Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No. 66 of 2019

Shoaib Illyas
Vs
Haseeb Ullah and another

APPELLANT BY:	Raja Muhammad Shafat Khan, Advocate
Complainant BY:	Raja Rizwan Abbasi, ASC.
State By:	Mr. Ishtiaq Ahmed, State Counsel. Mr. Muhammad Riaz Noon, ASI, P.S Aabpara, Islamabad.

DATE OF HEARING: 13-07-2021.

BABAR SATTAR, J.- Shoaib Illyas son of Muhammad Illyas **("Appellant")** filed the instant appeal against the judgment of the learned Sessions Judge, Islamabad (West) dated 22.02.2019 pursuant to which the Appellant was found guilty of committing Qatl-e-Amd of Muhammad Hammad under section 302(b) PPC as Tazir and was sentenced to imprisonment for life together with compensation payable under section 544-A, Cr.P.C to the legal heirs of the deceased in the amount of Rs.400,000/-. His co-accused Hassam Imtiaz and Adnan Khan were acquitted. The Appellant also filed another appeal i.e. ***Jail Appeal No. 45/2019 titled "Shoaib Illyas Vs. the State".*** *Haseeb Ullah,* the complainant, also filed ***Criminal Appeal No.***

80/2019 "Haseeb Ullah Vs. Hassam Imtiaz, etc." against the acquittal of accused Hassam Imtiaz and Adnan Khan and ***Criminal Revision No. 23/2019 "Haseeb Ullah Vs. Shoaib Illyas"*** for enhancement of the sentence awarded to the Appellant. Through this consolidated judgment we will decide the aforementioned appeals and the criminal revision.

2. The prosecution story is that Umar Niaz (PW-8), who lived in G-6/2, Islamabad was a student of grade-8 and used to study at a tuition centre between 04.00 p.m to 06.00 p.m. After the tuition he along with Hammad (deceased), Muhammad Zain Abdullah (PW-9) and another friend Mustafa used to go to a nearby gym for a workout. Shoaib Illyas, the convict, who was also from the same neighborhood, would tease Umar Niaz by calling him 'Choocha' or 'Pehlwan'. On 25.01.2018 Umar Niaz left his home for the tuition centre and bumped into Shoaib Illyas, Hassam Imtiaz and Adnan Khan near Aabpara, who were bullying him by calling him 'Choocha'. He retorted that the Shoaib Illyas's father may be a Choocha. The Appellant got infuriated and rushed towards Umar Niaz, who ran to enter the house where the tuition centre was located. He then came out of the tuition centre at 06.15 p.m and met with Muhammad Zain Abdullah (PW-9), Hammad (deceased) and Mustafa. The Appellant, Hassam Imtiaz and Adnan Khan along with some other boys were there to settle the score with Umar Niaz. Umar Niaz threatened Shoaib Illyas that he would lodge a complaint with Shoaib Illyas's parents regarding his behavior. Shoaib Illyas

responded by asking as to who would dare do such a thing. At this point Hammad (deceased) volunteered that he would. On hearing this Shoaib Ilyas and Adnan Khan started slapping Hammad (deceased). While he succeeded in escaping from their clutches and rushed towards Umer Niaz's house, he was intercepted and overpowered by Hassam Imtiaz, who held him. And Shoaib Illyas all of a sudden pulled out a dagger from his pocket and gave Hammad a forceful blow on his chest. Hammad got injured and fell down. Adnan Khan then kicked Hammad's abdomen a few times and then Shoaib Illyas, Hassam Imitiaz and Adnan Khan left the place of occurrence. Due to the hue and cry raised by Umar Niaz and Muhammad Zain Abdullah, a passerby stopped his car and Umar Niaz and Muhammad Zain Abdullah placed Hammad in the car and took him to the CDA Hospital. At the hospital they met Muhammad Arbab Anjum (PW-6) and Umer Niaz asked him to call Haseeb Ullah (PW-7) who was Hammad's elder brother (and the complainant in the instant case). They were advised to take Hammad to Polyclinic Hospital, which they did. Hammad had already died when he arrived at Polyclinic Hospital. FIR No. 48/2018 was registered around 08.20 p.m on the same day. Hammad's body was kept in the Hospital's mortuary overnight and the postmortem was conducted the next morning i.e. 26.01.2018 at 9.00 a.m. In the postmortem report (Ex-PB), Dr. Durdana Kazmi (PW-2) observed that Hammad had been brought in dead. That he was a young healthy male around 17-18 years of age and had a single incised wound in the centre of his chest, which in the doctor's

opinion was caused by a sharp object that pierced his chest and entered his heart and consequently ruptured the right atrium and ventricle causing massive hemorrhage and death due to injury to a vital organ.

3. On the evening of 25.01.2018, after receipt of information regarding the occurrence, Nasrullah, ASI (PW-10) arrived at Polyclinic Hospital where Haseeb Ullah (PW-7), brother of the deceased, submitted an application to him. In the application Haseeb Ullah stated that he received a call from Muhammad Arbab Anjum (PW-6) informing him that his brother Hammad had been injured near street 27, G-6/1-2 and was taken to the CDA Hospital by Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9). Haseeb Ullah, complainant, rushed to Polyclinic Hospital and was informed by Umar Niaz, Muhammad Mustafa and Muhammad Zain Abdullah that Hammad had been killed by Shoaib Illyas, Adnan Khan and Hassam Imtiaz. Arshad Ali Inspector (PW-11) arrived at Polyclinic Hospital and received the documents from Nasrullah ASI (PW-10). He along with witnesses went to the crime scene, inspected the place of occurrence and secured blood sample from the ground with the help of cotton and then sealed the parcel (Ex-PJ). On 30.01.2018, Shoaib Illyas and Adnan Khan were arrested. Blood-stained dagger was recovered from bushes near the place of occurrence on 05.02.2018 on the pointation of Shoaib Illyas. Subsequently Hassam Imtiaz was also arrested on 13.02.2018. The charge was framed against the accused on 06.02.2019 and they all

pleaded not guilty. Adnan Khan and Hassam Imtiaz took the plea that they were juvenile being less than 18 years of age and after medical inquiry and perusal of NADRA's record they were declared as such on 10.09.2018. A separate report under section 173 Cr.P.C was submitted. However in view of section 12(2) of the Juvenile Justice System Act, 2018, the learned trial court by order dated 06.02.2019 held that in the interest of justice all the accused were to be charged and tried together.

4. The learned Sessions Court determined that the recovery of dagger from bushes near a bridge on 7th Avenue close to the place of occurrence was inconsequential as it was recovered from a public place. It found the ocular account presented in the testimonies by Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9) to be consistent and credible and found that the information received by Haseeb Ullah (PW-7), complainant, from Muhammad Arbab Anjum (PW-6) regarding the incident was not hearsay as Umar Niaz (PW-8) had given such information to Muhammad Arbab Anjum (PW-6) and Umar Niaz (PW-8) corroborated the same. It further held that details regarding the vehicle in which Hammad (deceased) was transported to the CDA Hospital were not relevant as it was natural for a passerby to carry an injured person to the hospital and the focus of the companions of an injured person at such time is on the condition of the injured person and not on details of the transport such as its registration number etc. It further held

that the place of occurrence was well lit, and not seriously in dispute and for having been identified by Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9), and blood having been recovered from it by Arshad Ali Inspector (PW-11) through a cotton swab exhibited as Ex-PJ. Given that the place of occurrence was lit and Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9) recognized the accused persons the learned trial court concluded that there was no serious doubt regarding the identification of the accused. The learned Sessions Court disregarded a statement mentioned on the medical report noting that according to police there has transpired a fight between two groups of students causing injuries to the deceased. This it did in view of the fact that mere information transmitted by the police did not form part of medical evidence and the fatal injury caused to Hammad (deceased) also did not reflect that it was the consequence of a scuffle between two violent groups, as his death had been caused by a single injury inflicted on his chest and there were no other marks of any bodily injury. The learned Sessions Court also noted that nothing turned on the fact that postmortem was not conducted at night as it had remained a longstanding practice that postmortems after a certain point in the evening were not conducted till the next morning. And that a 14-15 hours delay in conducting postmortem after the deceased was brought into the hospital did not effect the creditability of the postmortem report. The learned Sessions Judge found that the medical evidence was consistent with the ocular account, as far as the actions of the Appellant were

concerned. It further found that while Hassam Imtiaz and Adnan Khan had been present at the scene of crime, the prosecution had not proved that they shared common intention with Shoaib Illyas and the said accused could therefore not be held vicariously responsible for the consequences of the crime committed by Shoaib Illyas, which led the learned Sessions Court to acquit them.

5. The learned counsel for the Appellant (Shoaib Illyas) and respondents No. 1 and 2 (i.e. Hassam Imtiaz and Adnan Khan) argued that the place of occurrence had not been correctly identified by eye-witnesses. That the site-plan was sketched many days later. That all the eye witnesses had cell phones with them and yet the prosecution did not produce Call Data Record (CDR) to establish that they were at the place of occurrence at the relevant time. That the eye-witnesses did not remember the registration plate of the vehicle that transported the deceased to the CDA Hospital and no record of any treatment in the CDA Hospital was brought on record, implying that neither the eye-witnesses (i.e. PW-8 and PW-9) were at the place of occurrence nor the body of the deceased was taken to the CDA Hospital. His contention was that there was a skirmish between two rival groups of students after which the body of the deceased was left at the place of occurrence, which was subsequently discovered and brought directly to the Polyclinic Hospital much later in the night which is why the postmortem was conducted in the morning on 26.01.2018. He emphasized that in their

statements under section 342 of Cr.P.C of the Appellant and Adnan Khan had stated that they had been implicated merely because the Appellant had a leadership position in Peoples Students Federation and the deceased was a leader of Muslim Students Federation.

6. The learned counsel for the complainant submitted that the ocular account was in consonance with the medical evidence and that prosecution had established its case beyond reasonable doubt in relation to all three accused. He contended that a statement of an eye-witness that is not challenged during cross-examination was deemed to be accepted and that a simple suggestion made by the defence counsel during cross-examination denied by a witness carried no evidential value. He relied on ***Muhammad Abbas alias Abbasio Vs. The State (2008 SCMR 1527)*** and ***Samiullah and another Vs. Jamil Ahmed and another (2008 SCMR 1623)*** to contend that a relationship between the eye-witness and the deceased did not render the testimony by such eye-witness nugatory so long as the testimony inspired confidence. He further submitted that the motive of attack had been explained by Umar Niaz (PW-8) and it was in order to settle the score with him that the three accused had resorted to violence which claimed the life of Hammad (deceased). He relied on ***Allah Wasaya Vs. The State (PLD 1982 SC 208)*** to argue that the force of the blow and the nature of the dagger used reflected the intention to cause fatal injury and the mere fact that the deceased received

solitary blow would not make the injury inflicted upon him accidental.

7. The learned State Counsel supported the arguments made by the complainant's counsel that the judgment rendered by the trial court did not suffer from any infirmity.

8. We have heard the learned counsel for the parties and perused the record. In the instant case, the incident transpired at around 7.15 p.m and the FIR was promptly registered at 08.20 p.m. The contention of the learned counsel for the Appellant that the prosecution witnesses ought to have immediately rushed to the Police Station to record their statements after the incident is not logical. In the aftermath of a violent attack on a friend, the natural reaction of the witnesses, who were friends of the deceased, would have been to rush the injured friend to the hospital so that his life could be saved. In view of the shock and trauma caused to the friends who were witnesses of the attack by the accused and at its receiving end, and given their tender age, to expect them to remember details of the vehicle that carried them to the hospital, such as its registration number etc., is unrealistic. There is nothing incredible about the fact that Umar Niaz (PW-8) stopped Muhammad Arbab Anjum (PW-6) (when they ran into each other at the CDA Hospital having brought in the Deceased), and asked him to inform Haseeb Ullah (PW-7), the brother of the Deceased, that the Deceased was a victim of a violent attack. Haseeb Ullah (PW-7) admitted that he received a call from Muhammad Arbab

Anjum (PW-6) and Muhammad Arbab Anjum testified that he was asked by Umar Niaz (PW-7) to inform Haseeb Ullah, and Umer Niaz also corroborated such account. Therefore, there is nothing unreliable about the manner of transmission of information about the incident from eye-witnesses (i.e. Umar Niaz and Muhammad Zain Abdullah) to Haseeb Ullah, the complainant.

9. The learned counsel for the Appellant contended that in the event the identity of the accused was known to Umar Niaz and Muhammad Zain Abdullah, at the time when they communicated the information to Muhammad Arbab Anjum, they ought to have communicated the names of the accused to Haseeb Ullah too, which they did not do. Again, given that Haseeb Ulllah was the elder brother of the deceased and he was not acquainted with the accused, it would be unreasonable to expect eyewitnesses to transmit meticulous details about the identity of attackers to a family member of a friend at the time when such friend was possibly at the verge of his death, in the manner in which one would report such incident to the police. Their natural reaction would have been to inform a family member of the deceased that he had been fatally injured, which is what was done in this case.

10. The testimonies of Umar Niaz (PW-8), Muhammad Zain Abdullah (PW-9), Muhammad Arbab Anjum (PW-6) and Haseeb Ullah (PW-7) have been consistent. Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9) who were eye-witnesses of the incident had explained in detail how the

altercation between Umar Niaz and the Appellant developed during the early evening and culminated into the fatal incident that claimed the life of the Hammad deceased in front of them at a well lit place with the attackers being individuals that the eye-witnesses were familiar with. And in the absence of the defence having created any doubt in the account presented by the prosecution witnesses, Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9), the question of misidentification of the accused does not arise. The medical evidence is also consistent with the ocular account presented by Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9). Even if the recovery of the dagger is treated as inconsequential, the testimonies of Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9) regarding the kind of dagger used by the Appellant to attack Hammad (deceased) is on the record, and the medical evidence also corroborates such account: the postmortem report concluded that a single blow by a sharp object pierced through the heart of Hammad (deceased) and the heart being a vital organ having been hemorrhaged caused Hammad's death.

11. The defence failed to create reasonable doubt about the place of occurrence in view of the account of the eye-witnesses, the collection of blood from the place of occurrence by Arshad Ali, Inspector (PW-11) and circumstantial account of how the body of the deceased was transported to CDA Hospital at first and subsequently to the Polyclinic Hospital, which were both in the vicinity of the place of occurrence. The

defence also failed to place on record or adduce any evidence to support its own version of motive (i.e. a skirmish between Peoples Students Federation and Muslim Students Federation). Hammad (deceased) and Umar Niaz were both young boys and students of a government High School and nothing was brought on record to establish that either Shoaib Illyas or Hammad (deceased) were ring leaders of rival students Unions. There is also nothing on record to establish that the accused were not at the place of occurrence at the relevant time and they were elsewhere and they could not have been involved in the incident that claimed the life of Hammad (deceased). Consequently the defence has failed to inject reasonable doubt in the prosecution's account of the event.

12. The motive of the attack was explained by Umar Niaz (PW-8). The Appellant, according to him, bullied him which is not something unlikely to happen between boys at that age. On the date of occurrence, Umar Niaz responded to Shoaib Illyas's bullying in a manner that made him angry and he thus sought to settle the score with Umar Niaz. At the time of the incident Hammad (deceased) volunteered to stand up for his friend Umar Niaz and threatened to complain to Shoaib's parents. That is when Shoaib Illyas and Adnan Khan started to beat Hammad (deceased) according to Umar Niaz, which claimed Hammad's life after Shoaib Illyas pulled out a dagger and with a single blow punctured his heart. This may not qualify as a motive for murder, but it certainly qualifies as a

motive to inflict harm on part of Shoaib Illyas. The ocular account presented in the form of eyewitnesses testimony by Umar Niaz (PW-8) and Muhammad Zain Abdullah (PW-9), has remained unshaken and consistent and is thus trustworthy. It is also corroborated by medical evidence and the description of the injury that claimed the life of Hammad (deceased). In view of evidence adduced by the prosecution the intent to harm has been proved beyond reasonable doubt on part of the Appellant. Merely because the attack launched by the Appellant against Hammad (deceased) was a single forceful blow that claimed the life of the deceased can at best be regarded as mitigating factor in considering the sentence to be awarded to the Appellant and does not dilute the nature of his crime.

13. In view of these facts and circumstances, the learned Sessions Judge has rightly found the Appellant guilty of an offence under section 302(b), PPC and sentenced him to imprisonment for life. The benefit of mitigating factors (such as a single blow causing the death of the deceased, inconsequential recovery etc.) has already been granted to the Appellant in the lesser sentence awarded to him, despite the fact that he ended the life of a young man just entering his prime. The fatal injury has been ascribed to the Appellant with certainty, backed by reliable ocular evidence corroborated by medical evidence. The time of the occurrence, the place of occurrence and the manner in which the death of the deceased was caused and the identity of the

accused is all backed by ocular evidence. The prosecution has brought home the charge of murder to the accused beyond reasonable doubt.

14. In relation to Hassam Imtiaz and Adnan Khan, the prosecution has led no evidence that they were aware of the fact that the Appellant was in possession of a weapon that could inflict a fatal injury upon Hammad (deceased) or that they were aware of his intent to do so. Merely because Hassam Imtiaz and Adnan Khan, who were also juvenile at the time of the incident, accompanied Shoaib Illyas with the intent to teach Umar Riaz a lesson does not amount to them being vicariously liable for the murder of the deceased. It was held by the august Supreme Court in ***Muhammad Akbar Vs. The State (PLD 1991 SC 923)*** that there exists a marked difference even between knowledge and common intention and that mere presence of an accused with a co-accused found liable for an offence is not sufficient to pin vicarious liability upon such accused in the absence of evidence or circumstances that reflected preplanning, preparation or a concert of mind and deeds pursuant to such plan. Reliance is also placed on ***Muhammad Yaqoob Vs. The State (PLD 2001 SC 378).*** In the present case, the prosecution has led no evidence to establish common intention of murder having been shared by Hassam Imtiaz and Adnan Khan with Shoaib Illyas. Consequently the learned Sessions Court rightly gave them the benefit of doubt and acquitted them.

15. For the above reasons, we find that the impugned judgment of the learned Sessions Court does not suffer from any infirmity and is to be upheld. The appeals (i.e. Criminal Appeals No. 45/2019, 66/2019 and 80/2019) and Criminal Revision No. 23/2019 are therefore **dismissed.**

(MOHSIN AKHTAR KAYANI)
JUDGE

(BABAR SATTAR)
JUDGE

Announced in the open Court on 12.08.2021.

JUDGE

JUDGE

Saeed*