

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam, Chairman
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed
Dr. Muhammad Al-Ghazali, Ad-hoc Member-I
Dr. Muhammad Khalid Masud, Ad-hoc Member-II

Criminal Shariat Appeal Nos.9 & 19/2017 and
Jail Shariat Petition No.02/2020

(Against the judgment dated 17.02.2015 passed by the Federal Shariat Court Islamabad in Jail Cr. Appeal Nos.15 to 19-I of 2014 along with Cr. Rev. No.2/Q/2014)

Muhammad Siddique

(Criminal Shariat Appeal No.9/2017)

Jamshaid

(Criminal Shariat Appeal No.19/2017)

Saif Ullah

(Jail Shariat Petition No.02/2020)

...Appellant/Petitioner(s)

Versus

The State

(in all cases)

...Respondent(s)

For the Appellant/
Petitioner(s):

Syed Rifaqat Hussain Shah,ASC/AOR
(in all cases)

For the Respondent(s):

Syed Baqir Shah, ASC/Standing counsel

Date of hearing:

03.12.2020.

ORDER

Qazi Muhammad Amin Ahmed, J:- Bakhat Bahadar, 50, was found lying dead in the bushes nearby his poultry farm located within the remit of Police Station Vandar, District Lasbela; the corpse was tied with ropes and plastic pipe; poultry flock comprising 5000 birds along with Saif Ullah and Jamshed, employed as attendants at the farm, were missing from the scene; they were named as suspects in the crime report, laid by deceased's brother Akhtar Zeb (PW-1). As the investigation progressed, Muhammad Siddique, Nadim Ahmed and Ata Muhammad were apprehended for being privies to the crime; they were indicted before a learned Additional Sessions Judge at Lasbela for committing *Qatl-i-Amd* of the deceased during the course of *Haraba*; they claimed trial that resulted into their convictions under section 396 read with section 34 of the Pakistan Penal Code, 1860 vide judgment dated 13.11.2013 whereunder Saifullah and Muhammad Siddique

were sentenced to imprisonment for life while Jamshed, Nadim Ahmed and Atta Muhammad to rigorous imprisonment for 10 years. The Federal Shariat Court vide impugned judgment dated 17.02.2015 maintained the convictions, however, enhanced sentence of Jamshed appellant to imprisonment for life; Nadim Ahmed and Atta Muhammad convicts are off the scene for having served out their sentences. Leave has been granted in *Shariat Appeal Nos.9 & 19 of 2019* separately filed by Muhammad Siddique and Jamshed, convicts clubbed with Jail Shariat Petition No.2 of 2020 filed by Saifullah; with a common thread, these are being decided through this single judgment.

2. Learned counsel for the convicts contends that the accused have been roped in the case on the basis of a misconceived and misplaced suspicion, subsequently structured upon various pieces of fake evidence, contrived belatedly to drive home the charge; that confession statement Ex.PW-8/C is manifestly bogus, fabricated to secure convictions in the absence of any tangible or reliable evidence. Contrarily, the learned Law Officer has faithfully defended the impugned judgment by arguing that Saifullah and Jamshed convicts were employed at the poultry farm, their absence from the scene after the brutal murder of Bakhtar Bahadar deceased is in itself a circumstance that speaks volumes about their guilt; according to him, subsequent recoveries and evidence furnished by independent witnesses regarding transportation of poultry birds at the weighing station under the supervision of Ata Muhammad accused, confirmed by Malkat Khan (PW-9), an independent witness, squarely framed the accused in the web of incriminatory circumstances that include seizure of sale receipts of the stolen flock from the possession of Nadim Ahmed whose disclosure led to the arrest of co-accused. Different pieces of evidence revolving around the confessional statement Ex.PW-8/C by Jamshed convict successfully drove home charge against all the accused beyond a shadow of doubt, concluded the learned Law Officer.

3. Heard. Record perused.

4. Prosecution case is structured upon various pieces of circumstantial evidence that prominently includes confessional statement of Jamshed appellant, recorded by a Judicial Magistrate (PW-8) on 11.04.2011; he was arrested on 7.4.2011 on the day when the dead body was spotted at the crime scene. Statement of Malkat Khan (PW-9), taken at its best, at the most possibly proves that Ata

Muhammad convict accompanied a poultry flock, incapable of being identified; he confronted the witness with a plea of alibi; according to him, on the fateful day, he attended a marriage ceremony as far away as in Karachi on 7.4.2011 and signed the marriage certificate as a witness on the said date; he himself appeared as a witness in disproof of charge with the support of two other witnesses to establish his plea.

Saifullah petitioner and Jamshed appellant were surprisingly not confronted with their alleged employment at the poultry farm, a grievous omission that escaped notice by both the courts below. According to the prosecution, the stolen flock was sold at an outlet under the name and style of *Al-Habib Agency*, though associated with the investigation, however, none from the outlet was produced during the trial to prove the sale and instead prosecution remained content with some computer generated receipts, genesis whereof is shrouded in mystery.

Prosecution appears to have rested its case on the judicial confession, retracted by Jamshed appellant at the first available opportunity. We have gone to the confessional statement (Ex.PW-8/C) to find it exasperatingly comprehensive as it contains even minutest details, remotely connected with the incident; spreading over six pages, it is compendium of the prosecution case that cannot be read without disquiet. A deponent struggling to cleanse his breast so as to ventilate the remorseful conscience, in the ordinary course of events would prefer to confine himself to the brevity of his crime instead of catering prosecution needs to successfully prosecute its case, otherwise placed in difficult straits. The exercise would essentially require either a prompter or an acquiescent scribe. The cautions administered to Jamshed appellant, on a printed form, mention that he was tortured by police during custody and, thus, in the totality of circumstances, it is difficult to assume, without potential risk of error that statement (Ex.PW-8/C) was a voluntary declaration of guilt that too without any meaningful corroboration. Once found suspect qua its maker, the confessional statement (Ex.PW-8/C) cannot be even considered vis-à-vis the co-accused. Fraught with doubts, compounded by inherent infirmities cumulatively fail to safely structure the charge. Consequently, convictions cannot be maintained. Criminal Shariat Appeals No.9 & 19 of 2019 are allowed; Jail Shariat petition No.2 of 2020 is converted into appeal and is also allowed; impugned judgment

Chairman

Member

Member

Islamabad, the
3rd December, 2020
Not approved for reporting
Azmat/-