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

Crl. Appeal No.56380 of 2021
(Muhammad Bilal *versus* The State etc.)

Crl. Revision No.42144 of 2021
(Muhammad Saleem *versus* Muhammad Bilal, etc.)

JUDGMENT

Date of hearing: **20.02.2024.**

Appellant by: **Ch. Muhammad Imran Fazal Gill, Advocate.**

State by: **Rana Muhammad Imran Anjum, DPG.**

Complainant by: **In person.**

Aalia Neelum, J: - Muhammad Bilal, son of Amanat Ali, resident of Chak Kirpa Ram, Tehsil & District Pakpattan, the appellant was involved in case F.I.R. No.724 of 2018, registered on 04.08.2018, under Sections 302, 34 PPC, at Police Station, Township, District Lahore and was tried by the learned Additional Sessions Judge, Lahore. The trial court seized with the matter in terms of the judgment dated 16.06.2021, convicted the appellant-Muhammad Bilal, under Section 302(b) PPC, and sentenced him to **rigorous imprisonment for life** as Tazeer with the direction to pay Rs.5,00,000/- as compensation to the legal heirs of the deceased and in case of default in payment thereof, the appellant would further undergo simple imprisonment for six months. The benefit of section 382-B Cr.P.C. was also extended in favour of the appellant.

2. Feeling aggrieved by the trial court's judgment, Muhammad Bilal, the appellant, has assailed his conviction through the instant criminal appeal, i.e., Crl. Appeal No.56380 of 2021. The complainant, dissatisfied with the impugned judgment dated 16.06.2021, preferred a Criminal Revision No.42144 of 2021 for awarding death sentence to respondent

No.1/appellant. As both matters arise from the same judgment, they are being disposed of through a single judgment.

3. The prosecution story as alleged in the F.I.R (Ex.PH) lodged on the statement (Ex.PA) of Muhammad Saleem (PW-1)-the complainant is that he deals in fruits. On 04.08.2018 at about 04:45 p.m., his brother Nadeem was selling mangoes on his loader rickshaw while standing in front of Al-Fazal Restaurant at Barkat Chowk, and the complainant (PW-1) was also selling mangoes near his brother. Meanwhile, Muhammad Bilal (the appellant), Rizwan (co-accused since acquitted), and one unknown accused came in a Chingchi rickshaw. Muhammad Bilal (the appellant) raised his voice not to let Nadeem live. After that, Rizwan (co-accused since acquitted) and an unknown accused caught hold the arms of the brother of the complainant and Muhammad Bilal (the appellant) took out "Churri" from his "Dabb" and inflicted "Churri" blow on the right side of chest of the brother of the complainant, who fell on the ground. The complainant (PW-1) called 1122 and shifted the injured to Emergency of Jinnah Hospital, where he succumbed to the injuries. The motive behind the occurrence was that the accused persons used to sell mangoes after purchasing from the complainant party. The accused persons purchased mangoes, which were found rotten, and one day before the occurrence, the accused persons extended threats of dire consequences to the complainant's brother. The occurrence was witnessed by Allah Ditta (PW-2) and Muhammad Imran (given up PW).

4. Upon receiving the information of the occurrence at 15, Muhammad Iqbal S.I (PW-9) reached Jinnah Hospital, Lahore, where the complainant (PW-1) got recorded his statement (Ex. PA) before him (PW-9), who, after completing police karawai sent the same to the Police Station through Amin 5262/HC (not cited as a witness), after that formal F.I.R. (Exh. PH) was chalked out by Muhammad Arshad, ASI (PW-5).

5. After registration of the case, the investigation of this case was entrusted to Aurangzaib, S.I. (PW-8)-the investigating officer, who, having found the accused/appellant guilty, prepared a challan and sent the same to

the court of competent jurisdiction while placing the names of all accused persons in Column No.3 of the challan. On 12.07.2019, the trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as nine (09) witnesses.

6. The ocular account in this case consists of the statements of Muhammad Saleem (PW-1)-the complainant, and Allah Ditta (PW-2). Dr. Abdul Sattar (PW-4) deposed that on 05.08.2018, he conducted postmortem examination on the body of the deceased, Muhammad Nadeem, and found the following injuries on his person: -

INJURIES.

- 1 A spindle-shaped incised wound size 3 X 2 CM on the right lower part of the front of the chest. It was running obliquely. It was 10 C.M infromedial to right nipple. It was 7 C.M. from the midline. On dissection, muscle in the space between the 4th and 5th rib was incised, and pericardium and heart incised/cut. 2 liters of clotted and un-clotted blood recovered from the thoracic cavity.

After conducting the postmortem examination, the doctor rendered the following opinion: -

OPINION

“Injury stated above was ante-mortem and caused by sharp edge weapon. The cause of death in this case was injury to the vital organ, the heart, leading to profuse hemorrhage shock and death. The said injury was sufficient to cause death in the ordinary course of nature. The time between death and postmortem was 09 to 12 hours.”

Ex. PG is the correct carbon copy of the postmortem report, whereas Ex.PG/1 and Ex.PG/2 are pictorial diagrams of injuries.

The statements of the remaining prosecution witnesses are formal.

7. The learned Assistant District Public Prosecutor gave up PW, Imran being unnecessary, and closed the prosecution evidence on

20.05.2021 after tendering the reports of Punjab Forensic Science Agency, Lahore (Ex. PU, Ex. PV and Ex. PW).

8. After the closure of the evidence, the appellant was examined under Section 342 of Cr.P.C., wherein he neither opted to appear as his own witness in terms of Section 340 (2) Cr.P.C nor produced any evidence in his defence. While replying to the question of why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

“In fact Muhammad Nadeem was murdered by the second husband of widow of Nadeem. Widow of deceased Nadeem had affair with her second husband before marriage and due to this affair second husband of widow committed the murder of Nadeem. Just after the death of Nadeem his widow entered into second marriage and left her daughter at the house of legal heirs of deceased. I and Muhammad Rizwan were aware regarding said affair due to which complainant implicated me and co-accused falsely in order to save his honor. Complainant, witnesses and deceased were not residents of Lahore. I and Muhammad Rizwan were residing at Lahore but we were not willing to become witness of complainants case due to said grudge complainant implicated me and Rizwan falsely. After the occurrence Pinchayat regarding compromise was also held. I and Rizwan gave proof regarding our innocence but complainant implicated us falsely. PW Imran was not willing to support complainants version due to which complainant give up his evidence. Complainant demanded money from me and co-accused Rizwan. Witnesses gave false evidence with the connivance of complainant and police. In fact I was arrested by the police from the first day of occurrence when I visited the police station with complainant party.”

9. After recording evidence and evaluating the evidence available on record in the light of the arguments advanced by both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction in the afore-stated terms.

10. I have heard the arguments advanced by the learned counsel for the parties and Deputy Prosecutor General and have minutely perused the record on the file.

11. The occurrence occurred on 04.08.2018 at 04.45 p.m. on the roadside at Barkat Chowk in front of Al-Feezan Restaurant, situated within the jurisdiction of Police Station Township, District Lahore, which is at a distance of one (01) Kilometer only from the place of occurrence. As per the prosecution case, Muhammad Nadeem, brother of the complainant (PW-1) Muhammad Saleem, was stabbed with a knife by the appellant, Muhammad Bilal, and Muhammad Nadeem (then injured) was shifted by rescue 1122 from the place of occurrence to Jinnah Hospital, Lahore, emergency, but before reaching Hospital, Muhammad Nadeem the injured succumbed to the injury. Upon receiving information about the fight, Muhammad Iqbal S.I. (PW-9) reached the place of the occurrence. When he reached there, he found out that the injured had been taken by 1122 to the emergency of Jinnah Hospital, Lahore, where Muhammad Saleem (PW-1)-the complainant got recorded Fard Bayyan (Ex.PA) to Muhammad Iqbal S.I. (PW-9) at 05:40 p.m. and signed (Ex. PA/1) by him. Muhammad Iqbal S.I. (PW-9) incorporated police proceedings (Ex. PA/3). The incident was not reported to the police at the Police Station. F.I.R. (Exh.PH) was registered on the oral statement (Exh.PA) of Muhammad Saleem (PW-1)-the complainant, on 04.08.2018 at 06:00 p.m. It is clear from the Fard Bayan (Exh. PA) that the statement of Muhammad Saleem (PW-1)-the complainant, was recorded by Muhammad Iqbal S.I. (PW-9) at the emergency of Jinnah Hospital, Lahore, at 05:40 p.m. Contrary to the above, Muhammad Iqbal S.I. (PW-9) deposed during examination-in-chief that: -

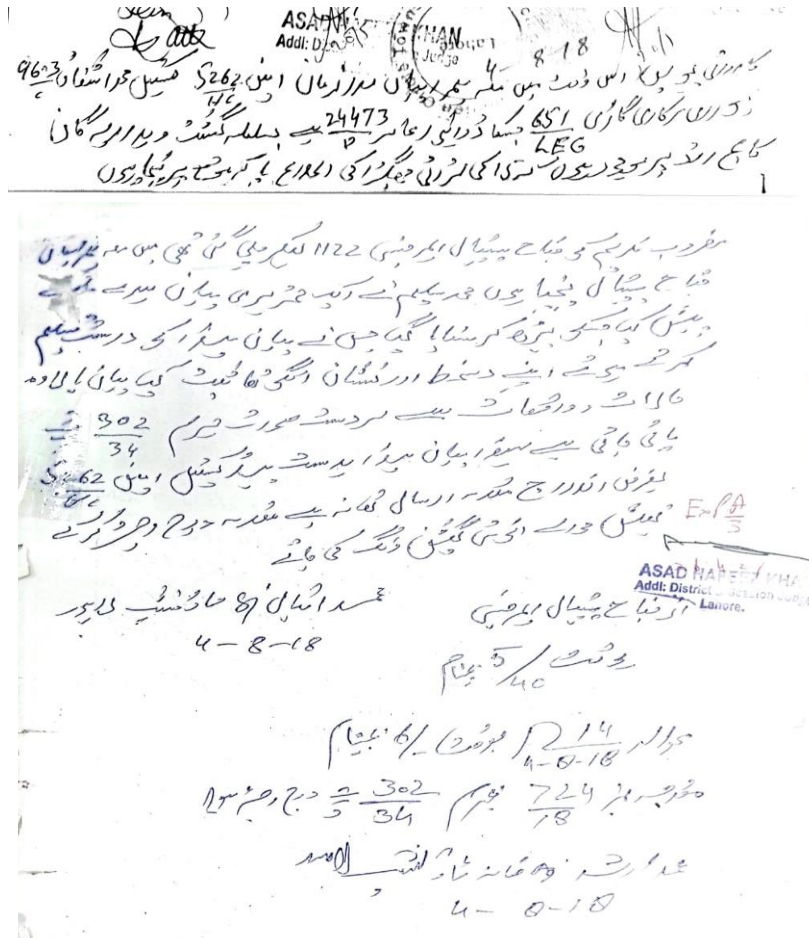
“Stated that on 04.08.2018 I was posted at P.S. Township Lahore. After receiving the information of occurrence I reached at the place of occurrence from where I proceeded for Jinnah Hospital, Lahore where complainant Muhammad Saleem met me and handed over to me his written statement Ex.PA bearing signature and thumb

impression of complainant. I drafted complaint Ex.PA/3 and sent it at police station through constable Amin for the registration of case.”

Muhammad Iqbal S.I. (PW-9) deposed during cross-examination that he reached the hospital at 05:00 p.m. The relevant portion of the cross-examination reads as follows: -

“Dead body was shifted in emergency ward by 1122. Death certificate was received by me. I reached at hospital at about 05:00 PM. Complainant gave to me his written statement which had been written by him before my arrival.”

According to Muhammad Iqbal S.I. (PW-9), when he reached the hospital, he received the dead body of the deceased. According to him, the deceased died at 05 in the evening, and Muhammad Saleem (PW-1)-the complainant, made his statement before him for registration of the case, and he reduced to writing the statement of Muhammad Saleem (PW-1)-the complainant, same was read over to him, and he accepted as correct. The scanned copy of the police proceedings incorporated (Ex. PA/3) is as follows:



Muhammad Saleem (PW-1)-the complainant deposed during cross-examination that: -

“On the day of occurrence I visited police station after about two hours. Police visited hospital. I filed application at police station again said at hospital. I am under metric. I did not write myself application for registration of case. Application was written by police. I narrated the occurrence to the police and application was prepared on the basis of said information. My statement was recorded by Iqbal ASI. Police reached at hospital after half hour. 2/3 other police officials were also present with Iqbal ASI. I cannot tell their names and designations. Zahid Iqbal, Allah Ditta, Imran and 2/3 other relatives also reached at hospital. I cannot tell the name of doctor and medical staff who met us at hospital. Time was about 04:30/05:00 PM. We remained present at hospital for about half hour.”

Contrary to the deposition of Muhammad Saleem (PW-1)-the complainant, Allah Ditta (PW-2), the first cousin of the complainant and eye witness, deposed during cross-examination that: -

“Iqbal ASI reached at hospital. We narrated occurrence to the police. Application was given to the police which was written by Orangzaib. Orangzaib is not my relative. Orangzaib is police officer. On the day of occurrence I visited the police station at about 06:30 PM. Police officials also left with us when we proceeded for police station. We were in police vehicle. We reached at police station at about 07:00 PM. We did not stop anywhere on the way to the police station. We filed application at police station. Application regarding occurrence was given in police station. Muhammad Saleem complainant gave said application. Faisal ASI visited hospital. I cannot tell the time for which we remained at police station. My statement was recorded by police at police

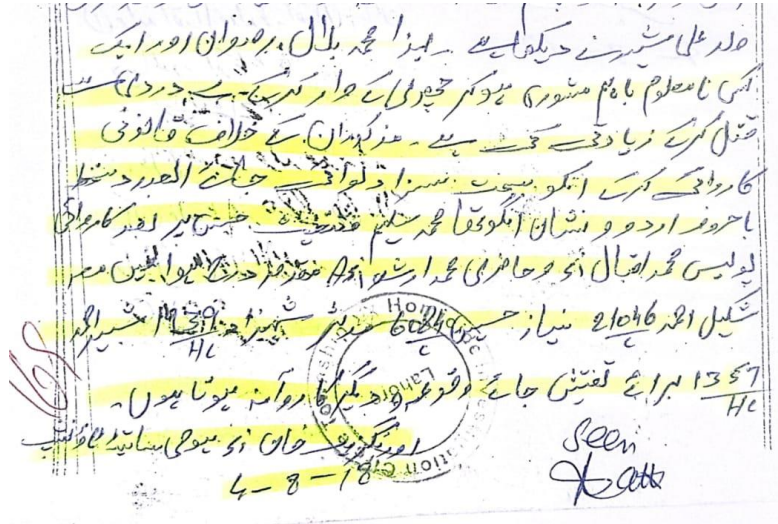
station. My statement was recorded by Orangzaib police officer. After leaving police station we went to hospital. I cannot tell the time of reaching hospital. We remained present at hospital till 04:00 AM. Police again visited the hospital. Name of police official is not remember to me. -----I have good memory. After taking dead body we went to our native Town.”

The matter can also be examined from another angle; in the inquest report (Exh.PF) in column No.3, related to the time of information received about the occurrence, it was mentioned at 05:25 p.m. on 04.08.2018. The contents of column No.3 of inquest report (Exh.PF) are reproduced hereunder,

"تاریخ 5:25 4/8/18 بجیشام"

It is mentioned in column No.8 of the inquest report (Exh. PF) that the mouth was open. The prosecution witnesses, i.e., Muhammad Saleem (PW-1)-the complainant, and Allah Ditta (PW-2), deposed in their court statements that they were with Muhammad Nadeem (then injured) when he was shifted to the hospital and before reaching the hospital, he succumbed to the injuries. If they attended to the deceased and he took his last breath in the rescue 1122 ambulance, then there was no reason for the mouth to be open. The medical staff always treat the body with dignity and respect; position the body in a supine position with anatomical alignment and close eyes and mouth if open. The second external check that is equally important is sending a copy of the FIR along with the dead body for post-mortem examination and its reference in the inquest report (Exh. PF). In the column of the brief history of the inquest report (Exh. PF), Aurangzaib S.I. (PW-8)-the investigating officer, specifically mentioned that a case has been registered and he is proceeding for investigation of the crime to the place of occurrence and others along with other police officers. Even then, it was not mentioned that FIR was also sent along with other documents with the dead body for post-mortem examination. The absence of these details in the inquest report may indicate that the FIR was not registered and was recorded

after due deliberations and consultation. The scanned copy of the relevant portion of the inquest report (Ex. PF) reads as follows: -



These facts create doubt in the prosecution case and the credibility and truthfulness of the statements of prosecution witnesses, i.e., Muhammad Saleem (PW-1)-the complainant, and Allah Ditta (PW-2). This also creates doubt about the genuineness of the version given by prosecution witnesses, i.e., Muhammad Saleem (PW-1)-the complainant, and Allah Ditta (PW-2). I further noticed that Doctor Abdul Sattar (PW-4) conducted the post-mortem examination of the dead body of Muhammad Nadeem. Doctor Abdul Sattar (PW-4) deposed during cross-examination that: -

“Dead body had arrived at hospital before starting of my duty timing. Dead body was received at 06:50 PM at dead house on 04.08.2018. -----I conducted postmortem at 03:00 AM on 05.08.2018. I conducted postmortem after about seven hours from the starting time of my duty. I received police papers on 05.08.2018 at 02:45 AM. I received police papers after about eight hours of receiving dead body in the dead house. -----I conducted postmortem with the delay of eight hours due to non availability of police papers. Police handed over to me police papers with delay. Injury mentioned in postmortem report may not be caused by simple blade. Volunteered stated that it may be caused by sharp edge object having heavy blade.”

I noticed that death had not taken place at the time given by the prosecution witnesses, nor the witnesses were present at the spot, which also got support from the inquest report (Exh. PF), wherein the names of Muhammad Saleem (PW-1)-the complainant, and Allah Ditta (PW-2) were not mentioned. It indicated that the incident did not occur as stated by the prosecution. However, Muhammad Saleem (PW-1)-the complainant, and Allah Ditta (PW-2) deposed that they remained with Aurangzaib S.I. (PW-8)-the investigating officer in hospital after the death of Muhammad Nadeem, the deceased. If he (PW-8) visited and prepared the inquest report (Exh. PF) and had met with Muhammad Saleem (PW-1)-the complainant, and Allah Ditta (PW-2). **In that case, there is no reason why the names of the complainant and eyewitness are missing from the inquest report (Exh. PF). The absence of those details indicates that the prosecution story was still in the embryo and had not been given any shape.** The FIR was recorded after due deliberations and consultations, and the FIR was then ante-timed. All these factual circumstances lead to the conclusion that relying upon the FIR in the instant case is unsafe.

12. As per the prosecution version, “bloodstained Churri” (P-6) was recovered on the disclosure of the appellant Bilal and produced by him, the Deoxyribonucleic acid (abbreviated DNA) of Muhammad Nadeem, the deceased was matched with the swab taken from the blade of Churri (P-6). As per the report of Forensic DNA and Serology Analysis of the Punjab Forensic Science Agency (Ex. PU), the swabs were taken from items # 5.1 and 5.2, the blade and handle of churri (P-6), and item # 5.1 was stained with human blood. As per the report, Forensic DNA and Serology Analysis (Supplementary-I) of the Punjab Forensic Science Agency (Ex. PW) reveals that a swab taken from the blade of Churri item # 5.1 matches the DNA profile of Muhammad Nadeem, the deceased. At the same time, the report, Forensic DNA and Serology Analysis (Supplementary-I) of the Punjab Forensic Science Agency (Ex. PW) reveals that a swab taken from the handle of Churri item # 5.2 did not match the DNA profile of Muhammad Rizwan (since acquitted) and Muhammad Bilal, the appellant. The relevant part of the report (Ex. PW) reads as follows: -

“The partial DNA profile obtained from item # 5.2 is consistent with the DNA profile of Muhammad Nadeem (item # 2). The probability of finding an unrelated individual at random in the population as being a source of the DNA obtained from item # 5.2 is approximately one in 71 quadrillion in Caucasians. The genetic loci D21S11, CSF1PO and D2S1338 were not used for frequency calculations. Muhammad Rizwan (item # S1) and Muhammad Bilal (item # S2) are eliminated as being contributors to the DNA obtained from item # 5.2.”

I have found from the evidence of Mudassar Shahzad 1939/C (PW-6), Aurangzeb S.I. (PW-8)-the investigating officer, that the accused were arrested on 20.08.2018. Aurangzeb S.I. (PW-8)-the investigating officer, deposed during examination-in-chief that: -

“On 20.08.2018 I arrested accused persons Bilal and Rizwan. ----- On 31.08.2018 at the disclosure and pointation of accused Bilal, a crime weapon bloodstained Churri P6 was recovered from his house. ---- -----I prepared its sealed and stamped parcel and took it into possession through recovery memo Ex.PQ attested by Mudassar Shahzad H.C and Shakeel Ahmed constable. I recorded the statements of said witnesses. I further prepared site plan Ex.PT regarding the place of said recovery.” He (PW-8) deposed during cross-examination that, **“On 31.08.2018 when I took accused Bilal for the purpose of recovery then door of his rented house was already opened.----- -Churri P6 was of ordinary nature which may be purchased from market. I did not mention in case diary that where complainant filed application for registration of case. Volunteered stated that application was filed at police station and said fact is mentioned in the proceedings of Muhammad Iqbal S.I.”**

Mudassar Shahzad 1939/C (PW-6), deposed during examination-in-chief that: -

“On 31.08.2018 at the disclosure and pointation of accused Muhammad Bilal crime weapon Churri P6 was recovered from his rented house No.14-B-1 situated at Township Market lying under the wooden box from residential room wrapped in plastic shopper and paper and it was blood stained. I.O. prepared its sealed and stamped parcel and took into possession through recovery memo Ex.PQ attested by me and Shakeel Ahmad constable.” He (PW-6) deposed during cross-examination that, **“When we visited the place of recovery then five / six persons were present in the house. Lady constable was not present with us. Volunteered stated that place of recovery was not residence of family and said rooms were got on rent by unmarried persons.”**

From the deposition of Mudassar Shahzad 1939/C (PW-6), Aurangzeb S.I. (PW-8)-the investigating officer, it reveals that appellant Bilal, along with his co-accused (since acquitted), was arrested on 20.08.2018; the appellant, Bilal, made disclosure and led to the recovery of crime weapon and produced a crime weapon. i.e., blood-stained knife (P-6) on 31.08.2018 by the appellant, Muhammad Bilal. As per the prosecution case, appellant Bilal was arrested on 20.08.2018. Strangely, Aurangzeb S.I. (PW-8)-the investigating officer, received the accused persons and other photographs from Shakeel Ahmad Constable on 10.08.2018. Aurangzeb S.I. (PW-8)-the investigating officer could not retrieve the crime weapon on 20.08.2018 when the arrest of the appellant Muhammad Bilal was shown, and the same was recovered on 31.08.2018, 11 days after his arrest from the accused's house. Aurangzeb S.I. (PW-8)-the investigating officer stated during cross-examination, that photographs of the place of occurrence were taken through a camera, and photographs of the accused persons were taken through a mobile phone. Aurangzeb S.I. (PW-8)-the investigating officer prepared the photographs on 04.08.2018 and deposed during his examination-in-chief that: -

“I also got photographs of the place of occurrence.”

The accused persons, i.e., Muhammad Bilal and Muhammad Rizwan (since acquitted), were in the custody of the police on 04.08.2018 as revealed from the deposition of Aurangzeb S.I. (PW-8)-the investigating officer Aurangzeb S.I. (PW-8)-the investigating officer and Mudassar Shahzad 1939/C (PW-6). The appellant, Muhammad Bilal, had the opportunity to conceal the weapon in his house. Mudassar Shahzad 1939/C (PW-6) deposed during examination-in-chief that on 10.08.2018, the I.O. took into possession photographs, including photographs of the accused persons. Mudassar Shahzad 1939/C (PW-6) deposed during examination-in-chief that: -

“On 10.08.2018 I.O took into possession 09 photographs of place of occurrence, deceased Muhammad Nadeem and accused persons P3/1-9 through recovery memo Ex.PN attested by me and Shakeel Ahmed constable.”

Mudassar Shahzad 1939/C (PW-6) deposed during cross-examination that: -

“I don’t know the date when photographs P3/1-9 were got by the I.O via mobile phone camera. Volunteered stated that I.O took it into possession on 10.08.2018. In one photographs accused Rizwan is seen in handcuff. Said photographs were got before 10.08.2018 due to which said were taken into possession on 10.08.2018.”

Aurangzeb S.I. (PW-8)-the investigating officer, admitted that he received photographs from Shakeel Ahmad Constable and deposed during examination-in-chief that: -

“Stated that on 04.08.2018, I was posted as Incharge HIU Circle Township Lahore. ----- I also got photographs of the place of occurrence. ----- On 10.08.2018 I took into possession photographs P3/1-9 through recovery memo Ex.PN attested Mudassar Shahzad and Shakeel Ahmed constables.”

Aurangzeb S.I. (PW-8)-The investigating officer admitted that the photographs were received on 10.08.2018, and the photographs of the place

“I recorded the statement of Shakeel Ahmed constable on 10.08.2018 regarding the production of nine photographs by said constable to me. Ex.P-3/1-9 are the photographs which were produced by constable Shakeel to me. Photographs regarding the place of occurrence were taken at the time of visit of place of occurrence and photographs of accused persons were taken after their arrest. It is correct that in photographs No.4 accused Rizwan is seen while handcuffed. Again stated that I cannot say it surely that accused Rizwan is handcuffed in said picture because no police official is present in said picture.----- Photographs of place of occurrence were taken through camera and photographs of accused persons were taken through mobile phone camera.”

[illegible]

I have noted that the said Shakeel Ahmad 21046/Constable was not produced as a witness by the prosecution. Thus, it was established from the recovery memo of possession of nine (9) photographs (Ex. PN) that Shakeel Ahmad 21046/Constable produced the nine (9) photographs (Ex. PN) on 10.08.2018 before Aurangzeb S.I. (PW-8)-the investigating officer, therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had Shakeel Ahmad 21046/Constable, been appeared as witness then his deposition would have been unfavorable to the prosecution. Reliance is placed on the case reported as “The State and others v. Abdul Khaliq and others” (PLD 2011 SC 554). The DNA test report, Forensic DNA and Serology Analysis (Supplementary-I) of the Punjab Forensic Science Agency (Ex. PW) reveals that sealed evidence of Buccal swab(s) of Muhammad Nadeem (the deceased) was submitted by Aurangzeb S.I. (PW-8)-the investigating officer on 06.08.2018. Aurangzeb S.I. (PW-8)-the investigating officer deposed during examination-in-chief that: -

“PFSA team had also reached at the place of occurrence and handed over parcels to me. I took into possession said parcels through recovery memo Ex.PJ attested by Mudassar Shahzad and Shakeel Ahmed constables. I recorded the statements of witnesses u/s 161 Cr.P.C.”

Whereas Aurangzeb S.I. (PW-8)-the investigating officer deposed during cross-examination that,

"Crime scene unit team had arrived at the place of occurrence before my arrival. I perused documents given by crime scene unit. Said documents are not the part of police record/file."

Mudassar Shahzad 1939/C (PW-6) deposed during cross-examination that: -

“I don’t know the date when photographs P3/1-9 were got by the I.O via mobile phone

camera. Volunteered stated that I.O took it into possession on 10.08.2018. In one photographs accused Rizwan is seen in handcuff. Said photographs were got before 10.08.2018 due to which said were taken into possession on 10.08.2018.”

The prosecution evidence remained silent about the names of the members of the team of PFSA who handed over three parcels sealed having insignia of PFSA to Aurangzeb S.I. (PW-8)-the investigating officer on 04.08.2018 and taken into possession through recovery memo (Ex. PJ) by Aurangzeb S.I. (PW-8)-the investigating officer and who prepared said parcels. The prosecution failed to establish by convincing evidence when and where the alleged parcel of Buccal swab(s) of Muhammad Nadeem (the deceased) was secured. After securing a sealed parcel, the same was handed over to Aurangzeb S.I. (PW-8)-the investigating officer. The Crime scene investigation report (Ex.PV) does not reveal where the team of PFSA collected the nail swab(s) and buccal swab(s) of Muhammad Nadeem (the deceased). As mentioned above, Mudassar Shahzad 1939/C (PW-6) and Aurangzeb S.I. (PW-8)-the investigating officer, deposed the PFSA team left in their presence from the place of occurrence. The Crime scene investigation report (Ex. PV) reveals that the dead body was not present at the spot when the PFSA team arrived at the place of the occurrence at 07:00 p.m. on 04.08.2018. After that, the PFSA team visited the dead house of Jinnah Hospital, Lahore, and the dead body of Muhammad Nadeem, the deceased, was examined. The scanned copy of the relevant portion of the crime scene investigation report (Ex. PV) reads as follows: -

Scene Description:

Crime scene unit (CSU) received a call on 04th of August, 2018 at 1900 HRS to process a homicide scene at the above mentioned address. Upon arriving at the crime scene, the CSU team conducted initial walk through and took background information about the scene. Crime scene was compromised as body of the deceased victim, named Nadeem S/O Ramzan, aged 25 years approximately was shifted to dead house of Jinnah Hospital, Lahore. Police officials or attendants of victim Nadeem were not present at crime scene. Suspected blood pool was observed on road.

CSU then visited dead house of Jinnah Hospital, Lahore. Body of the victim Nadeem was observed wrapped in white colored clothing, lying supine on stretcher. Victim Nadeem was fully clothed in sky blue colored *shalwar qameez*. No stiffness was observed in body parts of victim Nadeem. Discoloration of body was not observed due to excessive loss of blood. Suspected stabbing wound was observed on right side of upper abdominal region of victim Nadeem.

Scene Processing:

After initial walkthrough, crime scene was properly searched, documented by taking notes, not to scale (NTS) sketch and photography. Overall, midrange and close up photography of the dead body was rendered. North direction was noted and photographed. Zone search method was adopted for searching probable evidence. Crime scene was released after ensuring that all important information had been taken.

Contrary to the above, a scanned copy of the recovery memo of possession of three parcels with the seal of PFSA reads as under: -

مقامہ ٹاؤن شپ لاہور
 412-18
 18
 سرکار لاہور = قمر سلیم دلاور خیر انصاف قمر اکرم دین (محرر)
 قمر سلیم 724/18 مورخ 4/8/18 ج 302/34 ج 252/34 مقامہ ٹاؤن شپ لاہور
 قمر دلاور خیر 3 عداد پارسل سرکاری زمین PFSA
 اور برائے مکان ذیل درجہ ذیل موقوفہ PFSA زمین نے حصول قمر سلیم دلاور خیر انصاف
 کے بائیں ناقد کے قیل موثبات کا ایک عداد پارسل نمبر 2015-01-CS-LHR-
 سرکاری زمین PFSA اور ایک عداد پارسل درجہ ذیل ناقد کے قیل موثبات نمبر 2015-
 EX-02-CS-LHR-02 سرکاری زمین PFSA اور ایک عداد پارسل قیل موثبات نمبر
 2015-EX-03-CS-LHR-03 سرکاری زمین PFSA قیل ناقد کے قیل موثبات
 ج 3 عداد پارسل سرکاری زمین PFSA کو برائے قیوت پیر اور قیوت قیوت قیوت قیوت
 دیگر فرد مرتب کیلئے اور دیگر شدہ فرد پیر گرواھان کے اسنادات کے طور پر ملے۔
 18-8-4
 اور دیگر مرتب خانہ ٹاؤن شپ لاہور
 18-8-4
 گوراء شدہ
 1939/HC
 1939/HC
 گوراء شدہ
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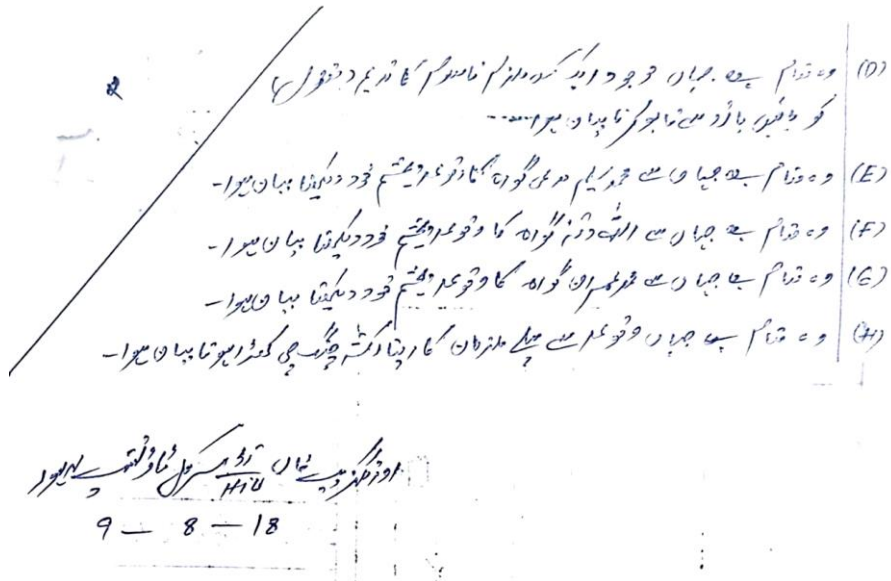
Aurangzeb S.I. (PW-8)-the investigating officer on 04.08.2018 prepared un-scaled site plan and he had deposed during his examination-in-chief that: -

“I prepared un-scaled site plan Ex. PR regarding the place of occurrence. I also got photographs of the place of occurrence. -----
-- On 09.08.2018 draftsman prepared scaled site plan in triplicate and handed over to me. I gave red ink notes. I recorded the statement of draftsman in this regard.”

The oral testimony is contrary to the documentary evidence in the shape of the un-scaled site plan (Exh.PR), revealing that at the bottom of the un-scaled site plan (Exh. PR) date is mentioned 09.08.2018 and not

[illegible]

۱۰۰ قتار جے جہاں متحدہ تدریم مفرد ب ہونا اور ہر سال پانچویں میں جاتی ہونا بیان ہوا۔ اس وقت سے قون ہذا اور ایسی
تقدیر پر سے کیا گیا بیان ہوا۔ اور باؤسی کے کل سوبہ دونوں علاقوں کے تیل سوبہ تدریم PESA تہفہ میں ہے
۱۰۰ قتار جے جہاں وجود ملنے مرید الہا کا ملکا مارنا اور اپنی دستہ چھوڑی سے تدریم دقتوں پر اور کرنا بیان ہوا۔
۱۰۰ قتار جے جہاں وجود ملنے اور ان کا تدریم دقتوں کو درمیں باؤسی سے قابو کرنا بیان ہوا۔



Although the site plan is not a substantive piece of evidence in terms of **Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211)**, but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses. All these circumstances create doubt about the parcels prepared by the PFSA team and make the matching report of the swab taken from the blade of Churri item # 5.1 matches the DNA profile of Muhammad Nadeem, the deceased, doubtful.

13. Besides, a bare reading of Section 510 Cr.P.C., a report of an expert is per se admissible without examination of the expert. It would be appropriate to quote Section 510 of the Criminal Procedure Code, which reads as follows: -

“510. Report of Chemical Examiner, Serologist, etc.

Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, fingerprint expert or fire-arm expert or the Chemist or the Pharmacist or the Forensic Scientist or Hand-writing expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code: Provided that the Court may [if it considers necessary in the interest of

justice] summon and examine the person by whom such report has been made.].”

A bare reading of this Section makes it abundantly clear that the reports of the Chemical Examiner or Assistant Chemical Examiner to the Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, fingerprint expert, or fire-arm expert or the Chemist or the Pharmacist or the Forensic Scientist or Hand-writing expert are admissible per se without they being formally proved by the person who has made the same. It is in prosecution evidence that a team consisting of the members of the Punjab Forensic Science Agency inspected the place of occurrence, collected evidence, prepared three parcels separately, and handed them over to Aurangzeb S.I. (PW-8)-the investigating officer. The members of the PFSA team are not officers covered by Section 510 of the Code of Criminal Procedure, and thus, the positive report of Punjab Forensic Science Agency (Ex. PW) is not conclusive and reliable in the absence of the officers above being examined in Court, who collected and prepared the parcels from the spot and prepared separate parcels to prove the fact that they collected evidence from the place of the occurrence and after that, they prepared parcels which were handed over to Aurangzaib, S.I. (PW-8)-the investigating officer. The report in question is of no help to the prosecution as there is nothing on record to prove that the three parcels alleged to have been made by the members of the PFSA team on the spot. Thus, there can be no dispute that it was incumbent upon the prosecution to produce members of the PFSA team who collected the crime empties and prepared separate parcels to prove the chain of safe custody. Without such proof, the PFSA report cannot corroborate the prosecution's case.

14. The motive set up by the prosecution in the Fard Beyan (Exh. PA) and F.I.R. (Exh. PH), brought on the record through the deposition of Muhammad Saleem (PW-1)-the complainant and Allah Ditta (PW-2) is that day before the occurrence the accused persons purchased mangoes from Muhammad Nadeem, the deceased and some mangoes were found rotten

due to the said reasons the accused persons gave threats of dire consequences to the deceased. To substantiate the motive part of the case, the prosecution produced Muhammad Saleem (PW-1)-the complainant. In the cross-examination of Muhammad Saleem (PW-1)-the complainant deposed as under: -

“I did not give any application regarding motive part of the occurrence at police station. In EX.PA I did not mention the time of motive part fight. In my evidence in court I did not give said time. In Ex.PA I did not give the name of witnesses of motive part of occurrence. in my statement in this court I have not mentioned names of the witnesses of motive part fight.”

The defence brought on the record contradictions and conflicts in the evidence of Allah Ditta (PW-2); he deposed during cross-examination that: -

“In my statement u/s 161 Cr.P.C. I did not submit that complainant was also used to sell fruit at his wheelbherro beside me. I told the police that deceased was also used to sell mangoes near by me on his loader Rikshaw. Confronted with Ex.DA where it is not so recorded. I told the I.O about the first aid which was given to the injured at spot. Confronted with Ex.DA where it is not so recorded. I told police about the motive part that accused persons committed the murder of deceased due to the dispute of rotten mangoes. Confronted with Exh.DA where motive part is not so recorded. I did not tell the I.O about the threats given by the accused persons before one day of the occurrence in my statement u/s 161 Cr.P.C. Time of quarrel, which took place before one day of the occurrence, is not remember to me. I did not give any application regarding the quarrel which took place before one day prior to the occurrence. Except me and Saleem no other witnesses regarding the fight, which took place before one day of the occurrence, appeared before police. It is correct that on my CNIC residential address is mentioned Hujra Shah Mugeem Tehsil

Deepalpur District Okara. Police recorded my statement u/s 161 Cr.P.C. I gave same address to the police while got recording my statement. I repeated same address in this court.”

Therefore, the evidence led by the prosecution in connection with the motive is not sufficient to place reliance on the testimonies of the witnesses for committing the occurrence. Motive is a double-edged weapon for the occurrence and also for false implication. Different motives always operate in the person's mind when making false accusations. In the circumstances, I cannot avoid the conclusion that the alleged motive was an afterthought and has not been proved by any credible evidence.

15. As it is difficult to rely upon the testimonies of Muhammad Saleem (PW-1)-the complainant, Allah Ditta (PW-2), and Aurangzeb, S.I. (PW-8)-the investigating officer and for other reasons enumerated hereinbefore, I am persuaded to hold that the prosecution had not been able to prove its case against the appellant, Muhammad Bilal, beyond shadow of doubt as there were many dents in the prosecution story. The conviction and sentence the learned trial court recorded cannot be sustained. Reliance has been placed on the case reported as “**Muhammad Akram v. The State**” (2009 SCMR 230), wherein the Hon’ble Supreme Court of Pakistan has held that even a single circumstance creating reasonable doubts in a prudent mind about the guilt of the accused makes him entitled to the benefit, not as a matter of grace and concession but as a matter of right.

16. The upshot of the above discussion is that the prosecution had severely failed to bring home a charge against the appellant, Muhammad Bilal, beyond any reasonable doubt; therefore, in the interest of the safe administration of Criminal Justice, Criminal Appeal No.56380 of 2021 filed by Muhammad Bilal, the appellant is **accepted in toto**. The conviction and sentence awarded by the learned Additional Sessions Judge, Lahore vide judgment dated 16.06.2021 is **set aside**, and the appellant, Muhammad Bilal, is ordered to be acquitted of the charge in case FIR No.724 of 2018 dated 04.08.2018 offence under sections 302, 34 PPC registered at Police Station

Township, District Lahore and the appellant-Muhammad Bilal is directed to be **released forthwith**, if not required in any other criminal case.

17. So far as Crl.Rev.No.42144 of 2021 seeking enhancement in the sentence of respondent No.1 inflicted by the trial court is concerned, for the afore-stated reasons, the same has no weight, which is accordingly dismissed.

18. Prima facie, this Court does not find the Investigating Officer to have performed his duties of conducting a fair investigation. The investigation must be honest and transparent, as it is the minimum requirement of the Rule of law. The investigating agency cannot investigate in a tainted and biased manner. A copy of this Judgment shall be sent to the CCPO, Lahore, to look into the conduct of the investigating officer and the investigation conducted by him.

(AALIA NEELUM)
JUDGE

Approved for reporting

Judge

*This judgment was dictated,
pronounced on 20.02.2024,
and signed after completion
on 28.02.2024.*

Ikram*