

[Balochistan]

Before Muhammad Ejaz Swati and Abdullah Baloch, JJ

Master MUHAMMAD NASEEM---Appellant

Versus

The STATE---Respondent

Criminal Jail Appeal No.34 of 2019, decided on 12th October, 2020.

(a) Penal Code (XLV of 1860)---

---S. 302(b)---Qatl-i-amd---Appreciation of evidence---Benefit of doubt---Contradictions in the statements of witnesses---Scope---Accused was charged for committing murder of father of complainant by firing---Ocular account of the incident had been furnished by complainant/son and widow of the deceased---Complainant mostly reiterated the contents of his fard-e-bayan, wherein he had stated that on the day of occurrence, he along with his other family members were present in his house, when the door of the house was knocked by the accused deceased was prohibited by his mother not to go to the door due to extreme annoyance of accused but despite that deceased went out of, where scuffle took place---Complainant came out from his house, after hearing fire shot and found his father lying in the pool of blood, while the accused holding pistol in his hand escaped from the place of occurrence in a motorcycle---Complainant contradicted his statement as contained in the fard-e-bayan, where he mentioned that on the way to the hospital his father succumbed to the injuries, while in his court statement he stated that doctor after examination disclosed that his father had died---According to complainant at the relevant time the neighbours were gathered at the spot but neither any neighbour was interrogated nor produced in the Trial Court by the prosecution---Prosecution had failed to produce the persons who had taken the deceased to hospital---Widow of the deceased also contradicted the statement of complainant and stated that initially her husband was being shifted to a private hospital from where he was being taken to civil hospital but on the way to civil hospital he succumbed to the injuries---Widow of deceased in her cross-examination stated that complainant disclosed to her that initially the deceased was shifted to private hospital in injured condition and thereafter he was taken to civil hospital---Statements of both the said witnesses had fully been contradicted by another witness, who claimed to be the witness of disclosure of the accused recorded during investigation, wherein allegedly the accused had not only confessed his guilt but also got recovered the crime weapon from the roof of the house of deceased---Statements of both the witnesses were silent that the accused had thrown the pistol on their roof rather they in a specific terms stated that the accused while holding the pistol escaped from the place of occurrence on a motorcycle---Comparative study of both the statements of complainant and widow and the statement of other witness made the presence of both the witnesses doubtful at the relevant time and also the recovery of crime weapon on the pointation was doubtful---

Circumstances established that the prosecution had failed to prove its case against the accused beyond any shadow of doubt---Appeal against conviction was allowed, in circumstances.

(b) Penal Code (XLV of 1860)---

---S. 302(b)---Qanun-e-Shahadat (10 of 1984), Art. 40---Qatl-i-amd---Appreciation of evidence---Benefit of doubt---Delay in disclosure made by the witness---Scope--- Accused was charged for committing murder of father of complainant by firing---In the present case, a witness had claimed to be the witness of disclosure of the accused recorded during investigation, wherein allegedly the accused had not only confessed his guilt, but also got recovered the crime weapon from the roof of the house of deceased---Record showed that the alleged recovery of crime weapon was effected after 20-days of incident from the roof of the house of complainant party, thus, it was beyond imagination that the said pistol remained on the roof of complainant party and no one had seen it and even after 20-days its condition was not deteriorated---Even otherwise, the Investigating Officer admitted in his cross-examination that the alleged recovery of pistol was not effected in his presence---Circumstances established that the prosecution had failed to prove its case against the accused beyond any shadow of doubt---Appeal against conviction was allowed, in circumstances.

(c) Penal Code (XLV of 1860)---

---S. 302(b)---Qanun-e-Shahadat (10 of 1984), Art. 40---Qatl-i-amd---Appreciation of evidence---Benefit of doubt--- Accused was charged for committing murder of father of complainant by firing---In the present case, both the complainant and widow of deceased in specific terms stated in their statements that on hearing the firing shots, when they came out from their house, they had seen the accused holding pistol in his hand---Admittedly both the said witnesses were also on the target of accused, but he let them free and escaped from the place of occurrence---Said fact did not appeal to the logic that by killing a person in presence of his blood relations, the accused being armed with sophisticated weapon would not attempt to cause any injury/kill the prosecution witnesses leaving them for evidence to be hanged---Ocular testimony of the related/interested prosecution witnesses and false implication of the accused by the witnesses could not be ruled out of consideration as the accused while recording his statement under S.342, Cr.P.C., had taken specific plea of his false implication by witnesses---Circumstances established that the prosecution had failed to prove its case against the accused beyond any shadow of doubt---Appeal against conviction was allowed, in circumstances.

Muhammad Farooq v. State 2006 SCMR 1707 and Dohlu v. State 2002 PCr.LJ 690 rel.

(d) Criminal trial

---Medical evidence---Scope---Medical evidence was only a supporting piece of evidence

and the same could not be the substitute of direct evidence.

(e) Criminal trial---

---Benefit of doubt---Principle---Accused could not be deprived of benefit of doubt merely because there was only one circumstance which created doubt in the prosecution story. [p. 474] H

Tariq Pervaiz v. The State 1995 SCMR 1345 rel.

Zahoor Hassan Jamote for Appellants.

Yahya Baloch, Additional, P.G. for the State.

Date of hearing: 6th October, 2020.

JUDGMENT

ABDULLAH BALOCH, J.---This judgement disposes of Crl. Appeal No.34 of 2019 filed by the appellant Master Muhammad Naseem son of Abdul Qadir, through Superintendent Central Jail Mach, against the judgement dated 23rd May 2019 (hereinafter referred as, "the impugned judgement") passed by learned Sessions Judge (Ad hoc) MCTC Quetta (hereinafter referred as, "the trial Court"), whereby the appellant was convicted under section 302(b), P.P.C. and sentenced to suffer imprisonment for life and to pay Rs.500,000 - as compensation to the legal heirs of deceased Abdul Hanan as envisaged under section 544-A, Cr.P.C. and in default thereof to further suffers six (6) months S.I., with the benefit of section 382-B, Cr.P.C.

2. Facts of the case are that on 25th March 2017, the complainant Izzatullah lodged FIR No.28/2017 at Police Station Pashtoon Abad Quetta under section 302, Q&D Ordinance, with the averments that on the day of occurrence he was present in his house, when his paternal uncle Master Naseem (appellant) knocked the door and called his father namely Abdul Hanan to come out, but the mother of complainant prohibited his father from going outside as his uncle was extremely annoyed, but despite that his father went outside the house, wherein harsh words were exchanged and his uncle took his father few steps ahead of the door and both of them started scuffling. In the meanwhile, he heard firing shots, thus when the complainant rushed outside the house, he saw that his father was lying in the pool of blood, while his uncle Master Naseem was holding a pistol in his hand, who on seeing the complainant and other housemates, fled away in a motorcycle from the scene. The complainant with the help of other inhabitants took his father to Gailani Hospital in a vehicle, but in the way his father succumbed to injuries and thereafter the dead body was taken to Civil Hospital. The motive behind the occurrence is stated to be property dispute.

3. After registration of FIR. 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, the prosecution produced seven (07) witnesses,

whereafter the appellant was examined under section 342, Cr.P.C. However, neither the appellant recorded his statement on oath under section 340(2), Cr.P.C. nor produced any witness in his defence. On conclusion of trial, the trial Court convicted and sentenced the appellant as mentioned above in para No.1, whereafter instant appeal has been filed.

4. Heard the learned counsel and perused the available record. To substantiate the charge of murder of deceased Abdul Hanan against the appellant, the prosecution produced the evidence of seven witnesses. The most important witness of the occurrence is PW-1 (complainant), PW-2 Mst. Shakira, circumstantial witness, PW-3 Hidayat Ullah, S.H.O. is the witness of disclosure memo of appellant, pursuant to which the recovery of crime weapon was taken place, while the remaining witnesses are PW-4 Muhammad Yousaf SI, who is the the recovery witness of blood stained articles and in his presence three empties and three leds of 30-bore pistol were also taken into possession, PW-5 Dr. Ali Mardan, Police Surgeon has brought on record the medical evidence, who had examined the deceased, PW-6 Muhammad Sabir S.I. is the Investigating Officer of the case, who counted the steps taken by him during the course of investigation, while PW-7 Muhammad Ishaq, S.I. produced the analysis reports.

5. As stated above the most important witness of the occurrence is PW-1 Izzatullah Complainant, who is also the son of deceased Abdul Hanan, while PW-2 Mst. Shakira is the widow of deceased. The complainant mostly reiterated the contents of his fard-e-bayan Ex.P/1-A, wherein he has stated that on the day of occurrence he along with his other family members were present in his house, when the door of the house was knocked by the appellant, to which the deceased was going outside, but he was prohibited by PW-2 due to extremely annoyance of appellant, but despite such fact the deceased went out of house, where scuffle took place and after hearing the firing shot, he came out from his house and found his father lying in the pool of blood, while the appellant holding pistol in his hand escaped from the place of occurrence in a motorcycle. The complainant contradicted his statement as contained in the fard-e-bayan, where he mentioned that in the way his father succumbed to his injuries, while in his Court statement he stated that the doctor after examination disclosed that his father has been died. According to PW-1 at the relevant time the neighbours including Muhammad Aslam were gathered at the spot, but neither the said Muhammad Aslam was interrogated nor produced in the trial Court by the prosecution. The prosecution has also failed to produce Nawab and Ramzan, who had taken the deceased to hospital. Likewise. PW-2 also contradicted the statement of PW-1 and stated that initially her husband was being shifted to Gailani Hospital, from where he was being taken to Civil Hospital, but in the way to Civil Hospital he succumbed to his injuries. PW-2 in her cross-examination stated that his son (PW-1) disclosed to her that initially the deceased was shifted to Gailani Hospital in injured condition and thereafter he was taken to Civil Hospital.

6. The statements of both the witnesses have fully been contradicted by PW-3 Hidayat Ullah, who claims to be the witness of disclosure of the appellant recorded during investigation, wherein allegedly the appellant had not only confessed his guilt, but also got recovered the crime weapon from the roof of the house of deceased. The contents of disclosure memo Ex.P/3-A transpires that the appellant was allegedly confessing his guilt that he went to the house of deceased, knocked the door, from where the deceased came out from the house, wherein quarrel took place, thus he took out the pistol and made firing upon

the deceased and after commission of crime he threw the pistol on the roof of the house of deceased, while both the witnesses i.e. PW-1 and PW-2 mentioned in their statement that on hearing the firing shots, they came out from their house and saw that the deceased was lying in the pool of blood, while the appellant was holding a pistol and he on seeing the PW-1 and PW-2 escaped from the place of occurrence on a motorcycle. The statements of both the PWs are silent that the appellant had thrown the pistol on their roof rather they in a specific terms stated that the appellant while holding the pistol escaped from the place of occurrence in a motorcycle. The comparative study of both the statements of PWs-1 and PW-2 and the statement of PW-3 makes the presence of both the witnesses doubtful at the relevant time and also the recovery of crime weapon on the pointation is doubtful. It has also been observed that the murder of deceased was committed on 25th March 2017, while the alleged disclosure was recorded on 14th April 2017 and on the said date i.e. 14th April 2017 the alleged recovery of crime weapon was effected i.e. after 20-days of incident from the roof of the house of complainant party, thus it is beyond imagination that the said pistol remained on the roof of complainant party and no one had seen it and even after 20-days its condition was not deteriorated. Even otherwise, the Investigating Officer admitted in his cross-examination that the alleged recovery of pistol was not effected in his presence.

7. If the statements of PW-1, PW-2, PW-3 and PW-6 (I.O.) are taken into consideration jointly, it would become crystal clear that neither the PWs-1 and 2 justified their presence at the relevant time when the occurrence had taken place nor the prosecution has succeeded in proving the volunteer disclosure recorded by the appellant, pursuant to which the the alleged recovery of pistol was effected. Even otherwise, both the PW-1 and PW-2 in specific terms stated in their statements that on hearing the firing shots, when they came out from their house, they saw the appellant holding pistol in his hand, thus admittedly both the PWs were also on the target of appellant, but the appellant let them free and escaped from the place of occurrence. It does not appeal to the logic that by killing a person in presence of his blood relations, the appellant being armed with sophisticated weapon would not attempt to cause any injury/kill the prosecution witnesses leaving them for evidence to be hanged. Reliance in this regard is placed on the case of Muhammad Farooq v. State 2006 SCMR 1707. Reference in this regard is also made to the case of Dohlu v. State 2002 PCr.LJ 690.

8. According to PW-5 Dr. Ali Mardan, Police Surgeon, Civil Hospital Quetta, on the day of occurrence the deceased Abdul Hanan was brought in hospital in dead condition and after examination he issued MLC, perusal of which though confirms the unnatural death of deceased. Anyhow, the medical evidence is only a supporting piece of evidence and the same cannot be the substitute of direct evidence.

9. Thus, in view of the ocular testimony of the related/interested prosecution witnesses, contradictions and dishonest improvements in their testimony, lacking independent corroboration in material aspect, the false implication of the appellant by the PWs cannot be ruled out of consideration as the appellant while recording his statement under Section 342 Cr.P.C. has taken specific plea of his false implication by PWs. The perusal of impugned judgement reveals that the same is suffering from misreading, non-reading and misappreciation of material available on record. The above defects in the prosecution case were not considered by the learned trial Court while passing the impugned judgement. It is well settled principle of law that a wrongful conviction results into injustice, the first tragedy is to the innocent person; the second is to the victim of the offence and to society, because the real

offender is not brought to justice, wrongly conviction undermine the credibility of the legal system, whenever witnesses are mistaken, it is rarely because they lie or misrepresent the facts. Needless to emphasize that accused was entitled to be extended benefits of doubt as a matter of right, but the same was withheld. Even an accused cannot be deprived of benefit of doubt, merely because there is only one circumstance, which creates doubts in the prosecution story, whereas in the case in hand there are series of doubts apparent from the statements of so-called eye-witnesses. 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 judgment dated 23rd May 2019 passed by learned Sessions Judge (Ad hoc) MCTC Quetta is set aside and while extending the benefit of doubts, the appellant Master Muhammad Naseem Son of Abdul Qadir, is acquitted of the charge under section 302(b) Q&D Ordinance. The appellant being in custody, is ordered to be released forthwith, if not required in any other case.

JK/245/Bal.

Appeal allowed.