

Journal: 2016 SCMR 1019

Court: [Supreme Court of Pakistan]

Judges : Asif Saeed Khan Khosa, Gulzar Ahmed and Iqbal Hameedur Rahman, JJ

Parties: MUHAMMAD JAMSHaid and another - Appellants

Versus

The STATE and others - Respondents

Statutes: Criminal Appeals Nos. 86 and 462 of 2012, decided on 26th November, 2015.
(Against the judgment dated 6-6-2011 passed by the Lahore High Court, Lahore in Criminal Appeals Nos.233 and 124 of 2007 and Criminal Revision No.46 of 2007)

Date of hearing: 26th November, 2015.

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---

Criminal Appeal No. 86 of 2012

Muhammad Jamshaid appellant was booked and tried in case FIR No.346 registered at Police Station Banni, District Rawalpindi on 12.07.2005 for an offence under section 302, P.P.C. read with section 34, P.P.C. in respect of an alleged murder of one Mirza Yaqoob. After a full-dressed trial the appellant was convicted for an offence under section 302(b), P.P.C. vide judgment dated 04.12.2006 handed down by the learned Additional Sessions Judge, Rawalpindi and was sentenced to imprisonment for life and to pay a sum of Rs, 1,00,000/- to the heirs of the deceased by way of compensation under section 544-A, Cr.P.C. or in default of payment thereof to undergo simple imprisonment for six months. The benefit under section 382-B, Cr.P.C, was extended to him. The appellant challenged his conviction and sentence before the Lahore High Court, Lahore through Criminal Appeal No, 233 of 2007 which was dismissed by a learned Judge-in-Chamber of the said Court vide judgment dated 06.06.2011. Hence, the present appeal by leave of this Court granted on 14.12.2012.

2. We have heard the learned counsel for the parties and have gone through the record of the case with their assistance.

3. According to the prosecution Mirza Yaqoob deceased was settled in the United Kingdom and had married a number of times including with a lady who was a sister of the present appellant but admittedly the said marriage had resulted in a separation and at the relevant time, while on a visit to Pakistan, the deceased was staying in a Guest

House but his deadbody had been found in the house of the appellant which house was inhabited by many other members of the appellant's family. It is not disputed that the murder in issue had remained unwitnessed. The motive set up by the prosecution had been disbelieved and ruled out of consideration by the trial court and the only circumstance relied upon by the prosecution was that the deadbody of the deceased had been found inside the house of the appellant and, hence, it was concluded by the courts below that it must be none other than the present appellant who had done the deceased to death. We have found such an approach adopted by the courts below to be nothing but speculative. It is trite that suspicion howsoever grave or strong can never be a proper substitute for proof beyond reasonable doubt required in a criminal case. The house in issue was admittedly inhabited by many other members of the appellant's family. The role played by the appellant in the incident in issue had never become available on the record and it had never been disclosed or alleged by the prosecution as to under what circumstances the deceased had been done to death. It has, thus, surprised us to learn that not only the trial court but also the High Court had concluded that the prosecution had proved its case against the appellant beyond reasonable doubt. We expect the courts below to do better in future.

4. For what has been discussed above a conclusion is inescapable that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. This appeal is, therefore, allowed, the conviction and sentence of the appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in connection with any other case.

Criminal Appeal No. 462 of 2012

5. None has entered appearance to prosecute this appeal on behalf of the appellant/complainant nor any request has been received seeking an adjournment. We have already concluded in our judgment passed in Criminal Appeal No. 86 of 2012 today that the prosecution had failed to prove its case and, thus, there is hardly any occasion left for us to enhance respondent No. 1's sentence or to convert respondent No. 2's acquittal into conviction. This appeal is, therefore, dismissed. The bail bonds and sureties of respondents Nos. 1 and 2, if any, shall stand discharged.