

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.135/2018

Noor Ahmad

versus

The State

Appellant by: Barrister Khalique Zaman, Advocate.

State by: Mr. Sadaqat Ali Jahangir, State Counsel.

Date of Hearing: 11.06.2021.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:By way of this common judgment,

I intend to decide the captioned criminal appeal along with connected Jail Appeal No.129/2018 (Noor Ahmad vs. The State) arising out of judgment of the Additional Sessions Judge (East), Islamabad, dated 18.07.2018, passed in case FIR No.360, dated 25.07.2012, under Section 302 PPC, P.S. Shahzad Town, Islamabad, Islamabad, whereby petitioner has been convicted under Section 302-B PPC and sentenced to life imprisonment along with payment of compensation to the tune of Rs.100,000/- to the legal heirs of deceased, in default whereof, the appellant would have to suffer six (06) months simple imprisonment.

2. Succinctly, PW-8 Muhammad Sarwar (*complainant*) submitted complaint (Exh.PH) alleging that his wife, Bilqees Bibi, along with his daughter Zohra and son-in-law Younis, were living in the house of his niece, Parveen daughter of Allah Ditta, as tenant and caretaker because Parveen was living abroad in Dubai. On 25.07.2012, at about 6 p.m., the complainant along with his son-in-law went to the nearby house of his sister-in-law, Zubaida, leaving behind his wife Bilqees Bibi and daughter

Zohra in the house along with his maternal nephew, Noor Ahmad (*appellant*), per se, as soon as Zohra left the house to buy yogurt, the appellant using .30 bore pistol made multiple fire shots upon Bilqees Bibi leaving her dead at spot for the reason that the appellant wanted to occupy the house of his sister, Parveen. The complainant, Younis, Zubaida and Zohra on hearing gun shots turned towards their house where they witnessed the appellant fleeing away from the house. The complaint has been converted into FIR No.360/2012 (Exh.PG) and during the investigation, the appellant was found guilty, therefore, he was indicted for the murder of deceased, though he pleaded not guilty and claimed trial. The learned trial Court pursuant to recording of pro and contra evidence convicted and sentenced the appellant as referred in preceding paragraph. Hence, the captioned criminal appeal along with connected jail appeal.

3. Learned counsel for appellant contends that the crime empties recovered were sent to the Forensic Science Laboratory on 05.10.2012 i.e. with delay of 75 days, which clearly creates a doubt in the prosecution case, as such, the learned trial Court itself acknowledged this fact in the impugned judgment that the case of prosecution with respect to empties and recovery of pistol is discredited, even otherwise, the learned trial Court has also disbelieved the motive part but, the appellant has not been awarded any benefit of doubt of such lacunas; that the police did not get fingerprints from any item on the place of occurrence to prove the presence of appellant at the place of occurrence; that there are cuttings / overwriting in the postmortem report in the date, as such, many columns of the inquest report are empty; that there are glaring contradictions in the

statements recorded by PWs but the learned trial Court has misread the same and the passed the impugned judgment in a slipshod manner.

4. Conversely, learned State Counsel argued that the FIR of the incident has promptly been lodged; that the appellant committed the offence in presence of PW-9 Mst. Zohra Bibi, as such, the appellant despite lengthy cross-examination has failed to put any dent to the prosecution case; that the Investigating Officer has not been cross examined by the appellant, which amounts to admission of receiving of complaint and registration of FIR against the appellant; that the prosecution has proved the case beyond the shadow of reasonable doubt, based on which the learned trial Court has rightly convicted and sentenced the appellant.

5. Arguments heard, record perused.

6. Perusal of record reveals that PW-8 Muhammad Sarwar (complainant) has submitted the complaint Exh.PH stating that he is Labour by profession and he visited his daughter's house i.e. PW-9 Mst. Zohra Bibi, situated in New Shakrial, Islamabad to meet his wife and son-in-law, who were residing there with PW-9 Mst. Zohra Bibi. The said house is owned by the appellant's sister namely Parveen, who was living abroad. On 25.07.2012, he along with his son-in-law PW-10 Muhammad Younis went to the house of his sister-in-law i.e. Zubaida Bibi, situated nearby to the house of Parveen. When they reached to the house of Zubaida Bibi, they heard firearm shots, whereupon they returned to the house of Parveen and while on the way they saw the appellant going out of the house while armed with pistol, as such, when they entered into the house, the complainant saw his daughter weeping next to the dead body

of his wife (Bilqees Bibi) smeared in blood. The complaint Exh.PH has been converted into FIR No.360, dated 25.07.2012, under Section 302 PPC, P.S. Shahzad Town, Islamabad, referred as Exh.PG, after getting information from his daughter that appellant Noor Ahmad alias Noori made 3/4 fires upon Bilqees Bibi and murdered her. The motive alleged in the FIR was the house of Parveen, which was leased out to deceased through an agreement as Parveen had to left for Dubai, whereas the appellant intended to take away the said house by force, as for this purpose he directed the deceased on 2/3 occasions to vacate the house but, Parveen restricted the deceased not to do so.

7. The Investigating Officer i.e. PW-5 Javed Iqbal/ASI accompanied the main Investigating Officer Javed Iqbal/S.I. (deceased) on 25.07.2012, visited the place of occurrence, where dead body of deceased was lying smeared in blood, prepared the inquest report, submitted an application for postmortem and shifted the dead body to PIMS Hospital Mortuary through Faraz Naz (Lady Constable), as such, the postmortem was conducted on the following day due to late hours of the night.

8. PW-11 Fayaz Ahmad/S.H.O., P.S. Shahzad Town, Islamabad appeared in this case to verify the investigation conducted by late Javed Iqbal/S.I. (Investigating Officer) being his colleague and verified his writing and signatures on certain documents including the unscaled site plan and site plan of place of recovery of .30 bore pistol, as such, the main Investigating Officer was not produced being already expired before the trial was conducted in this case.

9. The postmortem of Bilqees Bibi (deceased) was conducted by PW-6 Dr. Nasreen Butt/CMO, PIMS Hospital on 26.07.2012, as per postmortem report (Exh.PD), the deceased had received the following injuries:

External Appearance

A young female height 5ft 4 inches, eyes closed, mouth semi open, wearing white Kameez & Shalwar.

Following injuries were found on the body of deceased.

There are three injury wounds on right side of chest. One is above right nipple, two below right breast.

One right side of upper abdomen.

There are four injury wounds on left breast, one injury is 2 c.m. below left breast, one near left axilla, one injury right side of shoulder posteriorly, one right chest lower end posteriorly upper chest.

One injury at right side illac crest upper end. One wound at left lower abdomen.

Two wounds, one entry at left forearm laterally below left elbow joint. Exit wound medially left forearm.

Opinion

In my opinion deceased died due to fire-arm injury which caused rupture and damage of both lungs, liver, heart, small & large intestines which caused death. All injuries are ante-mortem in nature and sufficient to cause death in ordinary course of life.

PW-6 Dr. Nasreen Butt/CMO confirmed that 16 injuries were found on dead body of deceased, however entry and exit details have not been provided. She also confirmed that different columns of inquest report Exh.PE/1-2 are empty and there was overwriting in date mentioned in the inquest report.

10. The entire prosecution case mainly revolves around PW-9 Mst. Zohra Bibi being the sole eyewitness of the murder of deceased at the

hands of appellant, who categorically stated that appellant came to the house as a guest and when her father (PW-8 Muhammad Sarwar) and husband (PW-10 Muhammad Younis) went to the house of Zubaida, as soon as she left the house at about 6:45 p.m. to buy yogurt, she heard gun shots, whereby she observed that the appellant was making fires upon her mother, whereupon she hide herself in fear. When the appellant ran away after commission of murder, she started crying, whereupon her father and husband came back to the house. She acknowledged that her father was permanent resident of Sheikhpura and used to visit Islamabad whenever he wanted to, whereas her husband works as Steel Fixer. The appellant is son of her real aunt (Khala). There is no denial that the place of occurrence is a populated area but, no resident of street recorded their statement before the police or Court. She concealed herself in the room after hearing the firing and she has not mentioned the descriptive feature qua the color of clothes worn by the appellant at the time of occurrence in any of her statement. It is in the evidence that she locked herself up in a room.

11. The testimony of PW-9 Mst. Zohra Bibi has critically been examined by the learned Trial Court as well as by this Court, as such, this Court is of the view that she is a natural witness of the incident being resident of the house, though she is real daughter of deceased but, this does not affect the veracity of her statement while having close relationship with the deceased, even she could not be considered as an interested witness but, a natural witness, as her mother was brutally done to death by the appellant by making 16 fire-arm shots, as determined by PW-6 Dr. Nasreen Butt.

12. While considering the cross examination of PW-9 Mst. Zohra Bibi being the sole eyewitness, it appears that appellant has half heartedly cross

examined the said witness and failed to achieve any objective to discredit said witness in any manner.

13. On the other hand, PW-8 Muhammad Sarwar, husband of deceased, has also seen the appellant while going out of the house with pistol in his right hand, such testimony remained unrebutted when defence side put a specific question in the cross examination in the following manner:

Question: Is it correct that you have not seen the accused doing anything in this case?

Answer: Accused was holding pistol in his hand and after coming out of my house, accused ran away towards left side.

The above mentioned stance substantiates the evidence of PW-8 Muhammad Sarwar being witness of *wajtakar*, even he acknowledged that residents of street were also gathered at the time of occurrence. It is the prosecution case that PW-8 Muhammad Sarwar has heard the fire shots and even the Investigating Officer has recovered five empties from the spot, though the complainant only suggested 3/4 fires in complaint Exh.PH but, this does not mean that he is discredited, rather he only justifies the conduct of appellant, who ran away after committing murder of Bilqees Bibi, as such, the evidence of PW-8 Muhammad Sarwar is confirmed to that extent only.

14. The other witness of *wajtakar* is PW-10 Muhammad Younis, who is son-in-law of deceased, reiterated his stance in line with testimony of the complainant, who also verified that the appellant while armed with pistol left the house and ran away towards the other street. The appellant while cross examining PW-10 Muhammad Younis verified that the place of occurrence i.e. house of Parveen and the place being visited by PW-8

Muhammad Sarwar and PW-10 Muhammad Younis is admittedly near to each other.

15. This Court has also taken into account the evidence collected by the late Investigating Officer, whereby recovery memo of .30 bore pistol (Exh.PK) only confirms five firearm empties recovered on 25.07.2012, whereas the weapon of offence was recovered through Exh.PC on 15.09.2012 in presence of Muhammad Younis/Constable and Aslam/Constable on the pointation of appellant near the green area (bushes) closer to Zia Masjid. This admitted position reveals that the place of recovery is an open place accessible to everyone, per se, such recovery from an open place is deprecated by the superior Courts in cases reported as 2016 SCMR 1605 (Muhammad Saleem v. Shabbir Ahmed, etc.), 2019 ylr Note 81 Lahore (Muhammad Iqbal vs. The State) and 2006 PCr.LJ 980 Lahore (Muhammad Nasrullah vs. The State).

16. There is no denial to the proposition that the crime empties were sent to FSL on 05.10.2012 with delay of 75 days, whereas the weapon of offence was sent to laboratory on 07.11.2012 i.e. 43 days after recovery and 102 days after the occurrence, which made the recovery inconsequential on the touchstone and principles laid down in cases reported as 2008 SCMR 1064 (Ghulam Akbar vs. The State) and 2008 SCMR 707 (Ali Sher vs. The State). In addition, the learned Trial Court has also disbelieved the said recoveries.

17. In nutshell, PW-9 Mst. Zohra Bibi being the eyewitness of the incident remained consistent and proved to be a natural witness, who has successfully gone through the test of cross examination and her stance could not be shaken by the appellant, as such, her presence at the place of

occurrence is justified. Her statement has also been corroborated by the witnesses of last seen i.e. PW-8 Muhammad Sarwar (complainant) and PW-10 Muhammad Younis, husband of PW-9 Mst. Zohra Bibi, as such, the phenomena of last seen is a recognized concept, as referred in 2007 SCMR 778 (Binyamin alias Khari vs. The State). Though, the learned Trial Court has disbelieved the testimonies of PW-8 Muhammad Sarwar and PW-10 Muhammad Younis, but this Court opines contrarily that they are only witness to the events that they left the deceased lady along with her daughter PW-9 Mst. Zohra Bibi and the appellant in the house, which has not been denied through any manner by the appellant side nor their presence has been disbelieved on the day of occurrence by the then Investigating Officer, hence their testimonies are considered to be corroborated piece of evidence, which strengthens the case of PW-9 Mst. Zohra Bibi being the sole eyewitness.

18. The complainant suggested the motive in complaint (Exh.PH) that the deceased has obtained the house (place of occurrence) on rent from her sister (Parveen) through written agreement and thereafter she (Parveen) left for Dubai for a job. The appellant being real brother intended to usurp the house being disputed property and in this regard he made certain attempts on 2/3 occasions, however no independent justification has been brought on record in order to verify the alleged motive, per se, the motive as suggested might be true but, same could not be believed unless it is justified from any other record, even nothing has been suggested from the evidence in documented manner to prove the lease of house, hence the learned Trial Court has rightly excluded the motive from consideration.

19. This Court has observed certain minor contradictions in the prosecution evidence but, the same have no bearing on the case of PW-9 Mst. Zohra Bibi being the sole eyewitness, who has verified and translated the entire incident, even expressed her own fear in which she locked herself up in a room to save herself from any extended action at the hands of appellant, therefore, this Court believes the testimony of PW-9 Mst. Zohra Bibi.

20. That apart, the medical evidence suggests that deceased received 16 firearm injuries, 03 on right side of chest, 01 on right side of upper abdomen, 04 injuries wounds on left breast (01 below left breast, 01 near left axilla, 01 at right side of shoulder and 01 at right chest lower end posteriorly upper chest), 01 at right side iliac crest upper end, 01 at left lower abdomen and 01 entry wound at left forearm. All these injuries reveal that the appellant had a clear intention to commit murder of deceased as he made repeated fires on an innocent lady. Firing on vital part of the deceased i.e. upper side of chest further confirms the appellant's state of mind, who intended to commit murder of deceased having knowledge that causing injuries at such part of body would not create any exception to life.

21. All these factums persuaded this Court to believe that testimony of PW-9 Mst. Zohra Bibi is straight, simple and natural, whose mother was done to death by the appellant in front of her and there is no occasion to disbelieve such evidence, as such, this Court is mindful of the fact that the motive has not been proved and recovery is inconsequential, but all these factors do not create any doubt in this case, therefore, the learned Trial Court has rightly passed the conviction while considering life

imprisonment to the appellant as valid punishment on the touchstone of judgment reported as 1993 SCMR 585 (Government of Sindh through Advocate General v. Sobharo) and PLD 1975 SC 160 (Syed Mushtaq Ahmad v. Siddiqullah, etc.), where non proving of motive reacts to the sentence. Even otherwise, the appellant has failed to point out any illegality in the impugned judgment.

22. In view of above, the captioned Criminal Appeal No.135/2018 and connected Jail Appeal No.129/2018 are misconceived and same are hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 23rd June, 2021.

JUDGE

Khalid Z.