

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE MUHAMMAD ALI MAZHAR

JAIL PETITION NO. 865 OF 2017

(Against the judgment dated 17.11.2017
passed by the Lahore High Court, Lahore in
Murder Reference No. 10/2015 and Criminal
Appeal No. 595-J/2014)

Nasir Ahmed

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s): Syed Rifaqat Hussain Shah, ASC

For the State: Mirza Abid Majeed, DPG

Date of Hearing: 12.12.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner Nasir Ahmed along with co-accused was tried by the learned Additional Sessions Judge, Sargodha pursuant to a case registered vide FIR No. 150 dated 29.07.2011 under Sections 302/324/34 PPC at Police Station Shah Nikdar, Sargodha for committing murder of Mst. Shehnaz Bibi and for causing injuries to Bushra Bibi, a minor. The learned Trial Court vide its judgment dated 31.10.2014 while acquitting the co-accused, convicted the petitioner under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.200,000/- to the legal heirs of the deceased or in default whereof to further undergo SI for six months. In appeal the learned High Court maintained the conviction and sentence of death awarded to the petitioner by the learned Trial Court. The amount

of compensation and the sentence in default whereof was also maintained.

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

“Prosecution story, as set out in the FIR (Ex.PJ) registered on the statement of Sher Muhammad, complainant (PW.7) is that he was resident of Chak No.168/171 Shumali and a labourer. On 20.07.2011 the marriage of daughter of complainant namely Mst. Shahnaz Bibi aged about 18/19 years was fixed. The complainant along with his guests Abdul Majeed, and Abdul Hafeez, was busy in his house for marriage arrangements. At around 10.00 a.m. Nasir Ahmad (appellant), Muhammad Iqbal and Ahmad Sher came on a motorcycle. They parked motorcycle in the street and entered the house of complainant. Mst. Shahnaz Bibi daughter of complainant was sitting in the room on a chair, having Mst. Bushra Bibi daughter of elder daughter of complainant aged about 4 years in her lap. Nasir Ahmad, who was son-in-law (damad) and maternal nephew (bhanja) of complainant, while reaching near the door of room put out pistol from the folder of his shalwar and within the view of complainant party, fired three shots with pistol at Mst. Shahnaz Bibi. First fire landed behind left ear of Mst. Shahnaz Bibi and made its exit from right side of chin. Second fire hit on left thumb of Mst. Shahnaz Bibi and went through and through whereas third fire hit Bushra Bibi aged about 4 years on her right cheek near ear. Muhammad Iqbal and Ahmad Sher co-accused of the appellant kept on raising lalkaras. The accused persons went out of the house and fled away on motorcycle. The complainant along with Abdul Majeed and Abdul Hafeez witnessed the occurrence and attended both the injured. Mst. Shahnaz Bibi succumbed to injuries on the spot whereas Bushra Bibi immediately shifted to Sillanwali Hospital from where she was referred to Sargodha and thereafter referred to Lahore.

Motive behind the occurrence as alleged in the FIR was that Nasir Ahmad (appellant) etc. were not willing over the marriage of Mst. Shahnaz Bibi arranged by the complainant and told the complainant not to get her married there but the complainant did not accede to.”

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced twelve 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 opt to appear as his own witness on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against him. He also did not produce any evidence in his defence.

4. At the very outset, learned counsel for the petitioner contended 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 prosecution case is based on whims and surmises and it has to prove its case without any shadow of doubt but it has miserably failed to do so. Contends that the medical evidence contradicts the ocular account. Contends that the prosecution has not been able to prove motive as alleged, which causes serious dent in the prosecution case. Contends that the recovery of weapon of offence is inconsequential as no crime empty was collected from the spot, as such, the same cannot be used against the petitioner. 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 submitted that to sustain conviction of an accused on a capital charge, un-rebutted ocular evidence alone is sufficient. Contends that the ocular account is supported by the medical evidence, therefore, the petitioner does not deserve any leniency by 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.

There is no denial to this fact that the unfortunate incident wherein the daughter of the complainant lost her life had taken place on 29.07.2011 at 10.00 a.m. in the morning whereas the matter was reported to the police at 10:30 a.m. on the same day while the inter se distance between the place of occurrence and the Police Station was six kilometer. This aspect of the case clearly reflects that the matter was reported to Police promptly without there being any delay. As the occurrence has taken place in the broad daylight and the parties were known to each other, therefore, there is no chance of misidentification. The ocular account in this case has been furnished by Sher Muhammad, complainant

(PW-7) and Abdul Hafeez (PW-8). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be produced on record. Both these PWs remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. The complainant Sher Muhammad was inmate of the house where the occurrence took place, therefore, his presence was natural. So far as the presence of Abdul Hafeez (PW-8) is concerned, it is admitted position that at the relevant time, the wedding ceremony of the deceased Mst. Shahnaz Bibi was going on and he being a close relative had come to complainant's house to attend the ceremony. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of the deceased is concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. In Muhammad Iqbal Vs. The State (1996 SCMR 908) this Court candidly held that "ocular testimony being wholly reliable, conviction could even be safely based on the same without further corroboration." In Naeem Akhtar Vs. The State (PLD 2003 SC 396) this Court observed that "eye-witness who was a doctor and victim of the occurrence had narrated the incident in each detail without any omission and addition and his evidence being of unimpeachable character is alone sufficient to the charge." In Faisal Mehmood Vs. The State (2010 SCMR 1025) it was held that "reliable ocular testimony did not need any corroboration to lose conviction". Same was the view of this Court in Muhammad Ilyas Vs. The State (2011 SCMR 460) wherein it was held that "it is not medical evidence to determine question of guilt or innocence but it is ocular version which is required to be taken into consideration at first instance". The value and status of medical evidence and recovery is always

corroborative in its nature, which alone is not sufficient to sustain the conviction. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence when live shots are being fired, witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where such fire shots appeared to have landed and it becomes highly improbable to correctly mention the location of the fire shots with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence. As far as the question that the witnesses of the ocular account are related to the deceased, therefore, their testimonies cannot be believed to sustain conviction of the petitioner is concerned, it is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses especially when the relationship with the assailant is so close and admittedly the marriage ceremony was going on in the house. Presence of PWs cannot be doubted. Learned counsel for the petitioner could not point out any reason as to why the complainant has falsely involved the petitioner in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit who murdered his daughter and falsely involve the petitioner, who was his son-in-law and maternal nephew, without any rhyme and reason. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query he could not point out any major contradiction, which could shatter the case of the prosecution. It is a well settled proposition of law that as long as the material aspects of the

evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. To prove the motive part of the prosecution story, the witnesses of the ocular account appeared in the witness box and deposed against the petitioner. The perusal of the record reflects that neither the defence seriously disputed the motive part of the prosecution story nor the PWs were cross-examined on this aspect of the matter. On our specific query, learned counsel admitted that although the petitioner was represented by a counsel and an opportunity was given to cross-examine the witnesses but despite that the witnesses were not cross-examined on the issue of motive. In this view of the matter, we are constrained to hold that the prosecution has successfully proved the motive against the petitioner. So far as the recovery of weapon of offence i.e. .30 bore pistol is concerned, the same is inconsequential simply for the reason that no crime empty was recovered from the place of occurrence, which could be sent to Forensic Science Laboratory for chemical analysis. There seems to be something which was extended as obliging concession due to close relationship with the deceased family. Admittedly, the petitioner remained absconder for a period of about six months and the same is also a corroboratory piece of evidence against him. Keeping in view the facts and circumstances of the present case, even if the recovery of weapon of offence is excluded from consideration, still there is ample evidence in the form of unimpeachable and trustworthy ocular account, medical evidence and motive to sustain conviction of the petitioner on the capital charge. In Muhammad Aslam Vs. The State (2004 SCMR 872), this Court by holding that when ocular account is believed to be inspiring

confidence and trustworthy, mere the fact that recovery is inconsequential by itself could not be a ground for lesser penalty, maintained the penalty of death awarded to the accused by the lower courts. Reliance is also placed on Muhammad Afzal Vs. The State (2003 SCMR 1678).

7. For what has been discussed above, we do not find any merit in this petition, which is dismissed and leave to appeal is refused. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
12th of December, 2022
Approved For Reporting
Khurram