

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Mushir Alam
Mr. Justice Dost Muhammad Khan

Criminal Petition No. 685 of 2015

(Against the judgment dated 13.07.2015 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeal No. 307 of 2009)

Niaz Ahmed

...Petitioner

versus

Hasrat Mahmood, etc.

...Respondents

For the petitioner: Sh. Ahsan-un-Din, ASC

For respondents No. 1-3: Mr. Tanvir Iqbal, ASC

Date of hearing: 04.11.2015

ORDER

Asif Saeed Khan Khosa, J.: We have heard the learned counsel for the petitioner at some length and have gone through the relevant record of the case appended with this petition.

2. As regards the merits of the case we have noticed that the occurrence in this case had taken place during a night and according to the FIR as well as the private complaint initially only a suspicion had been expressed by the petitioner against respondents No. 1 to 3 *vis-à-vis* their involvement in the murder in issue. During the trial the prosecution had based its case against respondents No. 1 to 3 only on circumstantial evidence in the shape of the last-seen evidence, motive and an extra-judicial confession. All the said three pieces of evidence had threadbarely been discussed by the trial court as well as the High Court and

both the courts below had concurred in their conclusion that the prosecution had remained unable to prove its case against respondents No. 1 to 3 beyond reasonable doubt and resultantly the trial court had acquitted the said respondents and the High Court had upheld such acquittal. Upon our own independent evaluation of the said pieces of evidence we have not been able to take a view of the matter different from that concurrently taken by the courts below.

3. It has vehemently been argued by the learned counsel for the petitioner that the petitioner had initially lodged an FIR in respect of the incident in question and subsequently, having remained dissatisfied with the investigation of the case by the local police, he had instituted a private complaint regarding the selfsame incident containing identical allegations as leveled in the FIR and, thus, by virtue of the law declared by this Court in many cases the trial court ought to have conducted the trial in the complaint case first and it ought not to have consolidated the complaint case and the Challan case for a joint and simultaneous trial. In this regard the learned counsel for the petitioner has placed reliance upon the cases of Nur Elahi v. The State, etc. (PLD 1966 SC 708), Mst. Rasool Bibi v. The State and another (2000 SCMR 641), Syed Muhammad Hussain Shah v. Abdul Hamid and 5 others (1981 SCMR 361) and Muhammad Azam v. Muhammad Iqbal and others (PLD 1984 SC 95). We have attended to the said argument advanced by the learned counsel for the petitioner and have also perused the precedent cases referred to by him in support of such contention. The law is settled by now that if different versions of the same incident are advanced by the rival parties through cross-cases and such different versions contain different sets of accused persons then trial of such cross-cases is to be held simultaneously and side by side and a reference in this respect may be made to the cases of Muhammad Sadiq v. The State and another (PLD 1971 SC 713), Abdul Rehman Bajwa v. Sultan and Nine others (PLJ 1981 SC 895), Rashid Ahmad v. Asghar Ali, etc. (1987 PSC 646) and Mst. Rasool Bibi v. The State and another (2000 SCMR 641). The law is

equally settled on the point that where the same party lodging the FIR also institutes a private complaint containing the same allegations against the same set of accused persons then the trial court is to hold a trial in the complainant case first and in the meanwhile the Challan case is to be kept dormant awaiting the fate of the trial in the complaint case and a reference in this respect may be made to the cases of Nur Elahi v. The State, etc. (PLD 1966 SC 708), Zulfiqar Ali Bhutto v. The State (PLD 1979 SC 53), Syed Muhammad Hussain Shah v. Abdul Hamid and 5 others (1981 SCMR 361), Mumtaz and others v. Mansoor Ahmed and another (NLR 1984 Cr.L.J. 300 (SC)), Rashid Ahmad v. Asghar Ali and others (PLD 1986 SC 737) and Aziz-ur-Rehman v. The State (PLD 1987 Lahore 245). In the case in hand the trial court had ordered a consolidated trial of the Challan case and the complainant case which apparently was not the recommended course to be adopted. Be that as it may the fact remains that the provisions of section 537, Cr.P.C. provide that no finding, sentence or order passed by a court of competent jurisdiction is to be reversed or altered in appeal or revision on account of any error, omission or irregularity in the mode of trial unless such error, omission or irregularity has in fact occasioned a failure of justice. An explanation attached with section 537, Cr.P.C. clarifies that in determining whether any error, omission or irregularity in any proceedings in the Code of Criminal Procedure has occasioned a failure of justice the court shall have regard to the fact whether an objection in that regard could and should have been raised at an earlier stage in the proceedings. In the present case we have pertinently noticed that after a consolidated trial having been ordered by the trial court the petitioner had never raised any objection throughout the trial against the mode of trial adopted. Apart from that the learned counsel for the petitioner has remained unable to convince us that the mode of trial adopted by the trial court had caused any failure of justice because whatever be the mode of trial adopted by the trial court the evidence available with the prosecution was not likely to improve. We have already noticed above that the evidence available with the prosecution was not worthy of implicit reliance

and, thus, the courts below have been found by us to be quite justified in concluding that the prosecution had failed to prove its case against respondents No. 1 to 3 beyond reasonable doubt. In these circumstances no occasion has been found by us for interference in the matter by this Court. This petition is, therefore, dismissed and leave to appeal is refused.

Judge

Judge

Judge

Islamabad

04.11.2015

Approved for reporting.

Arif