

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Dost Muhammad Khan
Mr. Justice Syed Mansoor Ali Shah

Criminal Appeal No. 206 of 2016

(Against the judgment dated 22.02.2016 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeal No. 372 of 2011 and Murder Reference No. 69 of 2011)

Mst. Nazia Anwar

...Appellant

versus

The State, etc.

...Respondents

For the appellant:

Raja Ikram Ameen Minhas, ASC
Mrs. Rubina Mahmood Khan, ASC
Mr. S. A. Mehmood Khan Saddozai,
ASC
Chaudhry Akhtar Ali, AOR

For the State:

Mr. Muhammad Jaffar, Deputy
Prosecutor-General, Punjab

Date of hearing:

13.02.2018

JUDGMENT

Asif Saeed Khan Khosa, J.: Mst. Nazia Anwar appellant had allegedly caused multiple injuries to her friend namely Mst. Fahmeeda Bibi with the use of a dagger inside the house of the deceased as well as of her mother namely Mst. Sadiqa Bibi complainant in Line No. 2, Quaid-e-Azam Colony near Dhamial Camp, Rawalpindi in the area of Police Station Saddar Bairooni, District Rawalpindi at about 10.00 A.M. on 12.10.2010 in the backdrop of a motive according to which the appellant had borrowed a sum of Rs. 5,000/- from the deceased and a heated exchange had taken place between them over demand of repayment of that loan. With the said allegations the appellant was booked in case FIR No. 640 registered at the above mentioned Police Station at about mid-day on the same day and after a

regular trial the appellant was convicted by the trial court for an offence under section 302(b), PPC and was sentenced to death and to pay compensation which conviction and sentence of the appellant were subsequently upheld and confirmed by the High Court. Hence, the present appeal by leave of this Court granted on 21.04.2016.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. The occurrence in this case had taken place in broad daylight and inside the house of Mst. Sadiqa Bibi complainant. An FIR in respect of the alleged occurrence had been lodged with reasonable promptitude wherein the present appellant was named as the sole perpetrator of the alleged murder. Mst. Sadiqa Bibi complainant (PW2) was a natural witness of the occurrence being an inmate of the house wherein the occurrence had taken place and the time of occurrence was such that the complainant was likely to be present in her house at that time. The complainant had absolutely no reason to falsely implicate the appellant in the murder of the complainant's daughter who was also a friend of the appellant. The record of the case shows, and it is so recorded in the FIR itself, that the appellant had been apprehended at the spot inside the relevant house and was later on handed over to the local police. A blood-stained dagger had also been recovered from the place of occurrence. The medical evidence had provided full support to the ocular account furnished by Mst. Sadiqa Bibi, complainant (PW2). Both the courts below had undertaken an exhaustive analysis of the evidence available on the record and had then concurred in their conclusion regarding guilt of the appellant having been established to the hilt and upon my independent evaluation of the evidence I have not been able to take a view of the matter different from that concurrently taken by the courts below. There can conceivably be many theories as to why the appellant was found inside the house of the complainant with a baby-boy aged about four months but all such theories lie within the realm of conjectures which have no place in the criminal law. There is

also little room available for drawing an inference in that regard as some foundational facts necessary for drawing an inference are missing in that respect.

4. I have particularly attended to the sentence of death passed against the appellant and have noticed in that context that the motive set up by the prosecution had remained far from being established. According to the FIR as well as the statement of the complainant the motive was based upon borrowing of a sum of Rs. 5,000/- by the appellant from the deceased and on the issue of repayment of that loan a heated exchange had taken place between the appellant and the deceased. Mst. Sadiqa Bibi complainant (PW2) was the only witness produced by the prosecution regarding the alleged motive but in her deposition made before the trial court the complainant had admitted that the appellant and the deceased were on very good and friendly terms, no date or time of borrowing of the relevant amount by the appellant from the deceased had been specified by the complainant, the complainant was not present when the money had been borrowed by the appellant from the deceased, no date, time or place of the altercation taking place between the appellant and the deceased over repayment of the borrowed amount had been specified by the complainant and admittedly the complainant was not present when the said altercation had taken place. In these circumstances it is quite obvious to me that the motive asserted by the prosecution had remained utterly unproved. The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran @ Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State

(2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148). After going through the entire record of the case from cover to cover and after attending to different aspects of this case I have found that although it is proved beyond doubt that the appellant was responsible for the murder of the deceased yet the story of the prosecution has many inherent obscurities ingrained therein. It is intriguing as to why the appellant would bring her four months old baby-boy to the spot and put the baby-boy on the floor and then start belabouring the deceased with a dagger in order to kill her. I have, thus, entertained no manner of doubt that the real cause of occurrence was something different which had been completely suppressed by both the parties to the case and that real cause of occurrence had remained shrouded in mystery. Such circumstances of this case have put me to caution in the matter of the appellant's sentence and in the peculiar circumstances of the case I have decided to withhold the sentence of death passed against the appellant.

5. For what has been discussed above this appeal is dismissed to the extent of the appellant's conviction for the offence under section 302(b), PPC but the same is partly allowed to the extent of her sentence of death which is reduced to imprisonment for life. The order passed by the trial court regarding payment of compensation by the appellant to the heirs of the deceased as well as the order regarding imprisonment in default of payment of compensation are, however, maintained. The benefit under section 382-B, Cr.P.C. shall be extended to the appellant.

(Asif Saeed Khan Khosa)
Judge

I respectfully disagree with my learned brother Asif Saeed Khan Khosa, J. and have recorded my separate reasons.

(Dost Muhammad Khan)
Judge

I agree with my learned brother Asif Saeed Khan Khosa, J.

(Syed Mansoor Ali Shah)
Judge

JUDGMENT OF THE COURT

By a majority of two against one (Dost Muhammad Khan, J. dissenting) this appeal is dismissed to the extent of the appellant's conviction for the offence under section 302(b), PPC but the same is partly allowed to the extent of her sentence of death which is reduced to imprisonment for life. The order passed by the trial court regarding payment of compensation by the appellant to the heirs of the deceased as well as the order regarding imprisonment in default of payment of compensation are, however, maintained. The benefit under section 382-B, Cr.P.C. shall be extended to the appellant. This appeal is disposed of in these terms.

(Asif Saeed Khan Khosa)
Judge

(Dost Muhammad Khan)
Judge

(Syed Mansoor Ali Shah)
Judge

Islamabad
13.02.2018
Not approved for reporting.
Arif