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.176/2012
(On appeal from the judgment dated 12.3.2010 passed by the Lahore High Court, Lahore in Crl.A.No.174-J/2004 and MR.639/2004).

Muhammad Asif **...Appellant**

VERSUS

The State **...Respondent**

For the appellant: Mr. Muhammad Akram Gondal, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Ch. Muhammad Waheed Khan, Addl.PG. Pb.

Date of hearing: 18.1.2017

ORDER

Dost Muhammad Khan, J-. Leave to appeal was granted vide order dated 6.2.2012 to make reappraisal of the entire evidence including unnatural conduct of the eye witnesses and when two co-accused (real brothers) of the appellant have been acquitted by the trial court, disbelieving the prosecution witnesses, whether the same evidence without independent corroboratory evidence could be acted upon awarding capital punishment to the present appellant.

We have heard learned ASC for the appellant and Ch. Muhammad Waheed Khan, learned Additional Prosecutor General, Punjab.

2. The trial court at the conclusion of the trial vide judgment dated 31.5.2004 acquitted the two co-accused (real brothers) of the appellant while he was awarded death sentence and to pay Rs.200,000/- (two lac) to the legal heirs of the deceased.

3. On appeal and Murder Reference sent by the trial court, the Judges of the learned Lahore High Court, Lahore held that the FIR was promptly lodged and two eye witnesses have given a consistent statement on material aspects of the case; they are truthful witnesses and corroborated by the medical evidence and that the parties are closely related thus, there was no reason to falsely implicate the appellant. However, due to single stab wound attributed to the appellant and because the motive was not established, therefore, the death sentence was converted into life imprisonment and murder reference was answered in negative.

4. The case set up by the prosecution in the FIR lodged by Mst. Sughran Bibi aged 50/51 years was to the effect that on 2.6.2003 at about 8.30 pm she along with her husband Nazar Hussain and other sons and daughters were present in their house when Iftikhar son of Abdul Sattar and Tajammal Shah son of Mehmood Shah, the friends of her son i.e. deceased namely Muhammad Akram came there (house) and took him out to go for a round and chitchat. The complainant claimed that she alongwith her husband followed them and when the deceased and his companions reached '*metal road near (Aara)-saw machine'* of one *Aazan Sain,* she saw that the appellant-Muhammad Asif armed with a dagger, Ashiq Hussain and Muhammad Abbas empty handed. The latter two caught hold of the deceased while Muhammad

Asif inflicted a single dagger blow on the chest of the deceased after a brief brawl. Motive for the crime was that prior to the occurrence the deceased and Muhammad Asif quarreled with each other in the house of her daughter at Narowal, however, the matter was compromised and settled once for all.

5. During the course of investigation, the two co-accused, mentioned above were found innocent and were not recommended for trial, however, they were put to trial but at the conclusion they were acquitted on the basis of same set of evidence. However, the appellant was convicted and sentenced as above which was modified by the learned High Court.

6. In this case we are entertaining considerable amount of doubt about the presence of the alleged two eye witnesses namely Mst. Sughran Bibi (PW-8) and Nazar Hussain/her husband (PW-9) at the crime spot on the fateful day of occurrence. We deem it appropriate to mention that the appellant and acquitted two co-accused were real brothers.

7. At the trial the complainant admitted that she had two adult daughters who were present in the house when the deceased was taken out, however, this fact was neither disclosed before the police in the course of investigation nor they were produced to corroborate her version. This lady was aged about 50/51 years, while her husband was 70 years of age and when the two eye witnesses not produced at the trial namely Iftikhar and Tajammal, were close friends of the deceased then why she being an aged lady and her husband, who was at the advanced age of his life followed them. If they were

apprehending something abnormal, they would have conveniently told the above two friends of the deceased that being late dark night time, it was not advisable to take the deceased outside. No convincing and plausible reason has been advanced as to why they both followed the deceased and his two friends and what was the object behind it. The conduct of both these alleged eye witnesses runs counter to normal human behaviour and habit in the given circumstances and in the absence of plausible explanation, no prudent mind would believe such fantastic story which appears to be the hand-Art of the local police because in a night occurrence of this nature, remaining un-witnessed, the police imprudently indulges in such like tactics to mislead the court of law and justice.

8. The two independent witnesses who were close friends of the deceased and were on frequent visiting terms were not produced at the trial. The note appearing on the relevant page with regard to not producing them as PWs is that both are un-necessary.

9. In our considered opinion, these two independent witnesses could provide the first degree of evidence of reliable nature, thus, adverse inference has been drawn that because they were not supporting the prosecution case so set up, therefore, they were dropped at the trial. In this way, the best evidence, independent in nature, was withheld from the court for obvious reasons. This fact by itself is sufficient to discard the evidence of the interested and related witnesses because their evidence is not only of the second degree but also for the reason given above due to their unnatural conduct.

10. We fail to understand that in the presence of the two close friends accompanying the deceased and parents, how such tragedy with a son could happen without any intervention on their part to come to rescue of the deceased when they were not far away as shown in the site plan.

11. Both these two eye witnesses have been disbelieved by the investigating agency qua the acquitted two co-accused/the real brothers of the appellant. It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co accused then, they cannot be relied upon with regard to the other co accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature but that is not available in the present case.

In this regard reference can be made to case of Ghulam Sikandar and another Vs. Mamaraz Khan and others (PLD 1985 S.C.11). The view held in the above case/reference is reproduced below:-

"Appreciation of evidence-----Principle of indivisibility of credibility-----Maxim: Falsus in uno falsus in omnibus—Application of principle---Witness found false with regard to implication of one accused about whose participation he had deposed on oath---Credibility of such witness regarding involvement of other accused in same occurrence when shaken---Where it was found that a witness has falsely implicated one accused person, ordinarily he would not be relied upon with regard to other accused in same transaction but if testimony of such witness was corroborated by very strong and independent circumstances regarding each one of other accused, reliance might then be placed on such witness for convicting other accused when principle of indivisibility of credibility as laid down in Muhammad Faiz Bakhsh v. The Queen is to be ignored".

12. According to the FIR the occurrence allegedly took place at 8.30 pm in the dark night. Masood Ahmad Bhatti, Draftsman, (PW-1) has confirmed all the distances and points given in the scaled site plan. According to the same the distance shown between the deceased and the accused is twenty feet. How, in a dark night the witnesses were able to identify a dagger in the hands of the appellant and the appellant from such a distance. This site plan was prepared on the pointation of the alleged eye witnesses which has been tendered in evidence as Ex-PQ and has never been denied by the prosecution.

13. Yet there is another glaring aspect of the case, the autopsy on the dead body was conducted at 11.15 am on 3.6.2003, the following day while the duration between death and postmortem examination is given 12-18 hours, thus, if the maximum time is taken into consideration, the one favourable to the accused, the time of occurrence would be round about 7.00 pm, thus, the medical evidence does not support in any manner the time of death of the deceased or to say the time of occurrence. The Medico Legal Officer (MLO) has further stated that the dead body was forwarded on 3.6.2003, while on the other hand, the Investigating Officer has falsely shown the forwarding of the dead body to the mortuary on 2.6.2003

14. In column No.8-of the inquest report, the eyes and mouth of the deceased were found open, thus, if the parents, witnesses, and the two close friends were present then, at least after the death as is a consistent practice of such close relatives, they would have closed eyes and mouth of the deceased on his expiry. This fact by itself

indicates that none was present with the deceased till his death and why his eyes and mouth remained open and were not set right by any one and his dead body was discovered late in the night.

15. In a case of close relationship between the complainant party/ deceased and the accused, motive for murder crime assumes considerable importance because no nearer and dearer would like to kill his close relative without strong impulse by taking him into a boiling point wherefrom, the retraction is impossible but in the case in hand the motive set up was not only weak and feeble but also not established because the girl (daughter) of the complainant in whose presence the quarrel took place between the deceased and the appellant, was not produced at the trial. Again there is another doubtful aspect of the case because Nazar Hussain (PW-9), the father of the deceased who according to the FIR was stated to be guarding the dead body, on arrival of the local police to the spot, however, in the very examination in chief at page/20 of the paper book he has squarely stated that he joined the investigation after one month and one day after the occurrence. There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye witnesses would be fatal and testimony of such witnesses cannot be safely relied upon.

16. The recovery of the crime knife/dagger speaks volumes about the true nature of the same because no evidence has been brought on record that the shop, wherefrom, it was recovered, was in an exclusive possession and ownership of the appellant. Again there is

another intriguing aspect of the case that the shop was locked, nothing has been brought on record that who was in possession of the key and who unlocked the same.

17. It is, normal practice and conduct of culprits that when they select night time for commission of such crime, their first anxiety is to conceal their identity so that they may go scot free unidentified and in that course they try their level best to conceal or destroy each piece of evidence incriminating in nature which, might be used against them in the future thus, human faculty of prudence would not accept the present story rather, after committing crime with the dagger, the appellant could throw it away anywhere in any field, water canals, well or other place and no circumstances would have chosen to preserve it in his own shop if believed so because that was susceptible to recovery by the police.

18. Before parting with this judgment, we deem it essential to point out that, mere sending the crime weapons, blood stand to the chemical examiner and serologist would not serve the purpose of the prosecution nor it will provide any evidence to inter link different articles.

19. We have noticed that the Punjab Police invariably indulge in such a practice which is highly improper because unless the blood stained earth or cotton and blood stained clothes of the victim are not sent with the same for opinion of serologist to the effect that it was human blood on the crime weapons and was of the same group which was available on the clothes of the victim and the blood stained earth/cotton, such inconclusive opinion cannot be used as a piece of

corroboratory evidence. Therefore, copy of this judgment be sent to the Prosecutor General, Punjab, and Chief- Incharge of Investigation, Punjab Provincial Police to issue instructions to the investigating agencies in this regard.

Accordingly, for the above reasons this appeal is allowed and the appellant is acquitted. These are the detailed reasons for our short order dated 18.1.2017, which is reproduced below:-

> "For reasons to be recorded later, this appeal is allowed, the conviction and sentence awarded by the learned High Court through the impugned judgment dated 12.03.2010 are set aside and the appellant is acquitted of all the charges. He be set free forthwith, if not required in any other case. "

Judge

Judge

Judge

Islamabad, the
18th January, 2017
Sarfraz /-'

'Approved for reporting'