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**Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT**

Criminal Appeal No. 34-J of 2012

(Muhammad Afzal v. The State etc)

Murder Reference No. 39 of 2012

(The State v. Muhammad Afzal)

JUDGMENT

Date of hearing: 09.5.2016.

Appellant by: Ms. Saiqa Javed, Advocate/Defence counsel.

State by: Mr. Muhammad Jaffar, Deputy Prosecutor General
along with Muhammad Safdar, SI.

Complainant by: In person.

AALIA NEELUM, J:- Muhammad Afzal son of Muhammad Asghar, caste Ansari, aged about 22 years, resident of Gali No.8, Madina Colony, Kallar Abadi, Gujranwala (appellant) through this appeal has assailed his conviction and sentence recorded by the learned trial court vide judgment dated 12.01.2012 in case F.I.R. No.1017 dated 23.10.2011, offence under Section 302, 109 P.P.C., registered at Police Station Baghbanpura, District Gujranwala whereby the appellant was convicted as under:-

- i) Under Section 337-J P.P.C. and sentenced him to ten years R.I. death.
- ii) Under Section 302 (b) P.P.C. and sentenced him to death on eight counts.

The appellant/convict was also burdened to pay Rs.2,00,000/- on eight counts as compensation payable to legal heirs of the deceased as required under Section 544-

A, Cr.P.C. and in case of default in payment thereof, to undergo S.I. for six months S.I. on each default.

2. The learned trial court has forwarded Murder Reference No.39 of 2012 for confirmation of death sentence inflicted upon Muhammad Afzal/convict in terms of Section 374 of Cr.P.C. As both the matters are arising out of one and the same judgment of the learned trial court, therefore, these are being disposed of through consolidated judgment.

3. Prosecution story, as described in the F.I.R. (Exh.PA/1) lodged on the complaint (Exh.PA) of Safdar Ali, SI, Incharge Police Post Kallar Abadi, Police Station Baghbanpura Gujranwala (PW-7) is that during the night of 23.10.2011 at about 02.00 a.m. he (PW-7) along with other police officials was present at Alam Chowk, Gujranwala where he received information through wireless control to the effect that firing was in progress in the house of Muhammad Asghar Ali son of Ali Muhammad Ansari. On receipt of this information, Safdar Ali, SI (PW-7) reached there and found present Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) alongwith Mohallahdars and accused/appellant-Muhammad Afzal was in their custody. The above said persons told that the appellant had committed murder of his father Muhammad Asghar, mother Sajida Bibi, two sisters Anam and Sanam and four brothers Muhammad Iqbal, Sajid, Abid and Muzammal by firing while they were sleeping. The above said persons further told that they had witnessed the occurrence and they had apprehended the appellant red handed at the spot.

Motive behind the occurrence as disclosed in the crime report was that mother of the appellant used to blame her husband as gambler whereas father of the appellant used to blame her as woman of bad character and the accused was thus fed up due to the dispute between his parents and committed the murders.

4. After the occurrence, the complainant (PW-7) took the accused/appellant into custody and he (PW-7) drafted application (Ex.PA) and sent the same to police station through Muhammad Arshad 961/C for registration of formal

FIR (Ex.PA/1). Syed Israr Hussain, Inspector/Investigation Officer (PW-11) reached the place of occurrence and Safdar Ali, SI (PW-7) handed over custody of the appellant to said Syed Israr Hussain, Inspector/Investigation Officer (PW-11). On 24.10.2011 he (PW-7) got recorded supplementary statement to the Investigating Officer (PW-11) to the effect that Atif son of Muhammad Aslam “Chachazad of the appellant provided pistol and facilitated him (appellant) in the commission of murder of above said eight deceased persons. Safdar Ali, SI (PW-7) also got recorded in supplementary statement that Bilal Yousaf co-accused provided the appellant Ativan tablets which he (appellant) mixed in the tea and in this way Bilal Yousaf (co-accused) facilitated the appellant in the commission of murder of his father, mother, sisters and brothers. The complainant (PW-7) further deposed that in the life time of Sajida Bibi, deceased, one Muhammad Sarfraz developed illicit relation and people of locality reprimanded the said Muhammad Sarfraz.

5. Syed Israr Hussain, Inspector/Investigating Officer (PW-11) conducted the investigation of this case. He (PW-11) examined all the eight dead bodies and prepared injury statements (Ex.PK), inquest report (Ex.PL) and drafted applications for post mortem examination (Ex.PM) and sent the dead bodies for post mortem examination to DHQ Hospital, Gujranwala. He (PW-11) drafted rough site plan (Exh.PLL) and secured rush strings (P-22) to (P-25), rope made of pieces of cloth (P-26), rush string (P-27) and rope made of pieces of cloth (P-28) from the cots of deceased. He (PW-11) also secured eight crime empties (P-29/1-8) and one missed bullet (P-30) from the place of occurrence vide recovery memo (Exh.PJ). Safdar Ali SI (PW-7) handed over to him (PW-11) custody of accused/appellant (Muhammad Afzal) and he (PW-11) formally arrested the appellant. In presence of PWs Amjad Ali, 194-C (PW-13) and Asif Khan 170/C (given up PW), the appellant made a disclosure that after committing the occurrence, he (appellant) concealed the weapon of offence i.e. pistol 30 bore and as a sequel of disclosure, the appellant got recovered pistol 30 bore. On unloading, two bullets were recovered and he (PW-11) took the same into

possession vide recovery memo (Exh.PMM). On the same day, he (PW-11) also secured blood stained clothes of all the deceased, eight sealed boxes containing six boxes each along with eight sealed envelopes, post mortem reports and relevant police papers. He (PW-11) confined the appellant in police lock up and handed over case property to Moharrar of the police station. On 24.10.2011, he (PW-11) produced the accused/appellant (Muhammad Afzal) before the Court of learned Area Judicial Magistrate and submitted application (Exh.PQQ) for recording statement of the appellant/accused (Muhammad Afzal) under section 164 of Cr.P.C. The confessional statement of the appellant/accused (Muhammad Afzal) was recorded by the learned Area Judicial Magistrate. He (PW-11) got medically examined the appellant/accused from DHQ Hospital, Gujranwala. On the basis of supplementary statement of Safdar Ali S.I (PW-7), the Investigating Officer (PW-11) arrested co-accused Atif in this case and confined him in police lock up. On 25.10.2011, he (PW-11) arrested the accused Sarfraz in this case. On 26.10.2011, the appellant/accused disclosed that prior to the occurrence he (appellant) purchased strip of Ativan tablets from Faisal Medical Store run by Bilal Yousaf, co-accused of the appellant and he (PW-11) prepared pointation memo (Exh.PRR) and arrested co-accused Bilal Yousaf. In presence of Abdul Qayyum 1754/C and Shafqat Ali 493/C, the appellant/accused (Muhammad Afzal) made a disclosure and got recovered empty strip of Ativan tablets (P-21) from underneath "Darri" lying in Baithak of his (appellant) house and he (PW-11) secured it vide recovery memo (Exh.PC). On 27.10.2011, he (PW-11) obtained attested copy of confessional statement of the appellant/accused (Muhammad Afzal). On 27.10.2011 Masood Ahmad Bhatti draftsman produced before him (PW-11) scaled site plan (Exh.PSS). On 28.10.2011, he (PW-11) sent the accused Muhammad Afzal, Sarfraz and Atif to judicial lock up. He (PW-11) recorded statement of all the PWs under section 161 Cr.P.C. and submitted incomplete challan in the court. On 13.12.2011 the learned Additional Sessions Judge, Gujranwala, formally charged the appellant to which he pleaded guilty.

6. The prosecution in order to substantiate its case produced as many as sixteen (16) prosecution witnesses during the course of trial. Ocular account in this case consists of the statements of Safdar Ali (PW-7) along with Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9). Tariq Mahmood SI (PW-1) is author of F.I.R Exh.PA/1. Ashiq Ali 1549/C (PW-2) deposited eight sealed parcels said to contain blood stained pieces of ropes, crime empties, eight sealed boxes and sealed parcel of pistol 30 bore in the offices of Chemical Examiner and Forensic Science Laboratory Lahore. Usman Haider 1053/C (PW-3) got conducted autopsy on the dead bodies of deceased Asghar Ali, Muhammad Iqbal, Sajid, Muzammal, Abid, Mst. Sajida, Mst.Anam and Mst.Sanam on 23.10.2011. After autopsy, the doctor handed over to him (PW-3) last worn blood stained clothes (P-1) to (P-20), eight sealed boxes, eight sealed envelopes and post mortem reports, which he (PW-3) handed over to the Investigating Officer who took the same into possession vide seizure memo (Exh.PB). Basharat Ali 2321/HC (PW-4) kept the case property in safe custody in Malkhana. He (PW-4) handed over eight sealed parcels of blood stained pieces of rope and crime empties and eight sealed parcels and sealed parcel of pistol 30 bore to Ashiq Ali 1549/C for onward transmission to the offices of Chemical Examiner and Forensic Science Laboratory Lahore. Safdar Ali 493/C (PW-5) deposed that in his presence on 26.10.2011 the appellant got recovered empty strip of Ativan tablets P21 from his house. Muhammad Irfan (PW-6) identified the dead bodies of eight deceased persons in DHQ Hospital Gujranwala on 23.10.2011. After autopsy, the doctor handed over last worn blood stained clothes of all the eight deceased, eight sealed boxes, eight sealed envelopes and post mortem report to Usman Haider 1053/C, who (PW-6) handed over the same to Israr Hussain Inspector/Investigating Officer, who (PW-11) took the same into possession vide seizure memo (Exh.PB). Safdar Ali SI (PW-7) is complainant of this case whereas Muhammad Ilyas (PW-8) and Malik Naseer Ahmd (PW-9) are eye witnesses of this case. Sheikh Muhammd Javed, (PW-10) is witness of pointation memo (Exh.PK) by which the accused/appellant

(Muhammad Afzal) made a disclosure and pointed out the shop and co-accused Bilal Yousaf from whom he (appellant) purchased strip of Ativan tablets. Syed Israr Hussain Shah Inspector (PW-11) is the investigating officer of case in hand. Shafaqat Shahbaz Raja, Magistrate Section-30 Gujranwala (PW-12) recorded confessional statement of the appellant/accused (Muhammad Afzal). Amjad Ali, 194/C (PW-13) is attesting witness of recovery memo (Exh.PMM) according to which the appellant/accused (Muhammad Afzal) got recovered pistol (P-31) along with two live bullets (P-32/1-2) from a "Bharoola" lying in a room of his house, on 10.10.2011.

7. Dr. Rao Asif Ali Khan, (PW-14) conducted postmortem examination upon the dead body of Asghar Ali, Abid and Muzammal.

The doctor (PW-14) found following injury on the person of deceased Aghar Ali:-

1. A firearm lacerated wound of entry 1 x 1 c.m x going deep with inverted and burnt margins on the right temporal region.
2. A firearm lacerated wound of exit 1 x 1 c.m with everted margins on the left side of head, middle part, 3 c.m. from left ear.

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

"Vide Chemical Examiner, Lahore's report bearing No.2062/PV Lahore:3 dated 05.01.2012, "Tranquillizer belonging to benzodiazepine group was detected in the above viscera". In my opinion, the cause of death in this case was injury to the brain caused by injury No.1 leading to shock and death which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours."

The doctor (PW-14) found following injury on the person of deceased Abid:-

1. A firearm lacerated wound of entry 2 x 1.5 c.m x going deep with inverted and burnt margins on the front of right side of head at hair line.
2. A firearm lacerated wound of exit 1 x 1 c.m with everted margins on the left side of head, on the back.

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

“Vide Chemical Examiner, Lahore’s report bearing No.2068/PV Lahore:3 dated 05.01.2012, “Tranquillizer belonging to benzodiazepine group was detected in the above viscera”. In my opinion, the cause of death in this case was injury to the brain caused by injury No.1 leading to shock and death which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours.”

The doctor (PW-14) found following injury on the person of deceased Muzammal:-

1. A firearm lacerated wound of entry with inverted and blackened margins 2 x 1.5 c.m x going deep on the back of left side of head.
2. A firearm lacerated wound of exit 1 x 1 c.m with everted margins on the right side of head, on the back, 5 c.m. from right ear.

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

“Vide Chemical Examiner, Lahore’s report bearing No.2067/PV Lahore:3 dated 05.01.2012, “Tranquillizer belonging to benzodiazepine group was detected in the above viscera”. In my opinion, the cause of death in this case was injury to the brain caused by injury No.1

leading to shock and death which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours."

8. On the same day, Dr. Zohaib Hassan, (PW-15) conducted postmortem examination upon the dead body of deceased Sajid and Iqbal.

The doctor (PW-15) found following injury on the person of deceased Sajid:-

1. A firearm lacerated wound of entry 2.2 c.m. x going deep with inverted and burnt margins on forehead (frontal bone).
2. A firearm lacerated wound of exit 1 x 1 c.m with everted margins on left occipital region, 5 c.m. from left ear.

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

"Vide Chemical Examiner, Lahore's report bearing No.2063/PV Lahore:3 dated 05.01.2012, "Tranquillizer belonging to benzodiazepine group was detected in the above viscera". In my opinion, the cause of death in this case was injury to the brain caused by injury No.1 leading to cardiopulmonary arrest, which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours."

The doctor (PW-15) found following injury on the person of deceased Muhammad Iqbal:-

1. A firearm lacerated wound of entry 2.2 c.m. x going deep with inverted and burnt margins on the forehead just above left eye brow.

2. A firearm lacerated wound of exit 1 x 1 c.m with everted margins on the left side of back of head.

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

“Vide Chemical Examiner, Lahore’s report bearing No.2064/PV Lahore:3 dated 05.01.2012, “Tranquillizer belonging to benzodiazepine group was detected in the above viscera”. In my opinion, the cause of death in this case was injury to the brain caused by injury No.1 leading to shock and death which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours.”

9. On the same day, Dr. Lubna Masood, (PW-16) conducted postmortem examination upon the dead bodies of deceased Sajida, Anam and Sanam.

The doctor (PW-16) found following injury on the person of deceased Sajida:-

1. A firearm lacerated wound of entry 2.5 c.m. x 3.5 c.m. x going deep with inverted margins on left temporal region. Margins were burnt.
2. A firearm lacerated wound of exit 1 x 1 c.m with everted margins at the back of right side of head, 5

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

“Vide Chemical Examiner, Lahore’s report bearing No.2083/PV Lahore:3 dated 05.01.2012, “Tranquillizer belonging to benzodiazepine group was detected in the above viscera”. In my opinion, the cause of death in this case was injury to the brain caused by injury No.1 leading to cardiopulmonary arrest which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours.”

The doctor (PW-16) found following injury on the person of deceased Anam:-

- 1-A. A firearm lacerated wound of entry 3 x 2.5 c.m. x going deep on right side of head, 3 c.m. above the right ear with inverted and burnt margins.
- 1-B. A firearm lacerated wound of exit with everted margins 1 x 1 c.m. at the top of head.
- 2-A. A firearm lacerated wound of entry 1 x 1 c.m. x going deep with inverted margins on outer side of right arm, 2 c.m. above the elbow joint.
- 2-B. A firearm lacerated wound of exit with everted margins on inner side of right arm, 5 c.m. above the elbow joint. (1.5 x 1.5 c.m).
- 3-A. A firearm lacerated wound of entry with inverted margins 1 x 1/2 c.m. x going deep inner side of left fore arm, 6 c.m. below the left elbow joint.
- 3-B. A firearm lacerated wound of exit on outer side of fore arm 3 c.m. below the left elbow joint (1 x 1.5 c.m).

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

“Vide Chemical Examiner, Lahore’s report bearing No.2066/PV Lahore:3 dated 05.01.2012, “Tranquillizer belonging to benzodiazepine group was detected in the above viscera”. In my opinion, the cause of death in this case was injury to the brain caused by injury No.1 leading to cardiopulmonary arrest, which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours.”

The doctor (PW-16) found following injury on the person of deceased Sanam:-

- 1. A firearm lacerated wound of entry 3.2 c.m. x going deep with inverted and burnt margins on left side of fore head near anterior hair line.

2. A firearm lacerated wound of entry 1 x 1 c.m with everted margins on the right side of head, 3 c.m. above the right ear.

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

“Vide Chemical Examiner, Lahore’s report bearing No.2065/PV Lahore:3 dated 05.01.2012, “Tranquillizer belonging to benzodiazepine group was detected in the above viscera”. In my opinion, the cause of death in this case was injury to the brain caused by injury No.1 leading to cardiopulmonary arrest, which was sufficient to cause death in ordinary course of nature. The deceased was under effect of benzodiazepine group before the injury. Injury was ante mortem and caused by firearm. The probable time that elapsed between injuries and death was immediate whereas between death and post mortem was above 12 to 24 hours.”

10. The learned Deputy District Public Prosecutor vide his separate statement had given up Shahbaz, Aman Ullah and Abdul Qayyum, Asif Khan 170/C, Muhammad Ashfaq and Ibrar Hussain (PWs) as being unnecessary and closed the prosecution evidence while tendering in evidence the reports of Chemical Examiner, Lahore regarding blood stained ropes of deceased persons Muhammad Asghar, Muhammad Iqbal, Muzammal, Abid, Sajid, Sajida Bibi, Sanam and Anam (Ex.PCCC) to (Ex.PKKK) alongwith report of Forensic Science Laboratory, Lahore regarding pistol 30-bore (Ex.PVVV) and that of Serologist (Exh.PWWW) respectively.

11. After closure of the prosecution evidence, the appellant was examined under Section 342 of Cr.P.C., wherein he confessed his guilt and opted not to appear as his own witness in terms of Section 340 (2) Cr.P.C. in disproof of allegations levelled against him in the prosecution evidence and also opted not to adduce evidence in his defence. While replying to the question why this case against him and why the PWs deposed against him, the appellant made the following deposition:-

“Prior to this occurrence, relations between my parents Asghar Ali and Sajida Bibi were not cordial. My mother used to blame my father as gambler whereas my father used to blame my mother being woman of ill repute. I had also suspicion that Sarfraz my mohallahdar had developed illicit liaison with my mother Sajida Bibi. Due to this reason, I had committed the murder of my father, mother, four brothers and two sisters on account of suspicion of illicit liaison between my mother Sajida Bibi and Sarfraz.”

12. Learned trial court after evaluating the evidence available on record found version of the prosecution proved beyond shadow of reasonable doubt against the appellant resulting into his conviction in the afore-stated terms.

13. The learned counsel for the appellant has assailed the findings of the learned trial court and strongly urged that learned trial court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses. The learned counsel also urged that the learned trial court had conveniently ignored major contradictions, discrepancies and improvements made by the material witnesses. The PWs have given inconsistent versions as to the alleged confessional statement made by the appellant. It is not certain who informed the police and no informant was examined. The learned counsel further submitted that even if the confessional statement of the appellant is taken at face value, the accused had no intention to murder his family members. In his confessional statement, he categorically explained the circumstances forcing him to commit the offence.

14. The learned Deputy Prosecutor General supported the judgment urging that it does not call for any interference. The accused was apprehended at the spot itself after commission of the crime. The intention to murder was apparent as, after administering tranquillizer to his family members, he heartlessly killed them by making fire shots on the head of the deceased persons. The learned Law Officer has also stated that the appellant had pleaded guilty to the charge and made a voluntary judicial confession before the learned Magistrate on the

very next day. In the aforesaid circumstances, the finding of the guilt of the appellant by the learned Sessions Judge should not be interfered with by this Court and the appeal should be dismissed.

15. We have heard the arguments advanced from both sides and perused the record with the able assistance of the learned counsel for the appellant, learned counsel for the complainant, as well as, the learned Deputy Prosecutor General.

16. As per prosecution case, the occurrence took place on the night of 23.10.2011. As per complaint (Ex.PA) launched by Safdar Ali, SI (PW-7) Incharge Police Post Kallar Abadi, Gujranwala that he (PW-7) received information at about 2:00 a.m. when he (PW-7) was present in Alam Chowk on official vehicle bearing registration No.9304-GAQ in connection with patrolling along with other police personnel's from wireless control that firing is under process in the house of Muhammad Asghar son of Ali Muhammad Ansari situated in Gali No.8, Madina Colony, Kallar Abadi, Gujranwala whereupon he (PW-7) along with other police personnel's reached at the said place and found present Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) in the house of Muhammad Asghar who had caught hold of Muhammad Afzal son of Muhammad Asghar (accused). Both Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) informed Safdar Ali, SI (PW-7) that Muhammad Afzal has committed murder of his father Muhammad Asghar, mother Sajida Bibi, two sisters Anam and Sanam and four brothers Muhammad Iqbal, Sajid, Abid and Muzammal by firing while they were sleeping and they also informed Safdar Ali, SI (PW-7) that they had witnessed the occurrence and apprehended Muhammad Afzal red handed at the spot. The custody of the accused-Muhammad Afzal was taken by Safdar Ali, SI (PW-7). He drafted application (Ex.PA) and sent the same to the police station through Muhammad Arshad, 961/C for registration of formal FIR. Thereafter Israr Hussain, Inspector/Investigating Officer reached at the place of occurrence. Safdar Ali, SI (PW-7) handed over custody of accused Muhammad Afzal to Israr Hussain, Inspector (PW-11). Both eye witnesses Muhammad Ilyas (PW-8) and Malik

Naseer Ahmad (PW-9) deposed that during the night of 23.10.2011 they arrived in the house of Muhammad Afzal to resolve the dispute between 'Bathiga' of Muhammad Ilyas (PW-8). Muhammad Ilyas (PW-8) is brother of Muhammad Asghar, deceased whereas Malik Naseer Ahmad (PW-9) was neighboured of Muhammad Asghar, deceased. They attempted to effect compromise between Muhammad Asghar (deceased) and Muhammad Afzal (accused) till late hours of night. Due to late hours of night, they slept in the room located in the upper portion of house of Muhammad Asghar (deceased), both deposed that they had awakened on the reports of firing. They saw in the courtyard in the electric light that Muhammad Afzal accused was making fire shots at his father Asghar, mother Sajida, brothers Sajid, Abid, Muhammad Iqbal and Muzammal and sisters Sanam and Anam and by way of causing firearm injuries, Muhammad Afzal accused murdered all of his family members. Thereafter both of them i.e. Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) came down in the courtyard and apprehended the accused Muhammad Afzal. However, Muhammad Afzal accused concealed the pistol before apprehending by them. It appears to us that the evidence of the two eye-witnesses, namely, Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) so far as the complicity of the appellant, Muhammad Afzal, is concerned, is quite consistent and the discrepancies did not in any way discard the evidence of the said eye-witnesses so far as the appellant was concerned. During cross-examination, presence of both eye witnesses, namely, Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) has not been denied by the accused and no ulterior motive was imputed to them for falsely implicating him.

17. Since the prosecution case is primarily founded on judicial confession of the accused-Muhammad Afzal admitting his guilt, we will see that whether the confessional statement has been proved to have been made in accordance with law and voluntary and truthful, such judicial confession be relied upon to base a conviction on the maker of the judicial confession, and if so whether such judicial confession requires corroboration or not, and if so required whether such

corroboration needs be general or should be of all material facts in the judicial confession.

18. The prosecution relied on a judicial confession made by Muhammad Afzal-the appellant on 24.10.2011, which was recorded by PW-12, Mr.Shafqat Shahbaz Raja, Magistrate Section 30, Gujranwala, and was marked as Ex.PTT. According to the prosecution in his confessional statement (Ex.PTT), Muhammad Afzal-the appellant voluntarily admitted his guilt. Muhammad Afzal-the appellant had not only given confessional statement as per Ex.PTT but also pleaded guilty at the stage of framing of charge. The prosecution at the trial examined 13 witnesses and exhibited documents (Exh.PA to Exh.BBB/1). The accused before the trial court was examined under Section 342 Cr.P.C. and he had not denied the prosecution case. Muhammad Afzal-the appellant had not denied his confessional statement. Muhammad Afzal-the appellant has not attacked on his confessional statement Ex.PTT as to its genuineness and truthfulness. Muhammad Afzal-the appellant apart from admission of making confessional statement and prosecution case had not denied his act of committing murder of eight persons of his own family and pleaded guilty. However, the appellant-Muhammad Afzal come forward with his defence plea that why he committed such heinous and merciless killing of his father, mother, four brothers and two sisters, having ages of 45 years to 4/5 years. From the evidence and confessional statement of the accused it clearly transpires that the appellant in a cool and calculated manner wanted to kill his father-Muhammad Asghar, mother-Sajida Bibi, two sisters Anam and Sanam, and four brothers Muhammad Iqbal, Sajid, Abid and Muzammal by firing while they were sleeping due to tranquillizer administered by him and they had no occasions to give any resistance whatsoever. It is also revealed from the evidence that he (the appellant-Muhammad Afzal) was fully determined to commit the crime of murder and was conscious of the nature of the crime being committed by him (the appellant-Muhammad Afzal). It is also quite apparent that the appellant being conscious of the enormity of the crime committed by him, soon after the

occurrence concealed the weapon of offence. Such facts, in our view, clearly indicate that the appellant committed the said heinous crime in a conscious state of mind and in a calculated manner knowingly its consequences.

19. At the time of his (Muhammad Afzal accused) arrest, he (Muhammad Afzal accused) confessed his guilt on 23.10.2011. On the very next day i.e. 24.10.2011, Muhammad Afzal accused was produced before the learned Illaqa Magistrate. Syed Israr Hussain, Inspector/Investigation Officer (PW-11) submitted application (Ex.PQ) for recording statement of the accused Muhammad Afzal under section 164 Cr.P.C. before Shafqat Abbas Raja, Magistrate Section 30, Gujranwala (PW-12) whereupon the statement of accused Muhammad Afzal was recorded by the learned Magistrate Section-30 (PW-12). The learned Magistrate Section-30 (PW-12) also informed him about consequences of his statement under sub section 3 of section 164 Cr.P.C. but the accused insisted upon recording his statement under section 164 Cr.P.C. and the same was recorded after fulfilling the requirement of the legal procedure which is re-produced as under:-

" بیان از اس محمد افضل ولد محمد اصغر عمر 20 سال قوم انصاری پیشہ مزدوری ساکن گلی نمبر 8 مدینہ کالونی حافظ آباد روڈ باغیانپورہ کو جرنوالہ شہر زیر دفعہ 164 ت پ۔

بیان کیا کہ گزشتہ 5/6 ماہ سے گھر میں لڑائی جھگڑا تھا۔ میری والدہ والد کو کہتی تھی کہ تم کام نہ کرتے ہو جبکہ جوا کھیلتے رہتے ہو۔ اور میرے والد کہتے تھے کہ تم غیر اخلاقی حرکتیں کرتی ہو۔ ہمارے گھر میں ایک شخص سرفراز شروع سے آیا کرتا تھا اس نے میری والدہ کے ساتھ ناجائز تعلقات استوار کر لیے۔ آج سے 4/5 سال قبل میں کام سے واپس آیا تو میری والدہ اور سرفراز ایک ہی چارپائی پر سوتے ہوئے تھے جس کی بابت میں نے اپنے والد سے شکایت کی لیکن انہوں نے کچھ نہ کہا پھر میں نے اپنی نانی کو کہا۔ جب نانی نے میری والدہ سے بات کی تو الٹا میری والدہ میرے خلاف ہو گئی۔ جب میں حالات کو بدلتا نہ دیکھا تو میں نے سوچا کہ میرے چھوٹے بہن بھائی بھی خراب ہو جائیں گے تو میں نے سب کو ختم کرنے کا فیصلہ کر لیا۔ میں نے اس کام کے لیے pistol اپنے چچا کے بیٹے عاطف سے لیا۔ اس کو اس سارے محلے کا علم نہ تھا۔ میں نے نہ بتایا تھا کہ میں pistol کیوں لے رہا ہوں۔ جب میں باہر جاتا تھا تو لوگ مجھ سے باتیں کرتے تھے کہ سرفراز تمہارے گھر کیوں آتا ہے۔ آج سے دو دن قبل میں نے نانی کو کہا کہ تم امی کو سمجھاؤ ورنہ میں تو چھوڑ کر چلا جاؤں گا۔ نانی کے بات کرنے پر امی پھر میرے ہی خلاف ہو گئی۔ ہفتہ رات ڈیرھ بجے میں کام سے واپس آیا تو آگے لڑائی ہو رہی تھی۔ میں نے فیصلہ کیا کہ اس محلے کو ہمیشہ کے لیے ختم کر دوں اور pistol سے قاتلنگ کر کے ساروں کو مار دیا۔ پہلے میں نے اپنے والد کو مارا پھر والدہ کو پھر بھائیوں کو پھر بہنوں کو مارا۔ میں نے کولیاں مارنے سے پہلے سب کو نشہ آور کولیاں کھلا دیں۔ کولیاں ایک مہینہ پہلے خرید لی تھیں جو شام کو چائے کے ساتھ دیں۔ میں نے کل آٹھ بندوں کو مارا ہے۔ سب موقع پر ہی جان بحق ہو گئے تھے۔ میں نے جرم قتل کی واردات کی ہے۔ اس کو تسلیم کرتا ہوں۔

سکرورست تسلیم کیا۔

20. We have noticed from the evidence of PW-12, Mr.Shafqat Shahbaz Raja, Magistrate Section 30, Gujranwala and the endorsements made in Ex.PTT that PW-12 had taken care of the requirements of Sub-section (3) of Section 164 Cr.P.C. and he put all the required preliminary questions to the accused to find out the voluntariness of the statement and satisfied himself about the same. He had also cautioned the accused as to the consequences of making such statement and made it known to him that it was not mandatory for him to make such a statement. The record clearly shows that the learned Magistrate (PW-12) told the appellant that he was not bound to make a confession and that if he confessed that confession would be used against him and he also told the appellant that he was appearing before a Magistrate and he also asked him that nobody has forced him in making the statement to which the appellant replied that he has recorded his statement with his own free consent. He (PW-12) has also attached a certificate that he was satisfied that the said statement was voluntary as required by the law. This also supports the case of the prosecution. That apart, as it happens very often it is the common defence of a person making confessional statement to deny the same or retract from the same subsequently and to allege compulsion in making such statement, but in the instant case Muhammad Afzal-the appellant admitted during trial that he had made confessional statement (Exh.PTT). In this background, genuineness of Exh.PTT cannot be attacked. We are also of the opinion that the contents of Exh.PTT are truthful and sufficient enough to accept the prosecution case as against Muhammad Afzal-the appellant and the same do not require any further corroboration. Be that as it may, even otherwise the evidence led by the prosecution apart from the confessional statement in the form of oral evidence of Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) also establishes the involvement of Muhammad Afzal-the appellant in the crime, therefore, we are in agreement with the learned trial court that the prosecution has established the guilt of Muhammad Afzal-the appellant beyond all reasonable doubt.

21. Muhammad Afzal accused has not retracted from his earlier statement which was got recorded by him before the learned Magistrate Section 30 (PW-12) on 16.12.2011. Thereafter at the time of framing charge on 13.12.2011 the appellant/accused pleaded guilty of the charge levelled against him. The appellant-Muhammad Afzal repeatedly pleaded guilty. As such we are of the opinion that the appellant-Muhammad Afzal was pleading guilty voluntarily and without any pressure or coercion. Thereafter he put his defence version to the prosecution witnesses, namely, Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) for committing the heinous crime. The defence put during cross-examination to Muhammad Ilyas (PW-8) is reproduced hereunder:-

“It is correct that prior to present occurrence, relations between the accused present in court and his parents were not cordial. It is further correct that mother of accused Muhammad Afzal used to blame her husband as gambler and his father used to blame his wife Sajida Bibi being woman of ill repute. Accused present in court Muhammad Afzal had suspicion that Sarfraz had developed illicit liaison with his mother Sajida Bibi. It is correct that accused Muhammad Afzal committed the murder of his father, mother, four brothers and two sisters on account of suspicion of illicit liaison between Sajida Bibi deceased and accused Sarfraz (since not summoned).

In similar words, defence was put to Malik Naseer Ahmad (PW-9) who fully corroborates the statement of PW-8. Finally he (appellant) made the statement under section 342 Cr.P.C. and while giving the answer to question No.16, he stated as under:-

“Prior to this occurrence, relations between my parents Asghar Ali and Sajida Bibi were not cordial. My mother used to blame my father as gambler whereas my father used to blame my mother being woman of ill repute. I had also suspicion that Sarfraz my mohallahdar had developed illicit liaison with my mother Sajida Bibi. Due to this reason, I had committed the

murder of my father, mother, four brothers and two sisters on account of suspicion of illicit liaison between my mother Sajida Bibi and Sarfraz.”

The defence for committing heinous act by the appellant/accused Muhammad Afzal cannot be stated that same was result of provocation as he himself admitted that he fully planned the incident. He purchased medicine “Tranquillizer belonging to benzodiazepine group and pistol 30 bore prior to the occurrence. We have also noted that Dr. Rao Asif Ali Khan (PW-14), Dr. Zohaib Hassan, (PW-15) and Dr. Lubna Masood (PW-16) had opined that vide Chemical Examiner, Lahore Report bearing No.2062/PV Lahore:3 dated 05.01.2012 *“Tranquillizer belonging to benzodiazepine group was detected in the viscera”*. The medical evidence proved that he (the appellant) gave *Tranquillizer* in the tea to his family members and by satisfying himself that they are not in their senses, he committed their murder. We have also noted that the sequence of murder committed by the accused was the same sequence which was deposed on oath by the prosecution witnesses. He also admitted that he concealed the weapon of offence soon after the occurrence. By way of his confessional statement, he admitted the prosecution case, the mode and manner of the occurrence was duly proved by the prosecution and the defence plea of the accused is not acceptable as he committed the murder of his father, mother, brothers and sisters in the cold manner.

22. The motive as per eye witnesses i.e. PW-8 and PW-9 informed to Safdar Ali, SI (PW-7) was that parents of Muhammad Afzal accused were often used to quarrel each other. His mother used to blame her husband gambler while his father used to blame his mother of being of loose character. Whenever the accused (Muhammad Afzal) comes back to home, he could not find any food for eating and due to this, he committed murder of the inmates of the house. Both the prosecution witnesses, namely, Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) deposed similar motive as stated above. The prosecution witnesses Muhammad Ilyas (PW-8) and Malik Naseer Ahmad (PW-9) deposed that the dispute between Muhammad Asghar, deceased and Muhammad Afzal

arose 5/6 months prior to the occurrence. But the accused in his confessional statement (Exh.PTT) had stated that 4/5 years ago he saw his mother with Sarfraz sleeping together on one bed. Both prosecution witnesses had not deposed that the mother of the accused was a woman of bad character, however, while replying to specific question during cross-examination they relied that accused present in the court had suspicion that Sarfraz had developed illicit liaison with his mother-Sajida (the deceased). The accused failed to prove his plea that his mother had developed illicit liaison with Sarfraz.

23. Muhammad Afzal, accused/appellant was apprehended at the spot and he was taken into custody by Safdar Ali, SI (PW-7) on 23.10.2011. Amjad Ali, 194/C (PW-13) in his examination-in-chief deposed that on 10.10.2011 the appellant made a disclosure before the Investigating Officer (PW-11) and led to the recovery of pistol 30-bore from "Bharoola" lying in a room of his house. On unloading the same, two live bullets (P-32/1-2) were recovered which were taken into possession by the Investigating Officer (PW-11) vide recovery memo (Ex.PMM), attested by Amjad Ali (PW-13) and Asif Khan, 170/C (given up PW). Syed Israr Hussain, Inspector (PW-11) during site inspection, secured eight crime empties (P-29/1-29) and one missed bullet (P-30) from the place of occurrence and took the same into possession vide recovery memo (Ex.PJ). He (PW-11) on 23.10.2011 on his return to police station, handed over case property to Moharrar Basharat Ali, 2321/HC (PW-4) of the police station for keeping it in safe custody. Similarly, the Moharrar (PW-4) deposed that on 23.10.2011 Israr Hussain, Inspector/Investigating Officer (PW-11) handed over to him (PW-4) blood stained rope, one sealed parcel said to contain crime empties, eight sealed boxes having six boxes each, eight sealed envelopes, one sealed parcel said to contain pistol for keeping the same in Malkhana in safe custody. He (PW-4) further deposed that on 4.11.2011 he handed over eight sealed parcels said to contain six boxes each and pistol 30 bore to Ashiq Ali 1549/C (PW-2) for their onward transmission to the offices of Chemical Examiner, Lahore and Forensic Science Laboratory, Lahore whereas parcel of

pistol was received back with objections. On 10.11.2011 again sealed parcel said to contain pistol 30 bore was handed over by him to Ashiq Ali for its onwards transmission in the office of Forensic Science Laboratory, Lahore. Said (PW-4) specifically stated that as long as the parcel remained in his custody, same remained intact. Similarly, Ashiq Ali 1549/C (PW-2) deposed that on 4.11.2011 Basharat Ali, HC/Moharrar (PW-4) handed over to him eight sealed boxes having six boxes each and pistol 30 bore for their onward transmission to the offices of Chemical Examiner, Lahore and Forensic Science Laboratory, Lahore. He (PW-2) deposited eight sealed boxes in the office of Chemical Examiner, whereas the parcel said to contain pistol 30 bore was returned back with objection. He (PW-2) brought back said pistol to police station and handed over to the Moharrar. Again on 10.11.2011 Basharat Ali HC/Mohafrar (PW-4) handed over one sealed parcel said to contain pistol 30-bore for its onwards transmission in the office of Forensic Science Laboratory, Lahore and the same was deposited by him with the said office on the same day intact. Syed Israr Hussain, Inspector (PW-11) recorded statements of Moharrar Basharat Ali, HC (PW-4) and Ashiq Ali 1549/C (PW-2) regarding sending and depositing of parcels in the office of Chemical Examiner and Forensic Science Laboratory and receiving back sealed parcel of pistol 30-bore with objection for Forensic Science Laboratory on 04.11.2011. The Investigating Officer (PW-11) also recorded statements of both the PWs regarding sending and depositing of the parcel of pistol 30-bore after removing objection of Forensic Science Laboratory, Lahore on 10.11.2011. The positive report of Punjab Forensic Science Laboratory is available on the record. The prosecution has fully proved the recovery of weapon of offence which matched with the crime empties recovered from the crime scene.

24. The prosecution has fully proved the case against the appellant, the time of occurrence, the manner of occurrence, arrest of accused red handed from the place of occurrence, judicial confession of the accused and recovery of the crime empties. Both the prosecution witnesses (Muhammad Ilyas (PW-8) and Malik

Naseer Ahmad (PW-9) were consistent in their deposition regarding the manner and sequence of the occurrence. In the absence of any previous ill-will or acquaintance, Malik Naseer Ahmad (PW-9) is uninterested witness and is not expected to tell a lie. The appellant has not denied the occurrence at any stage from the time of his arrest till his statement recorded under section 342 Cr.P.C. As the confession was made voluntary which was recorded in accordance with law, it was admissible in evidence as it is presumed to be genuine in view of the specific provisions of Article 91 of the Qanun-e-Shahadat Order, 1984. The crime had been committed with utmost cruelty and brutality in a preplanned manner. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. In our view, if for such heinous crimes the most deterrent punishment for brutal murders is not given, the case of deterrent punishment will lose its relevance. Therefore, the appeal is **dismissed**. Consequently, the conviction and sentence of the appellant is **maintained**. **Murder Reference No.39 of 2012 is answered in affirmative** and the sentence of death awarded to Muhammad Afzal son of Muhammad Asghar, caste Ansari, aged about 22 years, resident of Gali No.8, Madina Colony, Kallar Abadi, Gujranwala (appellant) is **Confirmed**.

(Syed Shahbaz Ali Rizvi)
Judge

(Aalia Neelum)
Judge

Approved for Reporting.

Judge

Judge