

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Qazi Faez Isa
Mr. Justice Tariq Parvez

Criminal Appeals No. 235 and 236 of 2010

(Against the judgment dated 08.04.2010 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeal No. 158 of 2006 and Murder Reference No. 486 of 2006)

***Muhammad Ameer
Riyat Khan***

*(in Cr. A. 235 of 2010)
(in Cr. A. 236 of 2010)*

...Appellants

versus

***Riyat Khan, etc.
The State***

*(in Cr. A. 235 of 2010)
(in Cr. A. 236 of 2010)*

...Respondents

For the appellants:

Mr. Sana Ullah Zahid, ASC
Mr. Ejaz Muhammad Khan, AOR
(late) *(in Cr. A. 235 of 2010)*
Syed Zulfiqar Abbas Naqvi, ASC
Mr. Arshad Ali Ch., AOR (absent)
(in Cr. A. 236 of 2010)

For respondent No. 1:

Syed Zulfiqar Abbas Naqvi, ASC
Mr. Arshad Ali Ch., AOR (absent)
(in Cr. A. 235 of 2010)

For the State:

Mr. Ahmed Raza Gillani, Additional
Prosecutor-General, Punjab
(in both cases)

Date of hearing:

26.04.2016

JUDGMENT

Asif Saeed Khan Khosa, J.:

Criminal Appeal No. 236 of 2010

At about 12.00 Noon on 24.03.2004 Riyat Khan appellant had allegedly stabbed one Muhammad Afzal on the left side of his

chest in Chak Thoa Mahram Khan within the area of Police Station Saddar, Talagang, District Chakwal which injury had proved fatal and the said Muhammad Afzal died two days later, i.e. on 26.03.2004. In respect of the said murder FIR No. 33 was registered at the above mentioned Police Station on 26.03.2004 on the basis of a dying declaration allegedly made by Muhammad Afzal deceased before the local police in a hospital. After a full-dressed 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 but on appeal his sentence of death was reduced by the High Court to imprisonment for life. Hence, the present appeal by leave of this Court granted on 25.05.2010.

2. Leave to appeal had been granted in this case so as to reappraise the evidence in order to examine as to whether the prosecution had succeeded in establishing the appellant's guilt beyond reasonable doubt or not. With the assistance of the learned counsel for the parties we have gone through the record of the case minutely.

3. The linchpin of this case was a dying declaration attributed to Muhammad Afzal deceased which declaration he had allegedly made before the local police in an injured condition in a hospital on 24.03.2004 and which was subsequently made the basis of an FIR two days later, i.e. on 26.03.2004. It has been found by us to be rather intriguing that if the dying declaration had actually been made by the deceased on 24.03.2004 before the police itself then why an FIR had not been chalked out on the basis of the same during the next two days. Another factor sufficient to raise an eyebrow in the context of the dying declaration is that Dr. Nazir Ahmed (PW2), under whose medical care Muhammad Afzal deceased was when alive, had categorically stated before the trial court that the police had not recorded any statement of Muhammad Afzal deceased in his presence and he had gone on to state that Muhammad Afzal deceased had never made any statement before him about the alleged occurrence. A dying

declaration is an exception to the hearsay rule and, thus, the same is to be scrutinized with due care and caution, particularly in the backdrop of the observations made by different Courts about veracity of a dying declaration in the Province of the Punjab and a reference in this respect may be made to the cases of Bakhshish Singh alias Bakhshi and others v. Emperor (AIR 1925 Lahore 549), Tawaib Khan and another v. The State (PLD 1970 SC 13) and Usman Shah and others v. The State (1969 P.Cr.L.J. 317). In the case in hand it quite clearly appears that Muhammad Afzal deceased had no regard for the truth because he had categorically stated in the so-called dying declaration that he was taken to the hospital in an injured condition by Ghulam Abbas (PW9) and by one Noor Muhammad but the above mentioned doctor had contradicted the deceased by stating that the deceased had been brought to the hospital in an injured condition by a police constable and on that occasion no private person was accompanying the deceased. Even Ghulam Abbas (PW9) had given a big lie to Muhammad Afzal deceased by unambiguously stating before the trial court that he had not taken Muhammad Afzal deceased to the hospital in an injured condition at all. The other person who had statedly taken Muhammad Afzal deceased to the hospital in an injured condition was Noor Muhammad but the record of the case shows that the said person, though cited in the Calendar of Witnesses, had been given up by the prosecution as unnecessary. The legal inference to be drawn in that context is that if the said witness had entered the witness-box then he would not have supported the case of the prosecution. All this shows that either Muhammad Afzal deceased had economized with the truth while making his dying declaration or the dying declaration itself was a fabricated document which had been manufactured at some subsequent stage for the purposes of implication of the present appellant and to justify availability of the so-called eyewitnesses. In these peculiar circumstances we have decided not to place any reliance upon such a document.

4. As already observed above, one of the eyewitnesses relied upon by the prosecution, i.e. Noor Muhammad had not been produced by the prosecution before the trial court and the ocular account was furnished in this case only by Ghulam Abbas (PW9). The said witness was a first cousin of Muhammad Afzal deceased and was admittedly a chance witness who ordinarily resided about one kilometer away from the place of occurrence. The stated reason for availability of this witness near the place of occurrence had never been established through any independent evidence at all. Apart from that the said witness had demonstrated an unusual conduct because according to him he had found the deceased in an injured condition, had shifted the deceased to the deceased's house and had then gone to attend a marriage ceremony rather than taking the injured close relative to a hospital or informing the police about the incident. The said so-called eyewitness had not received any independent corroboration from the motive or from the alleged recovery of the weapon of offence inasmuch as no witness had been produced by the prosecution to prove the alleged motive and the memorandum of the alleged recovery of the weapon of offence had admittedly been signed by the recovery witnesses at the police station and not at the place of recovery whereat such memorandum had allegedly been prepared.

5. For what has been discussed above a conclusion is inescapable and irresistible that the prosecution had failed to prove its case against Riyat Khan appellant beyond reasonable doubt. This appeal is, therefore, allowed, the conviction and sentence of the appellant recorded by the courts below 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.

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6. As respondent No. 1 namely Riyat Khan has been acquitted by this Court today upon acceptance of his Criminal Appeal No.

236 of 2010, therefore, the present appeal seeking enhancement of his sentence has lost its relevance. Dismissed.

Judge

Judge

Judge

Islamabad

26.04.2016

Approved for reporting.

Arif