

JUDGMENT SHEET

**LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI**

JUDICIAL DEPARTMENT

Murder Reference No.35 of 2022

The State Versus

1. Ghaffar Abbas alias Ghaffar Ahmed
2. Muhammad Suleman alias Mani

Criminal Appeal No.435 of 2022

Ghaffar Abbas alias Ghaffar Ahmed etc. Versus The State etc.

Date of hearing: 13.03.2024
Appellants by: M/s Ansar Nawaz Mirza, Muhammad Danyal and Mustajab Hussain, Advocates

State by: Mr. Sajjad Hussain Bhatti, DPG with Zafar SI
Complainant by: Mr. Basharat Ullah Khan, Advocate

SADAQAT ALI KHAN, J. Ghaffar Abbas alias Ghaffar Ahmed and Muhammad Suleman alias Mani (appellants) alongwith Adeel Abbas and Nasir Abbas co-accused (since acquitted) have been tried by the trial Court in case FIR No.171 dated 15.08.2020 offences under Sections 302 and 34 PPC Police Station Dhudial, District Chakwal and were convicted and sentenced vide judgment dated 16.06.2022 as under:-

- 1. Ghaffar Abbas alias Ghaffar Ahmed,**
2. Muhammad Suleman alias Mani (appellants)

U/S 302(b) PPC	Sentenced to death as Tazir each for committing Qatl-i-Amd of Miran Baksh (deceased) with compensation of Rs.5,00,000/- each payable to legal heirs of the deceased u/s 544-A Cr.P.C. recoverable as arrears of land revenue and in default whereof to undergo six months S.I. each.
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2. Ghaffar Abbas alias Ghaffar Ahmed and Muhammad Suleman alias Mani (appellants) have filed this criminal appeal against their convictions and the trial Court has sent Murder

Reference for confirmation of their death sentences or otherwise, which are being decided through this single judgment.

3. Heard. Record perused.

4. Miran Baksh was done to death in the street on 15.08.2020 at 10:50 a.m., whereafter FIR was lodged on the same day i.e. 15.08.2020 at 12:40 p.m. on the statement of his maternal nephew Muhammad Latif complainant^{PW.8} who while claiming himself to be the eye-witness of the occurrence stated that on 15.08.2020 at 10:50 a.m., he was standing outside the clinic of his son Muzammal Hussain (not PW) in his absence, Adeel Abbas (Adeel Atif) and Nasir Abbas co-accused (since acquitted) were standing in the street in front of house of Ch. Fida Hussain (not PW), appellants (Ghaffar Abbas alias Ghaffar Ahmed and Muhammad Suleman alias Mani) were standing in front of the house of Ch. Doraiz (not PW), meanwhile, Miran Baksh deceased was coming to his house from the side of “Adda” when he (Miran Baksh deceased) after crossing Adeel Abbas (Adeel Atif) and Nasir Abbas co-accused (since acquitted) reached few paces from them, they [Adeel Abbas (Adeel Atif) and Nasir Abbas co-accused] took out their pistols while raising “*lalkara*” that Miran Baksh deceased should not be spared today, meanwhile, Ghaffar Abbas alias Ghaffar Ahmed appellant made fire shot with his pistol hitting on abdomen of Miran Baksh deceased who fell down, second fire shot made by him (Ghaffar Abbas alias Ghaffar Ahmed, appellant) hit on left side of neck of Miran Baksh deceased. Muhammad Suleman alias Mani (appellant) also made fire shots hitting on left arm, left leg and other parts of body of Miran Baksh deceased who succumbed to the injuries at the spot.

5. The Inquest Report is prepared in duplicate by the carbon copying agency under the provisions of Chapter 25, Rule 35 of The Police Rules, 1934 when preliminary investigation has been completed by the police officer after reaching the dead body and is sent alongwith other requisite papers to the medical officer

with dead body for post-mortem examination which is endorsed by the medical officer. The Inquest Report carries immense significance which is considered an integral part of method/system in every murder case to keep an eye on the subsequent possible fabrication in record, it gives some reflection of the witnesses in attendance, the weapon used in commission of crime, the detail of injuries on the body of the deceased, presence of crime empties etc. at the crime scene, if the dead body is lying at the spot, the nature of weapon and summary of the facts. Such information can easily be gathered from perusal of its relevant columns. In present case, inquest report was prepared by the investigating officer after reaching at the place of occurrence where dead body was lying but till that time FIR was not registered. According to inquest report, Muhammad Hafeez son of Muhammad Hanif and Zamir Hussain son of Munir Hussain (have not been produced before the trial Court) present there had identified the dead body of Miran Baksh deceased who were sent with the dead body for post-mortem examination under the escort of Wasim Nazar HC. In the relevant column of inquest report "مختصر حالات مقدمہ" it is simply mentioned as under:-

"اس طرح پر ہیں کہ مسمی میراں بخش ولد قادر بخش قوم بھٹی راجپوت ساکن پڑھال تحصیل و ضلع چکوال بعد قریب 57 سال بذریعہ آتشیں قتل ہونا بیان ہوا ہے۔ جسکی نقش بعد تحریر درخواست برائے پوسٹ مارٹم و ترتیب نقشہ صورت احوال ہمراہ شناخت کنندگان زیر حفاظت و سیم نذر HC/576 DHQ ہسپتال چکوال بھجوائی جارہی ہے بعد ملاحظہ اور پوسٹ مارٹم وجہ موت سے آگاہ کیا جائے"

Names of Muhammad Latif complainant^{PW.8} and his cousin Muhammad Shan^{PW.9} who claim themselves to be the eye-witnesses of the occurrence are not mentioned in it. Names of the appellants are also not mentioned, rather nothing is mentioned in column "Brief Summary of Facts" regarding facts of the case. No

reason for such lapses is available, so an inference can be drawn that till then, names of the complainant, eye-witnesses and accused were unknown and it was an unseen occurrence. In these circumstances, possibility cannot be ruled out that FIR was lodged after due consultation and deliberation by cooking up a story, preparing eye-witnesses for involving the appellants. **(2020 SCMR 505)**“Mst. Yasmeen Vs. Javed and another”.

6. Rough and scaled site plans of place of occurrence do not show the houses of these eye-witnesses (Muhammad Latif complainant^{PW.8} and Muhammad Shan^{PW.9}) around the place of occurrence. They being chance witnesses have failed to establish their presence at the time and place of occurrence with their stated reasons. **(2014 SCMR 1698)** “Muhammad Rafique v. The State” and **(2017 SCMR 564)**“Arshad Khan v. The State”.

7. Motive of the occurrence is previous enmity of murder which cuts both the ways. **(2017 SCMR 1672)** “Tariq Vs. The State”, **(2011 SCMR 646)** “Tahir Khan Vs. The State” and **(2009 SCMR 916)** “Ghulam Mustafa Vs. The State”.

8. Recovery of pistols on pointing out of the appellants in presence of negative report is not only inconsequential rather draws adverse inference.

9. In view of the above discussion, we entertain serious doubt in our minds regarding participation of Ghaffar Abbas alias Ghaffar Ahmed and Muhammad Suleman alias Mani (appellants) 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 they would be entitled to its benefit not as a matter of grace or concession, but as of right.

10. For the foregoing reasons, this appeal is allowed, convictions and sentences of Ghaffar Abbas alias Ghaffar Ahmed

Murder Reference No.35 of 2022
Criminal Appeal No.435 of 2022

and Muhammad Suleman alias Mani (appellants) awarded by the trial Court through the impugned judgment are hereby set-aside. They are acquitted of the charge and directed to be released forthwith, if not required in any other case. **Murder Reference** is answered in the **NEGATIVE** and death sentences of Ghaffar Abbas alias Ghaffar Ahmed and Muhammad Suleman alias Mani (appellants) are **NOT CONFIRMED.**

ASJAD JAVAID GHURAL
JUDGE

SADAQAT ALI KHAN
JUDGE

Approved for reporting.

Judge

Judge

جشید قسوری