

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.501 of 2018

*(Against the judgment dated 5.6.2018 passed by the
Lahore High Court Rawalpindi Bench Rawalpindi in Crl.
Appeal No.90 of 2016)*

Muhammad Javed

....Petitioner(s)

Versus

The State

....Respondent(s)

For the Petitioner(s): Syeda B.H. Shah, ASC

For the Respondent(s): Mr. Ahmad Raza Gillani,
Addl. Prosecutor General Punjab.

Date of hearing: 07.08.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Muhammad Elahi, 50, was murderously assaulted by Muhammad Javed, petitioner, on 23.7.2012 at 6:00 p.m. within the precincts of Police Station Attock Saddar in the backdrop of a default in payment of Rs.8500/- that he owed to the deceased, a grocery vendor in the neighbourhood. The casualty was attended by Naseer Ahmad, SI (PW-15) at 7:20 p.m. in the Civil Hospital Attock. After a brief struggle, the injured succumbed to the injury. According to Muhammad Iqbal (PW-13), the first informant, upon receipt of information that the deceased was being thrashed by the petitioner and his mother Raeesa Jan, he arrived at the spot to witness the deceased under assault when from amongst the assailants, the petitioner targeted the deceased with a straight fire shot on his back; Abdul Khaliq and Muhammad Shoaib PWs, amongst others, reached the spot for rescue when the accused took to the heels. Alongside the petitioner, his parents as well as one of his brothers Rafaqat were arrayed as accused, however, let off during the investigation and he was alone to contest the indictment that resulted into his conviction under clause (b) of Section 302 of the Pakistan Penal Code, 1860 with imprisonment for life, pre-trial period

inclusive vide trial Court's judgment dated 19.2.2016, upheld by a learned Judge-in-Chamber vide impugned judgment dated 5.6.2018, vires whereof, are being assailed herein.

2. It is argued that occurrence did not take place in the manner as alleged in the crime report and that the prosecution suppressed the real facts leading to the incident wherein the petitioner besides his mother and sister sustained multiple extensive injuries, spelling out a scenario diametrically incompatible with the events alleged in the crime report Ex.PH; that petitioner's even dated statement with the police, prima facie, supported by the witnesses was withheld and thus the evidence presented before the Court was not the whole truth. In the absence of complete tale, it would be unsafe to maintain the conviction, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment.

3. Heard. Record perused.

4. The deceased, in injured condition, was medically examined at 7:15 p.m. under a police docket carried by Aamir Mehmood 1112/C(PW-6); he was noted with an entry wound on the right buttock; he was fully conscious, well-oriented with stable vitals; it is somewhat surprising that despite capacity, he did not opt for a statement. Position taken by the Investigating Officer that "*As per opinion of the doctor, the injured was not in a condition to give statement*" stands contradicted by the observations recorded by Dr. Faheem Khan, (PW-1) in MLR (Ex.PA). Deceased's traumatic condition notwithstanding, nonetheless, his inexplicable silence before the Investigating Officer standing next to him, despite capacity, has repercussions on the statement of Muhammad Iqbal (PW-13) who upon receipt of information regarding an ongoing brawl, reached the scene, located at some distance from his residence, exactly at a point of time when the deceased received solitary fire shot, a rare coincident. More intriguing is his ignorance about injuries suffered by the petitioner, his sister Yasmeen Bibi and mother Raeesa Jan; they were medically examined under police dockets and noted with a good number of injuries comprising bruises, abrasions and lacerated wounds, durations whereof, coincide with the time of occurrence; comparative triviality of the injuries notwithstanding, the injured family presented a picture incompatible with the events narrated in the crime report. Admission by the Investigating Officer Naseer Ahmad, SI (PW-15) is no less startling:

"I proceeded to the place of occurrence. When I reached the place of occurrence, accused Muhammad

Javed and his mother were found confined in the house of the complainant and his sister not confined there alongwith them as suggested. When I examined bodies of accused Javed, his mother Raeesa Jan and sister Mst. Yasmeen Bibi, all the three were found injured. I do not remember as to whether their clothes were blood stained or not. There was bleeding from bodies of all the three said persons. I prepared injury statement of accused Javed, his mother Mst. Raeesa Jan and sister Mst. Yasmeen Bibi. Before preparing injury statement of the said three injured persons, I recorded statement of accused Javed, Ex.P-T. I read over statement of accused Javed Ex.PT to him, who put his signatures on the same as token of its correctness. It is correct that first version of accused Javed which came on the record was the said statement Ex.PT. Statement of accused Javed Ex.PT was made part of police file by me.”.

In the face of unanimous suppression of injuries by the prosecution witnesses, despite possible exclusion of petitioner’s plea from consideration, the prosecution case lacks “*proof beyond doubt*” as it does not reconcile with the parallel story recorded by the Investigating Officer himself duly supported by the statements of medical officers who attended the trial as court witnesses. Statement made by Abdul Khaliq (PW-12) also depicts a different scenario, as according to him, Javed and his mother were confined inside the house of the deceased wherefrom they were rescued by the police and it is so mentioned in his examination-in-chief itself; positions taken by the prosecution witnesses are mutually destructive as we cannot possibly believe the complainant without first excluding the statements of Abdul Khaliq (PW-12) and Naseer Ahmad (PW-15) and vice versa.

In view of the above discrepant positions, implicit reliance upon the statements of the witnesses cannot be placed without potential risk of error as the entire episode is shrouded into a mystery, further compounded by an entry wound without exit on the back of the deceased, fringing near the position taken by the petitioner on the day one in support whereof on the conclusion of prosecution evidence, he entered the witness-box and on solemn affirmation, braved the cross-examiner with the following stance:

“At that juncture, other ladies of their family also reached there and they all took me, my mother and sister outside our house in the street where Shoaib son of the deceased fired a shot on me which hit his father Muhammad Elahi deceased on his back.”

On an overall analysis, prosecution case is found fraught with doubts, deducible from the stated positions, benefit whereof, cannot be withheld, particularly after its failure qua the co-accused. Petition is converted into

appeal and allowed; impugned judgment is set aside and by extending benefit of doubt, the petitioner/appellant is acquitted of the charge; he shall be released forthwith, if not required to be detained in any other case.

Judge

Judge

Islamabad, the
7th August, 2020
Not approved for reporting
Azmat/-