

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.J. No. 28-D of 2015

JUDGMENT

Date of hearing 04.07.2017

Appellant-petitioner Nazir Ahmad by Shahzad Nawaz Mehsud

Advocate

Respondent State by Mr. Adnan Ali AAG and Mr. Saifur

Rehman Khan Advocate for complainant

MUHAMMAD AYUB KHAN, J.- Through this single judgment, we propose to dispose of instant Criminal Appeal No.28-D/2015 filed by appellant Nazir Ahmad against his conviction and sentence and Criminal Revision No.4-D/2015 filed by Allah Ditta complainant for enhancement of sentence awarded to appellant as both the matters are the outcome of one and the same judgment dated 20.4.2015 rendered by learned Additional Sessions Judge-III, D.I.Khan, whereby the appellant was convicted under section 302(b) PPC and sentenced to life imprisonment and pay compensation of Rs.100000/- under section 544-A Cr.P.C to the legal heirs of deceased, or in default, to suffer further six months imprisonment with benefit of section 382-B Cr.P.C, extended to him.

2. The prosecution story as spelt out from the FIR is that on 12.12.2011, complainant Allah Ditta, in the company of dead body of his daughter namely Mst. Fazilat Bibi lodged the report with Fazal Rahim Khan, SHO in the fields of Fazal Hussain to the effect that her daughter was married to one Nazir Ahmad and out of the wedlock, she had two daughters Mst. Shakeela Bib and Mst. Aneela Bibi. On the day of occurrence, when the complainant returned at about 'digar-vela' after cutting gross, his minor grand-daughters came to his house weeping and told that her parents left the house early in the morning for cutting woods but did not return. The complainant searched for his daughter and also asked from parents of his son in law about missing persons. He was informed by the family members of his son in law that Mst. Fazilat Bibi had been taken by her husband for outing. On coming back, announcement was made through loudspeaker of the mosque. Thereafter, he alongwith co-villagers started for fields. They reached near sugarcane crop of one Fazal Hussain and saw the dead body of his daughter who had been killed with sharp edged weapon. The complainant charged the appellant, his son in law for the murder of his daughter. Motive for the occurrence

was stated to be strained relations between husband and wife.

3. After completion of usual investigation, complete challan against the appellant was submitted before the learned trial Court. The appellant was formally charged. He pleaded guilty. However, the prosecution was directed to produce evidence. In support of its case, the prosecution examined nine witnesses. Thereafter, statement of the appellant was recorded under section 342 Cr.P.C, wherein he professed innocence and false implication. After hearing arguments, the learned trial Court convicted and sentenced the appellant as mentioned above vide judgment dated 20.4.2015, hence the instant criminal appeal and criminal revision.

4. The learned counsel for the appellant argued that the appellant was suffering from psychiatric illness and for medical treatment, he was referred to Sarhad Hospital, Peshawar but without any report in this behalf, the learned trial Court proceeded with the trial and thus violated the procedure provided in section 465 Cr.P.C, therefore, the impugned judgment is not sustainable.

5. The learned Assistant Advocate General appearing for the State assisted by learned counsel for the complainant did not seriously oppose the contention raised by learned counsel for the appellant. However, they contended that the appellant was capable of understanding the proceedings, therefore, there was no need for the trial Court to wait for report in this respect, because the appellant though remained at Peshawar for sufficient time but was re-shifted to Central Prison, D.I.Khan.

6. We have heard the arguments of learned counsel for the parties and have gone through the record.

7. The order sheet dated 08.3.2012 of the learned trial Court reveals that when charge was framed and read over to the appellant, he wanted to record his plea of guilt by making a confession. He was explained the legal consequences of such statement but since he was adamant to confess his guilt, therefore, he was given opportunity to think over the legal repercussions of his such statement. On 15.2.2012, when the case came up for hearing before the learned trial Court, the appellant declined to record his plea of guilt and claimed trial and thus the prosecution was directed to produce its

evidence on 29.3.2012 but postscript dated 27.3.2012 reveals that the learned trial Court received a letter from Superintendent Central Prison, D.I.Khan asking for permission to shift the appellant to Peshawar for medical treatment which was found supported by medical advice chit and permission was granted to shift the appellant to Peshawar for medical treatment as advised by the Medical Officer/Psychiatrist. The order sheet dated 05.7.2012 reveals that as per endorsement No.4007 of Superintendent, Central Prison, Peshawar, the appellant had properly been examined as advised, therefore, Superintendent Central Prison, D.I.Khan was directed to produce him and thereafter, the learned trial Court proceeded with further trial. Section 465 Cr.P.C being relevant is reproduced below for ready reference:-

“Procedure in case of person sent for trial before Court of Session or High Court being lunatic. (1)If any person before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the

accused shall be deemed to be part of his trial before the Court.”

From perusal of above referred order sheets, and observations of Dr. Munir Ahmad dated 15.3.2012, it is manifest that ailment of the appellant was in the notice of learned trial Court. In such circumstances, the learned trial Court was bound to have complied with the provisions of section 465 Cr.P.C, referred to above, but it failed to do so. Admittedly, the appellant was referred to Sarhad Hospital, Peshawar for treatment and remained there for sufficient time, but we were unable to lay hand on any document which could convince us that the appellant was capable of understanding the proceedings of the Court. However, a letter dated 07.9.2012 is available on record addressed to Superintendent of Police, Peshawar which is though for the purpose of providing police guard but it is also mentioned therein that the appellant has been treated accordingly and the doctor has advised his shifting back to Central Prison, D.I.Khan where he can keep continue his prescribed treatment. In such circumstances, it was the duty of learned trial Court to have adopted the procedure envisaged under section 465 Cr.P.C which has not been adopted. It was held in

the case of **Sirajuddin. Vs. Afzal Khan and another**
(PLD 1997 SC 847) that:-

“From perusal of the above it is clear that whenever question of insanity is brought to the notice of the Court the Court shall satisfy itself in the manner provided under the law; whether the person is capable of understanding the trial and defending himself. For such satisfaction medical evidence if of utmost importance.”

In the case of **Dilawar Khan. Vs. The State and 2 others (PLD 1995 Peshawar 121)**, this Court held that:-

“The Court never seemed to be fully alive to the contents of Chapter XXXIV of Cr.P.C. It did not examine the ingredients of section 464 and more particularly section 465 of Cr.P.C, that pertained to the Court of Sessions. The Court also was not alive to the subsequent provisions of law that related to the resumption of trial of a lunatic in case he is considered to be capable of understanding the proceedings.”

8. For the reasons mentioned above and the dicta reproduced above, we allow the instant Criminal Appeal No.28-D/2015, set aside the impugned judgment of conviction and sentence dated 20.4.2015 and remand the case to learned Additional Sessions Judge-III, D.I.Khan with the direction to hold a proper and thorough inquiry within the contemplation of

Chapter XXXIV Cr.P.C by constitution of a Medical Board and after examination of the appellant by the said Board, to proceed with the case in accordance with law. Till then, the appellant shall be treated as an under-trial prisoner.

9. Since the conviction and sentence of the appellant has been set aside and the case has been remanded, therefore, the question of enhancement of sentence becomes irrelevant at this stage and Criminal Revision No.4-D/2015 stands dismissed accordingly.

Announced.

Dt:04.7.2017.

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