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

Criminal Appeal No.820 of 2016
(Azhar vs. Dost Muhammad & another)

&

Criminal Revision No.554 of 2016
(Dost Muhammad vs. The State & another)

J U D G M E N T

Date of hearing	08.06.2021
Appellant by	Chaudhry Rab Nawaz, Advocate
State by	Ch. Muhammad Ishaq, Additional Prosecutor General
Complainant by	M/s Azam Nazir Tarar, Advocate, Mudassar Naveed Chattha, Advocate and Syed Ali Zain Shah, Advocate, as well as, for petitioner in Criminal Revision No.554 of 2016

Malik Shahzad Ahmad Khan, J:- This judgment shall dispose of *Criminal Appeal No.820 of 2016*, filed by Azhar (appellant), against his conviction and sentence, as well as, *Criminal Revision No.554 of 2016*, filed by the complainant Dost Muhammad for enhancement of sentence awarded to Azhar (appellant) from imprisonment for life to death and compensation amount, as both these matters have arisen out of the same impugned judgment dated 15.03.2016, passed by learned Additional Sessions Judge, Chiniot.

2. Azhar (appellant) along with Ahmad Sher and Hassan (co-accused since acquitted), was tried in case F.I.R. No.971/2008 dated 02.12.2008, registered at police station Saddar Chiniot, in respect of offences under sections 302/324/148/149 PPC. After conclusion of the

trial, the learned trial Court *vide* its judgment dated 15.03.2016, has convicted and sentenced Azhar (appellant) as under: -

Under section 302(b) PPC to imprisonment for life as tazir. He was also ordered to pay Rs.2,00,000/- (rupees two hundred thousand only) to the legal heirs of Ahmad Ali (deceased) as compensation under section 544-A of Cr.P.C and in default thereof to suffer simple imprisonment for six months.

Benefit of section 382-B Cr.P.C was also extended to the appellant.

However, vide the same impugned judgment dated 15.03.2016, Ahmad Sher and Hassan (co-accused), were acquitted by the learned trial Court/Additional Sessions Judge, Chiniot while giving them the benefit of doubt.

3. Brief facts of the case as given by the complainant Dost Muhammad (PW-1), in his *Fard Bayan* (Ex.PA), on the basis of which the formal FIR (Ex.PA/1) was chalked out, are that the complainant was resident of Chak No.125 and was cultivator by profession. About one (01) year ago, Imran and Usman sons of Faiz-ul-Hassan (co-accused since died), committed murder of nephew of the complainant namely Younas and the case regarding the abovementioned occurrence was fixed for hearing on 02.12.2008, in the Court of Sabir Sultan, Additional Sessions Judge, Chiniot. The complainant party came out of *Katchary* after Court proceedings in the abovementioned case. In the meanwhile, Faiz-ul-Hassan (co-accused since died), Ahmad Sher (co-accused since acquitted) gave threat to the complainant and his brother namely Ahmad Ali (deceased), that the complainant party will face dire consequences, if they (complainant party) will pursue the above-said case. The complainant party went to the chamber of their lawyer and informed about the next date of hearing of the case. Dost Muhammad complainant (PW-1) along with Hafeez Ullah (PW since given-up) and Muhammad Yousaf (PW-3), thereafter, boarded one

motorcycle, whereas Ahmad Ali deceased and Rabnawaz (PW-2), boarded other motorcycle and they departed for their homes. Ahmad Ali deceased and Rabnawaz (PW-2), were ahead at a distance of 25/30 yards from the remaining prosecution witnesses. The complainant party when crossed *New Abadi Kot Khudayar*, at about 3.30 p.m Faiz-ul-Hassan (co-accused since died) while armed with gun 12 bore, Ahmed Sher (co-accused since acquitted) while armed with gun 12 bore, Hassan (co-accused since acquitted) while armed with gun 12 bore, Azhar (appellant) while armed with gun 12 bore and Saif Ullah (co-accused since tried separately) while armed with repeater gun, emerged there. The accused party at gun point forcibly stopped Ahmad Ali (deceased) and he along with Rab Nawaz (PW-2), were alighted from the motorcycle. Saif Ullah (co-accused since tried separately), then made a fire shot, which landed on the right knee of Ahmad Ali (deceased). Ahmad Sher (co-accused since acquitted), thereafter made a fire shot, which landed on the right calf of Ahmad Ali (deceased). Azhar (appellant), made a fire shot, which landed on the right foot of Ahmad Ai (deceased). Faiz-ul-Hassan (co-accused since died), made a fire shot, which landed on the right leg of Rab Nawaz (PW-2). Hassan (co-accused since acquitted), made a fire shot, which landed on the left leg of Rab Nawaz (PW-2). Saif Ullah (co-accused since tired separately), made second fire shot, which landed on the right leg of Rab Nawaz (PW-2). Ahmad Ali (deceased) and Rab Nawaz (PW-2), fell on the ground after receiving the injuries. The accused persons while raising *lalkaras* and after boarding their motorcycles decamped from the spot. The accused also took away with them the motorcycle of Ahmad Ali (deceased). Ahmad Ali succumbed to the injuries at the spot, whereas Rab Nawaz (PW-2), was shifted to the DHQ Hospital, Chiniot in injured condition. Dost Muhammad complainant (PW-1), thereafter made his '*Fard Bayan*' (Ex.PA), before the police, on the basis of which the formal FIR (Ex.PA/1), was registered.

4. The appellant was arrested in this case by the police and after completion of investigation the challan was prepared and submitted before the learned trial court. The learned trial Court, after observing legal formalities, as provided under the Code of Criminal Procedure, 1898 framed charge against the appellant and his co-accused on 03.02.2015, to which they pleaded not guilty and claimed trial. In order to prove its case the prosecution produced thirteen witnesses, whereas Muhammad Afzal Inspector (CW-1) appeared before the Court as Court witness. Prosecution also produced documentary evidence in the shape of Ex.PA to Ex.PAC. The statement of the appellant under section 342 Cr.P.C, was recorded, wherein he refuted the allegations levelled against him and professed his innocence. In defence the appellant produced documentary evidence in the shape of Ex.DA to Ex.DF.

5. The learned trial Court *vide* its impugned judgment dated 15.03.2016, found the appellant guilty, convicted and sentenced him as mentioned and detailed above.

6. It is contended by learned counsel for the appellant that the appellant is absolutely innocent and he has falsely been implicated in this case by the complainant being in league with the local police; that evidence of two prosecution eye-witnesses namely Dost Muhammad (PW-1) and Muhammad Yousaf (PW-3) has been disbelieved by the learned trial Court and the appellant has been convicted and sentenced on account of evidence of Rab Nawaz injured (PW-2) but even the evidence of Rab Nawaz (PW-2) is not worthy of reliance; that mere injuries on the body of Rab Nawaz (PW-2) do not mean that he was stating the whole truth; that evidence of Rab Nawaz (PW-2) has also been disbelieved by the learned trial Court to the extent of Ahmed Sher and Hassan co-accused who have been acquitted by the learned trial

Court and appeal filed against their acquittal has already been dismissed by this Court due to non-prosecution vide order dated 20.04.2020, therefore, the prosecution evidence which has been disbelieved against the above mentioned co-accused cannot be believed against the appellant without independent corroboration which is very much lacking in this case; that recovery of gun 12-bore from the possession of appellant is inconsequential because there is no report of Punjab Forensic Science Agency, Lahore in this case; that even no specific motive was alleged against the appellant and the same was jointly alleged against the appellant and the acquitted co-accused; that even otherwise the prosecution could not prove any motive against the appellant; that there are material contradictions in the prosecution evidence which have not been properly appreciated by the learned trial Court while passing the impugned judgment; that the prosecution miserably failed to prove its case against the appellant beyond the shadow of doubt, therefore, this appeal may be accepted and the appellant may be acquitted from the charges.

7. On the other hand, it is argued by the learned Additional Prosecutor General for the State assisted by learned counsel for the complainant that the prosecution has proved its case against the appellant beyond the shadow of any doubt, therefore, he was rightly convicted and sentenced by the learned trial Court; that co-accused of the appellant namely Ahmed Sher and Hassan have been acquitted in this case by the learned trial Court but their case is distinguishable from the case of the appellant because the said accused were found innocent during the police investigation whereas the appellant was found guilty; that moreover, no weapon was recovered from the possession of above mentioned co-accused whereas a gun 12-bore (P-2) has been recovered from the possession of the appellant, which also corroborates the prosecution case against the appellant; that the appellant remained an absconder in this case for a considerable period

which further corroborates the prosecution case against the appellant; that the appellant was assigned a specific role of making a fire shot which landed on the right foot of Ahmad Ali (deceased) and the said role is fully supported by the medical evidence because injury No.1 in the postmortem report was on the right foot of Ahmad Ali (deceased); that the prosecution eye-witnesses stood the test of lengthy cross-examination but their evidence could not be shaken to the extent of role attributed to the appellant; that there is no substance in this appeal, therefore, the same may be dismissed.

Learned counsel for the complainant while arguing *Crl. Revision No.554 of 2016* contends that Azhar (respondent No.2 in the above mentioned criminal revision) has wrongly been awarded lesser punishment by the learned trial Court whereas there was no mitigating circumstance in this case, therefore, he may be awarded the normal penalty of death.

8. I have heard the arguments of learned counsel for the parties, as well as, the learned Additional Prosecutor General and have also gone through the evidence available on the record with their able assistance.

9. The detail of the prosecution case as set forth in *Fard Bayan* (Ex.PA) on the basis of which the formal FIR (Ex.PA/1), was chalked out has already been given in Para No.3 of this judgment, therefore, there is no need to repeat the same.

10. It is noteworthy that the learned trial Court has already disbelieved the evidence of the prosecution eye-witnesses namely Dost Muhammad complainant (PW-1) and Muhammad Yousaf (PW-3), in paragraph No.23, of the impugned judgment, however, the appellant has been convicted and sentenced on the basis of evidence of Rab

Nawaz injured (PW-2). It is true that Rab Nawaz (PW-2), is an injured eye-witness of this case but it is by now well settled that the injuries on the body of a witness do not mean that he is telling the truth. Reliance in this respect may be placed on the judgment reported as **“Muhammad Pervez and others Vs. The State and others”** (2007 SCMR 670). The Hon’ble Supreme Court of Pakistan at page 681 of the said judgment has observed as under:-

“It is also a settled law that injuries on P.W. only indication of his presence at the spot but is not informative prove of his credibility and truth. See said Ahmad’s case 1981 SCMR 795”.

11. It is further noteworthy that Azhar (appellant) was assigned the role of making a fire shot, which landed on the right foot of Ahmad Ali (deceased), whereas Ahmad Sher (co-accused since acquitted), has also been attributed the role of making a fire shot, which landed on the right calf of Ahmad Ali (deceased) but the abovementioned Ahmad Sher (co-accused) has been acquitted by the learned trial Court and *Criminal Appeal No.912 of 2016* filed by the complainant against his acquittal has already been dismissed due to non-prosecution by this Court vide order dated 20.02.2020. No application has been filed by the complainant till today for restoration of the abovementioned appeal, despite the lapse of a period of more than one year and three months. Under the circumstances, the acquittal of Ahmad Sher (co-accused) has attained finality. It is by now well settled that if a prosecution evidence is disbelieved qua one accused or one set of accused, then the same evidence cannot be believed against the other accused or other set of accused, without independent corroboration.

12. As mentioned earlier, Azhar (appellant) was attributed the role that he made a fire shot which landed on the right foot of Ahmed Ali (deceased) and according to the postmortem report of Ahmad Ali (deceased), there was injury No.1-A, on his right foot, whereas the role attributed to Ahmad Sher (co-accused since acquitted), was that he

made a fire shot which landed on the right calf of Ahmed Ali (deceased) and in the postmortem report of the deceased there was injury No.2, on his right calf. According to the evidence of Dr. Inam Jeelani (PW-5), all the injuries on the body of the deceased were the cause of his death. Under the circumstances, the case of Azhar (appellant), is not distinguishable on medical grounds from the case of the abovementioned acquitted co-accused.

13. Learned Additional Prosecutor General assisted by learned counsel for the complainant tried to distinguish the case of the Azhar (appellant) from the case of abovementioned acquitted co-accused on the ground that 12-bore gun (P-2) has been recovered from the possession of the appellant, whereas no weapon was recovered from the possession of abovementioned Ahmad Sher (co-accused since acquitted) but I have noted that there is no report of Punjab Forensic Science Agency regarding matching of any empty recovered from the spot with the gun (P-2), therefore, alleged recovery of gun 12- bore (P-2), on the pointation of the appellant is inconsequential for the prosecution and as such there is no independent corroboration of the prosecution case against Azhar (appellant), on account of above-referred recovery.

14. It is further noteworthy that as per prosecution case, the motive behind the occurrence was that about one year prior to the occurrence Imran and Usman sons of Faiz-ul-Hassan (co-accused since died) along with others committed murder of nephew of the complainant. The motive was specifically alleged against Faiz-ul-Hassan (co-accused since died) and no specific motive was alleged against the appellant. Apart from the abovementioned specific motive alleged against Faiz-ul-Hassan (co-accused since died), the motive was jointly alleged against all the accused persons. It is also noteworthy that Rab Nawaz (PW-2), during his cross examination conceded that the

appellant had no concern with the earlier FIR registered due to murder of nephew of the complainant. Relevant part of his statement reads as under:-

“Present accused Hassan, Ahmad Sher and Azhar had no nexus with above mentioned FIR number 905 and they were not the accused of said murder case”

Even otherwise, the motive was jointly alleged against Azhar (appellant), as well as, against Ahmad Sher and Hassan (co-accused since acquitted), therefore, the prosecution cannot seek independent corroboration against the appellant from the alleged motive.

15. It is next contended by learned Additional Prosecutor General assisted by learned counsel for the complainant that Ahmad Sher and Hassan (co-accused since acquitted), were declared innocent during the police investigation, whereas the appellant was found guilty, therefore, the case of the appellant is distinguishable from the case of the abovementioned acquitted co-accused. Insofar as the police opinion is concerned, it is by now well settled that police opinion/finding regarding the innocence or guilt of an accused becomes irrelevant after recording of evidence of the parties by the learned trial Court. It is further noteworthy that opinion of the police is inadmissible in evidence. Reference in this context may be made to the case of **“Muhammad Ahmad (Mahmood Ahmed) and another Vs. The State”** (2010 SCMR 660) wherein at page No.676 the Hon’ble Supreme Court of Pakistan was pleased to observe as under:-

“.....It may be mentioned here, for the benefit and guidance of all concerned, that determination of guilt or innocence of the accused persons was the exclusive domain of only the Courts of law established for the purpose and the said sovereign power of the Courts could never be permitted to be exercised by the employees of the Police department or by anyone else for that matter. If the tendency of allowing such-like impressions of the Investigating Officer to creep into the evidence was not curbed then the same could lead to disastrous consequences. If an accused person could be let off

or acquitted only because the Investigating Officer was of the opinion that such an accused person was innocent then why could not, on the same principle, another accused person be hanged to death only because the Investigating Officer had opined about his guilt.....”

It is, therefore, evident that the case of the appellant cannot be distinguished from the case of the above mentioned acquitted co-accused on the basis of police opinion.

16. It is lastly argued by learned Additional Prosecutor General assisted by learned counsel for the complainant that the appellant remained absconder in this case for a considerable period after the occurrence and he was declared a proclaimed offender, therefore, his abscondance corroborates the prosecution case against him. There is no substance in the abovementioned argument of learned Additional Prosecutor General assisted by learned counsel for the complainant because it is by now well settled that if the direct or circumstantial prosecution evidence is not worthy of reliance on some grounds then an accused cannot be convicted and sentenced merely on the basis of his abscondance. I may refer here the judgment reported as **“Haji Paio Khan Vs. Sher Biaz and others”** (2009 SCMR 803), wherein the Hon’ble Supreme Court of Pakistan was pleased to observe as under:-

“12. Insofar as the abscondance is concerned, it may be stated that mere absconsion is not conclusive proof of guilt of an accused person. It is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions. The same cannot take the place of proof.”

Similar view was taken by the Hon’ble Supreme Court of Pakistan in the cases of **“Muhammad Tasaweer Vs. Hafiz Zulkarnain and 2 others”** (PLD 2009 Supreme Court 53), **“Rahimullah Jan Vs. Kashif and another”** (PLD 2008 Supreme Court 298) & **“Tahir Khan Vs. The State”** (2011 SCMR 646).

17. Under the circumstances, the case of the appellant is not distinguishable from the case of Ahmad Sher (co-accused since acquitted) and as such, the prosecution evidence which has been disbelieved against Ahmad Sher (co-accused since acquitted) cannot be believed against the appellant without independent corroboration which is very much lacking in this case, therefore, the appellant is also entitled to the acquittal from the charge. In the case of **“Muhammad Akram Vs. The State”** (2012 SCMR 440) the Apex Court of the Country at Page-446 was pleased to observe as under:-

“.....Since the same set of evidence has been disbelieved qua the involvement of Muhammad Aslam, as such, the same evidence cannot be relied upon in order to convict the appellant on a capital charge as the statements of both the eye-witnesses do not find any corroboration from any piece of independent evidence.....”

Similar view was taken by the august Supreme Court of Pakistan in the cases reported as **“Akhtar Ali and others Vs. The State”** (2008 SMCR 6), **“Muhammad Ali Vs. The State”** (2015 SCMR 137), **“Ulfat Husain Vs. The State”** (2018 SCMR 313), **“Shaban Akhtar and another Vs. The State through Prosecutor General Punjab”** (2021 SCMR 395), **“Liaqat Ali and others Vs. The State and others”** (2021 SCMR 455) and **“Muhammad Yasin and another Vs. The State through P.G. Punjab and others”** (2020 SCMR 1237).

18. It is also noteworthy that for one deceased and one injured of this case the complainant party implicated five (05) accused persons in this case while assigning one or two injuries to each of them either on the body of the deceased or on the body of Rab Nawaz (PW-2), whereas, two additional accused were implicated in this case with the allegation of abetment and as such total seven (07) accused persons have been implicated in this case by the prosecution. Keeping in view all the abovementioned facts, possibility of false involvement of the

appellant in this case by using the wider-net by the complainant cannot be ruled out.

19. I have considered all the aspects of this case and have come to this irresistible conclusion that the prosecution could not prove its case against the appellant beyond the shadow of doubt.

20. In the light of above discussion, I **accept** **Criminal Appeal No.820 of 2016** filed by Azhar (appellant), set aside his conviction and sentence recorded by the learned Additional Sessions Judge, Chiniot *vide* impugned judgment dated 15.03.2016 and acquit him of the charge under Section 302(b) PPC by extending him the benefit of doubt. Azhar (appellant) is in custody, he be released forthwith, if not required in any other case.

21. Insofar as the ***Criminal Revision No.554 of 2016***, filed by Dost Muhammad (complainant) for enhancement of sentence awarded to Azhar (respondent No.2 of the said criminal revision) from imprisonment for life to death and compensation amount is concerned, I have already disbelieved the prosecution evidence due to the reasons mentioned in paragraph Nos.10 to 16 of this judgment and Azhar (appellant) has been acquitted from the charge, therefore, this criminal revision being devoid of any force is hereby **dismissed**.

(Malik Shahzad Ahmad Khan)
Judge

**Aitazaz **

Approved for reporting

(Malik Shahzad Ahmad Khan)
Judge