JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR
[JUDICIAL DEPARTMENT]

Criminal Appeal No. 616-P/2017

Farooq vs. the State.

Date of hearing 07.12.2021

Appellant (s) (by) M/S Astaghfirullah & Yaseen ullah, Advocates.

The State (by) Mr. Mujahid Ali khan, Addl: AG.

Complainant (by) Mr. Ismail khan, Advocate.

JUDGMENT

MUSARRAT HILALI, J.- This criminal appeal is directed against the judgment dated 16.09.2017, rendered by learned Additional Sessions Judge-II/Judge, Juvenile Court, Camp Court, Lahor, District Swabi, whereby the accused-appellant was convicted under section 302(b) PPC and sentenced to imprisonment for life with compensation of Rs. 5,00,000/-, payable to the legal heirs of the deceased, or in default thereof to undergo further six months SI with benefit of Section 382-B Cr.P.C.

2. Concise facts of the instant criminal appeal as reflected from the record are that on 21.12.2014, Noor Taj Ali lodged a report to the police in RHC, Yar Hussain, to the effect that on the eventful day, he along with his brothers Arshad Ali and Farhad Ali was

present in his house, when at 11.00 hours heard a report of fire shot, upon which they rushed to the Hujra where found his son Asim lying in a pool of blood, while Farooq (the appellant) armed with pistol was running from the Hujra. He further stated in his report that Asim and Farooq were class fellows and studying in Yar Hussain model School. Motive for the offence was that few days prior to the occurrence exchange of hot words were taken place between them. Shoukat Hussain Khan SI (PW-5) recorded report of the complainant in shape of Murasilla, on the basis of which, the present case FIR No. 515, dated 21.12.2014, under section 302 PPC was registered at Police Station, Yar Hussain.

3. After completion of investigation, complete challan was submitted against the accused-appellant to the Court of learned Additional Sessions Judge-II, Camp Court Lahor, Swabi. Since the accused-appellant was below the age of eighteen years, therefore, his case was tried by Judge, Juvenile Court, where at the commencement of trial, the prosecution produced nine (09) witnesses. On closure of the prosecution evidence, accused-appellant was examined under section 342 Cr.P.C, wherein he describing himself as scape-goat, denied the charges,

professed innocence and stated to have falsely been implicated in the case. He, however, wished to produce no defence nor wanted to examine himself on oath as required under section 340 (2) Cr.P.C. On conclusion of the trial, the learned trial Court convicted and sentenced the appellant, as mentioned above, vide judgment dated 06.09.2017, the legality and validity of which has been challenged by the appellant through the instant criminal appeal. Noor Taj Ali, the complainant, has also filed a **criminal revision No. 129-P/2017** for enhancement of the sentence. Since both the criminal appeal and criminal revision have been filed against one and same judgment, therefore, we propose to dispose of the same through this single judgment.

4. Learned counsel for the convict-appellant contended that the prosecution has fabricated the first information report on which no reliance should have been placed by the learned trial court; that neither there is eyewitness to the alleged occurrence nor the motive as alleged by the prosecution has been proved; that complainant and PW-8 being closely related to the deceased are interested witnesses, therefore, their testimony cannot be relied upon; that an empty .12 bore

allegedly recovered from the spot did not match the .12 bore pistol, which aspect of the case further makes the story of prosecution doubtful; further that the prosecution has badly failed to prove its case against the appellant by producing reliable and independent evidence; that the learned trial Court has not scrutinized the evidence of prosecution witnesses in accordance with recognized principles of appreciation of evidence available on record, rather based its judgment on the basis of conjecture and surmises, therefore, the impugned judgment is against the law and without any cogent evidence, as such, the same is liable to be set aside and the appellant be acquitted of the charge.

5. As against that learned AAG assisted by learned counsel for the complainant argued that the evidence furnished by the complainant and eyewitness (PW-8) is not liable to be questioned on any ground because same are candid and honest by stating the fact what they have seen on the spot, despite the fact that they could have exaggerated their statements; that the appellant is the single accused, who is charged directly in the promptly lodged FIR by name and that the ocular account is corroborated by the medical evidence as well as strong

circumstantial evidence; that the occurrence took place in broad day light and the appellant is also co-villager of the complainant party, therefore, question of mis-identification or false charge is also out of consideration; that the convict-appellant has committed the brutal murder of a boy, below the age of eighteen years; therefore, deserves no leniency and his sentence may be enhanced to death.

6. We have considered the arguments advanced by learned counsel for the parties and the State and gone through the entire record with their valuable assistance.

7. The homicidal death of deceased Asim, aged about thirteen years, has been established from the P.M documents as well as statements of PW-6 Dr. Muddasir Iqbal. According to his opinion, the death of the deceased had occurred due to injuries to brain and membrane, caused by firearm. The question as to whether it was the appellant, who had committed the murder of the deceased Asim or otherwise is concerned, perusal of the record would reveal that the appellant has been charged by complainant Noor Taj Ali (PW-7) in a promptly lodged report within forty-five minutes, which ruled out the possibility of deliberations or consultations, as the

occurrence took place on 21.12.2014 at 1100 hours, while the report was lodged by him at 11.45 hours. The complainant appeared as PW-7 and gave details of the occurrence by supporting the contents of FIR. According to his statement, he was present in his house along with his brothers Irshad Ali and Farhad Ali when at 1100 hours heard report of fire shot, upon which they rushed to the Hujra where he found his son Asim in a pool of blood while appellant armed with pistol was seen by them running from the Hujra. His testimony was also supported by Irshad Ali (PW-08), who is uncle of the deceased, and furnished the details of unfortunate incident. He fully explained his presence on the spot. As per site plan, points of complainant and Irshad Ali (PW-8) were close to the place of deceased and they on hearing the report of fire shot sharply went out from the house and attracted the appellant armed with pistol while running from the spot, therefore, keeping in view the relationship with the deceased and their residence, their presence at the scene of incident cannot be doubted.

There is no cavil to the proposition that in such like criminal cases, the whole fate depends on the authenticity of the ocular account and in the instant case,

both the eye-witnesses have given an honest and straightforward account of the occurrence of murder of deceased. They could have exaggerated the story by stating that the deceased was fired at in their presence but instead they gave a confidence inspiring testimony by stating that they at the time of occurrence had seen the appellant duly armed with pistol running from the spot. Even otherwise, it is not expected from such close relationship i.e. real father and paternal uncle of the deceased, that they would let the real offender of their teenage loved one, go scot-free and would falsely implicate the present appellant. Rel: **(PLD 2001 Supreme Court 222).** Both the PWs remained stuck to their statements and nothing material was brought on record to create uncertainty in their evidence in spite of lengthy examination. Therefore, on thorough scrutiny and appraisal of record, their un-impeached versions are apparently truthful and confidence inspiring.

8. No doubt, both the star witnesses of the prosecution are relative of the deceased but it is settled law by now that interested witness is the one who has an animosity for false charge and mere relationship of a witness to the deceased is not enough to discard his

testimony. The defence has also failed to bring on record an iota of evidence to prove any ulterior motive of the complainant and PW-8 to falsely implicate the appellant. Hon'ble the apex Court in number of cases has held that statement of a witness cannot be disbelieved solely on the plea that he is related to the deceased when there is no motive to falsely implicate the accused. **Rel: Sheeraz Tufail v. The State (2007 SCMR 518).** Same principle was also reiterated in the case titled **Muhammad Amin vs. the State (2000 S C M R 1784)** wherein Hon'ble the apex court has held that friendship or relationship with the deceased is not sufficient to discredit a witness particularly when there is no motive to falsely involve the accused. The general rule for appreciation of evidence as held by the apex court in a case **titled Haroon alias Haroni vs the State (1995 SCMR 1627)** is that the statement of a witness must be in consonance with the probabilities, fitting in the circumstances of the case and also inspire confidence in the mind of a reasonable prudent man and if these elements are present, then the statement of worst enemy of an accused may be accepted and relied upon without corroboration. Viewing the testimony of these witnesses in the light of aforesaid

criteria, we do not find their testimony as tainted or they had any motive to falsely implicate the appellant nor any enmity worth the name has been brought on record to show that they were implicating the appellant-convict in the case falsely, thus, in view of the above discussed reasons, we are satisfied that the evidence of complainant and Irshad Ali (PW-8) was rightly relied by the trial court.

9. As is evident from the record that it was a day light occurrence and appellant was already known to complainant and PW-8 being their co-villager, therefore, no question of misidentification arises. The case of prosecution has further been supported by the P.M documents as well as recovery of an empty of 12 bore, blood stained earth from the spot, blood stained garments of the deceased and discovery of .12 bore pistol as weapon of offence at pointation of the appellant.

10. Learned counsel for the appellant, no doubt, pointed out certain discrepancies in the statements of prosecution witnesses but the same being minor in nature are of no consequences. Besides, the discrepancies as pointed out by the defence are bound to occur even in the statements of truthful and honest witnesses due to lapse

of time, therefore, in presence of such discrepancies the prosecution case cannot be thrown overboard. As far as FSL report of a 12 bore empty with the pistol recovered on pointation of accused-appellant is concerned, there can be no implication of the said report on the instant case as no opinion was formed by the expert. The argument of learned defence counsel that the motive is far away from being established on record has also no force as it has now been settled by the august apex court in a case titled **Muhammad Hayat vs. the State (1996 SCMR 1411)** that absence of motive or failure of the prosecution to prove it does not adversely affect the testimony of the eye-witnesses, if they are otherwise reliable.

11. For the aforementioned reasons, we are fully satisfied that the prosecution has succeeded in establishing the guilt of the appellant. The judgment of conviction and sentences passed against the appellant is based on correct appreciation of evidence on record and there is nothing to indicate that it is either based on any error of law or the same is different to well-established principles of judicial approach or the same can in any manner be characterized as unjustified. Therefore, the

judgment of conviction and sentences recorded by the trial Court is maintained and this appeal being without merit is hereby dismissed.

13. As far as quantum of sentence to the appellant is concerned, he being child below age of eighteen years as defined under section 2(b) of Juvenile Justice System Ordinance, 2018, and under section 16 of the Act, no person who was a juvenile offender at the time of commission of an offence shall be awarded punishment of death, therefore, criminal revision No. 129-P/2017 for enhancement of sentence is also dismissed.

Announced
07.12.2021
M.Zafral P.S

JUDGE

JUDGE

(DB) Hon`ble Mr. Justice Lal Jan Khattak
Hon`ble Justice Musarrat Hilali