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Judgment Sheet
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Criminal Appeal No.200-2022/BWP
Muhammad Aamir Karim. Versus. The State, etc.

J U D G M E N T

<i>Date of hearing</i>	08.10.2024
<i>Appellant represented by:</i>	<i>Mr. Muhammad Ahmad Rizwan, Advocate and Malik Saeed Ijaz, Advocate.</i>
<i>The State represented by:</i>	<i>Mr. Shahid Fareed, ADPP for the State.</i>
<i>The complainant represented by:</i>	<i>Mr. Rashid Akhtar, Advocate and Syed Zeeshan Haider, Advocate</i>

Sardar Muhammad Sarfraz Dogar, J.: Instant appeal has been filed by the appellant Muhammad Aamir Karim son of Muhammad Manzar Karim against his conviction and sentence awarded to him *vide* judgment dated 11.03.2022, rendered by the learned Additional Sessions Judge/MCTC, Ahmadpur East, in case FIR No.273 dated 19.07.2019, registered for the offence under section 302 PPC with Police Station, City Ahmadpur East. Through the impugned judgment, the appellant was convicted and sentenced as under:-

Under section 302(b) PPC: Life Imprisonment alongwith Rs.300,000/- u/s 544-A Cr.P.C as compensation to the legal heirs of deceased. In default whereof, it was ordered that the same shall be recovered from the convict as arrears of land revenue and he shall also suffer further six months S.I.
He was also extended benefit of section 382-B of Cr.P.C.

2. Briefly, as per FIR, on 18.07.2019 at about 11:15 p.m, three unknown accused persons were scuffling with Muhammad Dilshad, brother of complainant and one of them opened pistol shot resulting death of complainant’s brother at the spot.
3. After completion of investigation, report under section 173 of Cr.P.C was submitted against the appellant. On culmination of trial, he was convicted and sentenced as noted above, hence this appeal.
4. Learned counsel for the appellant, in support of this appeal, contends that prosecution’s evidence is neither trustworthy nor convincing; that there are a number of material lacunas in

prosecution's case and infirmities in depositions of PWs; that the prosecution has miserably failed to prove its case against the appellant beyond the shadow of doubt; thus, the appeal be accepted and the appellant may be acquitted from the charge.

5. On the other hand, learned ADPP for the State duly assisted by learned counsel for the complainant, vehemently opposes this appeal on the grounds that the prosecution has proved the case against the appellant; that the defence remained failed to extract any mala-fide of the complainant to falsely implicate the appellant; that the prosecution has successfully proved the case against the appellant and sentence of life imprisonment was rightly awarded to the appellant hence, appeal may be dismissed.

6. Heard; record perused.

7. In murder cases, great care & caution is required for evaluation of authenticity and veracity of evidence of purported eye witnesses. In the case under discussion, the complainant Muhammad Latif took stance that he alongwith Muhammad Asghar and Salah-ud-Din, were present at the spot when they witnessed the occurrence. There is no denial to the fact that complainant is real brother of deceased, PW. Muhammad Asghar is cousin whereas Salahuddin PW is nephew/Bhanja of complainant. As such, they all are inter-se related. The Testimony of witnesses who are closely related to the deceased has to be appreciated carefully.¹ The complainant while appearing as PW.8 admitted that he serves in a School as a watchman/Chowkidar, which is at a distance of one *furlang* from the place of occurrence. He further admitted that school is 2/3 acres away from Chacha Basti Chowk and interse distance of place of occurrence said Chowk is 10 acres. As per relevant column of FIR, the occurrence was taken place four furlong west of Chacha Basti Chowk, which means that there was considerable distance of between the place of occurrence and school where the complainant is serving as Chowkidar, as such his presence at the place of occurrence particularly at midnight is not

¹ "Muhammad Imtiaz Baig and another v. The State" (2024 SCMR 1191), "Muhammad Zaman v. The State and others" (2014 SCMR 749) and "Abdul Ghafoor v. The State" (2022 SCMR 1527)

natural, hence he was a chance witness. Same was the position of other PW.9, who is resident of Mouza Mehmood Abad, Tehsil Ahmadpur, himself admitted in cross-examination that Mehmood Abad is situated at a distance of approximately 12 km from place of occurrence. Therefore, they being chance witnesses had to explain satisfactorily about their presence at the place of occurrence. However, unfortunately, not even a single word is stated by both these PWs in their statements regarding the justified reason of their presence at the place of occurrence. Although, complainant tried to justify his presence by stating that his relative namely Jam Moosa resides near the Ejaz Petrol Pump and he went to see him at 10:00 p.m to his house, however, being Watchman of a school, going to see a relative at 10:00 p.m without reason is not justified. Even otherwise, said Jam Moosa was not produced before the Court to substantiate the claim of complainant, hence, the complainant could not establish his presence at the place of occurrence at the relevant time. The august Supreme Court of Pakistan in recent pronouncement in case titled as “Muhammad Hassan and another v. The State”² has held as under:-

“In light of the aforementioned facts, we are of the considered view that the above-mentioned eye-witnesses could not justify their reasons for being at the place of occurrence at the relevant time. Therefore, they are chance witnesses, and their evidence is not free from doubt.

(Emphasis added)

In this regard, reference can also be made to case titled as “Mst. Sughra Begum and another v. Qaiser Pervez and others”; “Muhammad Irshad v. Allah Ditta and others” and “Sufyan Nawaz and another v. The State and others”³.

8. Now adverting to the indictment of present appellant in this case. It is an admitted fact that the appellant was not named in the FIR. The occurrence was taken place on 18.07.2019 whereas appellant was arrested under suspicion under section 54 of Cr.P.C on 26.07.2019 i.e. after eight days of occurrence and was sent to New Central Jail Bahawalpur where on 31.07.2019 i.e. after five days of arrest and thirteen days of occurrence, identification parade was conducted. As such, the identification parade has been held

² 2024 SCMR 1427

³ 2015 SCMR 1142, 2017 SCMR 142 and 2020 SCMR 192

after a considerable delay from the arrest of appellant. Furthermore, there is no denial to the fact that neither in complaint, nor in FIR, the complainant has not mentioned the features of unknown accused persons. Even during the course of cross-examination, both the eye witnesses have admitted this fact. The investigating officer Ijaz Ahmad S.I (PW.11) also admitted during the cross-examination that none told him about the features, height, age, colour of accused or as to whether they were having beard or not. Therefore, the evidentiary value of same has a little value in the eyes of law more particularly when the lineaments and physiognomy of the accused were not mentioned anywhere by the complainant or the eye-witnesses. Reliance is placed upon recent case laws titled as “Muhammad Riaz v. Khurram Shehzad and another” and “Mehboob Hassan v. Akhtar Islam”.⁴ Moreover, the Judicial Magistrate/PW.7, who conducted identification parade admitted in cross-examination that he did not describe the features, colours, heights of the dummies in between the identification parade, when it was conducted. He further admitted it correct that he did not mention in his report Exh.P.K whether the dummies were resembled with the accused in any manner. He also admitted that the accused raised an objection that he was shown to witnesses by the I.O prior to sending him in judicial lock up. These admissions on the part of identification parade conductor further raises questions on the veracity of identification parade.

9. Apart from the above noted infirmities in identification parade there is another fact which creates heavy shadows of doubts on the veracity of identification parade i.e. interview of Station House Officer concerned which was taken on 25.07.2019 and published in daily “Khabrain” on 26.07.2019. The defence took the stance that said interview was published prior to the shown date of arrest of appellant and his snap was also published in the newspaper. The interview conductor (CW.5) Abdul Qadeer appeared in witness box and supported the stance of accused by deposing that he received the information from Amir Lal S.I about

arrest of appellant Aamir Karim and his cameraman Irshad made a picture of the appellant. The prosecution could not negate this stance of appellant rather during the course of cross-examination, investigating officer (PW.11) simply showed his ignorance about this fact. However, said statement of I.O is not worthy of any credence as his snap was also present alongwith appellant and SHO, to whom he identified. Therefore, in view of above, the identification parade has lost its credibility and no reliance can be placed thereupon.

10. Another fact of immense importance which further casts doubts on the prosecution story is that allegedly, the occurrence took place at about 11:15 p.m on 18.07.2019, however, it is an admitted fact that post mortem examination of the deceased was conducted at 06:30 a.m on 19.07.2019 with the delay of more than eight hours. PW.3 Muhammad Ramzan 1900/C deposed during the course of cross-examination that they received information about the occurrence at about 10:00/10:45 and they reached at the place of occurrence within five minutes and left the spot after fifteen minutes, meaning thereby, as per statement of this PW, he took the dead body to hospital at about 11:10/11:15 p.m on 18.07.2019, while on the other hand, contradicting the statement of this important witness, PW.2/Dr.Muhammad Abid Aslam deposed during the course of cross-examination that he received the dead body at 06:00 a.m. Furthermore, at the time of external examination of the dead body, the PW.2/Dr.Muhammad Abid Aslam, observed that rigor mortis was developed and there was heavy clotted blood over the cloths of dead body, which further corroborates the fact that postmortem examination was conducted with considerable delay. Even otherwise, there is no explanation at all as to why the post mortem examination of the deceased was got conducted with such a delay. In similar circumstances, in case titled “Muhammad Ijaz alias BILLA and another v. The State and others”⁵, the august Supreme Court of Pakistan has held as under:-

“..In such circumstances, the most natural inference would be that the delay so caused was or preliminary investigation and prior consultation to nominate

⁵ 2024 SCMR 1507

the accused and plant eye-witnesses of the crime. Reference in this regard may be made to the case of Muhammad Rafique alias Feeqa v. The State (2019 SCMR 1068). In similarly circumstances, this Court, in the case of Irshad Ahmad v. The State (2011 SCMR 1190), observed that the noticeable delay in post-mortem examination of the dead body is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses before preparing police papers necessary for the same. This view has been followed by this court in Ulfat Hussain v. The State (2018 SCMR 313), Muhammad Yaseen v. Muhammad Afzal and another (2018 SCMR 1549), Muhammad Rafique v. The State (2014 SCMR 1698), Muhammad Ashraf v. The State (2012 SCMR 419) and Khalid alias Khalidi and 2 others v. The State (2012 SCMR 327).”

(Emphasis added)

11. Adverting to the next intriguing aspect of the matter i.e. conduct of witnesses. Admittedly, the complainant is real brother of deceased whereas PW.Muhammad Asghar is cousin and Salahuddin PW is nephew/Bhanja of complainant as well as of deceased. There are certain admitted facts that none of them tried to catch the accused persons or inform the police. They have not given any first aid to the deceased in injured condition even they did not try to take him to hospital in order to save his life and the deceased remained lying on the ground even in the presence of his real brother and close relatives. The mouth and eyes were found open by the medical officer (PW.2) as such, it is proved that they even did not try to close the mouth and eyes of the deceased. Such conduct of the prosecution eye-witnesses was highly unnatural and casts doubts about their presence at the place of occurrence at the relevant time. Reliance in this regard is humbly placed upon the recent pronouncements of august Supreme Court of Pakistan in case titled as “Mst. Saima Noreen v. The State”⁶ and “Riasat Ali v. The State”⁷ and “Maqsood Alam and another v. The State and others”⁸.

12. Another important aspect of the matter is that prosecution witnesses could not establish their presence sufficiently at the place of occurrence as neither the complainant nor PWs reside there and their residences are at a considerable distance. The stance of the complainant was that he was came to see his relative Jam Moosa, who resides near the Ejaz Petrol Pump where other PWs also arrived after one hour of his arrival. However, quite astonishingly, the prosecution has not produced the said Jam Moosa in order to substantiate presence of complainant and PWs

⁶ 2024 SCMR 1310

⁷ 2024 SCMR 1224

⁸ 2024 SCMR 156

at the stated time. Hence, the best witness, which could have independently supported the prosecution version has been withheld by the prosecution and non-producing of said witness tantamount to inference that had he been produced, he would have not supported the prosecution version. The august Supreme Court of Pakistan in recent pronouncement in case titled “Muhammad Ijaz alias BILLA and another v. The State and others”⁹ has held as under: -

“We believe that the prosecution withheld the best evidence, which undermines the credibility of its account. It is well established that whenever a party withholds the best evidence available, it is presumed under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that if such evidence had been produced, it would not have supported the stance of that party.”

(Emphasis added)

Reference in this regard can also be placed on case titled as “Riasat Ali v. The State” and “Abdul Qadeer v. The State”¹⁰.

13. Last but not the least, learned counsel for the appellant has consistently argued that the dead body of the deceased was taken to hospital through Rescue-1122. Although, the prosecution has been remained reluctant in this regard, however, during the course of trial, the team of Rescue-1122 was summoned as CW.1 to CW.3, who deposed in line with the version of defence and also produced certain documents i.e. copies of Rapat record of 1122. The said witnesses are undoubtedly natural and independent who supported the defense plea and prosecution could not sufficiently establish their any relation with the accused. Therefore, the appellant remained successful in proving his plea. In case titled “Muhammad Imtiaz Baig and another v. The State”¹¹, august Supreme Court of Pakistan has held as under: -

All the factors favouring belief in the accusation must be placed in juxtaposition to the corresponding factors favouring the plea in defence and the total effect should be estimated in relation to the questions viz. is the plea/version raised by the accused satisfactorily established by the evidence and circumstances appearing in the case?---If the answer is in the affirmative, then the Court must accept the plea of the accused and act accordingly---If the answer to the question is negative, then the Court will not reject the defence plea as being false but will go a step further to find out whether or not there is yet a reasonable possibility of the defence plea/version being true---If the Court finds that although the accused has failed to establish his (defence) plea/version to the satisfaction of the

⁹ 2024 SCMR 1507

¹⁰ 2024 SCMR 1224 and 2024 SCMR 1146

¹¹ 2024 SCMR 1191

Court but the plea might reasonably be true, even then the Court must accept his plea and acquit or convict him accordingly.

Reference in this regard can also be placed on case laws titled as “Faiz and others v. The State”, “Ashiq Hussain alias Muhammad Ashraf v. The State”, “Sultan Khan v. Sher Khan and others”, “Muhammad Asghar v. Muzammal Khan and 2 others”, “Muhammad Ashraf v. The State”, “Sabir Ali v. The State”, “Ahmad Nawaz and another v. The State” and “Ali Ahmad and another v. The State and others”¹².

14. In view of attending circumstances, there remains no uncertainty that the prosecution case is replete with doubts in respect of presence of PWs at the place of occurrence, the benefit of which is unequivocally to be given to the appellant. Reliance in this regard is also placed on recent pronouncements of august Supreme Court of Pakistan in case laws titled as “Khial Muhammad v. The State”, “Iftikhar Hussain alias Kharo v. The State” and “Muhammad Riaz v. Khurram Shahzad”¹³.

15. It is a known and settled principle of law that prosecution primarily is bound to establish guilt against the accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges so imputed against the accused have not been proved beyond reasonable doubt, then the accused becomes entitled for his release on getting benefit of doubt in the prosecution case. In such situation the Court has no jurisdiction to abridge such right of the accused. After considering all the pros and cons of this case, this Court has come to this irresistible conclusion that the prosecution could not prove its case against the appellant beyond the shadow of doubt. In a recent pronouncement in case titled as “Muhammad Hassan and another v. The State and others”¹⁴, august Supreme Court of Pakistan has held:-

“...once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an

¹² 1983 SCMR 76, PLD 1994 SC 879, PLD 1991 SC 520; 2004 SCMR 747, 2006 SCMR 1815, 2011 SCMR 629, 2011 SCMR 593 and PLD 2020 SC 201.

¹³ 2024 SCMR 1490 SC, 2024 SCMR 1449 SC and 2024 SCMR 57 SC.

¹⁴ 2024 SCMR 1427

accused. Reference in this regard may be made to the cases of Daniel Boyd (Muslim Name Saifullah) and another v. The State (**1992 SCMR 196**); Gul Dast Khan v. The State (**2009 SCMR 431**); Muhammad Ashraf alias Acchu v. The State (**2019 SCMR 652**); Abdul Jabbar and another v. The State (**2019 SCMR 129**); Mst. Asia Bibi v. The State and others (**PLD 2019 SC 64**) and Muhammad Imran v. The State (**2020 SCMR 857**)”.

(Emphasis supplied)

16. In the light of above discussion, I am of the considered view that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt, therefore, instant criminal appeal is **accepted** and his conviction and sentence recorded by the learned Additional Sessions Judge/MCTC, Ahmadpur East *vide* impugned judgment dated 11.03.2022 is set aside and he is acquitted of the charge by extending him the benefit of doubt. He is in jail, he be released forthwith if not required in any other case.

(Sardar Muhammad Sarfraz Dogar)
JUDGE

APPROVED FOR REPORTING

JUDGE

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