

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

**MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE SHEIKH NAJAM-UL-HASSAN
MR. JUSTICE ZAHOOR AHMED SHAHWANI**

CRIMINAL APPEAL NO.8/Q OF 2013

1. Muhammad Hayat 2. Wakeel ... Appellants
Both sons of Muhammad Arif
3. Ghous Bakhsh alias Shahdad @ Ahsan
s/o Mir Hassan, All by caste Hajja,
r/o Mandu Khan Bhag, Tehsil
Bhag, District Kachi

The State ... Versus ... Respondent

LINKED WITH

CRIMINAL MURDER REFERENCE NO.01/I OF 2013

The State Versus Wakeel and others

Counsel for the appellants ... Syed Muhammad Tayyab and
Mr. Ahsan Rafiq Rana, Advs.
Counsel for the complainant ... Mr. Shah Muhammad Jatoi,
Advocate
Counsel for the State ... Mr. Tahir Iqbal Khattak, Addl:
Prosecutor General, Balochistan
FIR No. Date and ... No.38/2010, dated 23.12.2010
Police Station ... P.S. Bhag, District Kachi
Date of trial Court ... 28.02.2013
Date of Institution ... 29.04.2013
Date of hearing and Decision ... 11.11.2014
Date of Judgment ... 22.11.2014

JUDGMENT

JUSTICE ZAHOOR AHMED SHAHWANI:- This Criminal Appeal under section 24 of Offences Against Property (Enforcement of Hudood) Ordinance VI, 1979 has been directed against the judgment dated 28.02.2013, passed by learned Additional Sessions Judge-I, Sibi whereby appellants namely Muhammad Hayat, Wakeel and Ghous Bakhsh alias Shahdad have been found guilty and convicted under section 302(b) of the Pakistan Penal Code 1860 as Tazir and death sentence has been awarded to the all appellants on three counts each for causing murder of deceased Abdul Jabbar, Liaqat Ali and Muhammad Siddique with a fine of Rs.6,00,000/- (rupees six lac) each payable to the legal heirs of deceased and in default have to undergo one year simple imprisonment each. The appellants were further convicted under section 392 of the Pakistan Penal Code and sentenced to 10 years rigorous imprisonment each with fine of Rs.50,000/- in default to undergo six months simple imprisonment each. All sentences of all the three appellants shall run concurrently whereas benefit of section 382-B Cr.P.C. was not extended to the appellants due to committing inhumanity crime. ~~_____~~

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2. Criminal Murder Reference No.1/I of 2013 has been duly submitted for confirmation of death sentence.

3. Since both the matters rise out of one and the same judgment, we are disposing them of by this single judgment.

4. Briefly stated, the facts of the prosecution case are that Muhammad Salah PW-1, complainant on 23.12.2010 lodged the report Ex.P/1-A at police station, Bhag which was recorded as FIR No.38/2010, wherein it was stated that he was resident of Goth Fatwani and is cultivator by profession, however, on fateful day of incident he came to Bhag city for shopping of household articles and from Bhag city his son Muhammad Siddique levies sepoy, grandson Liaqat Ali, police constable and Abdul Jabbar proceeded on one motorcycle, while complainant alongwith Hasad Khan and Abdul Razzaq on the other motorcycle left for their village and when at about 8.30 p.m. when they reached at Pir Tayar Ghazi Road near Goth Attai, suddenly three culprits armed with Kalashnikovs riding on a motorcycle intercepted them and starting firing, as a result whereof complainant's son Muhammad Siddique, grandson Liaqat Ali and Abdul Jabbar became serious injured and culprits snatched away official Kalashnikovs, CD-70 motorcycle of Muhammad Siddique while culprits

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also threatened complainant and his companion not to interfere, otherwise they will be killed. Complainant further alleged that he as well as his companions had identified the culprits in light of motorcycle and can recognize them, if be brought in front of them. However, complainant's grandson Liaqat Ali and Abdul Jabbar succumbed to their injuries at the spot while complainant's son Muhammad Siddique was injured seriously. The un-known accused were charged for commission of offence, hence this case was registered.

The case was duly investigated; the accused were taken into custody on 28.12.2010 and statements of PWs were recorded under section 161 Cr.P.C. After investigation, challan was sent to the trial Court under section 173 Cr.P.C. against the appellants to face their trial. The learned trial Court framed the charge against the accused persons on 25.02.2011 Under section 17(4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979. All the appellants did not plead guilty and claimed trial.

5. At the trial, prosecution examined **PW-1** Muhammad Salah, complainant of the case who narrated the same facts as mentioned in his report Ex.P/1-A. **PW-2** Muhammad Yousaf constable No.184/C, is the

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witness of disclosures memos of accused persons whereby different recoveries effected, who brought on record Disclosure Memo Ex.P/2-A of accused Wakeel, Disclosure Memo Ex-P/2-B of accused/appellant Muhammad Hayat, Disclosure Memo Ex-P/2-C of accused/appellant Ghous Bakhsh, Memo Ex-P/2-D of recovery of Kalashnikov No.56-35069992 of deceased Muhammad Siddique, Memo Ex.P/2-E of recovery of Kalashnikov No. 19720028 of accused Muhammad Hayat, Memo Ex.P/2-F of recovery of Kalashnikov No.1975AH7011 of accused Ghous Bakhsh, Memo Ex.P/2-G of recovery of Kalashnikov No. 56x5740769 of accused Wakeel and Memo Ex.P/2-H of pointation of place of incident. He also produced above articles as Art-P/1, Art-P/3, Art-P/5 and Art-P/7 respectively. **PW-3** Abdul Razzaq is an eye witness of the incident and also witness of certain recoveries who narrated the facts of this case on the same line as narrated by the complainant in his deposition and brought on record Memo of site inspection Ex.P/3-A, Memo Ex.P/3-B of recovery of blood stained earth of deceased Abdul Jabbar Memo Ex.P/3-C of the recovery of blood stained earth of deceased Liaqat Ali, Memo Ex.P/3-D of recovery of blood stained earth of deceased Muhammad Siddique and Memo Ex.P/3-E of recovery of 20 empty shells of Kalashnikov from place

of incident. He also produced the above articles as Art-P/10, Art-P/13, Art-P/16 and Art-P/19 respectively. **PW-4** Hasad Khan is also an eye witness of the incident who narrated more or less the same facts as narrated by the other eye witnesses in their depositions. **PW-5** Abdul Kareem Foot Tracker levies. **PW-6** Nawab Khan, Constable is recovery witness in whose presence Investigating Officer made different recoveries. He brought on record Memo Ex.P/6-A of recovery of CD-70 red colour motorcycle of deceased Muhammad Saddique, Memo Ex.P/6-B of CD-70 black colour motorcycle of accused persons. Memo Ex.P/6-C of blood stained clothes of deceased Abdul Jabbar, Memo Ex.P/6-D of blood stained clothes of Muhammad Siddique and Memo Ex.P/6-E of blood stained clothes of deceased Liaqat Ali. He also produced the above articles as Art-P/20, Art-P/21 Art-P/23, Art-P/26 and Art-P/29. **PW-7** Dr. Ayaz Ahmed, Medical Officer of Civil Hospital, Bhag deposed that injured Muhammad Siddique (later on died) was brought for treatment. He examined the injured and found some injuries on his person. After giving first-aid to the injured he referred him for further treatment to Civil Hospital, Quetta, however, the injured was very serious, hence expired in the way, he again examined the body and confirmed his death. He also conducted external Post-mortem on

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of corpse of deceased Abdul Jabbar and Liaqat Ali and brought on record MLC/Death Certificates as Ex.P/7-A to Ex.P/7-C respectively. **PW-8** Inayatullah, Judicial Magistrate Bhag in whose supervision identification parade of accused/appellants through eye witnesses was held. He brought on record Memo Ex.P/8-A of identification of accused Muhammad Hayat by witness Hasad Khan, Memo Ex.P/8-B of identification of accused/appellant Muhammad Hayat by witness Abdul Razzaq, memo Ex.P/8-C of identification of accused/appellant Wakeel by witness Hasad Khan, Memo Ex.P/8-D identification of accused/appellant Wakeel by witness Abdul Razzaq , Memo Ex.P/8-E of identification of accused /appellant Ghous Bakhsh by witness Hasad Khan and Memo Ex.P/8-F of identification of accused/appellant Ghous Bakhsh by witness Abdul Razzaq. **PW-9** Amanullah SI, he is the Investigating Officer, who investigated the case and narrated the facts regarding investigation, recovery of incriminatory articles, disclosure memos in respect of this case and brought on record FIR Ex.P/9-A, site inspection note Ex.P/9-B, incomplete challan Ex.P/9-C, report of Arms Expert, Ex.P/9-D, FSL report, Ex.P/9-E of blood stained earth and clothes and supplementary challan  Ex.P/9-F.

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6. After close of prosecution evidence, said statement of the appellants were recorded under section 342 Cr.P.C. wherein they denied the allegation leveled against them by prosecution. They did not opt to record their statements on oath as envisaged by section 340(2) Cr.P.C. nor to produce witness in their defence. The learned trial Court concluded the proceedings by means of judgment dated 28.02.2013 whereby the appellants were convicted and sentenced in the aforementioned terms. The appellants being aggrieved by the impugned judgment preferred this appeal.


7. The learned counsel for the appellants contended that appellants are not nominated in the FIR and alleged incident took place at night and there was no source of light, therefore, identification of appellants by witnesses has not safe and reliable particularly when no feature were given; that eye witnesses are close relative of the deceased persons and being interested witnesses are not worthy of reliance while the remaining witnesses are police officials; the identification parade is also doubtful as the accused were already in police custody and possibility can not be ruled out that witnesses had seen the accused persons prior to identification parade; that disclosure being a joint one also has no evidentiary value; that medical evidence is not in consistent with the ocular account and there is a delay in dispatch of 

recovered articles to the expert; that prosecution has not been able to prove its case beyond reasonable shadow of doubt against the appellants as material contradiction exist in the prosecution evidence.

8. On the other hand, learned counsel for the complainant has argued that the statements of eye witnesses are duly corroborated with each other on material points and no material contradiction exist in their statements ; the medical evidence supported the ocular account and recoveries were effected on the pointation of accused persons/appellants; the crime weapon, were matched with the crime empties which were secured from the place of occurrence and prosecution has fully proved its case against appellants beyond any shadow of doubt.

9. Whereas Learned Additional Prosecutor General Balochistan representing the State adopted the arguments put forth by learned counsel for the complainant.

10. We have heard learned counsel for the parties and have gone through the record with their assistance.

11. It is case of prosecution that on 23.12.2010, complainant PW-1 (Muhammad Salah) alongwith eye witnesses and both the deceased were returning home from Bhag city on two motorcycles when at about 8.30 p.m. 

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they reached at Pir Tayar Ghazi Road near Goth Attai, suddenly three persons riding on motorcycle and equipped with Kalashnikovs intercepted them and made firing as a result whereof complainant's son Muhammad Siddique, grandson Liaqat Ali and Abdul Jabbar became serious injured. The complainant's grandson Liaqat Ali and Abdul Jabbar died at the spot while injured Muhammad Siddique succumbed to his injuries while shifting to Quetta for treatment. It was the claim of the complainant that they identify accused persons in the light of motorcycle and could identify them on seeing later on. Accused persons who were arrested in an other case were also interrogated in the instant case and during identification parade the eye witnesses identified the accused persons/appellants. They were finally arrested and investigated. The learned counsel for the appellants has tried to point out that complainant has falsely implicated the appellants but no plausible reason could be shown by the learned counsel for the appellants because of which complainant should have falsely implicated the appellants, although the complainant was lengthy cross examined. The complainant has identified the appellants during identification parade and categorically narrated the sequence of evidence. The defence could not demolish his evidence despite of lengthy cross-examination.

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12. The accused persons during the investigation made disclosure and led police to the recovery of crime weapon. The recovered crime weapons and empties recovered from the place of occurrence and sent to Forensic Division Sindh, Karachi for chemical analysis and the expert in his report, had confirmed that the same matched with each other.

13. Though the accused persons/appellants are not nominated in the FIR but the record reveals that accused were taken into custody in the instant case after conducting of identification parade if the complainant and eye witnesses had no motive to falsely implicate the appellants if any, they would have nominated them while reporting to the matter to the police.

14. It was the contention of the learned counsel for the appellants that incident took place at night time and there was no source of light and even no features were mentioned, besides appellants were already in police custody and possibility could not be ruled out, that eye witnesses had seen them prior identification parade. But the contentions raised by learned counsels have no force. Firstly the complainant in the FIR had clearly mentioned that they identified the accused persons in the light of the motorcycle and also could identify them on seeing, secondly the eye witnesses as well as the Judicial Magistrate under whom supervision ~~was~~

identification parade was held, denied that witnesses had seen the accused persons prior to conducting of identification parade. It is evident from the evidence of the eye witnesses that they had identified the accused persons/appellants thrice correctly during identification parade as the appellants were mingled with the other nine dummies but eye witnesses had correctly picked them out, even otherwise, the identification parade was supervised by the concerned Judicial Magistrate and at the end of process he had attested the identification parade forms. It is evident from the statement of complainant that they were at a distance of about 8 to 10 paces from deceased persons when they were attacked at by appellants therefore, identification of the appellants was not difficult for the eye witnesses. The learned counsel for the appellants also contended that at the time of identification parade the Magistrate has not fulfilled the legal requirements, but could not shown any illegality in the proceedings of identification parade. Although it is settle principle of law as laid down in PLD 2003 Karachi, Page 470. *“That identification parade is not the requirement of any law but it is the rule of propriety in order to secure authenticity of the identification of real culprits.”* ~~XXXXXXXXXX~~

15. So far as the contentions of the learned counsel that eye witnesses are close relatives of the deceased persons and remaining witnesses are police officials are concerned, the same has no substance. Because the eye witnesses are natural witnesses of the incident as they alongwith deceased persons were on their way home from Bhag city on motorcycles when come under attack and murdered by the appellants by means of firing with fire arms and mere relationship is no ground/ reason to discard the evidence of eye witnesses when there was not motive to falsely depose against the accused or falsely implicate them on account of animosity or enmity. It is also a settle principle of law laid down in PLD 2001 Quetta Page 47 "*that mere relationship of the witnesses is no ground to discard the testimony of witnesses.* It is also held in SCMR 1973 Page 69 "*that prosecution witnesses related to deceased but otherwise having no motive to implicate the accused in commission of crime under section 302 PPC.*" are reliable. The police officials are also as good witnesses as remaining/private witnesses are. It is held in 2009 YLR 1557 that "*When an accused under interrogation leads to discovery of the fact which is within his special knowledge, section 103 Cr.P.C. would have no relevance. The recovery got made by accused would be admissible under Article 40 of the Qanoon-e Shahahat.*" The prosecution 

witnesses have corroborated each other on material points and no material contradictions exist in their deposition to be fatal to the case of prosecution.

16. It was also the contention of learned counsel for the appellants that disclosure being joint one has no evidentiary value. It is a settled principle of law laid down in 2009 SCMR 1440 that "*plurality of information received before discovery shall not necessarily take any of these information out of Article 40, Qanoon-e Shahadat. In a suitable case it is possible to ascribe to more than one accused the information which leads to discovery.*" Recovered articles were dispatched with delay to the expert. It is clear from the record that though the accused were interrogated/investigated jointly when they allegedly made disclosure but the disclosure of each accused was compiled separately and signed by witnesses. Though simple disclosure has no evidentiary value unless and until new fact and discovery is made in pursuance of such disclosure. But in the instant case the appellants had made disclosure and then led the police to the recovery of crime weapons hidden in the reaped crop of (جوار). So such disclosure is admissible according to Article 40 of Qanoon-e-Shahadat Order, 1984. Further the disclosure and recoveries effected in pursuance thereof, is corroborated by positive matching report issued by the Fire Arm Expert, Karachi and the

recovery of these incriminatory articles on information supplied by the appellants, under Article 40 of Qanoon-e-Shahadat Order, 1984 is also admissible in the light of settle principle of law. The learned trial Court had rightly believed and relied upon the disclosure and recoveries. There is also nothing on record to show that the expert have issued false report on account of any motive to strengthen the prosecution case.

17. Adverting to the last contention of the learned counsel that medical evidence is not in consistent with ocular account and prosecution has not been able to prove its case beyond shadow of doubt against the appellants, but learned counsel for the appellants could not point out any reason that as to how the medical evidence is not corroborated by ocular evidence. It is evident from the testimony of prosecution eye witnesses that after receiving fire arm injuries the deceased persons had succumbed to their injuries and lost their lives. The medical evidence also confirmed that deceased persons had received bullet injuries and as a result whereof breathed their last. The Medical evidence is fully corroborated by ocular account. As the medical officer namely Dr. Ayaz Ahmed appeared before the trial Court and categorically deposed regarding each and every injury of the deceased Abdul Jabbar and Liaqat Ali. The doctor also deposed regarding cause of death of [REDACTED]

deceased Abdul Jabbar and Liaqat Ali were excessive bleeding and injuries to thoracic region and fire arm weapon was used in this regard. The perusal of record reveals that prosecution had succeeded to establish its case against appellants by leading ocular evidence, medical evidence, disclosure and recoveries of crime weapon coupled with the positive report of the Forensic and Chemical Experts, leaving no to doubt that the appellants had committed the crime by the causing the death of deceased persons and they are responsible for the same. The learned trial Court has properly appreciated the evidence collected and led by the prosecution against the appellants and they had rightly convicted and sentenced the appellants by means of impugned judgment. The learned counsel for the appellants could not point out any illegality or irregularity in the impugned judgment, which call for interference on part of this court.


18. In view of what has been discussed above, we are of the considered view that prosecution has proved its case against the appellants beyond reasonable doubt, therefore, the appeal filed by the appellants is dismissed and conviction and sentences including death sentence awarded to the appellants namely Muhammad Hayat, Wakeel and Ghous Bakhsh @

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Shahdad @ Ahsan by trial Court are maintained as recorded by learned trial Court.

19. Resultantly, Criminal Murder Reference No.01/I of 2013 is answered in affirmative and confirmed. These are the reasons of our short order dated 11.11.2014.



(MR. JUSTICE ZAHOOR AHMED SHAHWANI)



(MR. JUSTICE DR. FIDA MUHAMMAD KHAN)



(MR. JUSTICE SHEIKH NAJAM-UL HASSAN)

Islamabad, the
22nd November, 2014
Zain/*

APPROVED FOR REPORTING



JUDGE