

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No.198/2020

Syed Zulqarnain Haider

Versus

The State, etc.

Appellants by : Mr Imran Abbasi, Advocate.
Mr Liaquat Ali Tareen, Advocate.
Respondents by : Mr Shujaullah Gondal, State Counsel.
Date of Hearing : 17-11-2021

ATHAR MINALLAH, C.J.- Through this consolidated judgment, I shall decide the following criminal appeals:-

- i. Syed Zulqarnain Haider v. The State (Crl. Appeal No.198/2020)
- ii. Syed Zulqarnain Haider v. The State (Jail Appeal No.203/2020)
- iii. Syed Muhammad Tahseen & another v. Crl. Appeal No.193/2020)
- iv. Syed Muhammad Tahseen v. The State (Jail Appeal No.202/2020)
- v. Khurram Ibrahim v. The State (Jail Appeal No.204/2020)

2. The facts, in brief, are that Zhou Zhiyan son of Zhou Wanfu (*hereinafter referred to as the 'Complainant'*) (PW-14) had reported commission of crime and pursuant thereto FIR No.364, dated 29-12-2017, was registered at Police Station Ramna, Islamabad (*hereinafter referred to as the 'FIR'*). It was reported that the Complainant and 12 other nationals of the Republic of China were living in House No.515, Street No.46, Sector G-10/4, Islamabad (*hereinafter referred to as the 'Crime Scene'*). On 29-12-2017, between 05:30 p.m. to 06:30 p.m., one male and four female inmates were present in the house. Three persons forcibly entered the Crime Scene and the inmates were held hostage by them. One had a firearm weapon in his possession while the other two were carrying knives. They collected cash and one cellular phone and other items. The person who was in possession of the firearm weapon shot at Hulixia wife of Liangbin Yang (*hereinafter referred to as the 'Deceased'*), which led to firearm injury. The three unknown persons escaped alongwith the cash and other items. The Deceased was initially taken to a private medical facility i.e. Ali Medical Centre, Islamabad. Pursuant to reference by the latter, the injured/Deceased was shifted to Pakistan Institute of Medical Sciences, Islamabad (*hereinafter referred to as the 'Hospital'*). The nature of the injury was described in the Medico Legal Report (Exh.PA). The Deceased was later discharged and sent home. However, on 09-01-2018, she collapsed and was thereafter rushed to another private medical facility i.e. Shifa International Hospital, Islamabad. The Deceased

passed away on 16-01-2018 and her autopsy was conducted on 24-01-2018.

3. The case was investigated by various Investigating Officers. When the matter was reported, Falak Shair, Assistant Sub Inspector (PW-2) had reached the Hospital and had prepared the injury sheet (Exh.PD). The latter was not the Investigating Officer. The Investigating Officer of the case was Ghulam Shabbir, Sub Inspector (PW-16). On 29-12-2017, the latter visited the Crime Scene and the Hospital. He drafted un-scaled site plan (Exh.PT) and with the assistance of a forensic expert, obtained finger prints. On 11-01-2018, the CMO of the Hospital handed over a sealed parcel to him. It was stated that the said sealed parcel contained a bullet extracted from the body of the Deceased. However, there is nothing on record to show that the bullet was kept in safe custody or taken into possession by the Investigating Officer in accordance with law. The investigation of the case was transferred to Muhammad Riaz Gondal, Sub Inspector (PW-16) on 05-03-2018. According to the testimony of the latter, on the same day he received information regarding the accused who had committed the offence. Syed Muhammad Tehseen son of Syed Gul Hussain, Syed Zulqarnain Haider son of Syed Kamal Hussain, Khurram Ibrahim alias Satti son of Muhammad Ibrahim (*hereinafter referred to as 'Appellant no.1, Appellant no.2 and Appellant no.3', respectively and collectively as 'Appellants'*) were arrested from the football ground situated in

G-9, Islamabad. The appellants were arrested under section 54 of the Code of Criminal Procedure, 1898 (*hereinafter referred to as the 'Cr.P.C.'*) and not in the criminal case registered by the Complainant. On 09-03-2018, identification parade was conducted by Dr Waqar Ali Khan (PW-19). It is noted that joint identification parade of three Appellants in one go was held. It was also conceded by the witnesses that the Appellants were subjected to identification parade in other criminal cases as well. Firearm weapon and other items were recovered from the Appellants when they were arrested. They had also led to recovery of cash from a room situated in a commercial area. The firearm weapon, empty and the bullet were sent for chemical analysis to the National Forensic Science Agency. The latter vide report, dated 23-05-2018, confirmed that the firearm weapon, empty and the bullet had matched. The report was brought on the record as Exh.DD. On 13-05-2018, Amir Shahzad, Draftsman (PW-4) visited the crime scene and scaled site plan (Exh.P-F/1-2) was handed over to the Investigating Officer on 09-05-2018. After submission of report under section 173 of Cr.P.C., charge was framed on 24-01-2019. The Appellants did not plead guilty. The prosecution produced 18 witnesses while the appellants preferred not to be examined under oath and thereafter their respective statements under section 342 of Cr.P.C. were recorded. After recording of evidence and affording an opportunity of hearing to the parties, the learned trial court vide judgment, dated 12-11-2020, convicted and sentenced the Appellants in the following terms.-

- "i. All three convicts Tehseen, Khurram Ibrahim and Zulqarnain are sentenced to undergo RI for 10 years under u/s 349 read with 397 PPC alongwith fine Rs.2,00,000/- each. In case of default, convicts shall undergo six months SI.*
- ii. All the convicts Tehseen, Khurram Ibrahim and Zulqarnain are awarded life imprisonment u/s 302(b) read with 34 PPC as Tazeer and fine Rs. 2,00,000/- each. In case of default the convicts shall further undergo six months SI.*
- iii. All the convicts Tehseen, Khurram Ibrahim and Zulqarnain are directed to pay Rs.5,00,000/- each as compensation to the legal heirs of deceased Hul Lixia u/s 544-A Cr.PC which shall be recoverable as arrears of land revenue. Both the sentences for imprisonment awarded to convicts shall run concurrently. The convicts shall also be entitled for the benefit of 382(b) Cr.PC."*

4. The learned counsels for the Appellants have been heard at length. They have argued that; the arrest of the Appellants is shrouded in mystery; they were not nominated in the FIR nor were they arrested in connection therewith; at a belated stage, they were arrested under section 54 of Cr.P.C.; they were subjected to multiple identification parades in different criminal cases; the prosecution had failed to prove its case beyond a reasonable doubt; reliance has been placed on the cases titled '*Dr Waqar Hameed v. The State and another*' [2020 SCMR 321], '*Muhammad Shah v. The State*' [2010

SCMR 1009], '*Qadir Bakhsh v. The State*' [2021 PCr.LJ 1169 (Balochistan)], '*Muhammad Ashraf alias Acchu v. The State*' [2019 SCMR 652], '*Khalid Rasheed v. The State*' [2012 MLD 1274 (Lahore)], '*Mrs Perin J. Dinshaw v. Mubarak Ali and another*' [2016 YLR 251 (Lahore)], '*Shahzada Khan v. The State*' [2020 YLR 1048 (Balochistan)], '*Gulfam and another v. The State*' [2017 SCMR 1189], '*Mian Sohail Ahmed and others v. The State*' [2019 SCMR 956], '*Noor Islam v. Ghani ur Rehman and another*' [2020 SCMR 310], '*Ghulam Mustafa v. Ali Nawaz and 2 others*' [2020 MLD 1260], '*Basharat ali v. Muhammad Safdar and another*' [2017 SCMR 1601], '*Zaheer Sadiq v. Muhammad Ijaz and others*' [2017 SCMR 2007], '*Muhammad Yousaf v. The State and others*' [2018 MLD 289 (Lahore)], '*Muhammad Imran and others v. The State*' [2021 YLR 95 (Lahore)], '*Arif Hussain v. The State through A.A.G. and 2 others*' [2020 YLR 589 (Peshawar)], '*In Re: Kanwar Anwaar Ali, Special Judicial Magistrate*' [PLD 2019 SC 488], '*Haji Nawaz v. The State*' [2020 SCMR 687], '*Riasat Ali v. The State*' [2013 YLR 272], '*Mst. Sughra Begum and another v. Qaiser Pervez and others*' [2015 SCMR 1142].

5. The learned State Counsel on the other hand has argued that; the prosecution had established its case beyond a reasonable doubt; the bullet, empty and the recovered firearm weapon had matched; reliance has been placed on the case titled '*Muhammad Siddique and others v. The State*' [2020 SCMR 342]; the ocular

account deposed by three witnesses was trustworthy; despite lengthy cross examination, its veracity was not shaken.

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

7. On 29-12-2017, three unknown persons had forcibly entered the Crime Scene. One of them was carrying a firearm weapon. He shot at the Deceased and resultantly the latter suffered firearm injury. The Deceased was taken to the Hospital and after treatment she was discharged. However, she collapsed on 09-01-2018 and was rushed to the Hospital where she remained admitted till 16-01-2018 i.e. when she passed away. The medical evidence indicates that she had developed infection which proved to be fatal. It also appears from the evidence brought on record that complaints were made regarding alleged medical negligence. The crucial factum of the appeals in hand is the identification of the Appellants as the persons who had committed the offence on 29-12-2017.

8. It is noted that the Appellants were arrested on 05-03-2018 and on the same day the investigation had been transferred to Muhammad Riaz Gondal, Sub Inspector (PW-17). There is nothing on record to indicate how the Investigating Officer had identified them as the three unknown persons mentioned in the FIR. The Appellants

were subjected to identification parades in different criminal cases, which raises doubts regarding credibility of the investigation proceedings. The identification parade was held in violation of the law laid down by the august Supreme Court in the cases titled '*Mian Sohail Ahmed and others v. The State*' [2019 SCMR 956], '*Gulfam and another v. The State*' [2017 SCMR 1189], '*Ziaullah alias Jajj v. The State*' [2008 SCMR 1210], '*Bacha Zeb v. The State*' [2010 SCRM 1189]. Moreover, it is evident from the evidence that the police officials had held a press conference immediately after the Appellants were arrested. The translator (PW-13) who was engaged by the Complainant had stated in response to a question during cross examination that the police officials had shown him the Appellants before the identification parade was conducted. Moreover, Muhammad Riaz Gondal, Sub Inspector (PW-17) had also conceded that footage of the Appellants while incarcerated in the Police Station was recorded by one of the TV Channels. The ocular account deposed by three witnesses is of no help to the prosecution because it lacks corroboration. There is also no explanation how the Agency in its report had concluded that the bullet stated to have been extracted from the body of the Deceased had matched the cartridge case and the firearm weapon. The medical evidence brought on record is inconclusive. The arrest of the Appellants and their identification as the accused in the case in hand, are shrouded in mystery and raise serious doubts regarding the prosecution's case. The prosecution had failed to establish the guilt of the Appellants beyond a reasonable

doubt. The benefit of doubt, therefore, ought to have been extended to the Appellants.

9. For the above reasons, the appeals are **allowed** and consequently judgment, dated 20-11-2020, whereby the Appellants were convicted and sentenced, is hereby **set aside**. In case the Appellants are not required to be incarcerated in any other case, then they shall be released forthwith.

(CHIEF JUSTICE)

Announced in the open Court on 10-12-2021. |

(CHIEF JUSTICE)

Luqman Khan/•