

In the Federal Shariat Court of Pakistan
Appellate Jurisdiction

Hon: Mr. Justice Shahzad Shaikh
Hon: Mr. Justice Allama Dr. Fida Muhammad Khan.
Hon: Mr. Justice Rizwan Ali Dodani

Criminal Appeal No.12/L of 2009

1. Muhammad Asif s/o Ghulam Mustafa, caste Arain
 2. Shafiq-ur-Rehman s/o Muhammad Munshi Naseem, Caste Arain
Both appellants r/o Chak No.261/EB, Tehsil Burewala, District, Vehari.
- Appellants

Versus

1. The State
 2. Saeed Iqbal s/o Muhammad Yousaf, caste Jutt Ottal
R/o Chak No.433/EB, Tehsil Burewala District, Vehari.
- Respondents

Linkedwith

Murder Reference No.2/L/2009

The State Vs. Muhammad Asif and Shafiq-ur-Rehman.

Linkedwith

Criminal Appeal No.1/L of 2012

Saeed Iqbal s/o Muhammad Yousaf, Cast Jutt Ottal
R/o Chak No.433/EB, Tehsil Burewala District, Vehari. ... Appellant

Versus

1. The State
 2. Muhammad Asif s/o Ghulam Mustafa, caste Arain,
 3. Shafiq-ur-Rehman s/o Muhammad Munshi Naseem, Caste Arain
Both residents of Chak No.261/EB, Tehsil Burewala, District, Vehari
- Respondents.

Counsel for the appellants	....	Mr. Tariq Zulfiqar Ahmed Chaudhry Advocate in Cr. A. No.12/L/2009
Counsel for the appellant/ Complainant	....	Malik Allah Yar Khan, Advocate in Cr. A. No.1/L/2012.
Counsel for the State	....	Mr. Nisar Ahmed Virk, DPG
No. & Date of FIR Police Station.	....	No.46/98 dated 14.2.1998 Sadar Burewala, Vehari.
Date of Judgment of Trial Court	....	28.4.2002
Date of Institution of Appeals.	....	30.1.2009 and 2.1.2012
Date of hearing	....	23.1.2012
Date of decision	....	23.1.2012


Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

2

JUDGMENT:

Justice Rizwan Ali Dodani, Judge: Appellant Muhammad Asif and Shafiq-ur-Rehman have through this appeal challenged the judgment dated 28.04.2002 delivered by the learned Additional Sessions Judge, Vehari whereby they were convicted and sentenced under section 302(b)/34 of the Pakistan Penal Code and sentenced to death each with direction to pay compensation of Rs.20,000/- each to the legal heirs of the deceased under Section 544-A of the Code of Criminal Procedure or in default thereof to further undergo six months rigorous imprisonment each. The Sessions Judge, Vehari has sent murder reference, which was registered as Murder Reference No.2/L/2009 for confirmation of death sentence awarded to Muhammad Asif and Shafiq-ur-Rehman appellant. The complainant has also filed Cr. Appeal No.1/L/2012 against acquittal of the appellants from section 17 of the Offences Against Property (Enforcement of Hudood)

Ordinance, 1979 and under Section 337-A(i)/34 PPC.

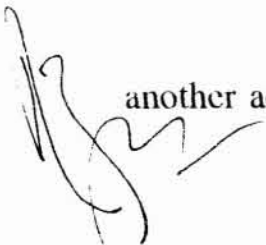


Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

3

All the above-mentioned three matters are being disposed of by this single judgment as these arise out of the common judgment and the same crime report.

2. The prosecution case in brief is that complainant Saeed Iqbal PW.3 recorded complaint Ex.PB wherein he stated that he was employed in Air Force and came to his house on leave of ten days. His brother Abdul Hamid was running a Bakery with the name of Fresh Well Bakery at Fawara Chowk, Lahore Road. On 14.02.1998 at about 8.30 p.m. he alongwith his brother Abdul Hamid deceased was returning to his village Chak No.433/EB on bicycle after closing the shop. His brother Rasheed Ahmad and Muhammad Sardar were also coming behind them at some distance on their respective bicycles. When they reached near canal bridge Phatianwala within the area of Chak No.443/EB, three unknown accused persons whose descriptions have been given in the complaint, armed with weapons emerged there. One of them armed with Carbine attacked him and another accused armed with dagger attacked Abdul Hamid deceased. The



Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

4

complainant raised alarm upon which his brother Rasheed Ahmad and Muhammad Sardar PWs raised lalkara. During scuffle the complainant received injuries on his head and left hand while the accused armed with dagger inflicted injuries on the chest, arm and below the abdomen of Abdul Hamid deceased. On reaching of the PWs at the spot the accused persons fled away. Then the PWs heard some noise and saw that two persons namely Akhtar Hussain and Muhammad Saleem PW.6 were tied under a mango tree. They untied them. Thereafter they attended Abdul Hamid deceased who was bleeding. They put him in a motorcycle rickshaw and took him to civil hospital but he succumbed to the injuries. Hence the complainant recorded complaint Ex.PB upon which FIR Ex.PB/1 was registered.

3. Police investigation ensued as a consequence of registration of crime report. Ghulam Abbas Inspector/Station House Officer PW.12 undertook the investigation. On 14.02.1998 on receiving wireless message

he reached Civil Hospital at 8.45 p.m. where the dead body of Abdul

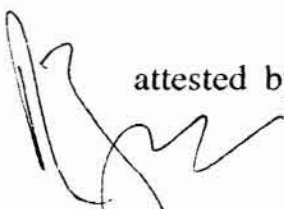


Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

5

Hameed was lying. He recorded statement Ex.PB of Saeed Iqbal complainant and sent the same to the police station through Khalid Mahmood constable for registration of FIR. He inspected the dead body, prepared injury statement Ex.PJ and inquest report Ex.PK. He also prepared injury statement of Saeed Iqbal complainant Ex.PL/1. He inspected the place of occurrence, took into possession blood stained earth through recovery memo Ex.PC. He also took into possession two ropes P-5 & P-6 through recovery memo Ex.PD. He recorded statements of Saeed Iqbal complainant and Muhammad Saleem PWs under section 161 of the Code of Criminal Procedure who attested the recovery memo. He also took into possession mold of feet of the accused (foot prints) P-12, P-13 & P-14 through recovery memos Ex.PO, Ex.PL and Ex.PM. He prepared site plan of place of occurrence Ex.PN. After post mortem examination Zafar Iqbal constable produced before him post mortem report and last worn clothes of the deceased which he took into possession through recovery memo Ex.PA

attested by Zafar Iqbal constable, Saeed Iqbal and Rashid PWs and he



Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

6

recorded their statements under section 161 of the Code of Criminal Procedure. He also recorded statements of nine PWs. He got prepared scaled site plans Ex.PN, Ex.PN/1 and Ex.PN/2 through draftsman and recorded statement of draftsman under section 161 of the Code of Criminal Procedure on 15.02.1998. Muhammad Aslam and Umer Din PWs nominated the accused in their statements as Asif, Shafiq-ur-Rehman and Asgher Ali. The Investigating Officer arrested the accused persons on 24.03.1998 and sent them to judicial lock up on 25.03.1998 for identification parade. On 04.04.1998 Muhammad Ayub Magistrate conducted identification parade in which the accused were identified. On 07.04.1998 the Investigating Officer recorded statements of Moharrar/Head Constable and Nazir Ahmad constable regarding parcel of blood stained earth. On 21.04.1998 after identification parade the Investigating Officer obtained physical remand of all the three accused. On 25.04.1998 Muhammad Asif accused got recovered blood stained *Khanjar* P-7 from an iron box lying in his residential room which was taken into possession by



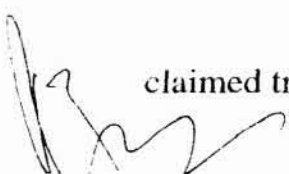
Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

7

the Investigation Officer through recovery memo Ex.PE and prepared site plan Ex.PR. Shafiq-ur-Rehman accused got recovered revolver 32 bore P-10 alongwith four live bullets P-11/1-4 from an iron box lying in his residential room which were taken into possession by the Investigating Officer through recovery memo Ex.PG. The Investigating officer also recovered Carbine P-8 alongwith two live cartridges P-9/1-2 on the pointation of Asgher Ali accused from an iron box lying in his residential room and took the same into possession through recovery memo Ex.PF. After completion of investigation the Station House Officer submitted report under section 173 of the code of Criminal Procedure before the Court on 05.05.1998 requiring the accused to face trial.

4. The learned trial Court framed charge against the accused persons on 08.05.2000 under section 17 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under sections 302 & 337-A(i) of the Pakistan Penal Code. The accused did not plead guilty and

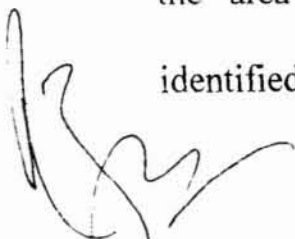
claimed trial.



5. The prosecution produced twelve witnesses to prove its case.

The gist of the deposition of the prosecution witnesses is as follows:-

- (i) PW.1 Nazir Ahmad Constable delivered one sealed parcel containing blood stained earth in the office of Chemical Examiner, Lahore on 03.04.1998 which were handed over to him by Muhammad Jamil Head Constable on 02.04.1998.
- (ii) PW.2 Dr. Asghar Ali had identified the dead body of Abdul Hameed deceased at the time of postmortem examination on 15.12.1998.
- (iii) Saeed Iqbal complainant appeared as PW.3 and endorsed the contents of his complaint Ex.PB.
- (iv) PW.4 Muhammad Sardar supported the version of complainant Saeed Iqbal PW.3.
- (v) PW.5: Muhammad Aslam stated that on 14.02.1998 he and Umar Din were going towards city Burewala from Bus Stop *Mana More* on motorcycle. They saw accused Muhammad Asif, Shafiq-ur-Rehman and Muhammad Asgher while crossing road near village Ghulam Muhammad Abad within the area of Chak No.259/EB. He alongwith Umer Din identified the accused in the light of motorcycle and thunder



light. Later on they were learnt that Abdul Hameed was murdered during an attempt of dacoity.

(vi) PW.6 Muhammad Saleem stated that on 14.02.1998 he and Akhtar were going to their village Chak No.443/EB on bicycle and when they reached near Pull Pathianwala the accused persons armed with weapons caught hold of them and removed Rs.400/- from his pocket and Rs.25/- from the pocket of Akhtar PW. Then they tied them with ropes with a mango tree. After some time Abdul Hameed deceased and Saeed Iqbal arrived there on bicycle. The accused attacked them. Abdul Hameed deceased was done to death due to infliction of daggers inflicted by accused Muhammad Asif. Saeed Iqbal complainant received injuries through respective weapons of Shafiq and Asghar accused. Meanwhile Rashid and Sardar PWs were attracted to the spot and untied them.

(vii) PW.7 Zafar Iqbal Constable stated that on 14.02.1998 the Investigating Officer handed over to him dead body of Abdul Hameed alongwith police papers and injury statement of Saeed Iqbal. On 15.02.1998 the Medical Officer prepared medico legal certificate of Saeed Iqbal injured and conducted postmortem of Abdul Hameed. After postmortem the Medical Officer handed over to him last worn clothes of the deceased,



which he produced before the Investigating Officer who took the same into possession through recovery memo Ex.PA.

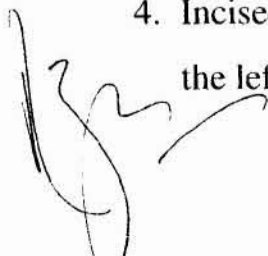
- (viii) PW.8 Javed Iqbal Head Constable/Moharrer stated that on 14.02.1998 he received complaint Ex.PB from Ghulam Abbas Inspector/Station House Officer upon which he formally recorded FIR Ex.PB/1.
- (ix) PW.9 Dr. Riaz Ahmed had conducted postmortem of Abdul Hameed deceased and observed as under:-

“INTERNAL APPEARANCE:

The dead body of a young man of average built, clad in green shalwar Qameez and blue and white Jarcy, all stained with blood. Both eyes closed, mouth closed. No ligature mark around the neck. Rigors mortis present. Postmortem stained non specific, with following injuries on his person:-

INJURIES:

1. Incised wound 6.5 cm x 2.5 cm x muscle deep over the left border of sternum on the chest.
2. Incised wound 3 cm x 2 cm x muscle deep on right side of the chest.
3. Incised wound 1.5 cm x .5 cm x muscle deep on outer part of left side of front of the chest.
4. Incised wound 1.5 cm x .5 cm x skin deep in front of the left axilla on the left side of the chest.



5. Incised wound 1.5 cm x .5 cm x skin deep on the back of left fore arm.
6. Incised wound 1.5 x .5 cm going deep on the left side of pubic area in front and lower part of the abdomen.

DECISION

Corresponding to injury No.6 underlying vessels cuts, cavity filled with blood (clotted), femoral artery and other related major vessels are cut.

CRANIUM AND SPINAL CORD

Scalp, skull and vertebrae, membranes, brain, spinal cord --- Not opened. Not needed.

THORAX

Walls, ribs, and cartilages --- already mentioned.

Pleurae:

NAD.

Larynx and trachea

Healthy.

Right Lung

Healthy.

Left Lung

Healthy.

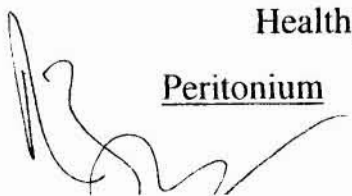
Pericardium and heart.

Right and left side of the heart were empty.

Blood Vessels.

Healthy.

Peritonium



On the left side it was ruptured in the lower part and contained clots of blood.

Stomach and its contents.

Stomach contained semi digested food.

Bladder

Healthy and empty.

Mouth, pharynx and oesophagus, diaphragm, pancreas, small intestines and their contents, large intestine and their contents, liver, spleen, kidneys, and organs of the generation external and internal were healthy.

MUSCLES, BONES AND JOINTS.

Already mentioned.

In my opinion, the death was occurred due to hemorrhage shock as a result of above mentioned injuries. All the injuries collectively and injury No.6 individually is sufficient to cause death in ordinary course of nature."

All the injuries were ante mortem and caused by sharp edged weapon. Probable time that elapsed between injuries and death was a few minutes and between death and postmortem it was within 24 hours. After the post mortem he handed over the last worn clothes of the deceased, police papers and postmortem report to the constable. Ex.PH is the correct carbon copy of postmortem report which is in his hand and bears his signatures. Ex.PH/1 is diagram which shows the locations of injuries, which is also in his hand and



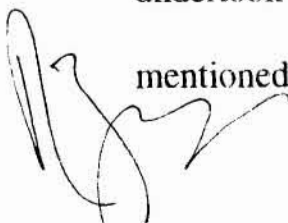
bears his signatures. Ex.PJ and Ex.PK, injury statement and inquest report also bear his signatures.

The Doctor had also medically examined Saeed Iqbal complainant and observed as under:-

“INJURIES:

1. A Lacerated wound 4 cm x .5 cm x skin deep on the top of the head, 7 cm above the left ear. Ex.PL is the correct carbon copy of medico legal report which is in my hand and bears my signature. Injury statement Ex.PL/1 also bears my signatures.”


- (x) PW.10 Muhammad Ayyub Khan Special Judicial Magistrate had conducted identification parade of accused Muhammad Asif, Shafiq-ur-Rehman and Asghar Ali in judicial lock up Vehari. In his presence Saeed Iqbal complainant identified all the three accused correctly. Then Umar, Abdur Rashid, Muhammad Saleem, Akhtar Hussain and Sardar Muhammad PWs identified all the accused separately.
- (xi) PW.11 Ahmed Waseem Sheikh had identified the drawings, hand writing and signatures of his father Sheikh Mazher Hussain Draftsman on site plans Ex.PN, Ex.PN/1 and Ex.PN/2 as Sheikh Mazher Hussain Draftsman died on 3rd May, 1999.
- (xii) PW.12 Ghulam Abbas Inspector/Station House Officer undertook the investigation whose details have already been mentioned in paragraph 3 of this judgment.



6. The prosecution closed its case on 09.04.2002 after tendering in evidence the report of Chemical Examiner regarding blood stained earth Ex.PU, report of Serologist Ex.PV, report of dagger from the Chemical Examiner Ex.PW and Serologist's report Ex.PC. Thereafter the learned trial Court recorded statements of two Court Witnesses. The gist of their evidence is as under:-

- (i) CW.1 Liaqat Ali Constable stated that on 26.10.2000 he was entrusted with non-bailable warrants of arrest of Asgher Ali accused Ex.CW.1/1. He went at the address of Asgher Ali accused where he met with Muhammad Afzal who disclosed that Asgher Ali accused had left his abode and had gone to some unknown place.
- (ii) CW.2 Munir Ahmad Constable stated that on 22.01.2001 he was entrusted with proclamation of Asgher Ali accused. He pasted one copy of proclamation at the house of Asgher Ali accused, one on the conspicuous place of the village and the third in the court premises and fourth copy of proclamation is Ex.CW.2/1; he had given his report Ex.CW.2/2.

7. The learned trial Court recorded statements of accused under

 section 342 of the Code of Criminal Procedure on 23.04.2002. The

Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

15

appellants denied the allegations leveled against them and in answer to question "Why this case against you and why the PWs deposed against you?" both the appellant gave the similar reply which is as under:-

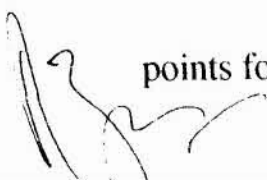
"I am innocent. Infact it was a blind murder and real assailant could not be traced out by the police and just to fill in the gape and to show his efficiency the I.O. falsely roped me in this case. PWs are closely related with the deceased and they deposed falsely against me just on the instigation of police."

8. Learned trial Court after hearing the learned Counsel for the parties and fulfilling the requirements of the trial, convicted and sentenced the appellants as mentioned in the opening paragraph of this judgment.

9. We have heard the learned Counsel for the parties and perused the record with their assistance. Relevant portions of the impugned judgment have also been scanned.

10. Mr. Tariq Zulfiqar Ahmad Chaudhary, learned Counsel for appellants Muhammad Asif and Shafiq-ur-Rehman raised the following

points for consideration of this Court:-

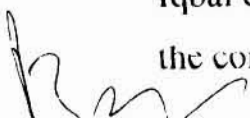


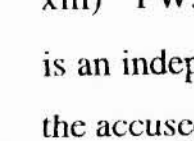
- i) The complainant was not present at the place of occurrence at the time of alleged occurrence.
- ii) Accused were not nominated in the FIR.
- iii) According to the complainant there were two injuries i.e. one on his head and the other on his hand while the medico legal report shows only one injury on his head.
- iv) The complainant alongwith others took Abdul Hamid deceased to hospital in injured condition but he did not get himself medically examined whereas he was medically examined on the next day i.e. on 15.02.1998 at about 2.10 p.m.
- v) PW.9 Dr. Riaz Ahmed has stated that the injury of Saeed Iqbal complainant can be self inflicted or can be of friendly hand.
- vi) **The complainant did not assign any role to the accused at the time of identification parade.**
- vii) The witnesses of recoveries are related inter-se.
- viii) Molds taken by the I.O. from the place of occurrence were not sent to the finger prints Bureu for their verification.
- ix) No tracker/Khoji appeared at the trial to state that the molds taken from the place of occurrence were of the accused. Non processing of the molds falsify the proceedings of the I.O.
- x) Nothing was snatched from the deceased Abdul Hamid.
- xi) It was a dark night un-witnessed occurrence and at the place of occurrence there was no transport frequently available but surprisingly after the incident the complainant stated to have got the transport and identification of the accused persons also became possible for them.

- xii) The accused were not known to the complainant party earlier.
- xiii) Rashid who stated to have untied Saleem and Akhter from the mango tree was not produced at the trial.
- xiv) The accused were already shown to the witnesses before the identification parade.
- xv) Muhammad Sardar PW.4 did not identify any of the accused by features or by any identity marks.
- xvi) The place of occurrence was at about 2 miles from the point where Muhammad Aslam PW.5 stated to have seen the accused.
- xvii) Identification of the accused by Muhammad Aslam PW.5 is based on suspicion.
- xviii) Identification parade does not fulfill the requirement of law.
- xix) Recoveries were fictitious.
- xx) Parcel of the dagger was sent to the Chemical Examiner after 71 days of its recovery for which no justification has been given.
- xxi) There was no enmity between the accused and the deceased.
- xxii) The prosecution has miserably failed to prove its case and the accused deserve acquittal.

11. On the other hand, Malik Allah Yar Khan, learned Counsel for the complainant has formulated the following points:

- i) It is established on the record that Rashid is brother of Saeed Iqbal complainant while Muhammad Sardar PW.4 is not related to the complainant.



- ii) Saeed Iqbal complainant did not go for his medical examination immediately because he was upset and he was handling the dead body of his brother Abdul Hamid deceased.
 - iii) FIR was promptly lodged as the occurrence took place on 14.02.1998 at 8.00 p.m. and the FIR was lodged on the same date at 9.15 p.m.
 - iv) The complainant had no reason to substitute the accused persons with the real culprits and there is no motive to falsely implicate the accused.
 - v) According to the report of Medical Board the accused were not juveniles.
 - vi) The claim for concession on the basis of minority amounts to admission of the offence on the part of the accused persons.
 - vii) One of the accused namely Asghar Ali is still proclaimed offender since eight years.
 - viii) The witnesses are independent.
 - ix) **Saeed Iqbal, injured witness is very important in this case.**
 - x) **PW.3 Saeed Iqbal complainant and PW.4 Muhammad Sardar are consistent all along.**
 - xi) Muhammad Saleem PW.6 and Akhtar are not related with the complainant.
 - xii) PW.5 Muhammad Aslam, chance witness also supports the prosecution versions.
 - xiii) PW.10 Muhammad Ayyub Khan, Special Judicial Magistrate is an independent witness who conducted the identification parade of the accused persons.
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xiv) The prosecution has fully proved its case beyond any shadow of reasonable doubt, therefore, the conviction and sentence awarded by the learned trial Court should be maintained.

12. Mr. Nisar Ahmad Virk, learned DPG appearing for the State

has raised the following points:

- i) FIR was prompt.
- ii) Roles were assigned to the accused with their general features.
- iii) Evidence of injured witness Saeed Iqbal has not been challenged.
- iv) PW.4 Muhammad Sardar is an independent witness and no enmity has been attributed to him with the accused persons.
- v) Muhammad Saleem PW.6 is another independent witness who supported the prosecution version.
- vi) Medical evidence corroborated the ocular account produced by the prosecution.
- vii) Identification parade was held immediately after arrest of the accused persons.
- viii) The prosecution has proved its case beyond any shadow of doubt and the learned trial Court has rightly convicted and sentenced the appellants. The appellants deserve no leniency.

13. This case is regarding a fateful occurrence in which the

accused with intention to commit dacoity attacked the complainant party in



Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

20

which Abdul Hamid, brother of Saeed Iqbal complainant was murdered.

Although the names of the accused were not mentioned in the FIR yet they

were identified during identification parade. Two other persons namely

Akhter Hussain and Muhammad Saleem were also maltreated and robbed

by the accused persons who were tied with a mango tree by the accused

persons and the occurrence was happened in front of them. Out of these

two persons one Muhammad Saleem appeared as PW.6 and categorically

deposed about the alleged incident of murder of Abdul Hamid deceased.

On the alarm raised by the complainant and his brother Abdul Hamid

deceased, Muhammad Sardar PW.4 alongwith Rashid were attracted to the

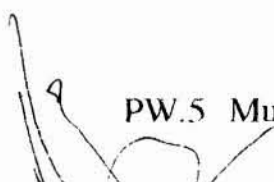
spot. Muhammad Sardar PW.4 stated that he had seen accused Muhammad

Asif inflicting dagger blows to Abdul Hamid deceased while accused

Shafiq-ur-Rehman and Asghar were inflicting injuries to Saeed Iqbal

complainant with Carbine and revolver. After the occurrence the accused

escaped from the spot. However while fleeing away they were seen by

 PW.5 Muhammad Aslam who alongwith Umar Din were proceeding

Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

21

towards City Burewala on a motorcycle and they saw accused Muhammad Asif, Shafiq-ur-Rehman alongwith their third companion Muhammad Ashger (proclaimed offender) in the light of motorcycle when the accused were crossing road near village Ghulam Muhammad Abad.

14. The learned Counsel for the appellants has raised some serious questions about the investigation of the case as well as about the identification parade. He argued that during identification parade the witnesses had not identified the accused while attributing them their specific roles. At that time the complainant did not indicate as to which accused had caused injuries to him. However, the witnesses had ^{only 1/8} attributed the role to the accused at the time of identification parade that they had committed murder of Abdul Hamid deceased. The I.O. recovered dagger P-7 on the pointation of accused Muhammad Asif from an iron box lying in his residential room. He recovered a .32 bore Pistol P-10 alongwith four live bullets P-11/1-4 on the pointation of accused Shafiq-ur-Rehman from an iron box lying in his residential room and also recovered a Carbine P-8

alongwith two live cartridges P-9/1-2 on the pointation of accused Asghar Ali from an iron box lying in his residential room. It is noteworthy that all the three weapons were recovered on the same day i.e. on 25.04.1998 and in the same manner. The witnesses of all the recoveries of weapons are also same i.e. Saeed Iqbal and Abdul Rasheed. The I.O. had not associated any independent person as witness of recovery. Furthermore the dagger was recovered on 25.04.1998 and it was dispatched to the Chemical Examiner for analysis on 30.06.1998 while it was received in the office of Chemical Examiner on 06.07.1998. **The prosecution has failed to explain such delay.**

That the learned Counsel could not substantiate his arguments in concrete manner. As regards the point of assigning roles at the time of identification of Accused, it has come on record that the role of murder has specifically assigned to the accused persons of having committed murders.

As far the other argument is concerned, there are numerous case-laws on this point of Hon'ble Supreme Court that for recovery on pointation, the

requirement of section 103 Cr.P.C is not mandatory.



Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

23

15. In this case Saeed Iqbal complainant PW.3, the injured witness, are star witnesses. They have seen the occurrence and they categorically stated that the accused gave dagger blows to his brother Muhammad Sardar PW-4 and Muhammad Saleem PW-6. Abdul Hamid deceased and PW-3 also received injuries during the occurrence. PW-3 stated in the FIR as well as in his statement before the learned trial Court that he received injuries on his head and arm. All the witnesses have however remained consistent and probable and could not be shattered in cross examination as well.

16. Accused themselves did not challenge their identification nor did they come forward with specific plea that they had not committed the occurrence. In their statements under section 342 Cr.P.C. they simply stated that the police could not trace out the real assailant and in order to fill in the gap and to show efficiency the I.O. had falsely roped them in this case. The discrepancies as mentioned by the Defence side ^{if (g)} ~~are~~ although not

1/9/11 of such a nature which could damage the whole prosecution case, yet these

Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

24

create some mitigating circumstances which favour the accused for reduction in sentence. In view of the above circumstances the accused can not be sentenced to capital punishment.

17. In view of what has been stated above, Cr. Appeal No.12/L/2009 filed by Muhammad Asif and Shafiq-ur-Rehman appellants is dismissed. However the death sentence awarded to them under section 302(B)/34 PPC is converted into life imprisonment each while the penalty of compensation of Rs.20,000/- each payable to the legal heirs of the deceased under section 544-A Cr.P.C. or in default thereof to further undergo six months R.I. each as awarded by the learned trial Court vide its judgment dated 26.04.2002 in Sessions Case No.24/S.C of 1999 and Sessions Trial No.10.4.2000 is maintained. The benefit of Section 382-B Cr.P.C. is extended to the appellants.

18. Record/file of accused Asgher Ali should be consigned to the record and kept till the accused is arrested and his case is decided.





Criminal Appeal No.12/L of 2009
Murder Reference No.2/L of 2009
Criminal Appeal No.1/L of 2012

25

19. Murder Reference No.2/L/2009 against Muhammad Asif and
Shafiq-ur-Rehman is answered in the negative and not confirmed.

20. The above are the reasons of our short order dated 23.01.2012
announced in the open Court.

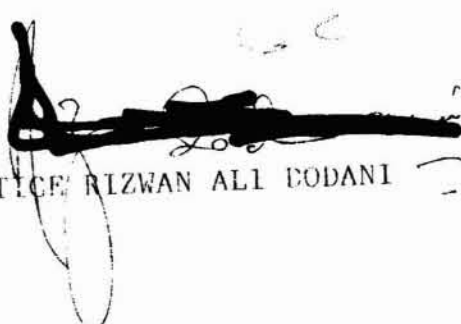

Justice Rizwan Ali Dodani


Justice Shahzad Shaikh


Justice Allama Dr. Fida Muhammad Khan

Dated Lahore the
*Anjad **

Approved for reporting.


JUSTICE RIZWAN ALI DODANI