

Muhammad Waseem versus The State and another

Crl. Misc. No.01/2023

Through instant miscellaneous application, Muhammad Waseem (applicant/convict) seeks suspension of execution of sentence awarded to him by learned Addl. Sessions Judge, Lahore/trial court *vide* impugned judgment dated: 28.02.2023 passed in complaint case titled as “Amjad Ali versus Muhammad Saleem, etc.” in case arising out of F.I.R. No.344/2012, dated: 04.04.2012 registered under Sections: 302, 452, 148, 149 PPC etc. at Police Station: Saman Abad, Lahore, whereby he has been convicted and sentenced with “Imprisonment for Life” under Section: 302 (b) PPC along with payment of compensation of Rs.5,00,000/- under Section: 544-A Cr.P.C. to the legal heirs of Muhammad Arshad (deceased of the case) and in default thereof to further undergo S.I. for six months. Benefit of Section: 382-B Cr.P.C. was also extended to the applicant/convict.

2. After hearing learned counsel for the parties, learned Deputy District Public Prosecutor and going through the impugned judgment appended with the appeal, it has been noticed that brief facts of the occurrence as per complaint have been mentioned in paragraphs No.2, 3 of the impugned judgment and perusal whereof reveals that accused persons namely {Muhammad Saleem, Muhammad Waseem (present applicant), Muhammad Adeel, Salah Uddin and two unknown accused armed with firearm weapons} dragged Muhammad Arshad (now deceased of the case), Salah Uddin (accused) raised a lalkara, accused persons started firing, Muhammad Saleem (accused) made direct fire with rifle which hit at the chest of Muhammad Arshad whereas accused persons made indiscriminate firing in result whereof fire shots hit at walls of the houses, Muhammad Arshad succumbed to the injuries.

Muhammad Saleem (aforementioned co-accused, who as per case of the prosecution, caused injury to the deceased of the case) as well as Muhammad Adeel and Salah-ud-Din (co-accused persons, whose roles are at par and similar with the present applicant) have already been acquitted in the case by the trial court on the basis of same evidence through the same impugned judgment.

As per case of the prosecution, pistol was recovered from Muhammad Saleem (co-accused, mentioned above) whereas pistol and .44 bore rifle were recovered from present applicant however after going through the impugned judgment, it has been apprised by learned counsel for both the parties as well as learned Deputy District Public Prosecutor that it has not been mentioned in the impugned judgment that empties secured from the place of occurrence were found as having been fired from said weapons.

When all aforementioned factors are taken into consideration in totality, then conviction recorded and sentence awarded to the present applicant needs reappraisal of evidence; in this regard, guidance has been sought from the case of “**SOBA KHAN Versus The STATE and another**” (2016 S C M R 1325) and relevant portion from the same is reproduced: -

“17. It is by now well settled principle of law relating to reappraisal of evidence that once co-accused, similarly charged and attributed same and similar role in a particular crime, is acquitted on the basis of same set of evidence where the witnesses have maintained no regard for truth while deposing on oath to tell the truth and nothing else then, ordinarily they shall not be relied upon with regard to the other co-accused unless their testimony/evidence is strongly corroborated by independent cogent and convincing evidence.

18. Keeping in view the above principle of law, tentatively it appears to us that the evidence furnished by the prosecution in this case appears to be indivisible and in absence of additional corroboration of the nature stated above, whether conviction and sentence of the petitioner can be maintained on the same evidence, on the basis of which the co-accused have been acquitted with the same and similar role, thus, this fact has entitled the petitioner to the concession of bail.”

It has been also categorically mentioned in paragraph No.24 of the impugned judgment that present applicant/convict was on bail during trial of the case and nothing is available on the record to show that he misused said concession; case of “**RAFAQAT AHMAD**

versus THE STATE” (1994 S C M R 1206) can be safely referred in this regard.

3. In view of what has been discussed above, case of the applicant for suspension of execution of the sentence has been made out. Resultantly, instant miscellaneous application is **allowed;** execution of aforementioned sentence awarded to Muhammad Waseem (applicant) is hereby suspended and he is ordered to be released on bail till final disposal of main criminal appeal, subject to his furnishing bail bonds in the sum of Rs.500,000/- (Rupees five hundred thousand only) with two sureties each in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court. However, applicant is directed to remain present before this Court on each and every date of hearing fixed in main criminal appeal.

(Farooq Haider)
Judge

(APPROVED FOR REPORTING)

(Farooq Haider)
Judge