

2023 Y L R 824

[Balochistan]

Before Muhammad Hashim Khan Kakar and Abdullah Baloch, JJ

ASFAND YAR---Appellant

Versus

The STATE--- Respondent

Criminal Appeal No. 332, Murder Reference No. 9 and Civil Miscellaneous Application No.

JUDGMENT

ABDULLAH BALOCH, J. ---This common judgment disposes of Criminal Appeal

No.332 of 2017, Murder Reference No.09/2017 and Civil Miscellaneous Application No.126/2017 under section 345, Cr.P.C. for accepting the compromise in the main appeal.

Appellant Asfand Yar son of Ghulam Muhammad filed the appeal against the

judgment dated 3rd October 2017 (hereinafter referred as, "the impugned judgment") passed by learned Additional Sessions Judge -I Quetta (hereinafter referred as, "the trial Court"), whereby he was convicted under section 302(b), P.P.C. and sentenced for Capital punishment

of death on two counts for committing the murder of deceased Sohail Ahmed and Mumtaz

Ahmed. The appellant was directed to be hanged by his neck till he is dead. Besides, the appellant has to pay Rs.500,000/- each as compensation to the legal heirs of each deceased and in default thereof to further suffer Six (06) months each.

The appellant was further convicted on two counts under section 324, P.P.C. for causing fire arm injuries to PWs

Watan Yar and Shano Begum and sentenced to suffer five (05) years R.I. each with fine of

Rs.20,000/- each or in default thereof to further suffer three (03) months S.I. each. The

benefit of section 382- B, Cr.P.C. has also been extended in favour of appellant.

The trial Court forwarded the murder reference for confirmation of death sentence of

appellant or otherwise, while the C.M.A. No.126/2017 has been filed by the injured/PW -4

Shano Begum under section 345, Cr.P.C. for accepting the compromise.

2. Facts of the case are that on 3rd November 2014, the complainant Malik Kamran

Ahmed, lodged FIR No.248 of 2014 at Police Station City Quetta, under Sections 302, 324,

P.P.C., with the averments that he is resident of Kasi Killa

Quetta and on the night of occurrence at about 12.15 a.m. when he reached near to his house, he observed that his relatives were also going towards his house, while the main gate of house was locked from inside, thus after repeated ring bells, his younger brother Asfand Yar opened the Gate, where he found his elder brother Sohail Ahmed in injured condition in a room, while his younger brothers Mumtaz Ahmed Watan Yar were lying in injured condition in Bath Room, while his mother Shano Begum was also lying in injured condition in the courtyard of house. On query, his mother disclosed that the appellant Asfand Yar made firing with pistol upon them. The motive behind the occurrence was that the appellant quarreled and tortured his wife, thus his brothers scolded him, whereafter the appellant had also divorced his wife and for such

divorce he was holding responsible to the injured persons. Initially the FIR was lodged under section 324, P.P.C., but on the following day of occurrence the injured Mumtaz Ahmed was died, while the injured Sohail Ahmed was died on 5th January 2015, thus section 302(b), P.P.C. was inserted in the FIR.

3. The appellant was arrested, who was subjected to investigation and on completion thereof, he was challaned before the trial Court, which indicated the charge and after denial by the appellant, the prosecution produced eleven (11) witnesses, whereafter the appellant was examined under section 342, Cr.P.C. He also recorded his statement on oath under section 340(2), Cr.P.C. However, did not produce any witness in his defence. On conclusion of trial and after hearing arguments, the trial Court convicted and sentenced the appellant as mentioned above in para -1. The appellant has preferred the instant criminal appeal, whereas

the trial Court has forwarded Murder Reference for confirmation or otherwise of the death sentence awarded to the appellant, while the injured Shano Begum filed application under section 345, Cr.P.C. for acceptance of compromise.

4. Heard the learned counsel and perused the available record. So far as the unnatural death of deceased Mumtaz Ahmed and Sohail Ahmed as well as receiving fire arm injuries by PW -4 and PW -9 are concerned, the same are undisputed. Soon after the occurrence both the deceased were shifted to Sandman Civil Hospital in injured condition, where PW -5 gave first aid to injured Mumtaz Ahmed, but on the following day he died, whereafter the postmortem of the deceased Mumtaz Ahmed was conducted. PW -5 issued MLC and postmortem report, which confirms that the deceased received fire arm injuries on his person and his death was unnatural.

Likewise, PW -5 also gave first aid to Sohail Ahmed and observed fire arm injuries on his person. PW -5 issued MLC as Ex.P/5- A, which confirms the fire arm injuries on the person of Sohail Ahmed. Whereafter, he was shifted to Karachi for medical treatment, but on 7th January 2015 he succumbed to his injuries.

5. PW-5 examined the injured PW -4 Shano Begum and PW -9 Wattan Yar and after examination issued MLC as Ex.P/5 -B & Ex.P/5 -C, which confirm that both the injured received bullet injuries on their persons. The prosecution case is also supported by the F.S.L. reports of blood stained clothes of deceased as well as other blood stained articles and the inquest report of deceased Mumtaz Ahmed prepared by the Investigating Officer. Even otherwise, the defence has not disputed the unnatural death of deceased and injuries received by the PWs -4 and 9, but pleaded his implication.

6. Adverting to ocular testimony produced by the prosecution. The prosecution in order to substantiate the charge has produced the evidence of eleven (11) witnesses, out of which PW-1 Malik Kamran Ahmed, is the complainant of the case, while PW -4 and PW -9 are the injured witnesses, whereas PW- 2 Bibi Nahida and PW -3 Bibi Afsha being the dwellers of the sad house as well as the widows of deceased Mumtaz Ahmed and Sohail Ahmed are the direct eye- witnesses of the occurrence. PW -1 in his Court statement mostly reiterated the contents of fard -e-bayan Ex.P/1- A and confirmed the presence of appellant inside the house, when the occurrence had taken place. PW- 1 has brought on record that after repeated ring bells, the appellant opened the main gate of the house and he found injured his mother and three brothers, however, on query his mother (PW -4) disclosed that the appellant by means of pistol injured them and as per assertions of his mother, the PW -1 nominated the appellant in the promptly lodged FIR. The prompt lodging of FIR has ruled out the element of consultation and deliberation. Even otherwise, it is not acceptable for a prudent mind that a person may falsely implicate his own brother leaving scot free to the real culprits. The witness was cross -examined at sufficient length, but PW -1 remained consistent in his view.

7. The most important and the star witnesses of the prosecution is PW -2 Bibi Nahida and PW -3 Bibi Afsha, who are the dwellers of the said house, where the occurrence had

taken place, thus their presence at the relevant time is natural and is beyond any shadow of doubt. PW -2 Bibi Nahida is the widow of Sohail Ahmed, who brought on record that at the relevant time her husband Sohail Ahmed was called by his mother to close the door, whereafter her husband heard firing shots from outside, thus he opened the door, where found present the appellant being armed with pistol, who made firing upon her husband, due to which he set down. PW -2 further observed fire arm injury on the chest of her husband and bleeding, whereafter she called his brother on phone and informed him about the occurrence. PW-2 further brought on record that she came to another room, where in the bathroom of that

room her brothers in laws namely Mumtaz Ahmed and Watan Yar were lying in a pool of blood.

8. The statement of PW- 2 was fully supported and corroborated by PW -3 Bibi Afsha.

who was also the dweller of the said house, where the incident had taken place. Thus, her presence is also natural and cannot be doubted. This witness has brought on record that on hearing firing shots, she came down from the upper floor and saw the appellant being armed with pistol. The appellant warned her to go upstairs and from upstairs she saw that appellant loading the pistol. In the meantime, she heard hue and cry of PW -2 Bibi Nahida, thus she again came to ground floor, where PW -2 was shouting that the appellant destroyed her house. Whereafter, she went to the room of her mother -in-law and found her husband and brother -in-law in injured condition.

9. So far as the statements of injured witnesses i.e. PW -4 Shano Begum and PW -9

Watan Yar are concerned, suffice to observe here that both the witnesses have not supported their earlier statements, thus were declared hostile. According to PW -4 at the relevant time, his sons quarreled with each other and made firing upon themselves. PW -4 made her ignorance that who was the aggressor. Though, PW -4 was declared hostile, but still her statement is supporting the case of prosecution to the extent of dispute, quarrelling and making firing, which confirms that the assailant was the appellant. PW -9 fully disowned his earlier statement and stated that the same was self -recorded by the police. Be that as it may, since in the said incident two sons of PW -4 have been murdered and the assailant is her third son, thus after losing her two sons, the PW -4 would certainly

do not want to lose her third son and alike is the situation with the PW -9, who had lost his two brothers, hence it was the sole reason that they have disowned their earlier versions and supported the defence version. Even otherwise, in presence of direct evidence of PW- 2 and PW -3 and circumstantial evidence of PW- 1 supported by the medical evidence as well as the recovery of the disclosure followed by the crime weapon on the pointation of the appellant, the matching of collected empties with the recovered crime weapon, only not supporting the prosecution version by the PW -4 and PW -9 is not enough to brush- aside the entire prosecution evidence, when more particularly the incident had taken within the boundary walls of the house. The prosecution established the presence of the appellant in armed condition in the house as well as proved the presence of natural witnesses in the house i.e. PW -2 and PW -3. Whereas, PW -4 and PW -9 does not supported each other being resiled witnesses. PW -9 failed to reply the question No.1 and also admitted in cross -examination that he was injured and shifted to hospital for treatment, he also admitted that he has pardoned the appellant to his extent. All such admissions of PW -9 support the version of prosecution.

10. It has also been observed that the unnatural violent death of deceased Mumtaz Ahmed and Sohail Ahmed and causing bullet injuries to PW -4 and PW -9 are also not disputed by the defence, however, both the parties had not denied the occurrence and not dispute the death of deceased by means of fire arm, thus under the circumstances PW-1, PW -2 and PW -3 cannot termed to be interested witnesses, when more particularly the husbands of PW -2 and PW -3 as well as the brother of PW -1 (complainant) were murdered in a brutal manner, thus the presumption of false implication of appellant being the member of same family is not acceptable to a prudent mind. It is beyond imagination that the PWs may falsely implicate a family member of their own family for the dual murders of the blood relations. Throughout the proceedings the appellant has not taken any justifiable explanation with regard to his false implication nor brought any ill -will or ulterior motives for his false implication by the witnesses and specially against the PW- 2 and PW -3, who being natural witnesses directly witnessed the crime. The learned trial Court has discussed and

dilated upon each and every aspect of the case and rightly convicted the appellant.

11. Adverting to the application under section 345, Cr.P.C. for accepting the compromise filed by the PW -4 Shano Begum, suffice to observe here that she was injured in the said incident and besides her two sons namely Sohail Ahmed and Mumtaz Ahmed have lost their lives, while her another son PW -9 Wattan Yar was injured. The Court vide order dated 16th June 2020, sent the compromise documents to the trial Court for verification. The trial Court recorded the statement of PW- 4 Shano Begum and forwarded the same to this Court. The perusal of her statement as CW- 1 reflects that the injured out of her free will and consent has forgiven the appellant for the sake of Al -Mighty Allah, however, the fact remains that though the injured Shano Begum is the real mother and the legal heir of deceased Sohail Ahmed and Mumtaz Ahmed, but the fact remains that both the deceased were married, having wives and children and they are also legal heirs of deceased, who have not compromised with the appellant and even the injured PW -9 Wattan Yar has also not compromised with the appellant, thus under the circumstances the compromise is effective only to the extent of PW-4 Shano Begum, which is accordingly accepted only to her extent.

12. So far as the quantum of sentence i.e. Capital punishment of death is concerned, we do not find in agreement ourselves with regard to the same. Suffice to observe here that there existed a family dispute in between the family members of the said house and also the appellant had divorced his wife, while on the said date the quarrel had taken all of sudden without the element of pre -mediation and further two family members of the said house have also lost their lives, thus under these circumstances awarding of capital punishment to the appellant is unwarranted, which other increase the sorrow of grieved family.

13. For the reasons discussed hereinabove, while upholding the conviction of convict - appellant, his sentence of death is converted into R.I. for life, while the amount of compensation and the sentence in default thereof shall remain intact. The conviction awarded to the appellant under section 324, P.P.C. for causing injuries to PW -9 is also maintained, while the conviction and sentence awarded under section 324, P.P.C. for causing injuries to PW-4 are set -aside on the basis

of compromise. All the sentences awarded in this case as well as in the case under section 13 -E of Arms Ordinance, 1965 shall run concurrently with the benefit of section 382- B, Cr.P.C. With the above reduction of sentence, the appeal is dismissed and murder reference is answered in negative. JK/102/Bal. Sentence reduced.