2022 P Cr. L J 1208

[Balochistan]

Before Muhammad Hashim Khan Kakar and Abdullah Baloch, JJ

MUHAMMAD NABI alias NABIKHO ---Appellant

Versus

The STATE--- Respondent

Criminal Appeal No. 465 and Criminal Revision No. 41 of 2019, decided on 13th April,

JUDGMENT

ABDULLAH BALOCH, J. ---This common judgment disposes of Criminal Appeal No.465 of 2019 and Criminal Revision Petition No.41 of 2019.

The appeal has been filed by the appellant Muhammad Nabi alias Nabikho son of Muhammad Jan against the judgment dated 24th September 2019 ("the impugned judgment") passed by learned Additional Sessions Judge -VI/MCTC -II, Quetta ("the trial Court"), whereby the appellant was convicted under section 302(b), P.P.C. and sentenced to suffer life imprisonment and to pay compensation of Rs.10,00,000/ - (Rupees Ten hundred thousand) to the legal heirs of deceased Walayat Hussain as envisaged under section 544- A, Cr.P.C. and in default thereof to further suffer Six (06) months' S.I., with the benefit of section 382- B, Cr.P.C.

The Criminal Revision Petition has been filed by the petitioner (complainant) Abdul Hameed son of Hassan Ali for enhancement of sentence of appellant from life imprisonment to that of Capital punishment of death.

2. Facts of the case are that on 15th June 2017, the complainant Abdul Hameed son of Hassan Ali, lodged FIR No.53 of 2017 at Police Station Quaid Abad, Quetta, under section 302, P.P.C., alleging therein that on the day of occurrence at about 12.00 Noon, he was present in his showroom situated at Brewery Road, Quetta, when he was informed through phone that the appellant (accused) Muhammad Nabi alias Nabikho has murdered his brother Walayat Hussain at Hazara Graveyard by means of making firing upon him and he was shifted to Civil Hospital, Quetta. On such information, he immediately reached to Civil Hospital Quetta and saw the dead body of his brother lying at casualty on the bed, who had sustained bullet injury at his chest and exist from his back side.

3. Pursuant to above FIR, the appellant was investigated and on completion thereof, he

was challaned before the trial Court,which indicated the charge to appellant, who refuted the
same. Theprosecution in order to prove the charge produced Seven (07) witnesses, whereafter the appellant was examined under section 342, Cr.P.C. The appellant neither recorded his statement on oath under section 340(2), Cr.P.C. nor produced any witness in his defence. On conclusion of trial and after hearing arguments, the appellant was convicted and sentenced as mentioned above in para No.1, whereafter convict -appellant filed Criminal
Appeal, while the complainant filed Criminal Revision Petition for enhancement of sentence from life imprisonment to that of Capital punishment of death.

4. Heard the learned counsel and perused the available record. In order to prove the
charge the prosecution has produced the evidence of Seven witnesses, perusal of which reflects that the prosecution has miserably failed to establish the charge against the appellant, as the alleged eye- witnesses of the occurrence could not justify their presence at the place of
occurrence and their conduct appears to be unnatural. The complainant of the case namely Abdul Hameed appeared as PW- 1, who mostly reiterated the contents of his fard- e-bayan Ex.P/1- A. According to this witness he was present in his show room, when received
telephonic call with regard to murder of his brother by the appellant, but however, this witness has failed to mention that who was the witness, who made phone call to him and informed about the occurrence. Though, this witness has brought the law into motion, but fact remains that he had not witnessed the crime, thus being hearsay evidence his statement is not helpful to the case of prosecution. Even none of the PWs deposed that they had informed the PW- 1 to believe his statement.

5. The most important and star witnesses of the occurrence are PW -2 Hussain Ali and
PW-3 Hakeem Ali, who are claiming to be the eye- witnesses of the occurrence. Both the
witnesses have deposed in their depositions that on the day of occurrence they together went to the grave of Syed Ibrahim Agha for offering Fateha and after offering fateha at about
11.30 a.m. they seated nearby the Tube well. In the meantime, they observed that two persons were quarrelling with each other, thus they went close to them and identified the appellant Muhammad Nabi alias Nabikho and the deceased Walayat Hussain, when all of sudden the appellant became furious, hence he took out the pistol and fired upon the deceased Walayat Hussain, due to which he became injured, whereafter the appellant escaped from the place of occurrence towards barracks, while the injured proceeded towards the mortuary of mosque. Both the witnesses

identified the appellant in the trial Court.
6. We have taken into consideration the statement of both the alleged eye -witnesses with
utmost care and caution and observed that both of them have failed to justify their presence at the place of occurrence, when the crime had taken place. The conduct of both the witnesses is unnatural, as both the PWs knew the appellant and the deceased, but despite such fact when at the first instance only quarrelling was being made, the PWs did not intervene and try to save and separate them. The conduct of PWs again u nnatural as
according to the PWs, the appellant after making firing escaped from the place of occurrence and the injured himself went towards the mortuary of Mosque. It is not acceptable for a prudent mind that an injured person being nearer to death and already knew to the witnesses,
but despite such fact they did not render any help or assistance to the injured rather they let the injured to move to another place himself. The statements of both the witnesses again unnatural, when after the commission of crime neither they called the police nor informed the legal heirs of deceased rather PW- 4 Ismail Shah is claiming that he informed the police about the occurrence. The unnatural conduct of the PWs rendered their statements as
doubtful and no conviction can be based upon such evidence, which otherwise is not
trustworthy.
7. Likewise, PW- 4 is not eye -witness of the occurrence rather according to him when he
was present nearby the Mosque of the graveyard, when an injured person came over there, who disclosed his name as Walayat Hussain and he further disclosed that he was injured by the appellant Nabi alias Nabikho by means of fire arm. The statement of this witness does not appear to be trustworthy. The place of occurrence and the Mosque are at the distance of few paces and being a calm area firing was also made at the relevant time, but PW- 4 did not
see the assailant and alleged eye- witness PW -2 and PW -3, while to the contrary the deceased
himself arrived there and informed him about the occurrence. Again the conduct of PW -4 is
unnatural, thus not reliable to make basis for conviction.
8. Another important feature of the case is that the Investigating Officer has recorded the
disclosure of the appellant and also got recovered the crime weapon allegedly used in the crime on the pointation of appellant from under beneath of a stone from the graveyard, but in this regard the statements of PW -2 and PW -3 are silent rather they deposed that the appellant

escaped to barracks. Thus the contents of such disclosure are not corroborating the other pieces of evidence rather contrary to the same, thus the disclosure of the appellant as well as the recovery of crime weapon also not strengthened the case of prosecution.

9. The medical evidence in this case has been furnished by PW -5 Dr. Ali Mardan,
Medical Officer, who has confirmed the unnatural death of deceased. However, the fact remains that medical evidence is only used for confirmation of ocular evidence regarding seat of injury, time of occurrence and weapon of offence used, etc. but medical evidence itself does not constitute any corroboration qua the identity of accused person to prove their culpability. Reliance in this regard can be placed on the case of Muhammad Sharif and another v. The State (1997 SCMR 866).

10. The prosecution is duty bound to prove its case beyond any reasonable doubt and if
any single and slightest doubt is created, benefit of the same must go to the accused and it would be sufficient to disbelieve the prosecution story and acquit the accused. However, in the case in hand the PWs did not justify their presence at the place of occurrence and their conduct entirely appears to be unnatural and not trustworthy. Reliance in this regard is placed on the case of Tariq Pervaiz v. The State 1995 SCMR 1345, wherein the Hon'ble Supreme Court has held that, "The concept of benefit of doubt to an accused is deep- rooted in our
country. For giving him benefit of doubt it is not necessary that there should be many circumstances creating doubt if there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused then accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

For the above reasons, the appeal is accepted. The impugned judgement 24th
September 2019 passed by learned Additional Sessions Judge -VI/MCTC -II, Quetta is set -
aside and the appellant Muhammad Nabi alias Nabikho son of Muhammad Jan, is acquitted
of the charge under section 302(b), P.P.C. The appellant being in custody; is ordered to be released forthwith, if not required in any other case.

Consequently, the Criminal Revision Petition being devoid of merits is dismissed.

JK/100/Bal. Order accordingly.