

2023 Y L R 629

[Balochistan]

Before Muhammad Ejaz Swati and Abdullah Baloch, JJ

MUHAMMAD AYAZ ---Appellant

Versus

The STATE--- Respondent

Criminal Jail Appeals Nos. 31, 281 and Criminal Revision Petition No. 19 of 2021, decided

JUDGMENT

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

Appeal No.31 of 2021, Criminal Appeal No.281 of 2021 and Criminal Revision Petition No. 19 of 2021.

The criminal jail appeal has been filed by the appellant (accused) Muhammad Ayaz son

of Abdul Manan through Superintendent Central Jail Mach and subsequently also filed Criminal Appeal No.281/2021, against the judgment dated 8th June 2021 ("the impugned judgment") passed by learned Additional Sessions Judge/MCTC, Khanozai ("the trial Court"), whereby the appellant was convicted under section 302(b), P.P.C. read with sections 109, 34, P.P.C. and sentenced to suffer life imprisonment for committing the murder of deceased Muhammad Afzal and also to pay Rs.200,000/- as compensation to the legal heirs

of deceased, as provided under Section 544- A, Cr.P.C. and in default thereof the appellants

shall further suffer S.I. for six (06) months, with the benefit of section 382- B, Cr.P.C.

The Criminal Revision Petition has been filed by the complainant Muhammad

Saleem, for enhancement of sentence of the appellant from life imprisonment to that of Capital punishment for death.

2. Facts of the case are that on 19th October 2019, the complainant Muhammad Saleem

son of Muhammad Qasim, lodged FIR No.27 of 2019 at Levies Station Bostan, District

Pishin, under sections 302, 109, 34, P.P.C. with the averments that on the day of occurrence at about 02:07 p.m. his brother Muhammad Qaseem informed him through mobile phone that at the beginning of Killi Mehterzai on Bostan Road, he along with Muhammad Afzal in Rickshaw were going to home after picking the children from school, meanwhile the appellant intercepted their way, who was in police uniform and started firing upon his brother Muhammad Afzal with a 9mm pistol and committed his murder, thereafter the

appellant escaped from the place of occurrence on Honda 125 CC Motorcycle. Pursuant to such information, he reached to the place of occurrence, where he found the dead body of his brother Muhammad Afzal lying in the pool of blood. The motive behind the occurrence is stated to be a dispute over a relation between the deceased with the appellant's family, to which the arbitrators tried to resolve the matter, but the appellant murdered his brother.

3. Pursuant to the above FIR, the appellant was arrested, who were subjected to investigation, on completion thereof he was remanded to judicial custody. On receipt of challan, the trial Court indicated the charge to appellant, who pleaded not guilty and claimed trial. At the trial the prosecution produced ten (10) witnesses, whereafter the appellant was examined under section 342, Cr.P.C. The appellant also recorded his statement on oath under section 340(2), Cr.P.C., but did not produce any witness in his defence. On conclusion of trial and after hearing arguments, the learned trial Court, convicted and sentenced the appellant as mentioned above, vide impugned judgment dated 8th June 2021. Whereafter, the appellant filed the Criminal Jail Appeal and also filed Criminal Appeal, while the complainant filed criminal revision petition for enhancement of sentences awarded to the appellant from life imprisonment to that of capital punishment of death.

4. Heard the learned counsel for parties and perused the available record minutely. Now advertng to the merits of the case, suffice to observe that so far as the unnatural death of deceased Muhammad Afzal is concerned, the same is undisputed as the defence is not disputing the unnatural death of deceased, but pleaded his false implication. It is observed that soon after the crime, the deceased Muhammad Afzal was shifted to Civil Hospital Quetta, where his dead body was examined by PW -4 Dr. Aysha Faiz, Police Surgeon, Sandaman Provincial Hospital, Quetta and thereafter issued MLC as Ex.P/4, perusal whereof transpires that the deceased had received a bullet injury on his left side front of Chest and exit wound on right side back of Chest and his cause of death was due to damage of his vital Organs, caused by fire arm. Besides, the inquest report prepared by the I.O. under section 174, Cr.P.C. also confirms the bullet injuries on his the person of deceased.

5. To prove its case the prosecution produced PW -1 Muhammad Saleem, being the real brother of deceased Muhammad Afzal after getting information of incident promptly lodged the FIR by nominating the appellant in

the crime, besides this witness has also brought on record the past worst relationship of deceased with the appellant's on account of relationship. However, since this witness has not directly witnessed the crime and he gathered information from the eye -witnesses namely Muhammad Qaseem, who appeared as PW- 3 and PW -6 Irfan

Ullah, thus it would be advantageous to minutely scrutinize the statement of PW -3 and PW -

6. PW -3 is also the real brother of complainant and deceased Muhammad Afzal as well.

According to PW -3 on the day of occurrence at about 02.00 p.m. he along with deceased,

PW-6 Irfanullah and other school children were proceeded from Kuchlak to Bostan in

Rickshaw, but in the way at Killi Mehterzai, the appellant being suited in police uniform, intercepted their way and started firing upon the deceased Muhammad Afzal and thereafter escaped from the place of occurrence in a Honda 125 Motorcycle, as such, he informed PW -

1, who along with Levies officials arrived at the site and took the deceased to hospital. The statement of second eye -witness of the occurrence is PW- 6 Irfan Ullah, who corroborated the statement of PW -1 on all counts. This witness narrated the story with regard to their riding in

Rickshaw and were going towards their homes, when in the way the appellant intercepted their way and with pistol made firing upon the deceased and escaped from the place of occurrence, whereafter PW- 3 called his brother PW -1.

6. Another important witness produced by PW -9 Allah Dad, who brought on record

earlier worst relationship in between the appellant and the victim family. This witness brought on record that the appellant had some dispute with his wife and his wife was residing in the house of her uncles, while the appellant approached their tribal chief, who amicably

settled the dispute in between the parties and through writing the appellant was bound down

not to mistreat his wife and children and in case of violation Rs.One Million will be imposed as fine. PW- 5 Sanaullah produced such Iqrar Nama as Ex.P/5 -B.

7. The comparative study of direct evidence produced through PW -3 and PW -6, while

the circumstantial evidence produced through PW -1 and PW -9 would establish the fact that

the appellant due to matrimonial dispute committed the murder of deceased Muhammad Afzal. The eye- witnesses in line with each other gave each and every detail of the occurrence. They remained consistent in their testimonies. Both the PWs correctly identified the appellant in the trial Court as

assailant, who committed the murder of deceased through pistol. Both the PWs correctly stated the date, time and the place of occurrence as well as the manner, in which the occurrence had taken place. Their testimonies were tested through cross-examination by the defence, but they remained consistent in their statements and the prosecution has failed to give any slightest dent or jolt to their testimonies. Besides, the occurrence had taken place during the day light, thus there was no occasion for mistaken identity of the appellant. PW -3 being the real brother of deceased will never raise his finger on innocent persons leaving the actual and real culprits scot-free, who committed the brutal murder of his brother. The plea of the learned defence counsel that PW- 3 is interested witness and the case of prosecution is lacking independent corroboration, suffice to state here that mere relation of witness with the deceased is no ground to discard his testimony, if his evidence is found entirely independent and truthful, therefore, his testimony without looking for any other corroborative evidence, would alone be sufficient to establish the charge. Legally, the evidence of related witness who is not found inimical and is confidence - inspiring would hardly need any corroboration. Reliance in this regard may be placed on the case of and the case of Haji Ali Shan v. The State reported in 2001 PCr.LJ 1320 and Allah Ditta v. The State, reported in PLD 2002 SC 52. In the case of Allah Ditta's it was held as under:

"... It is also to be noted that admittedly prosecution witnesses Muhammad Sadie and two others have no enmity of whatsoever nature against Allah Ditta and they have also no reason to falsely involve him in the commission of murder of their brother Muhammad Sabir. In addition to it, it is also not possible for them that they would allow real culprit to go scot-free and falsely involve another person for the commission of the offence. Even otherwise it is well settled by now that substitution of real culprit is a rare phenomena in our system of criminal justice." (BOLD ADDED)

8. Now advertng to other the circumstantial evidence, suffice to observe here that soon after the occurrence the Investigating Officer visited the place of occurrence and collected three empties from the place of occurrence. Subsequently, the appellant was arrested and from his possession of 9mm pistol was effected. Both the empties and the 9mm pistol were sent to FSL for analysis and the FSL report Ex.P/10- G received in affirmative confirming that not only the crime weapon is in working condition, but also the empties so collected from the place of occurrence were fired from the said pistol.

9. The reappraisal of entire prosecution evidence establishes the fact that the prosecution has succeeded in proving the charge against the appellant through direct, circumstantial and medical evidence. The appellant has failed to take any specific plea with regard to his false implication. The motive behind occurrence has also been established, which was over a matrimonial dispute in between the appellant with his wife Bibi Rehana and his wife due to such reasons took shelter into the house of his uncles and the deceased Muhammad Afzal being the maternal cousin of Bibi Rehana was murdered by the appellant. Thus, the learned trial Court has rightly convicted and sentenced the appellant after proper appraisal of available record.

10. As far as the contention of learned counsel for the petitioner (complainant) in Criminal Revision Petition for enhancement of sentence is concerned, suffice to observe here that there existed a previous dispute in between the parties, as the wife had taken shelter in the house of deceased, being his paternal cousin. Besides, the accused Gulzar, Fazal and Abdul Manan are absconding, whose plea is yet to be recorded due to which capital punishment of death cannot be awarded and rightly the learned trial Court awarded sentence for life imprisonment to the appellant (convict), thus in our view the impugned judgement is also not open for interference for enhancing the sentence of appellant (accused).

For the above reasons, the appeals and the revision petition being devoid of merits, are hereby dismissed.

JK/48/Bal. Appeals dismissed.