

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan

Criminal Petition No.412-L/2014

Against the judgment dated 24.2.2014
passed by Lahore High Court, Lahore in
Criminal Appeal No.1163/2010 with
Murder Reference No.284 of 2010

Sardaran Bibi

...Petitioner(s)

Versus

The State & others

...Respondent(s)

For the Petitioner(s):

Mian Shah Abbas
(via video link, Lahore)

For the State:

Mr. Khurram Khan, Addl. PG, Punjab

Date of Hearing:

18.4.2024

ORDER

Irfan Saadat Khan, J.- This Criminal Petition is directed against the judgment passed by the Lahore High Court, Lahore in Criminal Appeal No.1163 of 2010 relating to Murder Reference No.284 of 2010 whereby the Appeal filed by Ghulam Rasool and Ghulam Haider, both sons of Imam Din, was accepted, the conviction and the sentence awarded to them by the Trial Court in Sessions Complaint No.3/ASJ/2002 dated 04.5.2010 was set aside.

2. Brief facts of the case before us, as narrated in the F.I.R. No. 265/2001, registered at Police Station Hujra Shah Muqem, District Okara, on the statement of Mst. Sardaran Bibi ("**Petitioner**") dated 06.4.2001 that she has one son, who went to Lahore to work as a labourer. In the night between 05/06.04.2001, the Petitioner Mst. Safia Bibi, Barkat Ali, and her husband Muhammad Ishaq were asleep when at about 05:00 A.M. she woke up to answer the call of nature and saw that Ghulam Rasool (armed with a 12-bore gun), Ghulam Haider (armed with 12-bore gun), Qurban Ali (armed with pump-action gun), and Abdul Aziz (unarmed) ("**Respondents**"), had trespassed into her house. At this point, one of the Respondent namely, Abdul Aziz, shouted that he would

teach a lesson to the Petitioner's husband, namely, Muhammad Ishaq, for murdering Hakim Ali. Ghulam Rasool then fired from his weapon, which hit the left flank of the Petitioner's husband. Qurban Ali also fired which hit the left armpit of Muhammad Ishaq. Petitioner then raised hue and cry upon which Saghir Ali came at the spot and witnessed the scene, however, the Respondents fled away from the spot. The Petitioner's husband succumbed to his injuries on the spot. The motive behind the occurrence was that in the previous year, elder brother of Ghulam Rasool, namely Hakim Ali, was murdered and his murder case was registered against the Petitioner's son, Muhammad Sarwar, and her nephews, Abdul Majeed and Abdul Rasheed. The son of the complainant, however, was on bail in that case; therefore, due to the grudge/personal enmity it was averred that the Respondents had murdered the Petitioner's husband.

3. After completion of the investigation, report under Section 173 of the Code of Criminal Procedure, 1898 ("**the Code**") was submitted against the accused in the Court for trial. Charge was framed to which the Respondents pleaded not guilty and claimed trial. The trial Court announced its verdict, on 04.05.2010, in the following terms:

"29. The ocular account comprised of Pw. 1 and Pw. 2 are consistent and confidence inspiring which is duly corroborated by medical evidence to the extent of Ghulam Rasool, Ghulam Haider and Qurban Ali accused. I, therefore, convict Ghulam Rasool, Ghulam Haider and Qurban Ali u/s 302(b) PPC.

30. The case of Abdul Aziz son of Nizam Din accused is distinguishable because Abdul Aziz has been shown as empty handed in this case. It is highly improbable that any person would be associated any commission of murder without any weapon, the participation of empty handed accused seems doubtful, therefore, in such an eventuality when the prosecution is silent regarding my overt act by Abdul Aziz then the court has left no option but the (sic) extend the benefit of doubt to empty handed accused.

31. Principle of falls us in UNO fallsus in omni bus (sic) is not applicable to the facts and circumstances of this case. Principle of sifting chaff out of grain has to be followed so by extending the benefit of doubt to Adul Aziz accused I hereby acquit him of the charge. He is present in court on bail, his surety be discharged.

32. Convicts fact Ghulam Rasool son of Iman Din, Ghulam Haider son of Imam Din and Qurban Ali son of Abdul Aziz gave fire shot injuries with 12 bore guns on the person (sic) of Muhammad Ishaq deceased which hit on his upper part and outer border of axilla left humrous bone was fractured, back

and lower part of left chest front and outer side of right chest and back and middle of right chest in presence of Pw. I and Pw. 2. The injuries were shown as injuries No 1 to 4 in Ex.PC/1, Ex.PC/2 which are sufficient to cause death, so convict Ghulam Rasool, Ghulam Haider and Qurban Ali are awarded death sentence u/s 302(b) PPC for causing intentional murder of Muhammad Ishaq deceased, they shall be hanged by their neck till they are dead. The convicts are further directed to pay the compensation of Rs. 1,00,000/- to the legal heirs of the deceased u/s 544-A Cr.P.C. In default of payment of compensation, they shall further undergo SI for six months.

33. Proceedings of this case alongwith Exhibits, police file be submitted before the Honourable Lahore High Court Lahore for confirmation of the death sentence awarded to the convicts Ghulam Rasool, Ghulam Haider and Qurban Ali."

4. The present Respondents then filed Cr. Appeal No. 1163 of 2010 against their conviction and sentence. The High Court after detailed deliberation then accepted the Criminal Appeal and answered the Murder Reference in negative, vide its judgement, dated 24.02.2024, with the following observations:

"15. As already discussed the whole prosecution case became doubtful due to dishonest improvements made by the witnesses of the ocular account. The evidence of related and inimical witnesses cannot be taken into consideration without any corroborative piece of evidence, which is lacking in this case. There was no source of light at the place of occurrence which took place in the darkness of the night. So the prosecution evidence is full of doubts. It is settled principle of law that even a single doubt arising out of the prosecution story has to be extended to the accused and not to the prosecution.

16. Consequently, due to the above mentioned reasons, while extending the benefit of doubt to the appellants, we accept CrI.A.No. 1163/2010 filed by Ghulam Rasool and Ghulam Haider. The conviction and sentence awarded by the trial court u/s 302(b) PPC to the appellants, is set aside. They are acquitted of the charge. They shall be released forthwith from jail, if not required to be detained in any other case.

17. Death sentence of Ghulam Rasool and Ghulam Haider appellants is not confirmed. Murder Reference No. 284/2010 is answered in the negative."

5. Mian Shah Abbas, learned ASC appeared, *via video link from Lahore*, before us, on behalf of the present Petitioner. The Learned Counsel contended that the impugned judgement was against the law and facts of the case, as the Court has relied on assumptions only. He stated that the Trial Court had awarded the capital punishment to the Respondents on

merits and that the prosecution had proved its case beyond reasonable doubt, through oral as well as documentary evidences but the High Court has failed to properly peruse the same and without considering the fact that the offence committed by the Respondents was heinous in nature and that they were not entitled for any leniency/benefit. The learned Counsel therefore, has prayed that Leave to Appeal against the impugned judgement, dated 24.02.2014, passed in CrI.A.No. 1163/2010, may be granted and that the conviction awarded by the trial Court may be restored.

6. Mr. Khurram Khan, learned Additional Prosecutor General, Punjab has appeared on behalf of the State, he adopted the contention and the arguments of the learned Counsel for the Petitioner and prayed for leave to appeal against the impugned judgement as, in his view, the prosecution had proved its case up to the hilt and beyond reasonable doubt before the trial Court, which was not considered by the High Court.

7. We have heard both the learned Counsel for the Petitioner and the Additional Prosecutor General representing the State and have perused the record with their assistance.

8. At the outset, we would like to note that the High Court has categorically observed that there were marked improvements in the depositions of the witnesses which were not in conformity with the medical evidence and these evidences were neither reliable nor confidence inspiring. The record reveals and noted by the High Court that the petitioner in her initial statement, as per the F.I.R and as per the statement recorded u/s 161 of the Code stated:

"I had stated in Ex. PA that my deceased husband used to pursue the murder case of Hakim Ali (confronted with Ex. PA) where it is not so recorded."

However, during the trial the Petitioner stated as under:

"I had stated in F.I.R. that Muhammad Ishaq used to pursue the case and the accuses (sic) persons prevented him to pursue the case who did not stop from pursuing the case and this was the grudge against him of Ghulam Rasool etc. accused, and they had threatened him with dire consequence..."

The petitioner as (P.W-1), during her cross examination admitted as under:

"It is correct that the investigating officers challenged us accused."

"It is correct that the accused named in FIR were declared innocent by the police and recommended for discharge of them. It is also correct that the police had challenged us in this case."

The variance in the above statements, in our view, has put a dent in the case and has cast a shadow of doubt about the veracity of the events, as duly noted by the High Court.

9. The High Court has also noted that as per the FIR the incident took place in the early hours of the morning i.e. 05:00am, when there was hardly any light and that there was darkness with no source of light. Though Mst. Sakina Bibi and Najabat were witnesses of the occurrence but were never produced during the investigation. The version in the FIR has also negated the medical evidence, creating serious doubts about the veracity of the occurrence in the manner stated by the complainant Mst. Sardaran Bibi. It was also noted by the High Court that private complaint was filed on 8.1.2002 i.e. after nine months of the occurrence. In the private complaint also, no source of light was mentioned. Moreover, the High Court has rightly observed that if the enmity between the parties was with regard to murder of Hakam Ali, the elder brother of the petitioner, then why the respondents would murder Muhammad Ishaq (deceased) and why not Muhammad Sarwar son of the deceased, who was stated to be nominated in the murder of Hakam Ali and was on bail. Moreover, we have also noted that the witnesses have made marked improvements in their depositions during the trial, which had cast serious doubts about the prosecution story.

10. The High Court has further noted that I.O recommended discharge of the respondents. It is a settled principle of law that for giving benefit of doubt there may not be many circumstances, as a single confidence inspiring doubt is enough to give benefit of the same to the accused. Moreover, it is well settled exposition of law that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the

cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The Courts are very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, or suffering from the errors of grave misreading or non-reading of the evidence.

*Muhammad Riaz*¹.

This Court in *Tariq Parvez*² has held:

"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

The principle in *Tariq Parvez* vis-à-vis benefit of doubt was also reiterated in *Muhammad Akram*³ , in the following terms:

"It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace."

11. The entirety of the case before us, in our view, is riddled with fallacies as highlighted, in the impugned judgement by the High Court, which does not help the case of the Petitioner or that of the State at all.

This Court in *Muhammad Imran*⁴ has held:

"It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation; the case is fraught with many."

Similar views were also expressed in the cases of *Mst. Asia Bibi*⁵, *Ayub Masih*⁶, *Abdul Jabbar*⁷ and *Maqsood Alam*⁸.

¹ Muhammad Riaz v Khurram Shehzad (2024 SCMR 51 authored by one of us namely Muhammad Ali Mazhar J. wherein a number of decision given by the Supreme Court have been discussed)

² Tariq Parvez v The State (1995 SCMR 1345)

³ Muhammad Akram v The Sate (2009 SCMR 230)

⁴ Muhammad Imran v The State (2020 SCMR 857)

⁵ Mst. Asia Bibi v The State (PLD 2019 Supreme Court 64)

⁶ Ayub Masih v The State (PLD 2002 Supreme Court 1048)

⁷ Abdul Jabbar v The State (2019 SCMR 129)

⁸ Maqsood Alam v The State (2024 SCMR 156)

12. The Petitioner's case thus appears to be fraught with many doubtful circumstances, whose benefit naturally would extend to the Respondents. We, therefore, do not agree with the learned Counsel for the Petitioner and the Additional Prosecutor General, Punjab that the matter has been proved beyond reasonable doubt and that the conviction awarded by the trial Court may be restored and that of the High Court may be set aside.

13. In light of the above, the impugned judgement, in our view, does not warrant any interference by this Court; consequently, Leave to Appeal is refused and this Petition is accordingly dismissed.

Judge

Judge

Judge

Islamabad

18.4.2024

Arshed/A.J.K., LC.

"Approved for Reporting"