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Judgment Sheet
IN THE LAHORE HIGH COURT,
LAHORE
JUDICIAL DEPARTMENT

Murder Reference No.489 of 2017
(The State versus Nasir Abbas)

&

Crl. Appeal No. 73258 of 2017
(Nasir Abbas and another versus The State)

JUDGMENT

Date of hearing	27-05-2021
Appellants by:	M/s Munir Ahmad Bhatti, Nasir Mehboob Tiwana, Ch. Zulfiqar Ali Hargan, Advocate
State by	Mr. Muhammad Naveed Umar Bhatti, Deputy Prosecutor General.
Complainant by:	M/s Noor Muhammad Jaspal, Aqeel Atif Chattha, and Irfan Ali, Advocate.

Muhammad Tariq Nadeem. J:- Nasir Abbas and Muhammad Saleem (appellants) were tried by learned Additional Sessions Judge, Bhalwal in case FIR No. 35 dated 01.2.2016 for offences under sections 302, 324, 34 PPC (subsequently sections 337-F1, 337-F5, 440, PPC were added), registered at Police Station Phularwan, District Sargodha, for causing the murder of Manazir Ali, son of the Complainant, injuries to Muhammad Ijaz and vide judgment dated 19.07.2017 convicted and sentenced the appellants as under:-

Nasir Abbas

Under Section 302(b) PPC Sentenced to death as Tazir with a further direction to pay Rs.5,00,000/- (rupees five lacs only) as compensation under Section 544-A, Code of Criminal Procedure to the legal heirs of the deceased and in default whereof to further undergo six months S.I.

He was also convicted under section 324/34, PPC and sentenced him to undergo ten years R.I with fine of Rs. 30,000/- and in default thereof he shall further undergo two months S.I.

Muhammad Saleem

Under Section 302(b)/34, PPC Sentenced to life imprisonment as Tazir with a further direction to pay Rs.3,00,000/- (rupees three lacs only) as compensation under Section 544-A, Code of Criminal Procedure to the legal heirs of the deceased and in default whereof to further undergo three months S.I.

He was also convicted under section 324, PPC and sentenced him to undergo ten years R.I with fine of Rs. 50,000/- and in default thereof he shall further undergo six months S.I.

He was further convicted under section 337-F(v), PPC for two years S.I. with a daman of Rs. 50,000/- which will be paid to injured Muhammad Ijaz.

He was also convicted under section 337-F(iii), PPC as Ta'zir for one year S.I. with a daman of Rs. 25,000/- which will be paid to injured Muhammad Ijaz.

The above mentioned sentences awarded to Muhammad Saleem shall run concurrently.

Benefit of section 382-B, Cr.P.C. was also extended to him.

Assailing the above convictions and sentences, Nasir Abbas and Muhammad Saleem (appellants) have filed **Criminal Appeal No. 73258 of 2017** whereas the learned trial Court has sent **Murder Reference No.489 of 2017** for confirmation or otherwise of sentence of death awarded to Nasir Abbas, as required under Section 374, Code of Criminal Procedure. As both these matters have arisen from the same judgment, therefore, are being decided together through this single judgment.

2. Precisely, the facts necessary, as divulged through the statement ExH.PF on the basis of which formal F.I.R Exh. PF/1 was chalked out

on the statement of Sher Muhammad (PW4) are that on 31.01.2010 the complainant along with Muhammad Afzal, his brother and Ahmad Yar in car bearing registration No. SGH-8955, whereas, in the second car No. XLI LE-333-16 Manazar Ali and Muhammad Ijaz went to Faisalabad in connection with purchases of articles for the marriage of his nephew Asad Ali. Manazar Ali and Ijaz were traveling ahead of the Complainant's vehicle at some distance. At 03.15 a.m. (night) on 01.2.2016 when they reached *Saim Nala* near *Dera Lala Guraya Saalam*, in front of them, a black colour car bearing No. RE-123 intercepted the car of Muhammad Ijaz, etc. Appellant Nasir Abbas armed with 30 bore pistol and Muhammad Saleem also armed with 30 bore pistol alighted from the said car. Nasir Abbas raised a *lalkara* to them that they would be taught a lesson for arranging the marriage of their sister with their brother Asad Ali. Nasir Abbas fired with pistol 30 bore at the right side of neck of Manazar Ali sitting at the driving seat which went through and through. Muhammad Saleem made three consecutive fires shots with his pistol 30 bore, two fire shots landed on the upper side of left shoulder, third fire shot hit him upon his back of left shoulder. The occurrence was witnessed by Complainant, Muhammad Afzal and Ahmad Yar, in the head lights of cars/vehicles. The witnesses alighted from the car and reached at the place of occurrence. The accused persons while brandishing their weapons, fled away from the spot. The Complainant and PWs tried to stop them but the accused tried to crush the Complainant and PWs but they saved themselves. Manazar Ali succumbed to the injuries at the spot whereas Muhammad Ijaz received severe injuries.

Motive behind the occurrence was that Nasir Abbas appellant had a grudge against Manazar Ali and Muhammad Ijaz that they had arranged engagement of their brother Asad Ali with his sister.

3. After completion of investigation, result of the investigation was encapsulated in report under Section 173, Code of Criminal

Procedure which was submitted before the learned trial court. The appellants were summoned by the learned Additional Sessions Judge, Bhalwal to face the trial. Copies of relevant documents were provided to them as required under Section 265-C, Code of Criminal Procedure and formal charge was framed against them on 18.05.2016, to which they pleaded not guilty and claimed trial.

At the conclusion of the prosecution evidence, statements of the appellants under Section 342 Code of Criminal Procedure were recorded, wherein they refuted all the prosecution allegations levelled against them and professed their innocence. The appellants neither opted to appear as their own witnesses in disproof of the prosecution allegations as provided under Section 340(2) Code of Criminal Procedure nor they produced any defence evidence. However, after conclusion of trial, the learned trial court convicted and sentenced the appellants, as mentioned and detailed above. Hence, the supra mentioned appeal and Murder Reference.

4. Arguments heard and record perused.

5. As per contents of FIR, the unfortunate occurrence had taken place on 01.02.2016 at 3:15 a.m. (night) and the matter was reported to the police on 01.02.2016 at 07:15 a.m. i.e. after the delay of about four hours of the incident. The distance between police station and the place of occurrence is six kilometers. Sher Muhammad Complainant (PW4) in cross examination stated that he had been using mobile phone for the last ten years and the PWs were also using mobile phone since then. Obviously they were travelling at night far away from their houses so there was every possibility that all the PWs had mobile phones available with them. In this way, they could have easily made calls through their mobiles to the police at available police emergency numbers which are almost known to a person travelling. The prosecution failed to give any plausible reason for the aforesaid delay. Therefore, we have no hesitation to hold that the

delay in setting the machinery of law into motion speaks volumes against the veracity of prosecution version. Reliance is placed on case law titled as “*Altaf Hussain vs. The State*” (2019 SCMR 274).

Further we have noted that postmortem examination on the dead body of Manazir Ali deceased was conducted on 01.2.2016 at 09.30 a.m. with a delay of six hours and fifteen minutes from the occurrence. More so, as per opinion of Dr. Shahid Majeed (PW1) the time between the death and postmortem examination was 6 hours. It has been held repeatedly by the Hon’ble Supreme Court of Pakistan that such noticeable delay is normally occasioned due to incomplete police papers necessary to be handed over to the Medical Officer to conduct the postmortem examination on dead body of the deceased which happens only when the Complainant and police remain busy in consultation and preliminary inquiry regarding the culprits in such cases of un-witnessed occurrence. Wisdom is derived from the judgments “*Sufyan Nawaz and another vs. The State and others*” (2020 SCMR 192), “*Irshad Ahmad v. The State*” (2011 SCMR 1190). Similar view was also taken by the Hon’ble Supreme Court of Pakistan in the case of “*Muhammad Ashraf v. The State*” (2012 SCMR 419), “*Khalid alias Khalidi and 2 others v. The State*” (2012 SCMR 327).

6. Ocular account in this case has been furnished by Sher Muhammad Complainant (PW4), Muhammad Ijaz injured eyewitness (PW5) and Muhammad Afzal (PW6). Sher Muhammad Complainant is the father of the deceased, Muhammad Ijaz (injured PW5) is cousin and Muhammad Afzal (PW6) is nephew of the deceased. Sher Muhammad Complainant (PW4) stated that he, Muhammad Afzal and Ahmad Yar PWs were proceeded to Faisalabad in one car bearing registration SGH 8955 for purchasing articles in connection with marriage ceremony of his nephew namely Asad Ali and when they reached near the *Dera* of Lala Guraya in the area of village Saalam,

the car in which Ijaz and Manazir Ali were travelling, was ahead of them. At about 03.15 a.m. (night) when they reached near the *Dera* of Lala Guraya a car of black colour bearing registration No. RE-123 came in front of the car of Manazar Ali, etc. The accused persons stopped their car in front of the car of Manazir Ali and Muhammad Ijaz. Nasir Abbas and Muhammad Saleem appellants alighted from the car while armed with 30 bore pistols. Nasir Abbas made a pistol fire shot which hit Manazir Ali on right side of his neck which went through and through from left side, when he was sitting on the driving seat of his car. Muhammad Saleem appellant with his pistol made three consecutive fire shots, two of which hit Muhammad Ijaz PW on his left arm of upper shoulder and one on his back of left shoulder.

7. The narration of occurrence given by PWs as aforesaid is repellent to senses. It was a night occurrence and they were sitting in the car. Though it has been mentioned that they identified the culprits in the lights of car yet it is hardly believable that they could see the assailants when they had been firing desperately. All the PWs were equally under direct and immediate threat of death but still they were able to give photographic narration of the occurrence by attributing fire shots at the deceased and injured at the hands of two accused persons at a distance of 33 feet. The PWs had no any weapons along with them so they were at the mercy of assailants to be targeted.

We have noted that during cross-examination the PWs stated that they went to Faisalabad for purchasing articles in connection with marriage ceremony of their nephew namely Asad but they admitted during their cross examination that Sargodha City is at a distance of 30/35 kilometers from *Saalam* and this fact is also admitted by the PWs that Sargodha is a big city having many markets, bazzars and shopping centers. They had not provided any detail of purchased articles or any receipt whereof, before the Investigating Officer during investigation. Sher Muhammad complainant (PW4) stated in his cross

examination that he does not know the name of any shop from where they statedly purchased articles. Moreover, he failed to describe while traveling on motorway from which interchange they had made exit, similarly, could not describe the amount which was paid at motorway toll plaza.

8. We have noted that the only source of light available with the PWs by which they saw the appellants firing at the deceased was the head lights of the cars. Sher Muhammad (PW4) in his cross examination admitted that he had not produced the car used by them at the time of occurrence. After scanning the record it transpired that the police has also not taken into possession the car in which the alleged eyewitnesses were travelling and they witnessed the occurrence in the light of supra mentioned car. Identification of the accused in the head lights of vehicle is a weak type of evidence. A reference in this regard may be made to the case of “*Sajjad alias Sajoo and others vs. The State*” (2018 P.Cr.L.J. 1064).

9. Much stressed has been laid on the statement of one injured eye witness namely Muhammad Ijaz (PW5) who acclaimed to have received firearm injuries during the occurrence. It was pressed hard by the prosecution that injuries on the person of said PW are conclusive proof of their presence at the spot, thus, his testimony is destined to be accepted, even without scrutinizing it on the touch stone of corroboration. We feel it essential to mention here that though the firearm injuries are present on the person of PWs indicate his presence at the spot, however it is not a conclusive proof of what he deposed before the Court is true. As per settled principles laid down for appraisal of evidence, even the testimony of injured witness is to be subject to scrutiny, for making it basis of conviction. While holding so, we are guided by the observation of the Honorable Supreme Court of Pakistan expressed in the case of “*Nazir Ahmad Vs Muhammad Iqbal and another*” (2011 SCMR 527), which is as under;

“It is settled law that injuries of PW are only indication of his presence at the spot but are not affirmative proof of his credibility and truth”.

10. The medical evidence also belies the ocular account in this case. We have noted that the distance, from where the firing was caused by the accused upon Manazar Ali deceased, shown in the site plan Exh. PK was about three feet, but this fact has been rebutted by medical evidence as in the cross-examination Dr. Shahid Majeed (PW1) stated that there was no blackening, burning and tattooing on the body of the deceased. He further described in his cross examination that “*burning occurs when fire is made within the range of three feet whereas the blackening occurs within the range of four feet*”. In the light of the statement of Dr. Shahid Majeed (PW1), there is glaring contrast between ocular and medical account. In the peculiar circumstances of the case, there must be blackening on the body of deceased which is very much lacking in this case. We fortify our view from the case law titled as “***Mian Sohail Ahmad and others vs. The State and others***” (2019 SCMR 956).

Now the question arises that if the ocular account and the medical evidence is at variance with each other, whether its benefit can be extended to the appellant or not. The answer to this query lies in the observation of Hon’ble Supreme Court of Pakistan expressed in the case of ***Abdul Jabbar and another v. The State***(2019 SCMR 129) which is as under:-

“It is the settled principle of law that once a single loophole is observed in a case presented by the prosecution much less glaring conflict in the ocular account and medical evidence or for that matter where presence of eye-witnesses is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused.”

11. Motive behind the occurrence was that Nasir Abbas appellant had a grudge against Manazar Ali and Muhammad Ijaz that they had arranged engagement of their brother Asad Ali with his sister. In this context we have noted that in the F.I.R as well as in their statements of the PWs, they failed to even give the name of said girl. Similarly, Sher Muhammad (PW4) has admitted in his cross examination that he had not produced any *Shaadi card* during the investigation before the investigating officer. Sher Muhammad (PW4) also described in his cross examination that “prior to this occurrence, engagement took place between Asad and sister of Nasir accused one year earlier. Earlier to this occurrence, both the families were having cordial relation. The engagement ceremony was celebrated according to the custom of the area and few jewelry was exchanged between both the parties”. The learned trial court has already found the motive part flimsy one. Therefore, we hold that prosecution has failed to prove motive part against the appellants.

12. So far as the recoveries of pistols at the instance of Nasir Abbas and Muhammad Saleem (appellants) and matching report of the Punjab Forensic Science Agency are concerned, the same are immaterial because we have already disbelieved the ocular version, medical evidence and motive.

13. For what has been discussed above, we are of the view that the prosecution has failed to prove its case against Nasir Abbas and Muhammad Saleem appellants beyond any shadow of doubt, therefore, we **accept Criminal Appeal No.73258 of 2017** filed by appellants, set aside their convictions and sentences recorded by the learned Additional Sessions Judge, Bhalwal *vide* judgment dated 19.07.2017 and acquit them of all the charges by extending them the benefit of doubt. The appellants are in jail, they be released forthwith, if not required in any other case.

14. **Murder Reference No.489 of 2017** is answered in the **NEGATIVE** and the sentence of death of Nasir Abbas appellant is **NOT CONFIRMED.**

(Sehram Sarwar Ch.)
Judge

(Muhammad Tariq Nadeem)
Judge

Approved for reporting

JUDGE

JUDGE

Khurram
P.S.