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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI, CJ

MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Jail Petition No.29 of 2021

(On appeal against the judgment dated 30.11.2020 passed by the Islamabad High Court, Islamabad in Criminal Appeal No.50 of 2016)

Sikandar Ali alias Bhola

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Anis Muhammad Shahzad ASC

For the State: Ms. Chand Bibi, DPG Islamabad with Imran Munir SI

For the complainant: N/R

Date of Hearing: 13.01.2025

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JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Sikandar Ali alias Bhola petitioner was tried by the learned Additional Sessions Judge, Islamabad-West, pursuant to a case FIR No.521, dated 16.10.012, under Sections 302/34 PPC, registered at Police Station Margalla, Islamabad. The learned Trial Court vide its judgment dated 24.02.2016 convicted and sentenced the petitioner as under:-

Under Section 302(b) PPC

Imprisonment for life as Tazir with the direction to pay Rs.500,000/- as compensation to the legal heirs of the deceased, as envisaged under section 544-A Cr.P.C and in default thereof to further undergo 06 months SI.

Benefit of section 382-B Cr.P.C, was also extended to the petitioner.

In appeal, the learned High Court maintained the conviction and sentence awarded to Sikandar Ali alias Bhola (petitioner) under section 302(b) PPC.

2. Arguments heard. Record perused.

3. Since there is no direct evidence and the prosecution case hinges upon the circumstantial evidence, therefore, utmost care and caution is required for reaching at a just decision of the case. It is settled by now that in such like cases every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused. But if any link in the chain is missing then its benefit must go to the accused. In this regard, guidance has been sought from the judgments reported as 'Ch. Barkat Ali vs. Major Karam Elahi Zia and another' (1992 SCMR 1047), 'Sarfraz Khan Vs. The State' (1996 SCMR 188) and 'Asadullah and another vs. The State' (PLJ 1999 SC 1018). In the case of Ch. Barkat Ali (supra), at page 1055, it has been held as under:-

'...Law relating to circumstantial evidence that proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused. See 'Siraj vs. The Crown' (PLD 1956 FC 123). In a case of circumstantial evidence, the rule is that no link in the chain should be broken and that the circumstances should be such as cannot be explained away on any hypothesis other than the guilt of the accused.'

Similarly in the case of Sarfraz Khan (supra), at page 192, it has been held as under:-

7....It is well settled that circumstantial evidence should be so inter-connected that

it forms such a continuous chain that its one end touches the dead body and other to the neck of the accused thereby excluding all the hypothesis of his innocence.'

Further reliance in this context is placed on the case of 'Altaf Hussain vs. Fakhar Hussain and another' (2008 SCMR 1103) wherein, at page 1105 it was held as under:-

7....Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of a complete chain, one corner of which should touch the body of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain.'

Keeping in view the guidelines given in the above-referred judgments, we proceed to decide the instant case in the light of evidence produced in this case.

4. We have noted that the occurrence in this case took place on 12.10.2012 but the FIR was lodged on 16.10.2012 and as such there is delay of about four (04) days in lodging the FIR.

5. The petitioner was not named in the FIR, which was lodged with the delay of four (04) days from the occurrence. The petitioner has been implicated in this case on the basis of statement of Mst. Faiza Bibi (PW-4), who was daughter of the complainant. The said statement was recorded on 18.10.2012 i.e., with the delay of about 06 days from the occurrence. Mst. Faiza Bibi (PW-4), stated that she was 23 years old at the time of making of her statement before the learned trial Court, which was recorded on 25.06.2014, it means that she was 21 years old at the time of registration of FIR. She alleged that Sikandar Ali alias Bholla petitioner/accused was brother-in-law of her aunty Sobia. The petitioner developed illicit relationship with her mother Mst. Shazia Kausar (co-accused since

died) and when this relation came to the knowledge of her father namely Muhammad Asif (deceased), he forbade the petitioner from coming to their house and also restrained her mother namely Mst. Shazia Kausar (co-accused since died), from meeting with the petitioner, failing which he would pronounce divorce to her. She further stated that on 11.10.2012, at the time of *ISHA* prayer, her mother namely Mst. Shazia Kausar (co-accused since died), served a cup of tea but she smelled medicine and after taking 2/3 sips, she quit taking tea. She further alleged that on the night of 11.10.2012, her mother Mst. Shazia Kausar (co-accused since died), took Sikandar Ali alias Bhola (petitioner) in her own room and forbade her (Mst. Faiza Bibi PW-4), from giving the abovementioned information to her father. She also stated that her father was murdered through strangulation by Sikandar Ali alias Bhola (petitioner) and her mother namely Mst. Shazia Kausar (co-accused since died). The name of Mst. Faiza Bibi (PW-4), was mentioned in the contents of the FIR, wherein no such allegations were levelled against the petitioner rather the petitioner was not named in the FIR. It was mentioned in the FIR that on 12.10.2012, at 7.30 a.m, Mst. Shazia Kausar (co-accused since died), went out of her house on duty and Mst. Faiza Bibi (PW-4), when tried to wake up her father namely Muhammad Asif (deceased), at 9.00 a.m, she came to know that her father had already died. FIR was lodged against the unknown accused. The abovementioned story of illicit relationship of Mst. Shazia Kausar (co-accused since died) with the petitioner was not mentioned in the FIR. It is not understandable that when there was earlier dispute between the petitioner and father of Mst. Faiza Bibi (PW-4), on account of illicit

relationship of her mother with the petitioner, then as to why the said fact were not mentioned in the FIR, which was lodged after four days from the occurrence. We have further noted that although Mst. Faiza Bibi (PW-4), stated that her mother Mst. Shazia Kausar (co-accused since died), one day prior to the occurrence served her a cup of tea, which contain some medicine but neither any such cup has been recovered from the house, where the occurrence took place nor there is any medico legal report or PFSA report to support the said claim of Mst. Faiza Bibi (PW-4). Mst. Faiza Bibi (PW-4), while giving the abovementioned statement has tried to give an impression that her father was also administered some medicine, which can cause intoxication before his murder but according to the report of PFSA (Ex.PAA), no poison or drugs were detected in the viscera of the deceased. It is also noteworthy that Mst. Faiza Bibi (PW-4), stated that they were total six brothers and sisters and her sister namely Mst. Hifza Bibi was married. She further stated that she herself was working in Naval complex. She also stated that her remaining brothers and sisters were from the age of nine (09) years to eighteen and half (18½) years and their all brothers and sisters were residing in their parents' house i.e., the house of occurrence. It is, therefore, not understandable that if no medicine, which can cause intoxication was administered to Muhammad Asif (deceased), before his death, then he must had offered resistance at the time of occurrence and had also raised hue and cry but nobody out of the abovementioned six (06) children of the deceased intervened at the time of occurrence.

The postmortem report of Muhammad Asif (deceased), also shows that there were six injuries on the body of the deceased, which also suggest that the deceased offered strong resistance before his murder and considerable time must have been consumed while inflicting the said injuries but there is no allegation that any prosecution witness had heard the noise of the deceased at the time of occurrence.

6. It is not understandable that when there was earlier serious dispute between the petitioner and the deceased and the petitioner was earlier forbidden by the deceased from coming to his house then as to why Mst. Faiza Bibi (PW-4), did not raise any hue and cry on the night of occurrence to attract her other brothers, sisters and people of the locality, when she saw that her mother Mst. Shazia Kausar co-accused (since died), took the petitioner inside the room of her father. The conduct of Mst. Faiza Bibi (PW-4), who was 21-years of age at the time of occurrence is highly un-natural, which makes her evidence un-reliable as observed in the cases of **“Liaquat Ali Vs. The State” (2008 SCMR 95)**, **“Pathan Vs. The State” (2015 SCMR 315)** and **“Zafar Vs. The State and others” (2018 SCMR 326)**, wherein the evidence of eye-witnesses was discarded on account of their un-natural conduct at the time of occurrence.

7. Learned DPG has vehemently argued that Mst. Shazia Kausar (co-accused since died), made a judicial confession before Imran Ali Sultan, Magistrate/AC Industrial, Islamabad (*PW did not appear before the learned trial Court despite hectic efforts and secondary evidence of Zia ul Haq Reader was recorded*), which is a strong piece of evidence against the petitioner but we have noted

that judicial confession of Mst. Shazia Kausar (co-accused since died), is exculpatory in nature. Mst. Shazia Kausar (co-accused since died), herself stated during her judicial confession that Sikandar Ali alias Bhola (petitioner) forcibly administered her some sleeping pills and thereafter he administered her something in the tea due to which she went to sleep, where-after the petitioner committed the murder of Muhammad Asif (deceased). She had not stated that she also committed the murder of her husband or she participated in the occurrence. She shifted the entire burden of the murder of her husband on the shoulders of the petitioner. on the other hand, the petitioner has not made any judicial confession, therefore, the above-mentioned judicial confession of Mst. Shazia Kausar (co-accused since died), which is exculpatory in nature, cannot be used against the petitioner.

8. Insofar as the recovery of a rope on the pointing out of the petitioner is concerned, the same was recovered from an open place i.e., under the trees situated in the naval complex, Islamabad. The said place was accessible to the public and the same was not in exclusive possession of the petitioner. Moreover, the abovementioned rope was not sent to the office of PFSA in order to determine that as to whether the same was stained with any hair, skin, tissue or blood of the deceased.

Although a pillow was also recovered in this case from the room of the deceased on the pointing out of Mst. Shazia Kausar (co-accused since died), with the allegation that with the help of said pillow, Muhammad Asif (deceased), was murdered through asphyxia, however, according to the postmortem report, blood was coming out from the nostrils and ears of Muhammad Asif

(deceased) but there is no report of PFSA, qua the presence of blood on the abovementioned pillow. We are, therefore, of the view that the abovementioned recovery of rope and pillow are in consequential for the prosecution case.

9. The motive of illicit relationship of the petitioner with the wife of the deceased namely Mst. Shazia Kausar (co-accused since died), was not mentioned in the FIR, which was lodged with the delay of about four (04) days from the occurrence. The abovementioned motive was introduced through the statement of Mst. Faiza Bibi (PW-4), on 18.10.2012 i.e., after six days from the occurrence and two days from the registration of FIR. No convincing reason whatsoever has been mentioned by Mst. Faiza Bibi (PW-4), who was 21 years old at the time of occurrence that as to why the abovementioned motive was not mentioned in the FIR. As mentioned earlier, she claimed that the petitioner was forbidden by her father namely Muhammad Asif (deceased), from coming to their house and on the night of occurrence, the petitioner again came to the house of the complainant party and went inside the room of her mother, where her father was murdered but she did not raise any objection on the visit of the petitioner to her house or raised hue and cry to attract her other family members and people of the locality. She remained mum for considerable time and did not utter a single word regarding the abovementioned motive. Admittedly Mst. Shazia Kausar (co-accused since died) remained wife of Muhammad Asif (deceased) till the time of her death and neither she was divorced by the deceased on account of the abovementioned illicit relationship nor there was any litigation due to abovementioned alleged motive. We are, therefore, of the view that

the prosecution story *qua* the motive is result of an afterthought and the same has not been proved in this case.

10. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the petitioner beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Consequently, this petition is converted into an appeal and allowed. The impugned judgment is set aside. The petitioner is acquitted of the charge while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

Islamabad, the
13th of January, 2025
Not Approved For Reporting
Ahtaz