiguously deposed that in the case of the identification of Appellant no. 1, which was almost a year ago, the complainant had refused on the ground that he neither knew the accused nor had he seen any of them. The deposition of the complainant as PW 1 also suggests that it was not probable that he had the opportunity to see the accused, that too when it was almost dark and no source of light has been disclosed in the evidence. How he identified Appellant no. 2 in the circumstances is beyond comprehension and that too, after a delay of more than one year. The testimony of Mansoor Ahmed, SI, PW 13, is not trustworthy at all nor is it corroborated by any other evidence.

11. This case reflects the consequence of bad and inefficient investigations, not carried out in a fair or professional manner and, rather, it raises serious doubts regarding the investigating officers' fairness and honesty in

investigating the crime. In the criminal justice system investigation has the most crucial status because it is the foundation for ensuring that the actual perpetrators of a crime are prosecuted and sentenced after proving their guilt with certainty. The probability of abuse of the criminal justice system at the hands of investigating officers cannot be ruled out because the system has a reputation and tendency of being exploitative and inequitable. Having regard for the safe administration of the criminal justice system, Courts cannot ignore the tendency of forcing confessions and falsely implicating persons by the investigating officers for ulterior motives, be that for corruption, due to inexperience or merely to show their performance in solving undetected crimes. The lack of accountability of investigating officers, particularly when persons are sent for trial without conducting proper, fair and honest investigations, has serious implications for the society and the rights of the citizens to remain safe from being exposed to crime. The case in hand appears to highlight the serious flaws of police investigators. The arrest of both the appellants is shrouded in mystery. There is nothing on record to establish how Appellant no. 1 was arrested. His identification and the recovery of the crime weapon buried in the ground only 100 meters away from the crime scene does not appeal to a prudent mind nor proved through reliable evidence brought on record. Was it a mere coincidence that both the appellants were arrested and implicated in the case

in hand on the basis of their disclosures made to two distinct officers within days from the transfer of the investigations? There is nothing on record to show the connection of the two appellants. The medical evidence contradicts the ocular depositions as has been discussed above. For three months after the occurrence, the case was investigated by a police officer who never entered the witness box and there is no explanation on behalf of the prosecution in this regard. In the facts and circumstances there was a heavy burden required to be discharged by the two distinct investigators of the crime to demonstrate, through gathering unimpeachable and trustworthy evidence, the certainty of guilt of the appellants. Both the investigating officers failed to bring on record such evidence and, rather, their testimonies, prima facie, suggest that they had deposed falsely. They have, therefore, exposed themselves to be tried for the offence of giving false evidence. It is not denied that in both the cases the appellants were identified without reference to the role they had allegedly played during the occurrence. The learned Counsels have rightly placed reliance on the judgment of the august Supreme Court in the case titled "Kamal Din alias Kamala v. The State" [2018 SCMR 577]. The depositions of the witnesses, particularly "PW-12" and "PW-13", do not corroborate with the scaled site plan, "Exh.PF", prepared by the draftsman, namely Aamir Shahzad, "PW-10". We are afraid that the prosecution had failed to bring on record

unimpeachable and trust worthy evidence to establish certainty of guilt.

12. For what has been discussed above, we set aside the convictions and sentences handed down to both the appellants and consequently order their acquittals because the prosecution had failed to prove their guilt beyond a reasonable doubt. The instant appeal and Jail Appeal No. 193/2016, re: "Syed Naseer Ahmed Hashmi v. The State" are, therefore, **allowed** and resultantly the impugned judgment is set aside. The Murder Reference is accordingly answered in the **negative**.

13. Before parting it is noted that it is an onerous duty of an Investigating Officer to identify the perpetrator by collecting and analyzing evidence in a fair and honest manner. This becomes more crucial when an accused is arrested in connection with some other case and has been implicated on the basis of extra judicial confessional statement said to have been made before the Investigating Officer. The quality of investigations and evidence brought on record in such an eventuality ought to manifest that the Investigating Officer has not fabricated or given false evidence with the intent to procure conviction. The investigations carried out by an Investigating Officer and the evidence brought on record is the basis for holding an Investigating Officer accountable. Accountability of an Investigating Officer is of paramount importance in the

criminal justice system so as to ensure that an innocent person does not suffer the agony of losing the fundamental right of free movement and to be dealt with as accused.

14. In the facts and circumstances of the case in hand, we are of the *prima facie* view that both the officials who had conducted investigations in this case i.e. Mohammad Akbar, Sub Inspector (PW-12) and Mansoor Ahmed, Sub Inspector (PW-13) had deposed falsely on oath and had fabricated evidence with intent to procure conviction of the appellants. The office is directed to issue notice to the Inspector General of Police, Islamabad Capital Territory for ensuring personal appearance of Mohammad Akbar, Sub Inspector (PW-12) and Mansoor Ahmed, Sub Inspector (PW-13) before this Court on 18-06-2019 to show as to why they may not be ordered to be proceeded against for commission of the offences under sections 191 and 194 of PPC.

(CHIEF JUSTICE)

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in open Court on 12-06-2019.

JUDGE

CHIEF JUSTICE

Approved for reporting.