

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE FAISAL ARAB

Criminal Appeal No.324/2011 and Criminal Appeal No.325/2011

(On appeal from the judgment dated 17.6.2010 of the Lahore High Court, Lahore passed in CrI.A.No.2124/05, CrI.Rev.No.150/05 and M.R.No.107/05).

Mst. Rukhsana Begum
....Appellant
(In CrI.A.324/2011)

VERSUS

1. Sajjad son of Inayat
2. Mehdi son of Inayat
3. Abdul Salam son of Walayat
4. Zaraat son of Inayat
5. Abid son of Bahadar
6. Bilal son of Mehdi Khan
7. Khushi Muhammad son of Zarrat
8. Afzaal Mehdi son of Mehdi Khan
9. Masood alias Rana son of Adalat Khan
10. The State

(In CrI.A.324/11)
....Respondents

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1. Sajjad son of Inayat
 2. Mehdi son of Inayat
 3. Afzaal Mehdi son of Mehdi Khan
 4. Masood alias Rana son of Adalat Khan

...Appellants (In CrI.A.325/2011)

VERSUS

The State
(In CrI.A.325/11)
....Respondent

In CrI.A.324/2011

For the appellant:	Mr. Ansar Nawaz Mirza, ASC Syed Rifaqat Hussain Shah, AOR
Respondents-2,5,6,8,9:	Mr. Allah Bakhsh Gondal, ASC
Respondent-10/State:	Ch. Zubair Ahmed Farooq, Addl.PG, Pb

In Crl.A.325/2011

For the appellants: Mr. Allah Bakhsh Gondal, ASC
Mian Ghulam Hussain AOR (Absent)

For State: Ch. Zubair Ahmed Farooq, Addl.PG, Pb

Date of hearing: 25.1.2017

JUDGMENT

DOST MUHAMMAD KHAN, Judge:- Both these appeals have been filed with leave of the court dated 3.8.2011 for reappraisal of the evidence.

2. We have heard learned ASCs for the parties and the State and have carefully made the reappraisal of evidence.

3. Muhammad Faazil, while reporting the crime to Inspector/SHO Police Station, Sarai Alamgir on 22.2.2003, apparently at 1.35 A.N. shown, at some place out of police station, has alleged that on the fateful day at about 11.00 am, he alongwith his sons Muhammad Fayyaz and Muhammad Yar (deceased), Muhammad Sharif and Fayyaz son of Rahimdad after taking round of their wheat crop near 'Khohar' sat in the open plot and were smoking 'HUKKA', when in the meanwhile, Inayat son of Qutab Din armed with hatchet, Zaraat, Mehdi, Sajjad sons of Anayat armed with rifles, Abdul Salam son of Walayat armed with rifle, Abid son of Muhammad Sajjad armed with hatchet, Bilal son of Mehdi armed with hatchet, Afzaal Mehdi alias Bodi son of Mehdi Khan armed with hatchet, Khushi Muhammad son of Zaraat armed with hatchet and Muhammad Masood alias Rana son of Adalat Khan (gunman of accused Sajjad) armed with hatchet, in a concerted manner attacked them after encircling all of them. Zaraat

fired at Muhammad Fayyaz hitting him on his left thigh, followed by Mehdi whose fire shot hit Muhammad Fayyaz on left lower thigh then, Sajjad fired at Muhammad Fayyaz which hit the dorsal of right foot, which was broken. Abdul Salam fired at his son Muhammad Yar which hit on his left shoulder then Mehdi fired at Muhammad Yar which hit on his lower belly. As a result, both of his sons fell down and while lying on the ground, accused Inayat gave hatchet blow to Muhammad Fayyaz on the right shin/calf. Abid caused hatchet injury to Muhammad Yar on his right shoulder and thereafter, accused Masood, Abid, Bilal, Afzaal Mehdi alias Bodi and Khushi Muhammad gave hatchets blows to both of his sons one after another as a result both sustained serious injuries on the mandible, neck, forehead and skull and after satisfying that both had died, threatened us not to come near them otherwise, they would meet the same fate.

Motive for the crime has been shown enmity between the two families.

4. On this report, FIR No.65 was registered for crimes under sections 302/148/149 PPC by police station Sarai Alamgir District Gujrat.

5. The Investigating Officer, inspected the spot and recovered blood stained earth from the places of the two deceased while on 29.3.2003, at the instance of Sajjad accused, .8 mm, rifle was also recovered from his residential house.

6. On 29.3.2003 at the instance of Mehdi accused one rifle apparently of Kalashnikov shape, was recovered from his house while, on the same date, at the instance of Abid accused a hatchet was

recovered from his house which was found blood stained. Similarly, at the instance of accused Mehdi alias Bodi alleged crime hatchet was recovered from his house which too was blood stained. In the same fashion, at the instance of accused Masood alias Rana alleged crime hatchet was recovered on the same day from his house. All these were taken into possession vide recovery memos Ex-PE, Ex-PF, Ex-PG, Ex-PH and Ex-PJ.

7. The dead bodies along with injury sheets and inquest reports, were sent to mortuary, for postmortem examination under the supervision of escorting constables. Autopsy on both the dead bodies was conducted on the same date but at 11.00 pm and 11.30 pm respectively.

8. Rough site plan and scale site plan were prepared, during spot inspection eight crime empties of .8-mm rifle were secured from near the two dead bodies and taken into possession vide memo-Ex-PT.

9. At the conclusion of the investigation, charge sheet was submitted to the trial court, where, the prosecution examined 12 PWs in all and after recording the statement of the accused under section 342 Cr.PC., accused Zaraat, Mehdi, Sajjad and Abdul Salam were sentenced to death on two counts while accused Masood, Bilal, Afzaal, Mehdi, Khushi Muhammad and Abid were awarded life imprisonment. All the accused were also awarded three years R.I. under section 148 PPC, however, accused sentenced to life imprisonment, were given benefit of Section 382-B Cr.PC.

10. The convict appellants filed criminal appeal No.2124/2005 while the trial court sent a Murder Reference No.107/2005. On the

other hand, the complainant, filed Criminal Revision Petition No.150/2005, in the Lahore High Court, Lahore.

11. Through, the impugned judgment dated 17.6.2010, the appeal of present appellants (Criminal Appeal No.325/2011) i.e. of Mehdi, Masood alias Rana, Sajjad and Afzaal Mehdi was dismissed.

12. Admittedly, there was a longstanding enmity between the parties, therefore, we have to see as to what extent the witnesses who were inimical to the accused, are supported by any corroboratory evidence of independent and un-impeachable nature.

13. In the ridder to the FIR, the Investigating Officer has mentioned that the complainant Muhammad Faazil met him somewhere in the way while proceeding to the police station. In past, it had become routine practice of the police that indeed in such like crimes, the FIR/written complaints were being taken on the crime spot after preliminary investigation, however, after this court had disapproved this practice, they have invented a new way of misleading the court of law because invariably, in every second or third case, same and similar practice is adopted but with newly invented methodology.

14. In the inquest report of Muhammad Fayyaz, the time of death is shown 12.40 noon on 22.2.2003, while in the FIR, the time of occurrence is shown 11.00 am which lasted only for few minutes. The same time of death is given in the case of Muhammad Yar-deceased in the inquest report. Both the inquest reports were prepared on the crime spot as has been shown on the last page of each one. In column No.23, no crime empty has been shown present there, albeit in the

recovery memo and in the site plan, these empties had been shown recovered lying very close to both the dead bodies. This deliberate omission, creates reasonable doubts about the recovery.

15. Another intriguing aspect of the matter is that, according to the FIR, all the accused encircled the complainant, the PWs and the two deceased thus, the apparent object was that none could escape alive. The complainant being father of the two deceased and the head of the family was supposed to be the prime target. In fact he has vigorously pursued the case against the accused and also deposed against them as an eye witness. The site plan positions would show that, he and the other PWs were at the mercy of the assailants but being the prime target even no threat was extended to him. Blessing him with unbelievable courtesy and mercy shown to him by the accused knowing well that he and the witnesses would depose against them by leaving them unhurt, is absolutely unbelievable story. Such behavior, on the part of the accused, runs counter to natural human conduct and behavior explained in the provisions of Article 129 of the Qanun-e-Shahadat, Order 1984, therefore, the court is unable to accept such unbelievable proposition.

16. The site plan would further show that, the complainant party was having no land near or around the crime spot and even the cattle-shed where, they were, allegedly sitting, was belonging to one Nazir Ahmad, therefore, the claim of the complainant that they took a round of their crop prior to the occurrence, stood falsified. This was the only purpose for the complainant and the PWs to be present with the deceased which has not been established through any

documentary or other evidence. The second eye witness namely Muhammad Sharif (PW-9) undeniably belongs to another village. It was suggested to him by the defence that his village is 30-Kilometer away from the crime spot. Although he denied the same but the witness was attempting to conceal the true distance as is evident from the observation recorded by the trial court (page-76), therefore, he can be construed as a chance witness. The defence also suggested to him that his daughter is married to the nephew of the complainant which he denied. He also admitted that 2/3 cattle lifting cases were registered against him, however, he denied that one case was registered against him by the Zaraat accused/appellant. He also admitted that while coming from his village to the village of the complainant, river Jhelum intervenes. This witness, has also made dishonest improvements in his statement at the trial from the one he had given to the police under section 161 Cr.P.C. He has further admitted that, after arrival of the police at the spot, the statement of the complainant was recorded first thus, it provide strength to the view of the Court that FIR was lodged at crime spot after deliberation and consultations.

17. In ordinary parlance, a chance witness is the one who, in the normal course is not supposed to be present on the crime spot unless he offers cogent, convincing and believable explanation, justifying his presence there.

18. In the instant case, this witness has shown no work or definite purpose of visit to crime spot, therefore, his presence on the crime spot is not believable and his testimony, for this reason alone is

rejected. More so, when for reaching the spot, he had confronted surging waves of fast flowing water of the river.

A single doubt reasonably showing that a witness/witnesses' presence on the crime spot was doubtful when a tragedy takes place, would be sufficient to discard his/their testimony as a whole. This principle may be pressed into service in cases where such witness/witnesses are seriously inimical or appears to be a chance witness because judicial mind would remain disturbed about the truthfulness of the testimony of such witnesses provide in a murder case, is a fundamental principle of our criminal justice system.

19. As discussed earlier, the complainant was at the mercy of the accused as according to his version he alongwith the two deceased was encircled and was under direct and immediate threat of death but he was still able to give photographic narration of the occurrence by attributing individual role to each one of the several accused inflicting injuries with hatchets and fire arms on specific parts of the bodies of the two deceased. This fact, by itself is sufficient, to disbelieve his presence at the crime spot at the fateful time.

20. As we have already declared that, investigation conducted in this case, was neither fair nor honest, therefore, the recovery effected of the so-called crime weapons has also lost its legal worth which otherwise, is not implicating the appellants except Sajjad.

21. It is also pertinent to mention here, that the attesting witness to all these recoveries of incriminating articles is Muhammad Sharif (PW-9) whose testimony we have already disbelieved as a whole. **It is fundamental principle of justice that corroboratory**

evidence, must come from independent source providing strength and endorsement to the account of the eye witnesses, therefore, eye witnesses, in the absence of extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery of crime articles. In other words, eye witnesses cannot corroborate themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other than eye witnesses, thus, these recoveries are equally of no judicial efficacy.

22. In this case, some of the accused have been killed/murdered allegedly by the complainant party and some died during imprisonment thus, the private execution to death of some of the accused, by the complainant party, would suggest that they themselves took the revenge from those, who were involved in the crime albeit, the learned counsel for the complainant strongly opposed this view but he was unable to controvert that some of the acquitted accused have been killed.

23. In view of the analysis and combined study of the entire evidence by way of reappraisal, with much care and caution, we are of the considered view, that the prosecution has failed to prove its case against the appellants beyond any reasonable doubt, therefore, this appeal (Criminal Appeal No.325/2011) is allowed and while extending benefit of doubt to the appellants, they are acquitted of all the charges leveled against them. For the reasons given above, Criminal Appeal No.324/2011 filed by Mst. Rukhsana Begum is dismissed.

24. These are the detailed reasons for our short order of even date 25.1.2017 which is reproduced below:

“Criminal Appeal No. 324 of 2011:

For reasons to be recorded later, this appeal is dismissed.

Criminal Appeal No. 325 of 2011:

Per report of the Superintendent, District Prison, Gujrat and as was admitted at the bar by the learned ASC for the appellants, Sajjad son of Muhammad Inayat one of the appellants has died, therefore, to his extent this appeal stands abated, while the convictions and sentences awarded to other appellants/accused, namely, Mehdi son of Inayat, Afzaal Mehdi son of Mehdi Khan and Masood alias Rana son of Adalat Khan by the learned High Court vide the impugned judgment dated 17.6.2010 are set aside and they are acquitted of all the charges leveled against them. They be set free forthwith, if not required in any other case. Detail reasons to follow separately.”

Judge

Judge

Judge

Islamabad, the
25th January, 2017
Sarfray/-'

‘APPROVED FOR REPORTING’