

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO. 557 OF 2016 AND

CRIMINAL PETITION NOS. 1391-L & 1392-L OF 2016

(Against the judgment dated 03.10.2016 passed by the Lahore High Court,
Lahore in Criminal Appeal No. 1638/2013, Criminal Appeal No. 1724/2013
and Murder Reference No. 400/2013)

Muhammad Bashir

(In JP 557/2016)

Muhammad Essa (complainant)

(In Cr.Ps 1391-L & 1392-L/2016)

...Petitioner(s)

VERSUS

The State etc

(In JP 557/2016)

Muhammad Bashir etc

(In Cr.P. 1391-L/2016)

Saeed Ahmed etc

(In Cr.P. 1392-L/2016)

...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Yar Khan Dahi, ASC
(In JP 557/2016)

For the Complainant:
and P.

Malik Matee Ullah, ASC
(In Cr.Ps 1391-L & 1392-L/2016)
(Via video link from Lahore)

For the State:

Mr. Ahmed Raza Gillani, Addl. P.G.

Date of Hearing:

31.10.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner Muhammad Bashir along with two co-accused was tried by the learned Additional Sessions Judge, Arifwala in a private complaint under Sections 302/34 PPC for committing murder of Muhammad Amin, brother of the complainant. The same was instituted being dissatisfied with the investigation conducted by the Police in case FIR No. 487 dated 23.09.2010 registered under Sections 302/34 PPC at Police Station Saddar Arifwala, District Pakpattan Sharif. The learned Trial Court vide its judgment dated 23.11.2013 convicted the petitioner and co-accused Saeed Ahmed under Section 302(b) PPC and

while sentencing the petitioner to death, awarded punishment of imprisonment for life to co-accused Saeed. They were also directed to pay compensation amounting to Rs.200,000/- each or in default whereof to further undergo SI for six months. However, the learned Trial Court acquitted co-accused Abdul Hameed. In appeal the learned High Court while maintaining the conviction of the petitioner/convict 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. However, the learned High Court acquitted co-accused Saeed Ahmed. Being aggrieved by the impugned judgment, the petitioner/convict filed Jail Petition No. 557/2016 whereas the complainant has filed Criminal Petition Nos. 1391-L & 1392-L/2016 before this Court against acquittal of co-accused Saeed Ahmed and for enhancement of the sentence of the petitioner/convict from imprisonment for life to death.

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

"2. Unnecessary detailed apart, brief facts, as unfurled from the private complaint are that on 23.9.2010 at about 5 am, Muhammad Amin (deceased) proceeded on motorcycle to Chak No. 87/EB in order to meet one Hassan Bhatti; when he reached near the land of one Ghulam Rasool accused persons Muhammad Basheer, Saeed Ahmed and Abdul Hameed, all armed with pistols 30 bore came there. On hue and cry of Muhammad Esa complainant, Manzoor Ahmed and Muhammad Sharif PWs, who were watering the field near the place of occurrence attracted at the spot and saw the occurrence. Abdul Hameed accused raised lalkara that they would teach a lesson to Muhammad Amin for not giving 'Rishta' of his niece to Muhammad Basheer. Muhammad Basheer fired with his pistol 30 bore, which hit on the right side of head above the right ear of Muhammad Amin. Saeed Ahmed accused fired with his pistol 30 bore which hit below the right ear on the head of Muhammad Amin, who after receiving the fire shot fell down and succumbed to the injuries at the spot. The accused persons fled away from the spot alongwith their respective weapons.

Alleged motive behind the occurrence was that about six months prior to the occurrence, Muhammad Bashir accused for himself demanded Rishta of niece of Muhammad Amin deceased; Muhammad Amin refused that Rishta to Muhammad Bashir who felt insult and due to

that grievance he alongwith his co-accused persons committed the murder of Muhammad Amin.

3. The conviction of the petitioner was recorded in a private complaint. The complainant produced cursory evidence whereafter the formal charge was framed against the petitioner and co-accused on 10.05.2011 under Sections 302/34 PPC to which they pleaded not guilty and claimed trial. In order to prove its case the prosecution produced four PWs and thirteen CWs. 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 make his statement on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against him. However, he produced some documentary 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 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 during investigation, the Investigating Officer Ali Sher (CW-12) had found the petitioner not involved in the case and had declared him innocent. 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 recovery of weapon of offence in presence of a negative FSL report is inconsequential. Contends that on the same set of evidence, the learned High Court has acquitted co-accused Saeed Ahmed , who was ascribed the similar role but the petitioner has been convicted without there being any justification. Lastly contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer assisted by learned counsel for the complainant submitted that to sustain conviction of an

accused on a capital charge, un-rebutted ocular evidence alone is sufficient. 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 of imprisonment for life may be enhanced to death. So far as the acquittal of co-accused Saeed Ahmed is concerned, learned counsel for the complainant argued that the learned High Court erred in law while extending benefit of doubt although the same was not available keeping in view the solid, sound and cogent evidence adduced by the prosecution.

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.

Undeniably, this occurrence has taken place at 05.00 a.m. in the morning whereas the matter was reported to the police at 09:15 a.m. on the same day while the inter se distance between the place of occurrence and the Police Station is six miles. This aspect of the case clearly reflects that the matter was reported to Police without any inordinate delay. As the occurrence has taken place in the broad daylight and it is not denied anywhere that the parties were not known to each other, therefore, there is no chance of misidentification. The ocular account in this case has been furnished by Muhammad Essa, complainant (PW-1) and Manzoor Ahmed (PW-2). 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 produced 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. Both these witnesses have reasonably explained their presence at the place of occurrence by stating that they were watering the fields at the distance of one kanal and saw that Bashir Ahmed petitioner made fire shot with his pistol, which hit on

the right side of head of the deceased. 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. Learned counsel for the petitioner had argued that in site plan the distance between the deceased and the petitioner has been mentioned as five feet but there was blackening around the wound which suggests that the fire was made from a distance of less than three feet and the same contradicts the ocular version. However, this argument is of no help to the petitioner because there are various factors which affect blackening e.g. surface of target i.e. wet or dry and the body structure of the victim and the quality of gun powder. Probably, the accused would have extended his arm to shoot fire at the deceased. The normal length of the arm of an average man is more than two feet. With this if we add the length of the weapon i.e. .30 bore pistol, the distance between the accused and the deceased remains less than three feet. The deceased was not a static object and he could have changed his position at the time of occurrence. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence when live shots are being fired, witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where such fire shots appeared to have landed and it becomes highly improbable to mention the distance correctly and the location of the fire shots with exactitude. As far as the question that the witnesses of the ocular account are related to the deceased, therefore, their testimonies cannot be believed to sustain conviction of the petitioner/convict 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 petitioner/convict could not point out any reason as to why the complainant has falsely involved the petitioner/convict in the present case

and let off the real culprit. Such reasoning does not appeal to reason. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit who murdered his brother and falsely involve the petitioner without any rhyme and reason. 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 he could not point out any major contradiction, which could shatter the case of the prosecution. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. It was argued by learned counsel for the petitioner that during initial investigation, the Investigating Officer, who appeared as CW-12 had found the petitioner not involved in the crime. However, this argument is also of no avail to the petitioner simply for the reason that Ali Sher (CW-12) was an ASI and under the law, he was not authorized to investigate the murder case falling within the ambit of Section 302 PPC. Even otherwise, the statement of the said ASI shows that his finding was based on hearsay evidence and the same was not concurred by the subsequent Investigating Officer, who took the charge later on i.e. Qazi Abdul Basit, Inspector/SHO (CW-13). The said Qazi Abdul Basit, SHO categorically stated that he investigated the case under the supervision of SP, Regional Investigation Branch and found the petitioner involved in the case. His finding was verified by Regional Investigation Branch. The learned High Court has rightly disbelieved the motive by holding that a specific motive had been attributed towards the petitioner

that he wanted the hand of niece of Muhammad Amin and on refusal he took his life. However, name and parentage of niece of Muhammad Amin deceased whose hand had allegedly been demanded by the petitioner has not been introduced in the investigation as well as before the trial court. No evidence could also be placed on record to prove the motive. So far as the recovery of weapon of offence i.e. .30 bore pistol is concerned, the same is inconsequential in presence of negative report of Punjab Forensic Science Agency. However, even if motive and recovery is discarded, 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 recovery is inconsequential 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.

7. While adjudicating Criminal Petition Nos. 1391-L & 1392-L/2016 relating to the finding of High Court whereby co-accused of the petitioner namely Saeed Ahmed was acquitted of the charge while extending benefit of doubt, it is suffice to point out that the name of the said Saeed Ahmed was not mentioned in the crime report. However, his name was brought in through a private complaint, which was lodged after lapse of three months wherein his name was mentioned for the first time. The statement of the prosecution witness namely Manzoor Ahmed recorded on 23.09.2010 under Section 161 Cr.P.C. also does not disclose the name of the said co-accused. The learned High Court while adjudicating the matter and taking into consideration all the material placed on the record gave a finding of acquittal in favour of Saeed Ahmed, which seems to us to be well reasoned and the same does not invite any interference on judicial premises. The crux of the argument that there was a confessional statement on the part of all the co-accused is of no avail as the same was made jointly, which has no legal sanctity. Even otherwise, the same is inadmissible in evidence, hence, the order of acquittal is justified based upon sound judicial reasoning. As far as the question of enhancement of sentence awarded to petitioner Muhammad Bashir is

concerned, the learned High Court has already taken note of it and passed an appropriate order while converting the sentence of death into imprisonment for life, which seems to be meeting all requirements of principles enunciated by this Court for the safe administration of criminal justice.

8. 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
31st of October, 2022
Approved For Reporting
Khurram