

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AFR)

JAIL PETITION NO. 190 OF 2017 AND

CRIMINAL PETITION NO. 398-L OF 2017

(Against the judgment dated 20.02.2017 passed by the
Lahore High Court, Multan Bench in Murder Reference No.
111/2012 & Criminal Appeal No. 772/2012)

Azhar Hussain

Haji Ghous Bakhsh (complainant)

(In JP 190/2017)

(In Cr.P. 398-L/2017)

...Petitioner(s)

VERSUS

The State & others

(In both cases)

...Respondent(s)

For the Petitioner(s):

Ms. Saba Saeed Sheikh, ASC

(In JP 190/2017. Via video link Lahore)

Mr. Sikandar Javed, ASC

(In Cr.P. 398-L/2017. Via video link Lahore)

For the State:

N.R.

Date of Hearing:

16.08.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner Azhar Hussain along with two co-accused was tried by the learned Additional Sessions Judge, Jatoi, District Muzaffargarh pursuant to a case registered vide FIR No. 731/2010 dated 05.10.2010 under Sections 302/34 PPC at Police Station Jatoi for committing murder of Mst. Sajda Bibi, daughter of the complainant. The learned Trial Court vide its judgment dated 17.11.2012 while acquitting co-accused, convicted petitioner Azhar Hussain under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.100,000/- to the legal heirs of the deceased or in default whereof to further suffer six months SI. In appeal the learned High Court while maintaining the conviction of the petitioner under Section 302(b) PPC, 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/convict. Being aggrieved by the impugned judgment, the petitioner/convict filed Jail Petition No. 190/2017 whereas the complainant has filed Criminal Petition No. 398-L/2017 before this Court seeking enhancement of the sentence of the petitioner/convict.

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

"2. The brief facts of the prosecution case are that on 05.10.2010, the complainant of this case namely Haji Ghaus Bakhsh appeared before the police and got recorded his statement Exh.P.E. contending therein that today at morning time he (complainant) alongwith his wife Mst. Ashraf and children was cultivating vegetable near his house while his daughter namely Mst. Sajda aged 16/17 years was present in the house. At about 7.30 AM he heard hue and cry and rushed towards his house and saw that two unknown persons were coming out from his Havaili. He reached in the house and saw that his daughter Mst. Sajda had grappled with accused Azhar Hussain. When he (complainant) reached near, the accused Azhar Hussain made fire with his pistol which hit in the belly of Sajda Bibi who fell on the ground. In the meanwhile PWs namely Mukhtiar Hussain and Muhammad Siddique reached at the spot and they tried to catch accused Azhar Hussain but accused gave threats while raising his pistol but PW namely Mukhtiar Hussain chased the accused Azhar Hussain and caught hold him in the cotton crop near the house and they grappled with each others. The accused Azhar Hussain fled away while leaving his Qamiz, Shalwar alongwith broken Azarband, pair of shoe and identity card before they reached there. His daughter succumbed to the injuries. On these facts and circumstances, the above mentioned case was registered."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced nine witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner/convict pleaded his innocence and refuted all the allegations leveled against him. However, he did not make his statement on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against him. He also did not produce any evidence in his defence.

4. Learned counsel for the petitioner/convict contended that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which have escaped the notice of the learned courts below. Contends that the prosecution witnesses are interested and related, therefore, their evidence has lost its sanctity and the conviction cannot be based upon it. Contends that the prosecution case is based on 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 prosecution has not been able to prove motive as alleged, which causes serious dent in the prosecution case. Contends that there was no blood stained earth at the place of occurrence, which shows that the occurrence took place somewhere else. Lastly contends that the impugned judgment is based on misreading and non-reading of the evidence, therefore, the same may be set at naught.

5. On the other hand, learned counsel for the complainant submitted that the learned High Court has converted the sentence of death of the petitioner on the grounds, which are not tenable in law. Contends that to sustain conviction of an accused on a capital charge, un-rebutted ocular evidence alone is sufficient. Lastly contends that the ocular account is supported by the medical evidence, therefore, the petitioner/convict does not deserve any leniency by this Court, rather his sentence may be enhanced.

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

The ocular account in this case has been furnished by Ghous Bakhsh, complainant (PW-3) and Mukhtiar Hussain (PW-6). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner/convict or adverse to the prosecution could be brought on record. Both 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 corroborates the ocular account so far as the nature, time, locale and impact of the injury on the person of the deceased is concerned. As far as the question that the complainant was father of the deceased, therefore, his testimony cannot be believed to sustain conviction of the petitioner/convict is concerned, this Court has time and again held 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. Learned counsel for the petitioner/convict could not point out any plausible reason as to why the complainant has falsely involved the petitioner/convict in the present case and let off the real culprit, who has committed murder of his real daughter. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit who murdered his daughter and falsely involve the petitioner without any rhyme and reason especially when admittedly there was no previous enmity between the parties. 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 could not point out any major contradiction, which could shatter the case of the prosecution. While appreciating the evidence, the court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction. Reliance is placed on Allah Bakhsh Vs. Ahmad Din (1971 SCMR 462). Learned counsel for the petitioner had argued that there was no blood stained earth at the place of occurrence, which shows that the occurrence took place somewhere else and just to bring the case within the prosecution version, the place of occurrence was mentioned at the complainant's house. However, this argument of the learned counsel is

misconceived. The postmortem examination clearly suggests that gut was coming out of the only injury sustained by the deceased. The learned Trial Court has rightly observed that in such like injuries when the gut comes out of the belly, it seals the margin of the wound and the blood falls inside the body cavity instead of oozing outside the body. Dr. Samreen Rasheed, (PW-2) who had conducted postmortem examination had observed that the peritoneum was injured anteriorly at the level of umbilicus and the abdominal cavity was full of blood, the small intestines were perforated, therefore, non-existence of blood at the place of occurrence is easily understandable and does not shatter the prosecution case. The petitioner had taken defence plea that he had friendly relations with the deceased and when he was seen by the complainant's son with the deceased sitting in the cotton crop, he ran away and later heard that the deceased has been murdered. However, he could not substantiate his plea by placing on record cogent evidence. It seems he has concocted a false story just to save his skin. However, this stance of the petitioner extends support to the prosecution case that he was followed by Mukhtiar Hussain (PW-6) till the cotton crop where confrontation took place and his identity card along with other belongings were left by him in the field. It was one of the arguments of the learned counsel that the Investigating Officer did not properly investigate the case, the investigation remained incomplete and the challan was not properly sent. However, on our specific query, learned counsel admitted that neither any attempt was made by the defence to get the Investigating Officer declared hostile nor did they file private complaint nor even the Investigating Officer was cross-examined on this aspect of the matter. Therefore, raising this argument at this stage is of no avail to the petitioner. The prosecution had not disclosed the motive, which resulted in the commission of the offence but since there was no enmity between the parties, therefore, the complainant did not narrate any motive in the crime report. So far as recovery is concerned, admittedly neither the weapon of offence was recovered from the petitioner nor any empty was collected from place of occurrence. However, we may observe that where ocular evidence is found trustworthy and confidence inspiring

then the conviction can be solely based upon it. In these circumstances, there is sufficient evidence available to sustain the conviction of the petitioner/convict. So far as the quantum of punishment is concerned, keeping in view the fact that no recovery was affected and motive has not been proved, the learned High Court has rightly taken a lenient view and converted the sentence of death into imprisonment for life. No further leniency can be shown to the petitioner/convict. The impugned judgment is well reasoned, proceeds on correct principles of law on the subject and does not call for interference by this Court.

7. For what has been discussed above, we do not find any merit in these petitions, which are dismissed and leave to appeal is refused.

Islamabad, the
16th of August, 2022
Not Approved For Reporting
Khurram