

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO. 355 OF 2018

(On appeal against the judgment dated 22.02.2018
passed by the Lahore High Court, Multan Bench in
Criminal Appeal No. 481/2012)

Muhammad Abbas, and
Muhammad Ramzan

... Petitioners

VERSUS

The State

... Respondent

For the Petitioners: Ms. Sabahat Rizvi, ASC
(Via video link from Lahore)

For the State: Mirza Muhammad Usman, DPG Punjab

For the Complainant: Mr. Abdul Khaliq Safrani, ASC
(Via video link from Lahore)

Date of Hearing: 02.01.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioners along with two co-accused were tried by the learned Additional Sessions Judge, Chichawatni in a private complaint under Sections 302/148/149 PPC for committing murder of Muhammad Sarfraz. The same was instituted being dissatisfied with the investigation conducted by the Police in case FIR No. 85 dated 10.04.2009 under Sections 302/148/149 PPC at Police Station Ghaziabad, District Sahiwal. The learned Trial Court vide its judgment dated 28.06.2012 while acquitting the two co-accused, convicted the petitioners under Section 302(b) PPC and sentenced them to imprisonment for life. They were also directed to pay compensation amounting to Rs.50,000/- to the legal heirs of the deceased or in default whereof to further suffer four

months SI. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioners. In appeal the learned High Court maintained the conviction and sentences awarded to the petitioners by the learned Trial Court.

2. The prosecution story as given in the judgment of the Trial Court reads as under:-

"The complainant, Ameer Hussain filed this complaint against the accused persons alleging that he is resident of Chak No.413/E.B. and cultivator by profession. The accused persons abducted Mst. Shakila Bibi, aged about 16/17 years, the daughter of complainant's cousin, Muhammad Sarwar S/o Niamat. The accused persons promised to return her. On 09.04.2009 at 9.00 p.m. the complainant along with Muhammad Sarwar, Hassan Abad Ali, Muhammad Amin, Sarfraz and Muhammad Shabbir came to Chak No.53/12L and demanded for return of Mst. Shakila Bibi. Hot words were exchanged between the parties. Gahni accused raised Lalkara that teach Sarfraz a lesson for demanding the hand of Shakila Bibi, whereupon Muhammad Abbas made a dagger blow, which landed on the right wrist of Muhammad Sarfraz. Muhammad Ramzan accused also made a dagger blow on the right arm pit of Sarfraz. He fell down smeared in blood. Later on Muhammad Nawaz accused made a blow of his Chhuri, which landed on the right side of his back while Muhammad Boota accused beaten Sarfraz with kicks and fists. The witnesses Abbad Ali, Muhammad Amin witnessed the occurrence and saved the complainant party from the clutches of the accused persons. The victim Sarfraz succumbed to the injuries in the way to hospital. The motive was that the accused persons had abducted Mst. Shakila Bibi, daughter of Muhammad Sarwar. Sarfraz has been pursuing the said case. Due to that grudge, the accused persons have caused his murder. The complainant lodged FIR No.85/09 but the police in connivance with the accused persons declared Muhammad Nawaz accused as innocent while accused Muhammad Ashfaq died during the trial. Hence, this private complaint."

3. The conviction of the petitioners was recorded in a private complaint. The complainant produced cursory evidence whereafter the formal charge was framed against the petitioners on 02.08.2011 under Sections 302/148/149 PPC to which they pleaded not guilty and claimed trial. In order to prove its case the prosecution produced three witnesses and ten CWs. In their statements recorded under Section 342 Cr.P.C, the petitioners pleaded their innocence and refuted all the allegations leveled against them. However, they did not make statements on oath under

Section 340(2) Cr.P.C in disproof of allegations leveled against them. They also did not produce any evidence in their defence.

4. At the very outset, learned counsel for the petitioners contended that there are material contradictions and discrepancies in the statements of the eye-witnesses, which have not been taken into consideration by the courts below. Contends that the PWs are interested and related to each other and their evidence has lost its sanctity. Contends that the prosecution case is based upon whims and surmises and it has to prove its case without any shadow of doubt but it has miserably failed to do so. Contends that the medical evidence contradicts the ocular account. Contends that the prosecution has not been able to prove motive as alleged, which causes serious dent in the prosecution case. Contends that the reasons given by the learned High Court to sustain conviction of the petitioners are speculative and artificial in nature, therefore, the impugned judgment may be set at naught. Lastly contends that even if the whole prosecution case is admitted, at the most it falls within the ambit of Section 302(c) PPC.

5. On the other hand, learned Law Officer assisted by learned counsel for the complainant defended the impugned judgment. It has been contended that the petitioners were specifically nominated in the crime report with a specific role of causing injuries to the deceased, which ultimately became his cause of death. Contends that the ocular account has been proved beyond shadow of doubt and the medical evidence supports the same. Contends that the prosecution has proved its case through cogent and confidence inspiring evidence, therefore, the petitioners do not deserve any leniency by this Court. However, it has not been denied that the occurrence had taken place at the spur of the moment, which is spelled out from the record.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on record.

There is no denial to this fact that the unfortunate incident wherein brother of the complainant lost his life had taken place on 09.04.2009 at 9:00 p.m. whereas the matter was reported to the police at 01:20 a.m. on the same night while the inter se distance between the place of occurrence and the Police Station was 25 kilometers. This aspect of the case clearly reflects that the matter was reported to Police promptly without there being any delay. As the parties were related to each other, therefore, there is no chance of misidentification. In order to prove its case, the prosecution has mainly relied upon the statements of Ameer Hussain, complainant (PW-1) and Muhammad Amin (PW-2). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioners or adverse to the prosecution could be produced on record. These PWs remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. The medical evidence available on the record is in line with the ocular account so far as the nature, locale, time and impact of the injuries on the person of the deceased is concerned. So far as the question that the PWs were closely related to the deceased, therefore, their testimony cannot be believed to sustain conviction of the petitioners is concerned, it is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses. Learned counsel for the petitioners could not point out any reason as to why the complainant has falsely involved the petitioners in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query she remained unsuccessful and could not point out any major contradiction, which could shatter the case of the prosecution. On account of lapse of memory owing to the intervening period, some minor

discrepancies are inevitable and they may occur naturally. The accused cannot claim benefit of such minor discrepancies. The eye-witnesses have given details of the occurrence, which prove that they have witnessed the tragic death of Sarfraz. The motive had not been seriously disputed by the defence, therefore, it was rightly believed by the courts below. So far as the recovery of weapon of offence i.e. churries from the petitioners is concerned, the same has rightly been held inconsequential by the learned Trial Court by holding that the occurrence took place on 09.04.2009 while the weapons were recovered on pointation of the petitioners from their house on 20.02.2011 i.e. after about two years. Admittedly, the said house was a joint house wherein the other members of the petitioners' family were also residing. During this period, the petitioners did not reside in their house. Furthermore, the churries were allegedly recovered on 20.02.2011 but the same were sent to office of Chemical Examiner on 29.09.2011 i.e. after elapse of seven months for which no explanation has been given. In these circumstances, it can safely be said that the prosecution has brought on record reliable evidence to sustain the conviction of the petitioners. However, so far as the quantum of punishment is concerned, we are of the view that the occurrence took place at the spur of the moment and there was no pre-meditation on the part of the petitioners. Admittedly, the occurrence took place in the house of the petitioners where the complainant party had brought a *jirga* for return of Mst. Shakeela, niece of the complainant, who was married with petitioner Muhammad Nawaz against the will of her parents. A bare perusal of the record reveals that something happened immediately before the occurrence, which provoked the petitioners and they caused churri blows on the person of the deceased. On our specific query, learned Law Officer and learned counsel for the complainant could not deny the fact that the occurrence took place at the spur of the moment. Admittedly, both the petitioners did not repeat their act. There was no deep rooted enmity between the parties. In these circumstances, the learned High Court ought to have taken a lenient view. Consequently, we convict the petitioners under Section 302(c) PPC and sentence them to

fourteen years RI each. The amount of fine and the sentence in default whereof shall remain intact.

7. For what has been discussed above, this petition is converted into appeal and partly allowed and the impugned judgment is modified as stated in the preceding paragraph. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the
2nd of January, 2023
Approved For Reporting
Khurram