

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO.335/2017

(Against the judgment of the Lahore High Court Lahore dated 04.04.2017 passed in Murder Reference No.467/2012 and Criminal Appeal No.443-J/2012).

Muhammad Arshad

...**Petitioner(s)**

VERSUS

The State

...**Respondent(s)**

For the Petitioner(s): Miss Syed BH Shah, ASC

For the State N.R

Date of Hearing: 07.10.2020

...
ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J:- Criminal petition for leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been sought calling in question impugned judgment dated 04.04.2017 passed by learned Division Bench of Lahore High Court, Lahore.

2. The facts culminated into filing of the instant petition are that the petitioner was booked in case bearing FIR No.654/10 dated 11.12.2010 offence u/s 302/324 PPC registered with Police Station Malakwal, District M.B Din.

As per contents of the crime report, it is alleged that the petitioner while armed with hatchet gave repeated blows on the head of Saeed Muhammad, who succumbed to injuries. He also caused injuries to Mst. Rasulan Bibi & Mst. Sardaran Bibi and thereafter fled away from the scene. Motive behind the occurrence was that there was a dispute over the possession of a plot. The petitioner was taken into custody on

21.12.2010. During course of investigation, recovery of hatchet was affected from him on 24.12.2010. During course of investigation, he was found fully involved in the case and as such, his name was placed in column No.3 of the report u/s 173 Cr.PC. The challan of the case was sent to court. The learned trial court vide judgment dated 22.11.2012 convicted the petitioner u/s 302(b) PPC and sentenced to death. He was also burdened with compensation of Rs.1,00,000/- u/s 544-A Cr.PC and in default thereof, he was to suffer six months S.I. He was also found guilty of causing injuries to Mst. Rasulan Bibi and Mst. Sardaran Bibi and as such was sentenced 05 years as Taazir u/s 324/337-A(ii)/337-A(iii) PPC. He was also liable to pay Arsh which shall be 5% of Diyat notified in the official Gazette of year 2010. He was convicted and sentenced u/s 337-A(iii) PPC with R.I of 10 years as Taazir and also liable to pay Arsh which shall be 10% of Diyat notified in the official Gazette of year 2010. The petitioner was however sentenced u/s 324 PPC with imprisonment of 10 years alongwith fine Rs.50,000/- and in default thereof to further undergo six months S.I. The sentences shall run concurrently. Benefit of section 382-B Cr.P.C. was also extended.

3. The judgment of the learned trial court was challenged before learned High Court through Criminal Appeal No.443-J/2012 whereas the learned trial court sent the Murder Reference bearing No.467/2012 u/s 374 Cr.PC. The learned High Court while maintaining the conviction u/s 302(b) PPC but altered the sentence from death to imprisonment for life however the rest of the judgment of the learned trial court was maintained. Hence, the instant petition for leave to appeal.

4. At the very outset, it is argued by the learned counsel for the petitioner that in fact, both the courts below had not taken into consideration the evidence available on record and the same has not been evaluated according to the principles of "appreciation of evidence"

enunciated by the superior courts from time to time. Contends that it is an admitted fact that the petitioner himself sustained injury and the same has been suppressed by the prosecution while lodging the crime report. Contends that the petitioner while making statement u/s 342 Cr.PC has taken a definite stance that in fact, he was not the actual perpetrator of this occurrence rather he has been substituted. Contends that due to previous animus, the petitioner has been roped against the actual facts and circumstances and he being first offender requires leniency by this Court and if at all the whole prosecution case is admitted the maximum punishment which can be inflicted is sentenced u/s 302(c) PPC. Finally, it has been prayed that the leave to appeal be granted on this aspect.

5. *We have heard learned counsel for the petitioner at length and gone through the record.*

There is no denial to this fact that the instant occurrence has taken place in broad daylight in which one person was done to death in a brutal manner whereas 02 women folk were given severe injuries. The crime report was lodged with promptitude, although the inter-se distance between the place of occurrence and the police station is 10-KM. The facts and figures narrated above, rules out any possibility of deliberation and consultation. Further that there is only single accused nominated in the crime report which shows the fairness of the prosecution which normally is against the prevalent custom in our society. The petitioner was saddled with responsibility of causing injuries to Saeed Muhammad who was done to death in a brutal manner and the injuries ascribed to the petitioner are fully established from the medical evidence. Similarly, the injuries caused to the women folk, and the manner in which these were inflicted are also reflective from the medical legal reports. The ocular account in this case is supported by 02 injured PWs, the statements of the prosecution witnesses coincide with each other on salient features of

prosecution version. The ocular account is corroborated by the medical evidence, recovery of hatchet further lend support to the prosecution case and during the course of investigation, the petitioner was found involved and his name was placed in column No.03 of the report u/s 173 Cr.PC. The contention of the learned counsel that the petitioner was himself injured but it was suppressed by the prosecution, we have minutely gone through the medical legal report of the petitioner which is placed on the record, it is reflecting that it was caused two weeks back. Unfortunately, the petitioner never made any endeavor to lodge counter version with the local police qua the injury he sustained during the occurrence as argued by the learned counsel. Similarly, the doctor who examined him was never produced. We are conscious of the fact that the accused is having the privilege just to show the glimpse of his version being true but in the instant case even we could not find any such material on the record either in the shape of any application to the police or any application in the court to summon the doctor to supplement the medical legal report which could prove the factum of injury on the person of the petitioner. No doubt it is within the domain of this Court to do complete justice but without any substantial material the same is beyond its scope.

6. *As a consequence, in view of the facts and circumstances narrated above, we do not find any scope for interference, hence, the instant petition before us is **dismissed** and leave to appeal is declined.*

JUDGE

JUDGE

Islamabad, the
7th October, 2020
Approved for reporting
Syed Rashid Maqsood/