

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI**  
JUDICIAL DEPARTMENT

**Criminal Appeal No.865 of 2022**

Kashif Jamal      Vs.      The State

Date of hearing:                      **05.08.2024**

Appellant by:-                      M/s. G. M. Shah & Sardar Gul  
Nawaz Khaliq, Advocates.

State by:-                              Mr. Naveed Ahmed Warraich,  
DDPP with Arif, Inspector.

Complainant by:-                      M/s. Muhammad Afzal Khan  
Jadoon, Asif Mahmood Haider  
and Arfia Saadat, Advocates  
with complainant (Abida Parveen).

**SADAQAT ALI KHAN, J.** Appellant (**Kashif Jamal**)

has been tried by the trial Court in case FIR No.271, dated 11.03.2022, offence under Section 302 PPC, Police Station Civil Lines, District Rawalpindi and was convicted and sentenced vide judgement dated 20.10.2022 as under:-

**Kashif Jamal (appellant)**

**U/S 302(b) PPC**      Sentenced to imprisonment for life as Ta'zir for committing Qatl-i-Amd of Hassan Ali (deceased) with compensation of Rs.5,00,000/- (recoverable as arrears of land revenue) payable to legal heirs of the deceased u/s 544-A Cr.P.C. and in default whereof to further undergo simple imprisonment for 6-months.

Benefit of Section 382-B Cr.P.C. was extended to him.

**2.** Brief facts of the case have been stated by the complainant Abida Parveen<sup>PW-6</sup> in her statement before the trial Court, which is hereby reproduced for narration of the facts as under:-

*“States that on 10.03.2022 at 09:59 pm, I, Ghulam Raza, Muhammad Ubaid and Sajida Bibi were present in my house. My son Hassan Ali Had gone out of the house. There was report of fire shots from house of Raheel Khalid. I, Ghulam Raza, Sajid Parveen and Muhammad Ubaid came out of our house. Kashif Jamal accused came out from his house. My son had reached the Pulli. Kashif accused was having pistol in his hand. Kashif accused present in*

*Court in our view resorted to firing, which hit right side of my son below shoulder on front. Again said one fire shot hit shoulder and second shot hit little bit above shoulder of my son. My son fell down after sustaining injuries. I, Sajida Parveen, Ghulam Raza and Muhammad Ubaid witnessed the occurrence. We lifted my son and were shifting him to the hospital. We reached BBH hospital, Rawalpindi. After some time police came to the hospital and recorded my statement Ex-PF, which was read over to me and I signed and thumb marked Ex-PF/1 on the same in token of its correctness. Kashif accused a year ago picked up fight with me after entering my house. Due to this reason Kashif accused fired at my son.”*

**3.** After hearing learned counsel for the parties as well as learned DDPP, and on perusal of record with their able assistance, it is observed as under:-

- I.** Facts of the case have been given in preceding para of this judgment, therefore, there is no need to repeat the same to avoid duplication and repetition.
- II.** Hassan Ali was done to death at “pulli” near his house on 10.03.2022 at 09:59 p.m. whereafter FIR was lodged on the same night at 12:00 a.m. (11.03.2022) on the statement of her mother Abida Parveen/complainant<sup>PW-6</sup> who and her husband Ghulam Raza Khan<sup>PW-7</sup> claim themselves to be the eyewitnesses of the occurrence.
- III.** Abida Parveen/complainant<sup>PW-6</sup> has contracted second marriage with Ghulam Raza Khan<sup>PW-7</sup> who is stepfather of Hassan Ali (**deceased**).
- IV.** According to the FIR, occurrence took place on 10.03.2022 at 09:59 p.m. whereafter FIR was lodged at 12:00 a.m. (11.03.2022) with an unexplained delay of two hours. Post-mortem report (**Exh.PB**) shows that the dead body was received in the dead house on 11.03.2022 at 12:30 a.m. whereafter police papers were received by the Medical Officer (**Dr. Muhammad Junaid<sup>PW-2</sup>**) at 05:00 a.m. then post-mortem examination was conducted at 05:10 a.m. (11.03.2022)

with an unexplained delay of more than seven hours from the time of occurrence (**09:59 p.m. on 10.03.2022**). Such delay is generally suggestive of a real possibility that time had been consumed by the police in procuring/planting eye-witnesses, involving the appellant and in cooking up a story for the prosecution before preparing police papers necessary for getting a post-mortem examination of the dead body conducted. **(2011 SCMR 1190)** “Irshad Ahmad Vs. The State”.

- V.** Both the eyewitnesses (**Abida Parveen/complainant<sup>PW-6</sup> & Ghulam Raza Khan<sup>PW-7</sup>**) have stated in their examination-in-chief before the trial Court that Hassan Ali (**deceased**) had gone out of the house (**not returned home till 09:59 p.m. on the night of 10.03.2022**), they came out of their house after hearing fire shots, Kashif Jamal (**appellant**) also came out from the house of Raheel Khalid (**not PW**), Hassan Ali (**deceased**) had reached the “pulli”, in their view, appellant caused firearm injuries on his (**deceased**) person. Points No.3 & 4 of rough and scaled site plans of the place of occurrence show the presence of Abida Parveen/complainant<sup>PW-6</sup> and Ghulam Raza Khan<sup>PW-7</sup> which are at a distance of 60 paces/90 feet and 59 paces/88 feet from points i.e. No.1 (**where Hassan Ali, deceased was present**) and No.2 (**where appellant statedly was present at “pulli”**), as per prosecution story deceased was coming to his house. According to the site plans of the place of occurrence he (**Hassan Ali, deceased**) was facing toward the direction of his house whereas, appellant was going towards south of the “pulli” opposite direction of the house of the deceased facing toward south whose back was toward the house of the deceased and the eyewitnesses. Abida Parveen/complainant<sup>PW-6</sup> stated

in her cross-examination that source of light is not mentioned in her statement (**Exh.PF, upon which FIR was lodged**) before the police. She further stated in her cross-examination that her examination-in-chief was recorded on 23.06.2022 but she has not mentioned the source of light therein. She has also not stated in her examination-in-chief that she told the police about the source of light in her statement before police and police had not recorded. Ghulam Raza Khan<sup>PW-7</sup> has also not disclosed the source of light at relevant time even in his examination-in-chief. Aziz Sultan SI<sup>PW-10</sup> admitted in his cross-examination that according to the statement of Waqas Khalid JFS<sup>PW-1</sup>, no source of light was available at the spot and during the inspection he had not collected any source of light at the spot. In these circumstances, identity of the appellant in dark hours of the night at a distance of 88/90 feet when he was heading opposite to the direction of the eyewitnesses discussed above is not free from doubt. Mere recovery of electric bulb, later on, does not prove that same was litting at or near the place of occurrence at the time of occurrence unless eyewitness(s) discloses the source of light in the FIR as well as in his examination-in-chief before the trial Court.

- VI.** Abida Parveen/complainant<sup>PW-6</sup> stated in her cross-examination before the trial Court that occurrence took place at 09:15 p.m. Contrary to this, Aziz Sultan SI<sup>PW-10</sup> stated in his cross-examination that as per version of Abida Parveen/complainant<sup>PW-6</sup> occurrence took place at 09:59 p.m. whereas as per version of Rohail Khalid (**complainant in case FIR No.272/2022, P.S. Civil Lines, Rawalpindi, the story of this FIR has also been disbelieved by this Court**) occurrence took place at

09:30 p.m. This contradiction between time of occurrence is also not ignorable, rather negates the presence of eyewitnesses.

**VII.** It is mentioned in the complaint (**Exh.PF, upon which FIR was lodged**) that appellant made fire shot which hit on front of right shoulder of Hassan Ali (**deceased**). Abida Parveen/complainant<sup>PW-6</sup> also stated in her cross-examination that in her statement (**Exh.PF**) before police, police has mentioned one fire shot, stated in volunteer portion that two fire shots were made upon her son (**Hassan Ali, deceased**), she further stated in her cross-examination that she had stated in her statement (**Exh.PF**) before the police that one fire shot hit on the shoulder and second fire shot also hit little bit above shoulder of her son (**Hassan Ali, deceased**), who was confronted with her statement (**Exh.PF**) where second fire shot is not mentioned. Initially, complainant (**Abida Parveen<sup>PW-6</sup>**) got mentioned in the FIR that appellant made single fire shot. Contrary to this, Medical Officer during postmortem examination on the dead body of the deceased (**Hassan Ali**) observed two firearm entry wounds whereafter, complainant (**Abida Parveen<sup>PW-6</sup>**) in order to bring the case in line with the medical officer stated with dishonest improvement that appellant made two fire shots on the person of deceased (**Hassan Ali**). Likewise, Ghulam Raza Khan<sup>PW-7</sup> stated in his cross-examination that he had stated before police that appellant made two fire shots which hit on the right shoulder of Hassan Ali (**deceased**), who was also confronted with his statement (**Exh.DA**) before police where seat of injury is not mentioned. He (**Ghulam Raza Khan<sup>PW-7</sup>**) stated in his cross-examination that he had stated in his statement before police that Kashif Jamal (**appellant**) armed with .30-bore pistol came out

of his (**Raheel Khalid**) house, who was confronted with his statement (**Exh.DA**) wherein words 'came out' are not mentioned. He (**Ghulam Raza Khan<sup>PW-7</sup>**) also stated in his cross-examination that he had stated before police that they took the deceased to BBH Hospital, who was confronted with his statement (**Exh.DA**) before police where it was not so recorded. Above discussed dishonest improvements of both the eyewitnesses not only shatter their credibility, rather negate their presence at relevant time. **(2008 SCMR 06)** "Akhtar Ali and others Vs. The State".

**VIII.** Motive (disbelieved by the trial Court) of the occurrence as stated by the complainant before the trial Court is that about one year prior to the present occurrence appellant had a quarrel with her after entering into her house. This motive shows that appellant had grudge against the complainant but despite her (**Abida Parveen/complainant<sup>PW-6</sup>**) claimed presence at the time of occurrence at the place of occurrence, she did not receive even a single scratch on her body which negates her presence at the relevant time. Had she been present at the time of occurrence she would have been prime target of the appellant with above said motive, blessing her with unbelievable courtesy and mercy shown to her by the accused leaving her unhurt knowing well that she would ultimately depose against him is an unbelievable story of the prosecution. **(2017 SCMR 596)** "Mst. Rukhsana Begum and others Vs. Sajjad and others".

**IX.** Ghulam Raza Khan<sup>PW-7</sup> being second husband of the complainant (**Abida Parveen<sup>PW-6</sup>**) and stepfather of Hassan Ali (**deceased**) while appearing before the trial Court has provided his residential address i.e. Gulshan Jhawara Bakra Mandi Street No.1 which is far away from Dhok Chirag Din where the

occurrence took place. In these circumstances, presence of this witness at the time of occurrence at the place of occurrence is not only doubtful, rather whole story of the prosecution is neither plausible nor believable.

**X.** Recovery of pistol .30-bore on pointing out of the appellant in presence of negative report of Punjab Forensic Science Agency is not only inconsequential rather draws adverse inference.

**4.** In view of the above discussed circumstances, I entertain serious doubt in my mind regarding participation of the appellant in the present case. It is settled principle of law that for giving benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in the prudent mind about the guilt of the accused, then he would be entitled to its benefit not as a matter of grace or concession but as of right.

**5.** For the foregoing reasons, instant criminal appeal filed by the appellant (**Kashif Jamal**) is accepted, his conviction and sentences awarded by the trial Court through the impugned judgment are hereby set-aside. He is acquitted of the charges and directed to be released forthwith, if not required in any other case.

**(SADAQAT ALI KHAN)**  
JUDGE

**Approved for reporting.**

**JUDGE**

*Inaam Sandhu\**