CJDA-38

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

Criminal Appeal No.1717 of 2010
(Taj Muhammad vs. The State)

J U D G M E N T

Date of Hearing: 27.05.2021
Appellant by: Malik Jahanzaib Advocate.
State by: Mr. Irfan Zia, Deputy Prosecutor General.
Complainant by: Nemo

Sohail Nasir, J. Since morning repeated calls are made, but none appeared on behalf of complainant despite the fact that file is kept pending till 02:00 pm. Order sheets show that for the last five consecutive dates no one from complainant side has pursued this matter. This appeal is of the year 2010 and shown in the red regular cause list where name of Mr. Shoaib Zafar Advocate for complainant is also posted, so I proceed to decide it after hearing learned counsel for appellant and learned Deputy Prosecutor General for the State.

2. This criminal appeal is directed against judgment dated 27.05.2010, passed by learned Additional Sessions Judge, Mianwali on the basis of which Taj Muhammad ***(appellant)*** was convicted under Section 302(b) of Pakistan Penal Code (XLV of 1860) ***{PPC}*** and sentenced to imprisonment for life and to pay Rs.2,00,000/- *(two lacs)* as compensation in terms of section 544-A of the Code of Criminal Procedure, (Act V of 1898) ***(Cr.P.C)*** to the legal heirs of deceased. Benefit of Section 382-B, Cr.P.C was also extended to him. By way of same judgment Mst. Zareena Afshan was acquitted from the charges.

3. Facts of the case are that on 26.10.2007, Muhammad Ibrahim ***(Pw-9)*** while appearing in police station City Mianwali made a statement that on that day at about 12:30 noon his son

Muhammad Shafiq ***(deceased)*** was present at Kala Bagh Chungi on his *Chingchi Rikshaw*; Taj Muhammad armed with 30 bore pistol along with an unknown person empty handed came there on a motorbike; appellant raised a '*lalkara'* that they were there for taking the revenge of insult and made a straight fire which hit on the right flank of Muhammad Shafiq, who fell down on the ground; on hue and cry Muhammad Rafiq ***(Pw-10)*** and Muhammad Hanif *(not produced)* arrived there; appellant and his co-accused had escaped from crime scene. The motive alleged was that the appellant had borrowed an amount of Rs.50000/- *(fifty thousand)* from complainant and on demand for its return, appellant was insulted by deceased.

4. Said statement was resulted into registration of FIR No.524 ***(PG)***, on 26.10.2007 under Sections 324/34 PPC. On the death of Muhammad Shafiq in hospital, offence of Section 324 PPC was converted to 302(b) PPC.

5. During investigation, complainant got his supplementary statement recorded and maintained that while reporting the matter, he had forgotten that an hour prior to the occurrence, Mst. Afshan and Mst. Zareena daughters of Ghulam Hussain *(sisters of Appellant)* hatched a conspiracy with their brother Taj Muhammad regarding the murder of Muhammad Shafiq.

6. When the report under Section 173 Cr. P.C *(Challan)* was submitted in Court, an objection was taken that Mst. Zareena Afshan was one and the same lady and not two different personalities. After an inquiry it was also held so.

7. In the process of investigation the unknown person was nominated as Muhammad Iqbal, who was declared Proclaimed Offender. It is important to mention here that after the decision of the case, Muhammad Iqbal was also apprehended but acquitted in 2011 on the basis of compromise with legal heirs of deceased.

8. Appellant was arrested on 04.12.2007 and from his possession a pistol 30 bore was recovered. Statement of

Muhammad Shafiq, the then injured, on 30.10.2007 under Section 161 Cr.P.C ***(PO)*** was recorded by the investigating officer and it was claimed as dying declaration.

9. A charge under Sections 302/34 PPC, on 14.04.2009, was framed against appellant and Mst. Zareena Afshan for which they pleaded not guilty and demanded the trial, where after, in support of its case prosecution had produced following witnesses: -

Pw-1 Muhammad Hayat ASI is author of FIR.
Pw-2 Muhammad Shafiq is the draftsman.
Pw-3 Sher Rasool HC is Moharrar.
Pw-4 Yakki Khan Constable had executed the proclamation of Muhammad Iqbal.
Pw-5 Muhammad Asif Constable got conducted the post-mortem examination of deceased.
Pw-6 Dr. Muhammad Farooq performed the autopsy of deceased.
Pw-7 Abdul Qayyum Constable had deposited the parcel of blood-stained earth in the office of Chemical Examiner.
Pw-8 Dr. Salah-ud-Din made initial medical examination of Muhammad Shafiq when he was injured.
Pw-9 Muhammad Ibrahim is complainant and eye witness.
Pw-10 Muhammad Rafiq is also an eye-witness.
Pw-11 Nasrullah Constable is the witness to arrest of appellant and recovery of pistol form him.
Pw-12 Ghulam Qasim ASI is the investigating officer.
Pw-13 Dr. Maria had declared the injured as fit to make statement.

10. Muhammad Hanif, Ghulam Fareed, Muhammad Yasin and Ghulam Constable were given up being unnecessary. The learned ADPP, after producing the reports of Chemical Examiner ***(PQ)*** and Serologist ***(PR)*** had closed prosecution's evidence.

11. In his examination made under Section 342 Cr.P.C, version of appellant was as under: -

> *"In fact, few days prior to the occurrence, the parents of the deceased came in our house and demanded the hand of my sister Mst. Zareena Afshan, my co-accused for deceased and on our refusal, parents of deceased became annoyed and when this fact came into the knowledge of deceased who while entering in our house tried to outrage the modesty of my sisters. Meanwhile I attracted there and gave slaps to the deceased and the said quarrel was in the knowledge of parents of the deceased. Murder of deceased was committed by some unknown persons in mysterious circumstances as the shirt of deceased was found torn and this fact was noted by the IO during investigation but they involved me due to above said quarrel on suspicion. All PWs are close relative and deposed against me due to above said grudge. Furthermore the alleged occurrence took place in thickly populated area and the prosecution failed to produce any independent witness from the vicinity to corroborate the prosecution version."*

12. Appellant opted not to produce defence evidence or to appear in terms of Section 340(2) Cr.P.C.

13. Learned counsel for appellant contended that credibility of the alleged eye witnesses was found under serious doubts so much so they were proved to be the false witnesses; they made material improvements during their statements to bring their evidence in line with the medical evidence; showing two females with different names as sisters of appellant and claiming that they hatched the conspiracy, was an ultimate blast with regard to truthfulness of the witnesses for the reasons that Zareena Afshan was one and the same lady; recovery of pistol being inconsequential could not be considered as corroboration to the ocular account. He finally

contended that as prosecution has badly failed to prove its case beyond shadow of doubt, therefore, learned Trial Court was not justified to record the conviction.

14. On the other hand learned Deputy Prosecutor General for the State argued that it was a broad daylight occurrence in the city area, where appellant and his co-accused arrived and committed the *Qatl-e-Amd* of Muhammad Shafiq by way of specific fire made by appellant; misunderstanding about two personalities with different names by eye-witnesses of the occurrence could not be a reason to declare prosecution's case doubtful; both eye-witnesses during trial with consistency had narrated the manners of occurrence and in cross-examination, defence was unable to shatter their credibility; no enmity existed between the parties, so no question for false involvement of appellant was there; no doubt that eye-witnesses were related to deceased but, on this fact alone, their testimony cannot be termed as unreliable; initial medical examination and thereafter post-mortem examination of deceased were strong corroborative pieces of evidence to the ocular account; statement of Muhammad Shafiq, when he was in hospital in injured condition, was recorded after seeking declaration of fitness from the doctor, hence, it was a valid dying declaration; it is settled principle of law that a person expecting his death cannot make a false statement; recovery of pistol from the possession of appellant was also a strong support to ocular account. Learned Law Officer finally maintained that the learned trial Court had recorded valid reasons for convicting the appellant, so impugned judgment requires no interference.

15. **Heard**.

16. Prosecutions' story with regard to occurrence is revolving around the statements of Muhammad Ibrahim ***(Pw-9)*** and Muhammad Rafiq ***(Pw-10)***. In FIR admittedly allegation is of single fire by appellant and that is as under: -

تاج محمد نے للکارا کہ اپنی وہ اپنی بےعزتی کا بدلہ لینے آگئے ہیں اور سیدھا فائر با نیت قتل محمد شفیق پسرم پر کیا جو اسے دائیں وکھی پر لگا۔ پسرم گر گیا

Even no firing in the air was alleged by any of the accused. At this juncture, I will like to refer the statements of both the Medical Officers. Dr. Salah-ud-Din ***(Pw-8)*** had performed the medical examined Muhammad Shafiq when he was brought to hospital in injured condition. He observed as under: -

> *"Two fire arm entry wounds on outer surfaced of right abdominal wall ½ x ½ C.M size of each. It was 29 CM from umbilicus anteriorly and 10 C.M above right iliac crest"*

Dr. Muhammad Farooq ***(Pw-6)***, who conducted the postmortem examination also observed as under: -

> *"A group of 2 fire arm entry wounds in healing phase on the right outer surface of abdomen, 29 CM lateral to umbilicus and 10 CM above right iliac crest"*

17. Muhammad Ibrahim ***(Pw-9)*** and Muhammad Rafiq ***(Pw-10)*** in their examination-in-chief made clever moves by saying that *"one or two fire shots with pistol were made by appellant and those hit on Muhammad Shafiq"*. Muhammad Ibrahim, on confrontation from FIR, was found under improvement. When his attention was drawn with specific contents recorded in FIR, he made another move by adding that "*as it was automatic weapon, second fire might have been fired from pistol"*. Similarly, on confrontation from his statement recorded under Section 161 Cr.P.C, Muhammad Rafiq ***(Pw-10)*** was also responsible for the improvements in this context as he had claimed earlier only one fire.

18. There are two kinds of possible improvements by a witness during trial. One relates to explain certain facts those are immaterial in nature causing no damage to prosecution's case. The others are called deliberate, material and with a specific object, which in all circumstances shall destroy the veracity of a witness.

It is a settled proposition by now that no reliance can be made on the testimony of a witness who intentionally introduces improvements in his statement so as to cover the lacunas or to bring his testimony in line with other pieces of evidence.

19. In similar circumstances, when witnesses made improvements to bring their statements in line with medical evidence the honorable Supreme Court of Pakistan in ***"Sardar Bibi & another vs. Munir Ahmad & others 2017 SCMR 344"*** was pleased to hold as under: -

> "*As doctor, while conducting postmortem examination, declared that the deceased persons received bullet injuries hence for the first time during trial, Falak Sher and Sikandar were shown to be armed with 30 bore pistol and Munir being armed with 7mm rifle. This willful and dishonest improvement was made by both the witnesses in order to bring the prosecution case in line with the medical evidence. In the FIR the complainant alleged that fire shot of Falak Sher hit Zafar Iqbal deceased on his chest and the fire shot of Sultan Ahmed accused also hit on the chest of deceased Zafar Iqbal. According to doctor, there was only one fire-arm entry wound on the chest of the deceased Zafar Iqbal. In order to meet this situation, witnesses for the first time, during trial made omission and did not allege that the fire shot of Sultan hit at the chest of Zafar Iqbal, deceased. So the improvements and omissions were made by the witnesses in order to bring the case of prosecution in line with the medical evidence. Such dishonest and deliberate improvement and omission made them unreliable and they are not trustworthy witnesses."*

20. The above view also finds support from "***Syed Saeed Muhammad Shah & another vs. The State 1993 SCMR 550"*** where it was ruled that: -

> *"Secondly, statements of the witnesses in the Court in which improvements are made to strengthen the case of the prosecution are not worthy of reliance. It is held in the case of Amir Zaman v. Mehboob and others (1985 SCMR 685) that testimony of witnesses containing material improvements are not believable. Reference can also be made to the cases of Haji Bakhsh v. The State (PLD 1963 Kar. 805), Qaim Din and others v. The State (1971 P Cr. LJ 229) and Fazla and another v. The State (PLD 1960 Lah. 373)"*

21. Same view was also taken by the apex Court in its latest pronouncement ***(Muhammad Arif vs. The State 2019 SCMR 631)***.

22. Prosecution's case was that Muhammad Shafiq was present at crime scene on his *rickshaw*. Said *rickshaw* was not produced by the complainant during investigation. Even its documents were not placed for consideration before the Investigating Officer. Ghulam Qasim ASI ***(Pw-12)***, in cross-examination, specifically replied that he had not shown any *rickshaw* in rough site plan ***(PL)***. The same position was there in the scaled site plan ***(PB)***. Circumstances always play an important role in corroboration to the ocular account. It is not the case of prosecution that someone had taken the *rickshaw* from there, so the question till today is unanswered that where that *rickshaw* is? This fact has also created serious dents in prosecution's story.

23. Although it was claimed that FIR was recorded promptly, but I do not find so. The occurrence took place at 12:30 noon. Police Station was at a distance of one kilometer from crime scene that was in the city area. Muhammad Ibrahim after taking Medico Legal Report of Muhammad Shafiq went to police station and FIR was recorded. It means that prior to 01:45 pm, no one informed the police about the occurrence. It is an absolute position and cannot be questioned that priority for complainant was to save the life of Muhammad Shafiq but this duty to inform the police could be

performed by two others, who being his near and dear were accompanying the complainant.

24. Muhammad Ibrahim, in cross-examination, admitted that when injured was taken to hospital, his clothes were smeared with blood. Those clothes to my mind could be considered strong corroborative piece of evidence to prove his presence at crime scene but those were never produced before the investigating officer.

25. Conduct of Muhammad Ibrahim and Abdul Hameed is repeatedly under heavy clouds of uncertainty. On the same day, Muhammad Ibrahim made a supplementary statement after registration of FIR that: -

> *"He had missed that on the same day at about 11:00 am Muhammad Shafiq had gone to the house of Taj Muhammad and demanded money form him; there was also present Mst. Zareen and her sister Mst. Afshan and all they quarreled with Muhammad Shafiq; Mst. Zareen and Afshan asked appellant to take revenge of the said insult; he/complainant and Muhammad Rafiq were also present and they heard this conversation"*

26. I have observed that while reporting the matter to police, complainant was having all relevant information, therefore, missing from memory an important incident of the same day in the morning, was out of question, so this story was rightly disbelieved by the learned Trial Court.

27. Since the females nominated by the complainant in his supplementary statement were related to him therefore question of misidentification or confusion does not arise. According to record when incomplete *Challan* was submitted in Court, appellant was placed in column No.3. During investigation it transpired that Mst. Zareena Afshan was one and the same lady and not two independent personalities. She was placed in column No.2. Second *Challan* was submitted with the same status, however, name of

Mst. Zareena Afshan was not shown there. The learned Additional Sessions Judge, on the application of complainant, had summoned Mst. Afshan and Mst. Zareena to face trial. Mst. Zareena filed a criminal revision before this Court against that order of summoning, which was allowed and the learned Trial Court was directed to hold an inquiry, whether Mst. Zareena Afshan were two independent ladies with the name of "*Zareena*" and "*Afshan*" or it was the name of one and the same lady as "*Zareena Afshan*". On conclusion of inquiry the learned trial Court found that Mst. Zareena Afshan was one and the same lady and not two independent personalities. Those findings of the learned Trial Court remained unchallenged throughout.

28. If above was the position, then how in supplementary statement, complainant and Muhammad Rafiq, in his statement under Section 161 Cr.P.C ***(DA)*** categorically stated that they were two females "*Afshan Bibi*" and "*Zareena Bibi*"? Despite this unchallenged position that she was one and same lady, again Muhammad Ibrahim and Muhammad Rafiq in their examination-in-chief maintained that appellant with Mst. Zareena and Mst. Afshan were present in the house.

29. The above referred facts and discussion made, therefore, cannot restrain this Court to hold that both witnesses made false statements in the Court so they cannot be relied upon.

30. Coming to story of motive, it is enough that prosecution was under heavy burden to prove that at what date, time and place and in what manners the appellant had borrowed the amount of Rs.50000/- from complainant party, but this duty was not discharged so without any further discussion it is held that motive was not proved in this case.

31. This takes me now to the evidence of dying declaration. The Phrase "***Dying Declaration***" means that: -

> *"A man will not meet his maker with a lie in his mouth"*[1]

[1] https://en.wikipedia.org/wiki/Dying_declaration

"No one at the point of death is presumed to lie"[2]

32. In the law of evidence, a dying declaration is testimony that would normally be barred as hearsay but may be admitted as evidence in criminal law trials because it constitutes the last words of a dying person. The rationale is that someone who is dying or believes death to be imminent would have less incentive to fabricate testimony, and as such, the hearsay statement carries with it some reliability.

33. Evidence of dying declaration is universally recognized. In England and Wales[3] an original statement made by a dead person is admissible under the statutory "unavailability" exception subject to the Courts' judicial discretion to exclude unreliable evidence.

34. In United States of America under the Federal Rules of Evidence[4], a dying declaration is admissible if the proponent of the statement can establish that deceased's statement was made while under the genuine belief that his or her death was imminent and that the statement relates to the cause or circumstances of what he or she believed to be his or her impending death; statement must relate to the circumstances or the cause of the his own impending death.

35. The first use of dying declaration exception in American law was in 1770 murder trial of the British soldiers responsible for the Boston Massacre[5]. One of the victims, Patrick Carr, told his doctor before he died that the soldiers had been provoked. The doctor's testimony helped defense attorney John Adams to secure acquittals for some of the defendants and reduced charges for the rest.

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[2] Nemo moriturus praesumitur mentiri

[3] https://en.wikipedia.org/wiki/Dying_declaration

[4] The Federal Rules of Evidence are a set of rules that governs the introduction of evidence at civil and criminal trials in United States federal trial courts

[5] The Boston Massacre was a deadly riot that occurred on March 5, 1770, on King Street in Boston. It began as a street brawl between American colonists and a lone British soldier, but quickly escalated to a chaotic, bloody slaughter. The conflict energized anti-British sentiment and paved the way for the American Revolution. (https://www.history.com/topics/american-revolution/boston-massacre)

36. In Canadian jurisdiction[6] ***(R. v. Nurse, 2019 ONCA 260)*** the general principles on which evidence of dying declaration is admitted are that declaration made in extremity: -

i. *When the person is at the point of death.*
ii. *When every hope of this world is gone.*
iii. *When every motive to falsehood is silenced, and*
iv. *The mind is induced by the most powerful considerations to speak the truth.*

37. Dying declaration is also allowed as evidence in Indian Courts, if the dying person is conscious of his or her danger, he or she has given up hopes of recovery, the death of the dying person is the subject of the charge and of the dying declaration, and if the dying person was capable of a religious sense of accountability to his or her Maker.

38. In Pakistan, dying declaration is the statement that is made by the victim of homicide offence and it relates to his/her cause of death. Under Article 46 of the Qanoon-e-Shahadat, (P.O No. X of 1984), it is a relevant fact when it is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death.

39. A dying declaration certainly is an important piece of evidence, which possesses the sanctity on the reason that a dying man is not expected to tell lie. But this is not an absolute rule, as by now it is settled principle that dying declaration is a weak type of evidence as it cannot be challenged in cross-examination, therefore, the Courts have to evaluate its sanctity with great care and caution and for that Court must keep in sight that: -

i. Whether the maker has the physical capacity to make the dying declaration?

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[6] https://www.canlii.org/en/on/onca/doc/2019/2019onca260/2019onca260.html

ii. Whether the maker had opportunity to identify the assailant/assailants?
iii. Whether there was a chance of misidentification on the part of dying man in identifying and naming the assailants?
iv. Whether it was free from prompting from any outside quarter; and?
v. The witness heard the deceased correctly and whether this evidence can be relied upon?

40. By applying the above tests and principles, now I proceed to discuss the evidence of dying declaration produced by prosecution in this case. It is the statement under Section 161 Cr.P.C ***(PO)*** that has been claimed as dying declaration. It is in the statement of Ghulam Qasim ASI that: -

> *"I went to DHQ Hospital Mianwali where Muhammad Shafiq was admitted in an injured condition and I was informed that he was taken for operation. On 27.10.2007 I again went to DHQ Hospital, Mianwali and made the application EX-PM, doctor opined that he was not fit for statement. On 28.10.2007 I again went to DHQ hospital Mianwali and sought the opinion of doctor about the fitness of Muhammad Shafiq to make the statement and doctor gave negative opinion. On 30.10.2007 I made application EX-PN and lady doctor opined that Muhammad Shafiq was fit for statement"*

41. One of the considerations to appreciate the dying declaration is that, it must be free from any outside promptness that means that at the relevant time no one has to be there to influence the deceased. Not only this, but also no one met him before his statement. In the case in hand Ghulam Qasim ASI ***(Pw-12)*** admitted in cross-examination that at the time of recoding of statement of injured, Muhammad Ibrahim/complainant ***(Pw-9)***,

Muhammad Rafiq ***(Pw-10)*** and Muhammad Hanif were also present there. This fact alone is enough to discard the evidence of dying declaration.

42. Investigating officer recorded the statement after seeking declaration from the lady Doctor, which means that she was present in hospital at the relevant time. It was his duty to record the statement in presence of lady doctor and then to obtain her signatures in token of its correctness with a certificate also that injured remained conscious throughout during his statement. In *"**Mst. Zahida Bibi Vs. The State PLD-2006- SC-255**"* the facts were identical with regard to dying declaration as in the case in hand. Their Lordships were pleased to observe as under: -

> *"This is an admitted fact that the statement of the deceased was not recorded by the Sub-Inspector of police in hospital in presence of the Doctor and further neither any member of the hospital staff was associated at the time of recording the statement nor it was got verified by any official of the hospital that the statement was actually made by the deceased. Be that as it may, the status of such a statement would be hardly a statement under section 161, Cr.PC and not a dying declaration of the deceased. This may be seen that the dying declaration or a statement of a person without the test of cross examination is a weak kind of evidence and its credibility certainly depends upon the authenticity of the record and the circumstances under which it is recorded, therefore, believing or disbelieving the evidence of dying declaration is a matter of judgment but it is dangerous to accept such statement without careful scrutiny of the evidence and the surrounding circumstances, to draw a correct conclusion regarding its truthfulness. The rule of criminal administration of justice is that the dying declaration like the statement of an interested witness requires a close scrutiny and is not to be believed merely for the reason that dying*

> *person is not expected to tell lie. This is the method of common knowledge that in such circumstances in preference to any other person, a Doctor is most trustworthy and reliable person for a patient to depose confidence in him with the expectation of sympathy and better treatment to disclose the true facts. In the present case, in the manner in which the statement of deceased was recorded by the Sub-Inspector, would seriously reflect upon its correctness and consequently, could not be considered worthy of any credit to be relied upon as dying declaration."*

43. Even otherwise, the dying declaration was factually incorrect on the following reasons: -

i. *Muhammad Shafiq had alleged sole fire by appellant whereas through medical evidence it has been established that he had received two fire shots and same was also maintained by two eye witnesses.*

ii. *It is proved that Afshan Zareena is one and the same lady whereas in dying declaration he had stated that they were two different personalities.*

44. The deliberations made above take me to a definite result that the alleged dying declaration has not been proved by the prosecution.

45. From the possession of appellant a pistol 30 bore was recovered on his arrest. As no empty was found at crime scene, therefore, recovery was inconsequential with no benefit to prospection.

46. '*Fiat Justitia*' is the motto of the Court. It is a Latin phrase, which means 'Let Justice be done'. Appreciation of evidence involves weighing the credibility and reliability of the evidence

presented in the case. According to Jeremy Bentham[7] 'evidence' is any matter of facts, the effect, tendency or design of which is to produce in the mind, a persuasion, affirmative or dis-affirmative, of the existence of some other matter of fact. 'Evidence' means and includes all statements, which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry and all documents including electronic records produced for the inspection of the Court. The standard of proof in Criminal case is not the same as in the Civil. Importantly, in criminal case, the burden of proving the guilt of an accused is upon the prosecution. It must stand by itself. If there is a real and reasonable doubt as to guilt, the accused is entitled to the benefit of doubt. The law always requires that the conviction should be certain and not doubtful.

47. The honorable Supreme Court of Pakistan in "***Muhammad Imran vs. The State 2020 SCMR 857"*** on the question of benefit of doubt was pleased to hold that: -

> *"It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation"*

48. I have perused the impugned judgment and I feel no hesitation to say that it is a bad judgment in the eyes of law. Every finding recorded by learned Trial Judge is contradictory or imaginary. It appears that at one stage he believed the presence of eye witnesses but in later discussion he disbelieved them. The findings on motive and dying declaration are also confusing as it is difficult to understand that if he had stamped the correctness or not on both the pieces of evidence. The learned Trial Judge was of the view that it was a case of two fire shots and he himself assumed that second fire was made by Muhammad Iqbal the then Proclaimed offender. The most astonishing position was that when

[7] An English philosopher, jurist, and social reformer regarded as the founder of modern utilitarianism

learned trial Judge disbelieved the allegations of fire by appellant and held as under: -

> "*As far as accused Taj Muhammad is concerned, the prosecution has proved its case against accused Taj Muhammad to the extent that he was present at the time and place of occurrence and grappled with deceased Muhammad Shafiq with co-accused and shared common intention with his co-accused for the murder of Muhammad Shafiq deceased"*

49. I am unable to understand that on the basis of what material learned Trial Judge had drawn above opinion. If he had disbelieved the presence of eye witnesses and held that it was a case of two fire shots, then he was supposed to acquit the appellant. I, therefore, find no difficulty to hold that the learned Trial Judge had convicted the appellant on the basis of presumptions only.

50. Under Section 367 of Cr.P.C a judgment shall contain the point or points for determination, the decision, thereon and the reasons for the decision. The learned Trial Judge has made complete deviation from the statutory provisions while writing the impugned judgment.

51. A good judgment must base on deep critical analysis of all the facts relevant to the case and not on external consideration. It, in all circumstance, has to be transparent, unambiguous, and intelligible. It is said that *"a judgment should be transparent like clean water so that people can understand it without any doubt and probabilities*".

52. Resultantly, this Criminal appeal is ***allowed***. Impugned judgment dated 27.05.2010 is set aside. Appellant is acquitted from the case. He is on bail. His surety is discharged from terms and conditions of bail bonds.

(SOHAIL NASIR)
JUDGE

Approved for reporting

Sharif

JUDGE