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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar
Mr. Justice Qazi Muhammad Amin Ahmed

Cr. M.A. No.130-K/2019 in Cr. Petition No.137-K/2019
and Criminal Petition No.137-K/2019

(For restoration - Against the judgment dated 30.04.2018 passed by the High Court of Sindh at Karachi in Crl. Appeal Nos.309 & 336 of 2913)

Muhammad Imran

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Ashraf Kazi, Sr.ASC
For the State: Mr. Hussain Bukhsh Baloch, Additional Prosecutor General Sindh.
Date of hearing: 20.03.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.-

Cr.M.A. No.130-K/2019 in Cr.P. No.137-K/2019. For the reasons mentioned in the application, the same is allowed; main petition is restored to its original number.

Criminal Petition No.137-K/2019.

2. Malik Safeer, 30, was stabbed to death on 16.8.2005 at 10:15 p.m. within the precincts of Police Headquarter Garden Karachi; incident was reported after midnight at 1:30 a.m. by his brother Malik Shahzada Khan (PW-2); he nominated Muhammad Imran, petitioner, along with Jahanzeb, Saleem Khadra, since acquitted, and Khalid Shah, P.O.

As per complainant, a police constable, on the fateful night, he was sitting outside his home with his friend Fazal Abbas (PW-4) when Umar Daraz (PW-9) laid information about an ongoing brawl between the deceased and the accused, outside *Darbar Peer Kunda*; he rushed to the scene to find the deceased being stabbed by Muhammad Imran

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within his view; the accused decamped from the venue and the deceased, in injured condition, shifted to the hospital, however, succumbed to the injuries on way. A dispute over a cell phone handset is cited as a motive for the crime.

Autopsy conducted at 1:30 p.m. revealed three cavity deep stab wounds on both sides of the chest, with resultant cardiac failure without reference to durations. The accused, barring the P.O, were arrested on 17.8.2005; a bloodstained dagger/*Churra* was recovered upon disclosure of acquitted co-accused Saleem Khadra. Prosecution case is structured upon ocular account furnished by Malik Shahzada Khan (PW-2), Fazal Abbas (PW-4) and Umar Daraz (PW-9), confronted by the petitioner with the following plea:-

"I am innocent. I have been falsely implicated in this case due to enmity as on the day of incident deceased and PW Riasat attacked on our house and injured my mother. In this respect uncle Jahanzaib reported at P.S. Nabi Bux vide rapat No.52 at 22:40 hours dt. 16.8.2005. I produce Roznamcha entry No.52 as Exh.26/A and ML certificate of my mother as Exh.26/b. The report was against deceased Malik Safeer and PW Riasat. Police had issued a letter in favour of my mother to visit hospital for treatment. Accordingly she went and examined. I produce police letter and hospital slip as Exh.26/C and 26/D. As a counter blast this FIR has been registered. The deceased was criminal person. There were so many criminal cases were registered at P.S Nabi Bux and Jamshed Quarter. I produce FIR No.58/2002 registered against deceased Malik Safeer & others, as Exh.26/E. He was criminal person and any other criminal person murdered him and the complainant falsely involved me in this case. I am innocent."

Unimpressed by the plea, the learned trial Judge returned a guilty verdict under clause (b) of section 302 read with section 34 of the Pakistan Penal Code, 1860 and sentenced the accused to imprisonment for life vide judgment dated 30.10.2018, upheld by a learned Judge-in-Chamber, qua the petitioner vide impugned judgment dated 30.04.2018, being impugned through Cr. Petition No.137-K of 2019, barred by delay of 353 days, condoned in the interest of justice.

3. Learned counsel for the petitioner contends that occurrence did not take place in the manner as alleged in the crime report lodged after considerable delay despite the police station, located close by; that presence of the witnesses appears to be extremely improbable as given their number, they could have easily apprehend the petitioner or intervene to rescue the deceased; that receipt of injuries by petitioner's mother Ramseela Begum is established through official documents and

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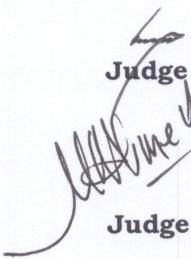
witnesses, a circumstance, suggestive of a different scenario, that escaped notice by the courts below; discrepant statements by the witnesses have been referred to conclude that prosecution had not been able to drive home the charge beyond reasonable doubt. The learned Law Officer has faithfully defended the impugned judgment.

4. Heard. Record perused.

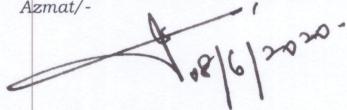
5. Ocular account, prosecution's mainstay, has been furnished by the witnesses, found by us out of tune with one another; Fazal Abbas (PW-4) has been silent about material details of the incident, otherwise succinctly related by the complainant whom the witness statedly accompanied to the venue. On the contrary, according to his statement, in examination-in-chief, the witness appears to have arrived at the scene after the deceased had already fallen. Umar Daraz (PW-9) is prosecution star witness; according to him, Khalid Shah and Jahanzeb, co-accused, held iron bars whereas the petitioner carried a *Churri*, a position that is not shared by the other witnesses; they are also discrepant on the manner and mode of their arrival at the crime scene; according to Umar Daraz PW, they reached the scene on a motorbike whereas remainder of the witnesses are reticent as to how they covered the distance; there is no unanimity amongst them on the passage, they took the deceased to the hospital. These contradictions, viewed in the retrospect of arrival of the witnesses exactly at a point of time when the petitioner started inflicting blows to the deceased with their inability to apprehend him without there being any weapon to keep them effectively at bay, cast shadows on the hypothesis of their presence during the fateful moments. It was an odd hour of night without any source of light as admitted by no other than Fazal Abbas (PW-4) himself. Petitioner's mother Mst. Ramseela was medically examined under a police docket at 10:30 p.m. on 17.8.2015; she was noted with an incised wound on the palmer aspect of her right hand; wound though not extensive, nonetheless, suggests a happening incompatible with the case set up in the crime report, a possibility further strengthened by a *Rapat* of even date incorporated in the daily diary at the same police station. Despite defence's inaptitude to clearly put-forth its case, a different story is spelt out from prosecution's own case. Argument that occurrence did not take place in the manner as alleged by the witnesses does not appear to be unrealistic. Co-accused, blamed to have clutched the deceased to facilitate the petitioner have since been acquitted on the same evidence without reproach. Recovery

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of *Churra/dagger* from inside *Darbar*, that too, upon the disclosure of a co-accused, fails to inspire confidence so as to be received as independent corroboration. It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation; the case is fraught with many. It would be unsafe to maintain the conviction. Criminal Petition is converted into appeal and allowed. The appellant is acquitted from the charge; he shall be released forthwith, if not required to be detained in any other case.

Judge

Judge

Karachi, the
20th March, 2020
Not approved for reporting
Azmat/-


18/6/2020