

50/24

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

DJ-AFR
Jail Petition No.514/2016 & Crl. P. 1011-L/2016

[Against the judgment dated 22.06.2016 passed by the Lahore High Court,
Bahawalpur Bench passed in Crl. Appeal No.313-J/2012]

Muhammad Jahangir
Muhammad Lateef

...Petitioner(s)

Versus

The State, etc

...Respondent(s)

For the Petitioner(s)	: Ch. Abdul Ghaffar, ASC (in JP 514/16) (Through video link Lahore) Nemo (in Crl.P. 1011-L/16)
For the State	: Mr. Irfan Zia, Deputy Prosecutor General, Punjab
For the Complainant	: Nemo
Date of Hearing	: 06.05.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.-

Jail Petition No.514/2016

Muhammad Jahangir (**petitioner**) faced trial before Sessions Judge, Bahawalnagar in case F.I.R No. 350/2011, dated 23.09.2011, under Section 302 PPC, registered at Police Station Takhat Mahal. At the conclusion of the trial, the petitioner was convicted and sentenced to death and was directed to pay an amount of 100,000/- as compensation to the legal heirs of the deceased under Section 544-A of Cr.P.C.

2. Being aggrieved by the aforementioned conviction and sentence, the petitioner preferred an appeal before the Lahore High

Court, Bahawalpur Bench, and the murder reference was also sent to the High Court for confirmation or otherwise. The High Court while converting the death sentence of the petitioner to imprisonment for life and answered the Murder Reference in negative keeping the amount of compensation intact. The benefit of Section 382-B Cr.P.C was also extended to the petitioner. Being dissatisfied with the judgment dated 22.06.2016 (**Impugned Judgment**) of the Lahore High Court, the petitioner has preferred this petition seeking acquittal whereas the complainant filed the criminal petition for leave to appeal seeking enhancement of the sentence.

3. The facts of the case, as gathered from the FIR, are that the Muhammad Lateef (**complainant**) through his statement Exh PC, reported the matter to the police while stating the facts that his sister Mst. Siddiqan Bibi was married to Allah Ditta son of Ghulam Muhammad about 06/07 years back who was blessed with three sons; on 22.09.2011, the complainant alongwith Muhammad Sharif and Muhammad Nasir PWs, had gone to meet Mst. Siddiqan Bibi at her house in village Qasimka. Muhammad Jehangir (accused) who is brother of Allah Ditta, the brother-in-law of the complainant, was also present in the house of Allah Ditta. He demanded Rs.2000/- from Allah Ditta whereupon the sister of the complainant responded him that they had no money whereupon altercation took place between Muhammad Jehangir (accused) and Mst. Siddiqan Bibi. On the next day, at 09:00 am accused left the house while saying that he was proceeding towards his in-laws' house. The complainant was present at his sister's house. During noon, the sister of the complainant went to the field of Falik Sher for fetching grass for cattle who did not

return for a long time, upon this the complainant, Muhammad Sharif, and Muhammad Nasir PWs went to find whereabouts of her. When they reached in the land of Falik Sher, they heard the cries of Mst. Siddiqan Bibi. They rushed towards the said spot and saw that Muhammad Jehangir accused was sitting on the chest of Mst. Siddiqan Bibi and pressing her throat. On observing the complainant and PWs, he ran away. They tried to apprehend him but the accused took the advantage of the crops and succeeded in running away. Mst. Siddiqan Bibi died at the spot due to the injuries sustained by her.

4. Learned counsel for the petitioner contends that the impugned judgment is suffering from misreading or non-reading of evidence; a concocted story has been established and the petitioner has been roped in the case with *mala fide* intention; that there are material contradictions in the statements of the witnesses and that the prosecution has miserably failed to prove its case against the petitioner.

5. On the other hand, the learned Law Officer, assisted by the learned counsel for the complainant, has opposed the contentions advanced by the learned counsel for the petitioner by submitting that it is a daylight occurrence and parties *inter se* are the relatives thus there is no chance of misidentification; that the ocular account is corroborated by medical evidence and the prosecution has proved its case beyond any shadow of doubt. Lastly, he prays for the enhancement of punishment.

6. Heard the learned counsel for the parties as well as the learned Law Officer at length and scanned the material available on the record with their able assistance.

7. It is the case of the prosecution that the petitioner namely Muhammad Jehangir murdered Mst. Siddiqan Bibi on the grudge that she refused to pay him the stipulated amount when he asked her. The parties *inter se* are close relatives inasmuch as the accused is the brother of the complainant's brother-in-law and the accused has murdered his brother's wife.

8. In order to prove the charge against the petitioner, the prosecution has primarily relied upon the evidence of two eyewitnesses the complainant (PW-5) and Muhammad Sharif (PW-6) who are real brothers of the deceased, the motive, medical evidence, and recovery. It is pertinent to mention here that Muhammad Nasir PW who was also an eyewitness was given up by the prosecution being unnecessary.

9. As far as motive is concerned, the learned trial court through its judgment has conceded that the prosecution has failed to prove the motive in the case at hand. Paragraph 10 of the said judgment is reproduced below for the sake of convenience:

"I deem it appropriate to discuss the motive as well as the recovery evidence at the first instance in the instant case. As per the assertion of the prosecution witnesses, in presence of PW-5 and PW-6 Muhammad Jehangir accused demanded an amount of Rs.2000/- from his brother Allah Ditta, the husband of the deceased. The deceased asked him that they have no money and on such refusal an altercation took place between accused and the deceased. The further narration of the PWs was that after the altercation they all stayed in the house of deceased that night and on the next day, firstly accused left the house and at noon time the deceased went away in order to fetch fodder for the cattle. If the accused had the said motive in his mind, there was hardly any chance of his staying in the house of deceased that night. Prima-facie it reflects that even if some amount was demanded by the accused and refused by the deceased, it was not that serious issue between them. There are certain contradictions in the deposition of PW-5 & PW-6 with regard to alleged altercation between the accused and the deceased as according to the contents of the complaint they remained silent spectators to the said altercation. In view of the above discussion, I am of the considered opinion that prosecution failed to establish the motive".

(emphasis added)

10. As far as recovery of the deceased's ear-rings is concerned, it was not proved by the prosecution during the trial, and the learned trial Court disbelieved it in paragraph 11 of its judgment as mentioned below:

"According to the prosecution version the ear rings of deceased were removed by the accused, resulting into injuries of her ears. The complaint is silent about the said feature. The said fact earlier came on record through the supplementary statement of the complainant and witnesses. No much weight can be extended to the same as by that time the post-mortem proceedings had been completed".

11. If the motive part and recovery of the crime weapon are excluded, the entire case of the prosecution rests on the testimonies of two eye-witnesses, and medical evidence.

12. The defence has seriously challenged the presence of both PWs at both places i.e., the deceased's house and the place of occurrence. Beginning with PWs visit to their sister's home, it is common in our society for brothers to visit their sisters spontaneously. However, staying overnight typically occurs only in the context of a family event. In this instance, the PWs were unable to provide a justification for their overnight stay at their sister's house. They were posed specific questions regarding their purpose of stay and whether there was any family function. However, no plausible justification was given by the PWs in this regard. The complainant (PW-5) replied to this query as mentioned herein:

"There was no specific family function at the house of my sister Siddiqan Bibi for which we visited her house on 22.09.2011".

A similar answer was rendered by PW-6 who is an eye-witness of the incident.

13. Furthermore, we have examined the second aspect in this regard, whether the PWs were present at the place of occurrence. It is alleged that they saw the accused committing the murder of their sister by pressing her throat with her dupatta. It

is claimed by the three PWs that they witnessed the occurrence from a distance of 15/16 karams. At the time of occurrence, there were cotton crops not less than the height of 3/4 feet. Generally, it is hard to believe that one accused can succeed in fleeing away in front of three persons and that too in cotton crops having 3/4 feet height.

14. The material facts relating to the place of occurrence are also missing in the FIR and were added through the supplementary statement. It shows that PWs improved their version later on. The injuries on the deceased's ear were not mentioned by the PWs. The specific question was put to the complainant during cross-examination whether he mentioned the ear-rings before the police. He answered in the following manner:

"I had stated before the police that the gold ear rings of Siddiqan Bibi were missing and she was bleeding through her ears. Volunterred that the police did not mention the said fact in my statement Exh PC. on 26.09.2011 I came to know that the fact of missing gold earrings of Siddiqan Bibi deceased was not mentioned in my statement Exh PC when I read the same".

This Court has held in a number of cases that where a witness makes dishonest improvements in his statement then it loses the significance in the eyes of law.¹ In *Muhammad Mansha* case,² it has been ruled as follows:

"Once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. The witnesses in this case have also made dishonest improvement in order to bring the case in line with the medical evidence (as observed by the learned High Court), in that eventuality conviction was not sustainable on the testimony of the said witnesses."

¹ Sardar Bibi and another v. Munir Ahmad and others (2017 SCMR 344), Amir Zaman v. Mahboob and others (1985 SCMR 685), Akhtar Ali and others v. The State (2008 SCMR 6), Khalid Javed and another v. The State (2003 SCMR 1419), Mohammad Shafiq Ahmad v. The State (PLD 1981 SC 472), Syed Saeed Mohammad Shah and another v. The State (1993 SCMR 550) and Mohammad Saleem v. Mohammad Azam (2011 SCMR 474).

² Muhammad Mansha vs the State, 2018 SCMR 772

15. Apart from dishonest improvements in the version of complainant, perusal of record reveals that FIR was lodged after an unexplainable delay of 3 hours despite the fact that the distance of the police station from the place of occurrence was 5 km. The time of occurrence is around 05:00/05:30 pm and the matter is reported at 08:30 pm. The complainant had a bike that he used to go to the police station. This delay has not been encountered through plausible explanation by the prosecution.

16. Dr. Sadia Habib (PW-7) furnished the medical evidence in the present case. According to the prosecution version Muhammad Iqbal constable took the dead body of the deceased to the hospital, the last worn clothes were handed over to him by the doctor and he produced those articles before the I.O. As per the post-mortem report, it was Mushtaq Muhammad constable who received the dead body and other articles from the doctor. It casts doubt on the post-mortem report and raises the question that who actually received the aforementioned articles once the post-mortem was done.

17. Thus, the minute scrutiny of the evidence of PW-5 and PW-6, the eye-witnesses, makes their presence at the spot highly doubtful.

18. Qua medical evidence, it corroborates the version of the complainant as stated in the FIR but the same is of no assistance in this case as medical evidence by its nature and character cannot recognize a culprit in case of an un-witnessed incident. The eyewitness account relied upon by the prosecution is unreliable and untrustworthy as observed above, therefore, the petitioner's conviction cannot sustain on the basis of medical evidence alone.

19. This Court in the case of Hashim Qasim and another versus. The State,³ has enunciated that: -

"The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit."

20. Serious doubts in the case of prosecution have been overlooked by the Courts below. This Court has maintained a consistent approach that the presumption of innocence remains with the accused till such time the prosecution on the evidence satisfies the Court beyond a reasonable doubt that the accused is guilty.⁴ It is one of the principles, which seeks to ensure that no innocent person is convicted.⁵

21. Proof beyond a reasonable doubt requires the prosecution to adduce evidence that convincingly demonstrates the guilt of the accused to a prudent person. A reasonable doubt is a hesitation a prudent person might have before making a decision. Mere presumption of innocence associated with the accused is adequate to warrant acquittal, unless the court is fully convinced beyond reasonable doubt regarding the guilt of the accused, following a thorough and impartial examination of all available evidence.

22. We find that there are major contradictions in the prosecution's case that were overlooked by the courts below. We are constrained to hold that the prosecution has failed to prove its case beyond any reasonable doubt.

23. Consequently, this petition is converted into an appeal and is allowed. The impugned judgment is set aside. The petitioner is acquitted of the charge. He be set at liberty if not required to be detained in any other case.

³ (2017 SCMR 986)

⁴ Muhammad Asghar alias Nannah and another v. State [2010 SCMR 1706]

⁵ Ibid para 5.,

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24. Since petition of the accused is converted into an appeal and is allowed and he is acquitted of the charge therefore as a natural corollary this petition seeking enhancement of sentence is hereby dismissed.

25. Above are the reasons for our short order pronounced on even date.

Judge

Judge

Judge

Islamabad, the

6th May 2024

~~NOT~~ APPROVED FOR REPORTING

~~Paras Zafar, LC*~~