

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO. 34 OF 2020

(Against the judgment dated 21.11.2019
passed by the Lahore High Court, Lahore in
Criminal Appeal No. 1584/2015 & Criminal
Revision No. 907/2015)

Sabtain Haider

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s):

Mrs. Bushra Qamar, ASC
Syed Rifaqat Hussain Shah, AOR

For the State:

Mr. Muhammad Jaffer, Addl. P.G. Punjab

For the Complainant:

Rai Zamir ul Hassan, ASC

Date of Hearing:

21.09.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner was tried by the learned Additional Sessions Judge, Mandi Bahauddin in a private complaint under Sections 302/34 PPC for committing murder of Altaf Saqib and Mst. Safeeran Bibi. The same was instituted being dissatisfied with the investigation conducted by the Police in case FIR No. 242 dated 12.06.2010 registered under Sections 302/34 PPC at Police Station Gojra, District Mandi Baha-ud-Din. The learned Trial Court vide its judgment dated 23.06.2015 convicted the petitioner under Section 302(b) PPC on two counts and sentenced him to imprisonment for life on each count. 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 set aside the conviction and sentence of the petitioner under Section 302(b) PPC for the murder of Mst. Safeeran Bibi. However, his conviction and sentence under Section 302(b) PPC for committing murder of Altaf Saqib was maintained. Benefit of Section 382-B Cr.P.C. was also extended to him. Being aggrieved by the impugned judgment, the petitioner/convict has filed the instant jail petition.

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

"2. Succinctly stated the facts of the prosecution case as unveiled by complainant Naveed Iqbal (PW-1) in FIR (Exh.PA/2) are to the effect that he is resident of Mauza Khai and is running Iqra Model School as well as a grocery shop; that on the night falling in between 11/12.06.2010 his younger brother Altaf Saqib and Abbas Ali son of Abdul Sattar went to Iqra Model School for playing badminton but did not return till late night; that at about 3.30 am (night) he along with Bashir Ahmad son of Muhammad Siddique reached the said school; that in the meantime Sabtain Haider (appellant) and Zulqarnain Haider (since PO), whose house was adjacent to the house of the complainant while armed with pistol .30 bore entered the school premises while scaling over the wall; that Sabtain Haider (appellant) asked to switch on the light, upon which Abbas Ali said as to what was the matter; that Zulqarnain (since PO) made a pistol shot which missed; that Altaf Saqib while getting up from the cot ran towards the outside and the second fire made by Sabtain Haider hit him at the right side of his back which went through and through, due to which he fell down in the haveli adjacent to the school and died at the spot; that thereafter the accused killed their own sister, namely, Safeera Bibi due to suspicion of illicit liaison with Altaf Saqib."

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 on 26.03.2011 under Sections 302/34 PPC to which he pleaded not guilty and claimed trial. In order to prove its case the prosecution produced as many as thirteen witnesses and one CW. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded that deceased Altaf Saqib had developed illicit relations with his sister Mst. Safeeran Bibi and when he saw them in a compromising position, he lost his control and on account of *ghairat* and

sudden and grave provocation, he committed the murders. 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 eye-witnesses failed to prove their presence at the spot especially in the mid of the night. Contends that the medical evidence contradicts the ocular account, benefit of which must go to the petitioner. Contends that the occurrence took place in dark hours of the night but no source of light was proved by the prosecution. In the alternative, learned counsel contended that the case in hand is indeed a case of grave and sudden provocation as the petitioner had seen the deceased in highly objectionable position, which attracts the provisions of Section 302(c) PPC. Contends that from the day one, it is the stance of the petitioner that he committed the murders under the impulses of *ghairat* and grave and sudden provocation but the learned High Court did not even consider it.

5. On the other hand, learned Law Officer assisted by the learned counsel for the complainant have defended the impugned judgment. It has been contended that to sustain conviction of the petitioner, un-rebutted ocular evidence alone is sufficient. Contends that the ocular account is supported by the medical evidence, therefore, the petitioner does not deserve any leniency by this Court. It was lastly contended that in terms of the first proviso to section 302(c) PPC the case in hand does not attract the provisions of Section 302(c) PPC.

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 instant case is a case of double murder committed under the impulses of *ghairat* and on grave and sudden provocation. The FIR in respect of the same had been lodged with sufficient promptitude wherein the petitioner was specifically nominated. Although, the learned Trial Court had convicted the petitioner under Section 302(b) PPC on two counts but the learned High Court has exonerated the petitioner for the charge of murder of his sister Mst. Safeeran Bibi, which finding has not been challenged before us. The ocular account in this case has been furnished by Naveed Iqbal (PW-1) and Bashir Ahmad (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 brought on record. Both these PWs remained consistent on each and every material point and successfully advanced the prosecution case so far as it relates to the homicidal death of Altaf Saqib, deceased is concerned, the said eye-witnesses have given a reasonable explanation for their presence at the place of occurrence at the relevant time and have made consistent statements before the trial court which statements have inspired confidence. As far as the question that the complainant was brother 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. 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. The motive set up by the prosecution was based upon a suspicion of illicit relations between the two deceased, which has been admitted by the petitioner through his statement recorded under section 342 Cr.P.C. So far as the recovery of weapon of offence is concerned, the same is inconsequential simply for the reason that neither the crime empty nor the weapon was sent to the Forensic Science Laboratory. So far as the argument that no source of light was

proved by the prosecution is concerned, the learned High Court has rightly noted that point No. 8 in the scaled site plan stands for place of electric bulb which was on at the eventful time. In this view of the matter, it can safely be concluded that the prosecution has proved its case against the petitioner.

7. The only point which requires intervention of this Court is the quantum of sentence. Keeping in view the facts and circumstances surfaced during the course of arguments by both the learned counsel, there is no denial to this fact that the deceased Saqib Altaf was murdered when the petitioner had seen him with his sister in an objectionable position. The said question was also put to the eye-witnesses but they could not deny the same. This fact has also been mentioned in the crime report. The stance of the petitioner has been supported by the statement of Dr. Hussana (PW-9), who conducted postmortem examination of the deceased Mst. Safeeran Bibi. The lady doctor candidly stated that "hymen is totally absent" and she was of the view that "zina may be committed but not discharged". Admittedly, the place where the deceased Saqib was done to death was a school where no activity was going on when the occurrence took place. The wall of the school from the northern side was common wall between the school and the house of the petitioner and the stairs were situated adjacent to the above said wall. During cross-examination, the Investigating Officer, who appeared as (PW-13) admitted that it was the first version of accused Sabtain that he took the life of the deceased under grave and sudden provocation as he had seen them in a compromising position. It is established principle of criminal jurisprudence that the defence is not under obligation to prove its version and the burden on it is not as heavy as on the prosecution rather the defence is only to show the glimpse that its version is true. The record clearly reveals that there was no conventional enmity between the parties and the only reason as to why the petitioner could have committed the murders was nothing but his having seen the two deceased together in an amorous pursuit. In such like cases, the analogy can be drawn from the statutory law prevalent in United Kingdom called Homicide Act, 1957 wherein if a

crime is committed due to mental or psychological compulsion, it squarely falls within the ambit of diminished liability. It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such state of mind as to substantially impair his responsibility in committing or being a party to an alleged criminal act. In the present case as the murders were committed under the impulses of *ghairat* and grave and sudden provocation, the doctrine of diminished liability would be squarely attracted providing mitigation to the punishment awarded to the petitioner. In these circumstances, we are of the firm view that the case in hand is indeed a case of grave and sudden provocation which attracts the provisions of Section 302(c) PPC. So far as the argument of learned Law Officer that in terms of the first proviso to Section 302(c) PPC, the provision of Section 302(c) PPC is not attracted is concerned, this aspect of the matter has been elaborately dealt with by this Court in the case reported as Muhammad Qasim Vs. The State (PLD 2018 SC 840) wherein this court held as under:-

"The learned Deputy Prosecutor-General, Punjab appearing for the State has, however, pointed out that in terms of the first proviso to section 302(c), P.P.C. the case in hand was a case of murders committed in the name or on the pretext of honour and, thus, it was to be treated as a case attracting the provisions of sections 302(a) or 302(b), P.P.C. and not those of section 302(c), P.P.C. We have attended to this aspect of the matter with care and have found that the words "in the name or on the pretext of honour" used in the first proviso to section 302(c), P.P.C. are not without any significance or meaning. The said words indicate that a murder committed "in the name or on the pretext of honour" has to be a calculated murder committed with premeditation in the background of honour whereas the words used in the context of grave and sudden provocation in Exception 1 to the erstwhile Section 300, P.P.C. were "deprived of the power of self-control". Such words used in Exception I to the erstwhile section 300, P.P.C. catered for a situation which was not premeditated and had developed suddenly leading to grave provocation depriving a person of the power of self-control. Such different phraseology used by the legislature in these distinct provisions clearly indicates catering for different situations and, therefore, the words "in the name or on the pretext of honour" ought not to be mixed or confused with grave and sudden provocation leading to depriving of the Power of self-control. This distinction between honour and grave and sudden provocation was clearly recognized by this Court in the case of Muhammad Ameer v. The State (PLD 2006 SC 283) and the same is manifestly attracted to the facts of the present case

as well. It has already been found by us above that the case in hand was a case of grave and sudden provocation and honour only provided a backdrop to the same.”

(Underlined to lay emphasis)

8. Even otherwise, it is human psychology that if someone comes across the situation like it, as is disclosed in the present case, the situation would be dealt with by individual depending upon his temperament, caste, race, creed, tribe, social status and the area from where the individual hails. This aspect also imprints a lasting impact regarding the response keeping in view the previous antecedents not only of the individual but the family/tribe he belongs. In the instant case, all these factors must have contributed towards the act of the petitioner, hence, as stated in the preceding paragraph, the case of the petitioner squarely falls within the ambit of Section 302(c) PPC. As a consequence of the above discussion, we convict the petitioner under Section 302(c) PPC and sentence him to imprisonment for the period which he has already undergone. Consequently, this petition is converted into appeal, partly allowed and the impugned judgment is modified as stated above. The petitioner shall be released from jail forthwith unless detained/required in any other case.

JUDGE

JUDGE

Islamabad, the
21st of September, 2022
Approved For Reporting
Khurram