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Judgment Sheet
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Criminal Appeal No.454-J-2021/BWP
Manzoor Ahmad. Versus. The State, etc.

J U D G M E N T

<i>Date of hearing</i>	14.09.2022
<i>Appellants represented by:</i>	Mr. Muhammad Saeed Ansari, Advocate.
<i>The State represented by:</i>	Mr. Shahid Fareed, ADPP.
<i>The complainant represented by:</i>	Mirza Muhammad Azam, Advocate.

Sardar Muhammad Sarfraz Dogar, J.: This judgment shall dispose of **Criminal Appeal No. 454 of 2021** filed by appellant Manzoor Ahmad against his conviction and sentence inflicted upon him *vide* judgment dated 30.09.2021, rendered by the learned Additional Sessions Judge, Bahawalnagar, in case FIR No.05/2021 dated 03.01.2021, registered under sections 364-A, 302, 34 PPC at Police Station Saddar Bahawalnagar, whereby, he was convicted and sentenced as under:-

Under section 302(b) PPC: Life Imprisonment as Ta'zir, alongwith the direction to pay Rs.300,000/- as compensation under section 544-A Cr.P.C to the legal heirs of deceased. In default whereof, to further undergo six months S.I.

It was ordered that compensation will be recoverable as arrears of land revenue from the appellant. He was also extended benefit of section 382-B of Cr.P.C.

2. Brief facts of the case, as disclosed by Haji Ghulam Rasool/complainant (PW.6) and contained in FIR (Exh.P.D/1) are that on 02.01.2021, Umar Rasool, his son aged 12-years went to the carpenter shop of Muhammad Asghar (PW.9) to learn carpenter work and did not return in the home at evening. The complainant alongwith PW.7 Asif Nadeem and Binyamin

remained searching for him but in vain. On the next day i.e 03.01.2021, he reported the matter to police because in the year 2011, Muhammad Hussain S/o Manzoor Husain was murdered and case was registered against complainant Haji Ghulam Rasool and his brother Muhammad Yaseen. Complainant expressed his suspicion that Manzoor Ahmad and others had abducted his son Umar Rasool with intention to commit his murder.

3. The investigation of this case was conducted and during the investigation, I.O prepared rough site plan (Exh.P.G/1), recorded the statements of witnesses of Waj-Takkar of last seen of deceased and prepared visual site plan Exh.P.S., arrested the accused Manzoor Ahmad on 04.01.2021 and on his pointation, recovered the dead body of deceased Umar Rasool, prepared identification slip of deceased body of deceased (Exh.P.J), visual site plans, prepared injury statement, inquest report, took into his possession samples given to him by crime scene unit of PFSA through recovery memo (Exh.P.E), collected blood stained chaff *vide* recovery memo (Exh.P.G), prepared sealed parcels of polythene bag and blood stain "Prawlee" (Paddy stains) *vide* recovery memo (Exh.P.F), sent the dead body for post mortem examination, received the last worn clothes of deceased, submitted the parcels to PFSA, took into possession the weapon of offence recovered on the pointation of accused *vide* recovery memo Exh.P.L, took into sealed parcels of cap and shoes of victim into possession *vide* recovery memo Exh.P.M, prepared the site plan of place of recovery, took into possession motorcycle got recovered from acquitted accused Muhammad Ahmad *vide* recovery memo Exh.P.N, prepared site plan Exh.P.N/1, took into possession motorcycle got recovered by acquitted accused Muhammad Azam *vide* recovery memo Exh.P.O, prepared site plan Exh.P.O/1, took into possession weapon of offence sticks/soties got recovered by both acquitted accused *vide* recovery memos Exh.P.P & Exh.P.Q, prepared site plan Exh.P.P/1 and Exh.P.Q/1, recorded the statements of the witnesses under section 161 Cr.P.C and and after

completion of the investigation a challan was submitted in the Court.

4. 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 on 24.03.2021, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution produced 13 witnesses, during the trial. Muhammad Asghar (PW.9) saw the acquitted accused Muhammad Azam while deceitfully taking the deceased whereas Altaf Hussain (PW.10) and Abdul Rasheed (given up PW) saw the accused Manzoor Ahmad and Muhammad Ahmad while taking the deceased on motorcycle and the accused confessed his guilt before these PWs.

6. After completion of prosecution evidence, the statements of the appellant and acquitted accused persons under section 342 of the Code of Criminal Procedure, were recorded by the learned trial court on 07.08.2021 wherein they refuted the allegations levelled against them and professed their innocence. While answering to a question that *“Why this case against you and why the PWs have deposed against you?”* the appellant replied as under:-

“The PWs are closely related interse and highly inimical towards me. It was a blind murder. Nobody witnessed the occurrence. The story of abduction and murder is fabricated one and planted upon me due to previous rivalry. I am innocent”

The appellant neither opted to make statement on oath as envisaged under section 340(2) Cr.P.C., nor he produced any evidence in his defence.

7. Upon the conclusion of trial, the learned trial court found the prosecution's case against the appellant to have been proved beyond reasonable doubt and, thus, he was convicted and sentenced as mentioned and detailed above whereas acquitted his co-accused giving them benefit of doubt. Hence, the present appeal.

8. Learned counsel for the appellant, in support of this appeal, contends that prosecution has miserably failed to bring home the guilt against the convict by producing trustworthy and convincing evidence; that it was an un-witnessed occurrence as none of the witnesses had witnessed the appellant to commit the murder of Umar Rasool deceased; that the whole case of prosecution against the appellant is based on circumstantial evidence which consists of last seen, extra judicial confession allegedly made by the appellant before PWs, recovery of dead body of Umar Rasool deceased, evidence of recovery of weapons of offence, recovery of motorcycles and medical evidence; that no reliance can be placed on the evidence of last seen and extra judicial confession as admittedly, PWs Altaf Hussain is relative of complainant whereas PWs Asif Nadeem and Muhammad Binyamin are his nephews and there is nothing on record which could suggest that the PWs Asif Nadeem and Muhammad Binyamin were influential persons of the locality, so their statements cannot be relied upon without independent corroboration which is very much lacking in this case; that it is settled law that the medical evidence may confirm the ocular evidence with regard to seat of injury and its duration, nature of injury and kind of weapon used for causing such injury but it cannot connect the accused with the commission of the crime, until and unless there is some other evidence, therefore, this piece of evidence is of no avail to the prosecution; that the prosecution has miserably failed to prove its case against the appellant beyond the shadow of doubt; thus, the appeal be accepted and the appellant may be acquitted from the charge.

9. On the other hand, learned ADPP for the State assisted by learned counsel for the complainant, vehemently opposes this appeal on the grounds that the prosecution has proved the evidence of extra judicial confession by producing witness of extra-judicial confession, before whom the appellant had confessed that he had murdered the son of complainant to take revenge; that on pointation of the appellant dead body of the deceased was recovered; that the sentence of life imprisonment was rightly

awarded to the appellants and the same may be maintained, appeal may be dismissed.

10. I have heard the arguments of learned counsel for the appellant and the learned law officer assisted by learned counsel for the complainant and also gone through the record with their able assistance.

11. Admittedly, there is no ocular evidence in this case and it was an un-witnessed occurrence as none of the witnesses had witnessed the appellant to commit the murder of Umar Rasool deceased. The whole case of prosecution against the appellant is based on circumstantial evidence which consists of (i) last seen (ii) extra judicial confession allegedly made by the appellant before PWs i.e. **PW-7** Asif Nadeem, and Binyamin (**not produced**) (iii) recovery of dead body of Umar Rasool deceased, (iv) evidence of recoveries of belongings of deceased and weapon of offence i.e. blood stained Muffler (**P-10**), blood stained shoe/slipper brown colour with heel (**P.11**), cap (**P.12**) and slipper of deceased and (v) medical evidence. Since the case hinges upon the circumstantial evidence, therefore, utmost care and caution is required for reaching at a just conclusion of the case. It is settled by now that in such like cases every chain should be linked with each other as its one end touches the dead body while the other end goes to the neck of the accused and if any chain link is missing then its benefit should be given to the accused. In this regard, guidance has been sought from the judgments of the learned Apex Court of the country. In **The State Vs. Manzoor Ahmad (PLD 1966 Supreme Court 664)**, the Hon'ble Supreme Court of Pakistan, at page 680, has been pleased to observe as under:-

“..... It is no doubt true that in a case resting wholly on circumstantial evidence the Court must, as observed by Wills in his Treatise on Circumstantial Evidence, remember that the ‘processes of inference and deduction are essentially involved--- frequently of a delicate and perplexing character--- liable to numerous causes of fallacy’. Mere suspicion will not be sufficient to justify conviction. Before the guilt of the accused can be inferred merely from

inculpatory circumstances those circumstances must be found to be incompatible with the innocence of the accused and 'incapable of information upon any other reasonable hypothesis than that of his guilt'. It is also equally well settled that the circumstances sought to be relied upon must have been established beyond all doubt. But this only means a reasonable doubt, i.e. a doubt such as would assail a reasonable mind and not any and every kind of doubt and much less a doubt conjured up by pre-conceived notions. But once the circumstances have been found to be so established they may well furnish a better basis for decision than any other kind of evidence.....”

The above view was reiterated in the case of Asadullah and another Vs. State and another (PLJ 1999 SC 1018). In Ch. Barkat Ali Vs. Major Karam Elahi Zia and another (1992 SCMR 1047) at page 1055, it was held as under:-

“.....Law relating to circumstantial evidence that proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused. See ‘Siraj Vs. The Crown (PLD 1956 FC 123)..... In a case of circumstantial evidence, the rule is that no link in the chain should be broken and that the circumstances should be such as cannot be explained away on any hypothesis other than the guilt of the accused.”

In Sarfraz Khan Vs. The State (1996 SCMR 188), at page 191, it was observed as under:-

7.....it is well-settled that circumstantial evidence should be so inter-connected that it forms such continuous chain that its one end touches the dead body and other neck of the accused there by excluding all the hypothesis of his innocence.....”

In Altaf Hussain Vs. Fakhar Hussain and another (2008 SCMR 1103), at page 1105, while discussing the impact of circumstantial evidence, the learned Apex Court has been pleased to observe as under:-

“.....Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of a complete chain, one corner of which should touch the neck of the deceased and

other corner to the neck of the accused. Failure of one link will destroy the entire chain.”

12. First of all, evidence of last seen which has been furnished by PW.10/Altaf Hussain is to be discussed. This piece of evidence is shrouded in mystery and there remained unanswered questions with respect to the credibility of deposition of this PW. According to this witness, on 02.01.2021, he alongwith Abdul Rasheed (not produced) came to Mauza Fateh Kot i.e. area of occurrence to attend the marriage ceremony of their close friend and in the area of Mauza Lakhmeer Dhudhee, Pakka Tibba vicinity, they saw accused Muhammad Ahmad while riding the motorcycle, Umar Raool was sitting behind him and Manzoor Ahmad was sitting behind Umar Rasool and in the light of bulb of grocery shop, they saw the accused persons with deceased. On the following day at about Asar prayer, they met the complainant, Asif Nadeem and Binyamin at Adda Fateh Kot and informed him about seeing of Umar Rasool with accused persons. During the course of cross-examination, he admitted that he is relative of both the parties i.e. complainant and accused party and that there was 11 years old enmity between the parties. It is not believable that when the PW.10 knew such a longstanding dagger drawn animosity between the parties, then why he did not tell the complainant and choose to remain silent. On the other hand, the investigating Officer (PW.12), during the course of cross-examination admitted that he did not join the shopkeeper in whose shop the electric bulb was lit and where Altaf and Abdul Rasheed PWs identified the accused. He further admitted it correct that he did not take into possession the motorcycle in whose light, accused was identified as the complainant party did not produce it before him. Most importantly, the investigating officer deposed that he did not verify the fact that in whose marriage ceremony PW Altaf attended. Although, the PW.10 explained that he had participated in the marriage of one Muhammad Majeed Baloch

but said Majeed Baloch has neither been joined in investigation nor produced before the learned trial court. Same is the situation with respect to his companion i.e. Abdul Rasheed, with whom he went to participate in marriage. The examination of said PWs could have established the presence of PW.10, but failure on the part of prosecution to examine them not only belied his presence but also gave rise to an adverse inference against it under article 129 (g) of the Qanoon-e-Shahadat Order 1984 that if he has been produced he would not have supported the prosecution case. Therefore, testimony of this witness with all his deftness and dexterity does not inspire confidence, as such no reliance can be placed upon it. In “Altaf Hussain v. Fakhar Hussain and another” (2008 SCMR 1103), it has been held as under:-

“It is settled principle of law that the last seen evidence is a weakest type of evidence unless corroborated with some other piece of evidence which is conspicuously missing in this case.”

13. The second moot point to be determined is extra-judicial confession allegedly made by the appellant before **PW-7** Asif Nadeem. This Court is well-conscious of the fact that conviction can be based on extra judicial confession when it is corroborated by other reliable evidence. However, extra judicial confession being regarded as a weak type of evidence by itself, utmost care and caution has to be exercised in placing reliance on such confession. In the instant case this Court is not inclined to believe this piece of evidence as well for the reasons that PW.7 Asif Nadeem and Binyamin (not produced) are admittedly nephews of complainant, so their statements cannot be relied upon without independent corroboration which is very much lacking in this case as the other witness before whom the said extra-judicial confession was made has not been produced during the trial. Further, PW.7 Asif Nadeem in his cross-examination deposed that accused Manzoor was arrested on 03.01.2021 i.e. on the day of registration of FIR and he made extra-judicial confession at Basti Balochan while standing at

road at about after 12:00 (mid night) in his presence as well as that of Binyamin and no other person was present. He further deposed that after making extra-judicial confession by accused Manzoor, Binyamin went to police station and after half an hour or quarter to one hour, he came with police at road and then accused Manzoor Ahmad also made extra-judicial confession before the police at road when complainant was also present. This statement of witness before whom appellant made extra-judicial confession shakes the veracity of whole case against the appellant as the complainant has not mentioned the said fact in his application for the registration of case which was too filed on the same day i.e. 03.01.2021 when the alleged extra-judicial confession was made. It is not believable that a murderer while standing at road of Basti Balochan, which was not his place of residence, after mid-night, would not only confess his guilt in presence of two unarmed persons, with family of whom, he (appellant) already had animosity and after making said confession, remained standing there in presence of PW.7 and waited the police to come and arrest him. Even otherwise, why should he make such confessions before the said witness who did not hold any authority nor did he wield any influence as could hold out any hope to the appellant and thereby tempt him to make any confessions. This Court don't find any answer to the aforesaid questions nor any other justification for believing him. Rather this Court is amazed to note as to why did the learned trial court believe the extra-judicial confession of the appellant and discarded to the extent of acquitted accused. Notwithstanding all of it, suffering from alike infirmities deserve alike treatment. Therefore, it is held that ex-judicial confession is not worthy of reliance and cannot be taken even as corroborative of the charge.

14. Irrespective of above, it is observed that there are many other infirmities in the prosecution case because the partial story of the prosecution has already been disbelieved by the learned trial court to the extent of acquitted accused against

whom the allegations of murder was also leveled and recoveries have been shown to have been effected from them. The prosecution has not produced Yaseen Rehmani, the tenant/Mustajir and Gul Nawaz, owner of land i.e. the place of recovery of dead body of deceased. The unchallenged acquittal of co-accused coupled with all these facts of the case, nullify not only the alleged recoveries but also the story of recovery of dead body leading no room to consider the medical evidence in this case. Therefore, the prosecution evidence is replete with material contradictions arising out of irresistible doubt, the benefit of which is to be extended in favour of accused.

15. It is a known and settled principle of law that prosecution primarily is bound to establish guilt against the accused without shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges so imputed against the accused have not been proved beyond reasonable doubt, then the accused becomes entitled for his release on getting benefit of doubt in the prosecution case. In such situation the Court has no jurisdiction to abridge such right of the accused. To ascertain as to whether accused is entitled to the benefit of doubt the Court can conclude on considering agglomerated effect of the evidence available on record as held in the cases of **“Safdar Ali v. The Crown” (PLD 1953 FC 93)** and **“Muhammad Lugman v. The State” (PLD 1970 SC 10)**. After considering all the pros and cons of this case, this Court has come to this irresistible conclusion that the prosecution could not prove its case against the appellant beyond the shadow of doubt. It is by now well settled law that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts about the prosecution story. In **‘Tariq Pervez versus The State’**

(1995 SCMR 1345), the Hon'ble Supreme Court of Pakistan, at page 1347, was pleased to observe as under:-

'5.....The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.'

The Hon'ble Supreme Court of Pakistan while reiterating the same principle in the case of 'Muhammad Akram versus The State' (2009 SCMR 230), at page 236, observed as under:-

'13.....It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.'

16. In the light of above discussion, I am of the considered view that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt, therefore, instant criminal appeal is **accepted** and his conviction and sentence recorded by the learned Additional Sessions Judge, Bahawalnagar vide impugned judgment dated 30.09.2021 is set aside and he is acquitted of the charge by extending him the benefit of doubt. He is in custody, he be released forthwith if not required in any other case.

(Sardar Muhammad Sarfraz Dogar)
JUDGE

Approved for reporting

JUDGE