

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE SHAHID WAHEED

AFR-DJ

JAIL PETITION NO. 300 OF 2022

(On appeal against the judgment dated
17.05.2022 passed by the Lahore High Court,
Bahawalpur Bench in Criminal Appeal No.
215/2021 and Criminal Revision No. 109/2021)

Saghir Ahmed

...Petitioner(s)

VERSUS

The State etc

...Respondent(s)

For the Petitioner(s):

Malik Muhammad Aslam, ASC
Syed Rifaqat Hussain Shah, AOR

For the State:

Mirza Muhammad Usman, DPG

For the Complainant:

In person

Date of Hearing:

28.11.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner along with three co-accused was tried by the learned Additional Sessions Judge, Fortabbas pursuant to a case registered vide FIR No. 135/2020 under Sections 377/506-B/337-H(ii)/377-B/34 PPC at Police Station Maroot for committing sodomy with son of the complainant. The learned Trial Court vide its judgment dated 22.04.2021 while acquitting the co-accused, convicted the petitioner under Section 377 PPC and sentenced him to ten years RI along with fine of Rs.200,000/- or in default whereof to further undergo six months SI. In case of realization of fine, the same was ordered to be given to the victim as compensation. Benefit of Section 382-B Cr.P.C. was also extended in his favour. In appeal the learned High Court while maintaining the conviction of the petitioner under Section 377 PPC, reduced the

quantum of punishment to five years RI. The amount of compensation and the sentence in default whereof and the benefit of Section 382-B Cr.P.C. was also maintained. Hence, the instant jail petition seeking leave to appeal.

2. The prosecution story as given in the impugned judgment reads as under:-

"2. The prosecution story as portrayed in the FIR lodged on the complaint of Nasir Mehmood, complainant (PW-1) is to the effect that on 08.04.2020 at about 07.40 pm, when Muneeb-ur-Rehman, complainant's son, aged about 9/10 years old who had gone to the shop of the accused to get repair the mobile, did not return, the complainant along with Zaheer Ahmed, Muhammad Abid went to his shop and found the shutter of shop more than half down while the light on, son of the complainant weeping and witnessed underneath the shutter, the accused committed sodomy with him, who upon seeing them, pull down the shutter and locked it and thereafter he called his relatives through telephone and after a while, Muhammad Asif, Muhammad Khalid and Naseer Ahmed armed with pistols reached there, asked the accused not to worry upon which, the accused opened the shutter and started aerial firing while loading his pistol. The accused persons threatened them to kill and accused Asif etc took the accused Saghir Ahmad and fled away."

3. After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced as many as nine witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. He did not appear in his own defence under Section 340(2) Cr.P.C. However, he produced copy of FIR No. 115/2020 under Sections 452/148/149 PPC at Police Station Maroot as Exh.DB in his defence.

4. At the very outset, learned counsel for the petitioner contends that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which have escaped the notice of the learned courts below. Contends that the medical evidence in the shape of medico legal report as also the report of the Forensic Science Agency does not support the ocular account. Lastly contends that the reasons given

by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer assisted by the complainant in person vehemently opposed the petition. It has been contended that the prosecution witnesses had no enmity with the petitioner to falsely implicate him in the present case and their testimony is in line with the medical evidence, therefore, the petitioner does not deserve any leniency from this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

It is the case of the prosecution that on 08.04.2020 at about 07.40 pm, the son of the complainant namely Muneeb-ur-Rehman aged about 9/10 years went to the shop of petitioner Zaheer Ahmed to get the mobile phone repaired. However, he did not return in time, which prompted the complainant to go to the shop of the petitioner. When the complainant along with other eye-witnesses came at the shop of the petitioner, they saw that shutter of the shop was down more than half and light was on. When they saw underneath, the petitioner was committing sodomy with the son of the complainant. There is no denial to this fact that the victim was medically examined on the same day by Dr. Muhammad Zeeshan, Medical Officer (PW-9). The medical report, which is available at page 84 of the paper book, clearly states that the *"child has not yet defected, nor took shower or clean the area after the act. On general physically examination, no signs of physical trauma noted on body."* The doctor further observed that *"there is mild redness around the anal sphincter. No bruise, no swelling, no abrasion or laceration noted on skin around anal sphincter."* The victim neither complained of pain on walking or defecation. The doctor took two external and three internal anal swabs and sent the same to Forensic Science Laboratory for DNA analysis. The Punjab Forensic Science Agency gave its report on 27.10.2020 but it did not give

any definite finding and the report just denotes that *"the victim may have been victimized with the act of sodomy."* In this view of the matter, the report of the Forensic Science Agency can be interpreted in two ways, one in favour of the petitioner and second against him. However, it is a well settled principle of law that if two views are possible on the evidence adduced in the case, one indicating the guilt of accused and other to his innocence, the view favourable to the accused is to be adopted. Reliance is placed on Shahid Orakzai Vs. Pakistan Muslim League (2000 SCMR 1969), Ijaz Hussain Vs. The State (2002 SCMR 1455), Iftikhar Hussain and others Vs. The State (2004 SCMR 1185) and Muhammad Zubair Vs The State (2010 SCMR 182). Mere heinousness of the offence if not proved to the hilt is not a ground to punish an accused. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, *"Better that ten guilty persons escape, than that one innocent suffer."* Benjamin Franklin, who was one of the leading figures of early American history, went further arguing *"it is better a hundred guilty persons should escape than one innocent person should suffer."* The above report of the Forensic Science Laboratory is sufficient to cast a shadow of doubt on the prosecution case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner. This Court in the case of Mst. Asia Bibi Vs. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that *"if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1995 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)."* The same view was reiterated in Abdul Jabbar vs. State (2019 SCMR 129) when this Court observed that once a

single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

7. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment. The petitioner is acquitted of the charge. He shall be released from jail forthwith unless detained/required in any other case. The above are the detailed reasons of our short order of even date.

Islamabad, the
28th of November, 2022
Approved For Reporting
Khurram