

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Dost Muhammad Khan
Mr. Justice Sajjad Ali Shah

Criminal Appeal No. 141 of 2016

(Against the judgment dated 12.09.2013 passed by the Lahore High Court, Multan Bench, Multan in Criminal Appeals No. 271-J & 147 of 2008 and Murder Reference No. 37 of 2008)

Nazir Ahmad

...Appellant

versus

The State

...Respondent

For the appellant: Mr. Anis Muhammad Shahzad, ASC

For the State: Mr. Muhammad Jaffar, Deputy
Prosecutor-General, Punjab

Date of hearing: 07.02.2018

JUDGMENT

Asif Saeed Khan Khosa, J.: Nazir Ahmed appellant and another had allegedly murdered the appellant's wife namely Mst. Anwar Bibi inside the appellant's matrimonial home in Basti Haji Pura Dakhli, Chak No. 35/KB in the area of Police Station Sahuka, District Vehari at about 04.00 A.M. on 19.11.2006 in the backdrop of a motive based upon strained relations on account of exchange marriages. With the said allegations the appellant and his co-accused were booked in case FIR No. 339 registered at the above mentioned Police Station during the ensuing morning and after a regular trial the appellant was convicted by the trial court for an offence under section 302(b), PPC read with section 34, PPC and was sentenced to death and to pay compensation whereas the

appellant's co-accused namely Bashir Ahmed was also convicted and sentenced by the trial court for the same offence. The appellant and his co-convict challenged their convictions and sentences before the High Court through separate appeals, the appeal filed by Bashir Ahmed co-convict was allowed by the High Court and he was acquitted of the charge whereas the appeal filed by the appellant was dismissed to the extent of his conviction for the offence under section 302(b), PPC but the same was partly allowed to the extent of his sentence of death which was reduced by the High Court to imprisonment for life. Hence, the present appeal by leave of this Court granted on 18.03.2016.

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 the small hours of the fateful night, i.e. at 04.00 A.M. in the middle of November. The place of occurrence was inside the house of the appellant and according to the site-plan of the place of occurrence there was no other house or shop situated anywhere close to the house of occurrence. An FIR in respect of the incident in question had been lodged after about three hours and forty minutes and, thus, a possibility regarding deliberations before lodging of the FIR could not safely be ruled out of consideration. The eyewitnesses produced by the prosecution, i.e. Nausher Ali complainant (PW6) and Muhammad Fayyaz (PW7) were very closely related to Mst. Anwar Bibi deceased inasmuch as the complainant was a brother of the deceased whereas the other eyewitness was a brother-in-law of the complainant. Both the said eyewitnesses were also chance witnesses and they had claimed to have been attracted to the place of occurrence upon hue and cry of the deceased. As already mentioned above, there was no house or shop of any person situated anywhere close to the house of occurrence and, thus, it was not readily believable that the above mentioned eyewitnesses would be attracted to the place of occurrence upon hue and cry of

the deceased. Instead of providing support to the ocular account the medical evidence produced by the prosecution had gone a long way in creating dents in the case of the prosecution. Post-mortem examination of the deadbody had been conducted after about 13 hours of the death of the deceased giving rise to an inference that time had been consumed by the complainant party and the local police in cooking up a story for the prosecution and in procuring and planting eyewitnesses. The time of death of the deceased stated by the eyewitnesses was materially different from that discernable from the medical evidence. Bashir Ahmed co-accused, attributed an active role during the incident in issue, had been acquitted by the High Court which established that the eyewitnesses produced by the prosecution were capable of falsehood. The High Court had categorically concluded that no independent proof of the alleged motive had been adduced by the prosecution. As if this were not enough, a son of the deceased and also of the appellant had appeared before the trial court as DW1 and he had categorically stated that it was Nausher Ali complainant (PW6) who had murdered his mother and that the said murder had not been committed by the present appellant. That son of the deceased was a natural witness being a resident of the house wherein the occurrence had taken place and the time of occurrence was such that the said son of the deceased was likely to be present inside that house at the relevant time.

4. It has been argued by the learned Deputy Prosecutor-General, Punjab appearing for the State that the deceased in this case was a vulnerable dependent of the appellant and, thus, by virtue of the law declared by this Court in the cases of Saeed Ahmed v. The State (2015 SCMR 710) and Arshad Mehmood v. The State (2005 SCMR 1524) some part of the onus had shifted to the appellant to explain the circumstances in which his wife had died an unnatural death in his house during the fateful night which part of the onus had not been discharged by the appellant. We have attended to this aspect of the case with care and have found that when every other piece of evidence relied upon by the

prosecution has been found by us to be utterly unreliable then the appellant could not be convicted for the alleged murder simply on the basis of a supposition. The principle enunciated in the above mentioned cases of Saeed Ahmed v. The State (2015 SCMR 710) and Arshad Mehmood v. The State (2005 SCMR 1524) was explained further in the cases of Nasrullah alias Nasro v. The State (2017 SCMR 724) and Asad Khan v. The State (PLD 2017 SC 681) wherein it had been clarified that the above mentioned shifting of some part of the onus to the accused may not be relevant in a case where the entire case of the prosecution itself is not reliable and where the prosecution fails to produce any believable evidence. It is trite that in all such cases the initial onus of proof always lies upon the prosecution and if the prosecution fails to adduce reliable evidence in support of its own case then the accused person cannot be convicted merely on the basis of lack of discharge of some part of the onus on him.

5. For what has been discussed above a conclusion is irresistible and inescapable that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. This appeal is, therefore, allowed, the conviction and sentence of the appellant are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in connection with any other case.

Judge

Judge

Judge

Islamabad

07.02.2018

Approved for reporting.

Arif