

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO. 794 OF 2017

*(On appeal against the judgment dated 06.10.2017
passed by the Lahore High Court, Lahore in Murder
Reference No. 340/2014 & Criminal Appeal No. 508-
J/2014)*

Muhammad Sadiq

... Petitioner

VERSUS

The State

... Respondent

For the Petitioner: Mr. Tariq Mehmood Butt, ASC

For the State: Ch. Muhammad Sarwar Sandhu, Addl. P.G

Date of Hearing: 09.11.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- *Petitioner was proceeded against in terms of the case registered vide FIR No. 630 dated 13.11.2012 under Section 302 PPC at Police Station Bhowana, District Chinito for committing murder of Muhammad Tahir son of the complainant. The learned Trial Court vide its judgment dated 13.09.2014 convicted the petitioner under Section 302(b) PPC and sentenced him to death. He was also directed to pay an amount of Rs.500,000/- as compensation to the legal heirs of the deceased as provided under Section 544-A Cr.P.C. or in default whereof to further undergo six months SI. However, the learned High Court vide impugned judgment while maintaining the conviction of the petitioner altered the sentence of death into imprisonment for life. The amount of compensation and the sentence in default whereof was maintained. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner.*

2. *The prosecution story as given in the impugned judgment reads as under:-*

"2. Prosecution story, as set out in the FIR (Ex.PB/1) registered on the statement (Ex.PB) of Mst. Zubaida Bibi, complainant (PW-6) is that she (complainant) was resident of Mohammadi Sharif and had kept her cattle at the dhari of Mian Farooq Ahmad Mayana. In evening time, Muhammad Tahir son of the complainant used to bring back the goats to the house daily but on the fateful day when he did not return, the complainant alongwith Muhammad Nasir and Ahmad Nawaz started search and when they reached near the Dhari, Muhammad Sadiq (appellant) within their view, inflicted hatchet blows on the person of Muhammad Tahir which landed on his chin and head who fell down on the ground. On the hue and cry of complainant party numerous people gathered there who also witnessed the occurrence. When the complainant's side tried to overpower Muhammad Sadiq (appellant) he threatened that if anybody came near he would not be left alive and fled away from the place of occurrence while brandishing his hatchet. The complainant and other PWs attended Muhammad Tahir but he had succumbed to the injuries. Motive behind the occurrence as that few days prior to the occurrence an altercation took place between Muhammad Tahir (deceased) and Muhammad Sadiq (appellant) and they abused each other and due to the said grudge the appellant has committed the murder of deceased."

3. After completion of the investigation, report hallan under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced eight witnesses. In his statement recorded under Section 342 Cr.P.C the petitioner pleaded his innocence and refuted all the allegations leveled against him. He did not opt to appear under Section 340(2) Cr.P.C. to lead defence evidence.

4. Learned counsel for the petitioner contended that there are glaring contradictions in the statements of the eye-witnesses, which were ignored by the learned courts below. Contends that the complainant was mother of the deceased, therefore, her testimony cannot be believed to sustain the conviction of the petitioner. Contends that when the learned High Court disbelieved the motive part of the prosecution story and held recovery of weapon of offence to be inconsequential, there was no occasion for it to maintain the conviction and sentence recorded by the learned Trial Court. Lastly contends that the learned High Court while passing the impugned judgment has not appreciated the evidence in its true prospective, therefore, a great miscarriage of justice has been done.

5. On the other hand, learned Law Officer has defended the impugned judgment. He contended that the petitioner has

committed murder of an innocent person and the evidence available on record is sufficient to prove the case against him, therefore, he does not deserve any leniency by this Court.

6. *We have heard learned counsel for the parties at some length and have perused the evidence available on record with their able assistance.*

The ocular account in this case has been furnished by Mst. Zubaida Bibi, complainant (PW-6) and Ahmad Nawaz (PW-7). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be produced on record. Both these PWs remained consistent on each and every material point inasmuch 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 fully corroborates 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 complainant was mother of the deceased, therefore, her testimony cannot be believed to sustain conviction of the petitioner 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 unless previous enmity or ill will is established on the record to falsely implicate the accused in the case. In the present case, the petitioner committed the murder of his real son whereas his wife, who happened to be mother of the deceased, implicated him in the case. Learned counsel for the petitioner could not point out any reason as to why the wife of the petitioner i.e. the complainant has falsely involved him in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit who murdered his son and falsely involve the petitioner, who happened to be her husband, without any rhyme and reason. Even otherwise, if we keep aside the testimony of Mst. Zubaida Bibi (PW-6) even then the petitioner can be convicted on the solitary statement of Ahmed

Nawaz (PW-7) as it is an established principle of law that testimony of a solitary eye-witness is sufficient to sustain conviction of an accused if the same rings true and inspires confidence and it is the quality of the testimony of a witness that has to be weighed and not the quantity of witnesses. The witnesses were residents of the same locality where the occurrence took place and they have duly explained their presence at the scene of occurrence. The learned High Court has disbelieved the motive part of the prosecution story whereas the recovery of weapon of offence was also held inconsequential only on the ground that it was recovered after lapse of 19 days and was sent to the office of Chemical Examiner after 24 days and because it was possible that the blood would have disintegrated it does not advance the prosecution case. However, we are of the view that the conclusion arrived at by the learned High Court so far as the weapon of offence is concerned is based upon hypothetical approach. Normally the blood stains disintegrate after one month through a biological process but this process is not absolute rather it depends upon so many other factors such as nature of article stained with blood, severity of weather, level of humidity, place where it is found, blood group, race and physique of the body etc. In the instant case the hatchet was recovered at the instance of the petitioner after 19 days and the same was sent for chemical examination after 24 days. The Investigating Officer had also collected blood stained earth and sent the same along with the hatchet to the office of Chemical Examiner. As per the reports of Punjab Forensic Science Agency human blood was found on both these articles. The recovery was effected by the petitioner from the corn fields in the same vicinity where the occurrence took place in the presence of PWs, who remained consistent in their depositions. Even otherwise, when we have found the testimonies of the witnesses of the ocular account to be trustworthy, straightforward and confidence inspiring, which are duly supported by the medical evidence, mere the fact that motive has not been proved and recovery of weapon of offence has been held to be inconsequential, would not be of any benefit to the petitioner. The learned High Court has already taken a lenient view while converting the penalty of

death into imprisonment for life. No further leniency can be shown to the petitioner.

7. For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.

JUDGE

JUDGE

Islamabad, the
9th of November, 2021
Approved For Reporting
Khurram