

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan

CRIMINAL PETITION NO.887-L OF 2013

[Against judgment dated 04.07.2013 passed by the Lahore High Court, Lahore in
Crl. Appeal No.613 of 2009 along with MR No.193 of 2009]

Muhammad Ramzan

...Petitioner(s)

Versus

Khizar Hayat & another

...Respondent(s)

For the Petitioner(s)

: Malik Saleem Iqbal Awan, ASC

For the State

: Mr. Khurram Khan,
Additional Prosecutor General,
Punjab

Date of Hearing

: 17.04.2024

JUDGMENT

Ayesha A. Malik, J.- This Criminal Petition is directed against judgment dated 04.07.2013 passed by the Lahore High Court, Lahore (**High Court**) whereby the criminal appeal filed by Respondent No.1 was allowed by acquitting him from the charge, and the murder reference was answered in the negative by not confirming the death sentence.

2. Facts of the case are that the Petitioner lodged FIR No.293 of 2007 on 26.12.2007, at 8:45 AM, at Police Station Ganjial, District Khushab, against Respondent No.1. According to him, he along with his maternal cousin, Saif Ullah (PW-8), had come to the residence of his brother, Muhammad Hayat (**Deceased**), to borrow his camel cart. At about 7:30 AM, while riding on the camel cart, all three (Petitioner, Deceased and PW-8) were returning to Dera Khakhanwala. At some distance, the Deceased's other brother, Fateh Khan (given-up PW) met these three and tagged along with them. As per the FIR, Saif Ullah descended from the camel cart to give Fateh Khan company. The Petitioner and Deceased were on the camel cart, whereas Saif Ullah and Fateh Khan were on foot following the said cart. When the camel

cart reached link road Ameer Wala near the brick kiln of one Ahmed Sher Shahbazi, Respondent No.1, armed with a *sota*, emerged from the bushes and raised *lalkara* to the Deceased for allegedly destroying his family life. Respondent No.1 gave a *sota* blow on the Deceased's head and repeated a second blow which landed on the left side of the Deceased's head and then a third blow on the Deceased's face and left eye. Respondent No.1 then fled away from the scene of the crime. Petitioner, Saif Ullah and Fateh Khan statedly witnessed the occurrence. As per the prosecution, the alleged motive of Respondent No.1 for committing the crime was that he had a suspicion that the Deceased had developed illicit relations with his wife, due to which, Respondent No.1 divorced her some two years ago. The Deceased was rushed to the Civil Hospital, Quaidabad, where he was given treatment, but he succumbed to the injuries.

3. Respondent No.1 was arrested on 30.12.2007, which led to the recovery of the *sota* (P-6) on 01.01.2008. After completion of the investigation, the trial was conducted against Respondent No.1 before the Additional Sessions Judge, Khushab. Upon conclusion of the trial, the court, vide judgment dated 28.04.2009, convicted Respondent No.1 under Section 302(b) of the Pakistan Penal Code, 1860 and sentenced him to death as *tazir*. Respondent No.1 was also directed to pay Rs.100,000/- as compensation under Section 544-A of the Criminal Procedure Code, 1898 to the legal heirs of the deceased or undergo six months of simple imprisonment in the event of default. Respondent No.1 appealed his conviction and sentence before the High Court, which was allowed, and he was acquitted vide the Impugned Judgment.

4. Counsel for the Petitioner contends that it is a case of misreading and non-reading of evidence as there was no occasion for the High Court to acquit Respondent No.1, who was solely charged by the prosecution for murdering the Deceased. He further contended that the occurrence took place in broad daylight, so there was no chance of mistaken identity. Petitioner's counsel argued that the prosecution has established the case against Respondent No.1 beyond a reasonable doubt with the assistance of truthful witnesses who have fully justified their presence at the spot. According to him, the contradictions pointed

out by the High Court are minor in nature, the same cannot be taken into account by brushing aside the confidence-inspiring evidence. Hence, Petitioner's counsel concluded that the High Court has taken an incorrect view, which calls for interference by this Court in order to avoid a miscarriage of justice.

5. We have heard the Petitioner's counsel and the Additional Prosecutor General, Punjab, and re-examined the record.

6. The High Court acquitted Respondent No.1 on the following grounds:

Firstly, the PWs were closely related to the Deceased being his brother and cousin;

Secondly, the prosecution failed to explain the delay of 8 hours in conducting the post-mortem examination of the Deceased;

Thirdly, Dr. Khalid Bashir Awan (PW-6), who conducted the post-mortem examination at the DHQ Hospital Khushab at Jauharabad, did not find any signs of initial treatment or stitched wounds on the Deceased by the Civil Hospital, Quaidabad, which belies the stance of the PWs that they first took the Deceased to the Civil Hospital;

Fourthly, in the presence of three close relatives, Respondent No.1, armed with *sota* only, managed to kill the Deceased while the witnesses just watched;

Fifthly, motive has not been proved by the prosecution, because Respondent No.1 had divorced his wife 2½ years prior to the occurrence; and

Lastly, the prosecution failed to conduct forensic of the *sota*.

7. The entire case of the prosecution relies on the ocular account furnished by the Petitioner (PW-7) and Saif Ullah (PW-8). We have examined the ocular account. The Petitioner (PW-7) is the real brother of the Deceased, who was allegedly sitting on the camel cart next to the Deceased at the time when Respondent No.1 inflicted injuries upon the Deceased. Admittedly, the Deceased was assaulted by a non-lethal weapon (*sota*); yet being his real brother, sitting beside the Deceased, the Petitioner sustained no injury, nor was he able to prevent the assault on the Deceased. Furthermore, in his evidence, the Petitioner has not disclosed the purpose of borrowing the camel cart from the Deceased, and why he was with him at that time. He also stated that the camel cart was not present when the Investigating Officer (**IO**) visited the place of occurrence; rather the said cart was produced

before the IO at the Civil Hospital, Quaidabad. However, as per the statement of the IO (PW-9), the camel cart was standing on the road and was at a distance of 3 to 4 paces from the place of occurrence. This is a serious contradiction in the evidence. Another contradiction is that the Petitioner (PW-7) described the size of the *sota* as 3 to 4 feet, whereas Saif Ullah (PW-8) in his statement described the length of the *sota* as 6 feet. Further, in his examination-in-chief, the Petitioner stated that he along with Saif Ullah and Fateh Khan tried to catch Respondent No.1. However, in the cross-examination, the Petitioner admitted as:

[...] We did not try to catch the accused. We got busy in attending the deceased. ... We did not make any attempt to apprehend the accused.

8. The statement of the second witness, Saif Ullah (PW-8), also has material contradictions. He is the maternal cousin of the Deceased. He is a resident of village Utra, which is situated at a distance of 2.5 kilometres from the *Dera* of the Deceased and 1.5 kilometre from the house of the Petitioner. He described the date of occurrence as 12.02.2007. Not only did he misstate the day but also the month of the occurrence. He also stated that he had not mentioned in his statement the time of reaching the *Dera* of the deceased and the mode of their travel whereas in his cross-examination, he admitted that they set out from the house after morning prayer, that too, on foot. He stated that they were following the camel cart at a distance of 8-10 *karms* whereas the site plan (Ex.PC) depicted this distance as 38 *karms*. He also stated that when they reached the *Dera* of the Deceased, the camel cart was already coming out therefrom. He admitted that the Petitioner did not try to rescue the Deceased. He has stated that his hands and clothes were not stained with blood. He has also stated that the other witnesses did not have blood stains on their clothes.

9. The above-stated contradictions and discrepancies in the ocular account of the eyewitnesses cannot be discarded. These contradictions have diluted the story of the prosecution, whose case rested on the statement of eyewitnesses, who all are closely related to the Deceased. No one else was present at the place of occurrence. This creates doubt in their testimony, because both the Petitioner and Saif Ullah, reside

in different villages, that too, at a considerable distance and their joint arrival at the *Dera* of the Deceased, on foot, in the early morning of the last week of December remains unexplained. Therefore, their testimony was rightly discarded. It is also critical to note that the alleged third eyewitness (Fateh Khan) was present, but the prosecution did not produce him as a witness.

10. As to the two eyewitnesses (PW-7 and PW-8), they are also interested witnesses due to their close relationship with the Deceased. The testimony of an interested witness should be scrutinized with care and caution.¹ Independent corroborating evidence is essential to test the validity and credibility of the testimonies of interested witnesses.² Capital punishment cannot be given on the testimony of an interested witness uncorroborated by any independent evidence.³ As to the testimony of interested witnesses, the rule is well-established by this Court in the *Nazir* case as:

[B]ut we had no intention of laying down an inflexible rule that the statement of an interested witness (by which expression is meant a witness who has a motive for falsely implicating an accused person) can never be accepted without corroboration. There may be an interested witness whom the Court regards as incapable of falsely implicating an innocent person. But he will be an exceptional witness and, so far as an ordinary interested witness is concerned, it cannot be said that it is safe to rely upon his testimony in respect of every person against whom he deposes. In order, therefore, to be satisfied that no innocent persons are being implicated along with the guilty the Court will in the case of an ordinary interested witness look for some circumstance that gives sufficient support to his statement so as to create that degree of probability which can be made the basis of conviction. This is what is meant by saying that the statement of an interested witness ordinarily needs corroboration. For corroboration it is not necessary that there should be the word of an independent witness supporting the story put forward by an interested witness. Corroboration may be afforded by anything in the circumstances of a case which tends sufficiently to satisfy the mind of the Court that the witness has spoken the truth. What circumstances will be sufficient as corroboration it is not possible to lay down. But, as the question before the Court would be whether some innocent person had not been implicated in addition to those who were guilty the circumstance relied upon must have a bearing on this question. In the case of an interested witness the corroboration need not be of the same probative force as in the case of an accomplice for the two do not stand on the same footing.⁴

(Underlining is ours)

In the instant matter, the ocular account of the prosecution's interested witnesses is not only materially contradictory but

¹ Ali Ahmed v. the State (PLD 1962 SC 102).

² Dalmir v. the State (1970 SCMR 840) and Muhammad Sharif v. Tahirur Rehman (1972 SCMR 144).

³ Hazratullah v. the State (1969 PCr.LJ 138).

⁴ Nazir v. The State (PLD 1962 SC 269) (**Nazir**).

uncorroborated by the available evidence.⁵ As stated above, the presence of these witnesses at the crime scene is highly doubtful and questionable. Hence, the conviction of Respondent No.1 cannot be based upon this ocular account.

11. Another important aspect of the prosecution's case is the recovery of the weapon (the *sota*). Respondent No.1 was arrested on 30.12.2007, whereas the said weapon was recovered on 01.01.2008 from his residence 6 days after the occurrence of the crime. According to the IO, the weapon was lying under the cot, and it was not stained with blood. Admittedly, the prosecution has not placed anything on the record to show whether the said weapon was sent to the forensic science laboratory for examination. Hence, no significance can be attributed to the recovery of the *sota* as it was not established as the murder weapon. It was the responsibility of the IO to have presented the *sota* for forensics to establish that the blows inflicted on the Deceased were from the recovered *sota*, or if any blood or other evidence could have been found on the said weapon, that may have strengthened the story of prosecution.⁶

12. It is essential to emphasize the importance of forensic science in the criminal justice system. Forensic deals with '*the application of scientific techniques to provide objective, circumstantial evidence.*'⁷ Forensic is a science '*of interest to the legal system,*' whose objective is to ascertain what happened in the recent past.⁸ Forensic science means nothing more than the science which is used in the courts of law for the purposes of detection and prosecution of crime.⁹ This science plays a significant role in the criminal justice system by providing data that can be used to assess the degree of guilt of a suspect.¹⁰ In *Dharam Deo Yadav*, the Supreme Court of India (SCI) highlights the significance of forensic sciences and how the role of the investigating agency is essential for effective and efficient prosecution in the administration of criminal justice.¹¹ The SCI recognizes that for

⁵ Nur Muhammad v. Falak Sher (PLD 1976 SC 607).

⁶ Chamkaur Singh v. State of Punjab (20.02.2017 - PHHC) : MANU/PH/0266/2017.

⁷ H. J. WALLS, FORENSIC SCIENCE: AN INTRODUCTION TO SCIENTIFIC CRIME DETECTION (Sweet & Maxwell 2nd) (1974), v.

⁸ DONALD A. WILSON, FORENSIC PROCEDURES FOR BOUNDARY AND TITLE INVESTIGATION (John Wiley & Sons, Inc.) (2008), 1-2.

⁹ Walls, *supra* note 7, at 1.

¹⁰ Mahmood Ahmed. Dr. Abdul Razzak and Imdad Khan, *Implementation of Forensic Science in Pakistan's Legal Justice System: A Critical Legal Perspective: The Importance of Forensic Evidence and its Principal Function*, 5 Pakistan Journal of International Affairs 3 (2022), 742-751 <<https://pjia.com.pk/index.php/pjia/article/view/785>>.

¹¹ Dharam Deo Yadav v. State of U.P. [(2014) 5 SCC 509] (*Dharam Deo Yadav*).

any criminal justice system to be effective, credible and reliable forensic evidence is an absolute must. For the purposes of our criminal justice system, investigating agencies have to move towards scientific evidence to establish a crime, and proper care and caution must be taken to preserve and protect the crime scene. The tendency to rely on outdated investigative methods places a big question mark on the effectiveness of the criminal justice system. We recognize the fact that each case has to be investigated based on the facts, however, cases such as the instant case highlight the inadequacy of the investigation agency and how the role of forensic science has been downplayed if not overlooked. Crime scenes that are not managed well and do not rely on science will lead to poor-quality evidence and erroneous acquittal. The SCI in *Dharam Deo Yadav* has aptly held that:

[25]. Crime scene has to be scientifically dealt with without any error. In criminal cases, especially based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the element of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the Investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime. Investigating Officer may be guarded against potential contamination of physical evidence which can grow at the crime scene during collection, packing and forwarding. Proper precaution has to be taken to preserve evidence and also against any attempt to tamper with the material or causing any contamination or damage.¹²

(Underlining is ours)

13. Similarly, this Court in the *Ali Haider* case has emphasized the importance of modern forensic techniques and science as follows:

[4]. ... it might be useful to underline the role of science, modern forensic techniques and devices under our criminal justice system. For the law to serve people in this technologically complex society, courts need to understand and be open to science and its principles, tools and techniques. Legal decisions of the courts must fall within the boundaries of scientifically sound knowledge. A judge and more so a trial judge, acts as a gatekeeper of the scientific evidence and must, therefore, enjoy a good sense and understanding of science. As science grows so will the forensic techniques, tools and devices; therefore, courts must be open to developments in forensic science and embrace new techniques and devices to resolve a dispute, provided the said technique and device is well established and widely accepted in the scientific community as a credible and reliable technique or device. Article 164 of the Qanun-e-Shahadat Order, 1984 (QSO) is our gateway allowing modern forensic science to come into our courtrooms.¹³

¹² *Id.*

¹³ *Ali Haider v. Jameel Hussain* (PLD 2021 SC 362) (**Ali Haider**).

Hence, the police force must make a concerted effort to shift its investigation techniques to include and rely on forensic science and accordingly, train specialized officers in this field.

14. In relation to the motive of the crime, the Impugned Judgment did not accept that Respondent No.1 murdered the Deceased because he suspected illicit liaison between the Deceased and his wife (Mst. Meeran). The record shows that Respondent No.1 had already divorced his wife some two years ago. The prosecution has not established the motive given that there is no explanation of the delay. If he did have motive to kill the Deceased, then why didn't he do the same in the past when he had suspicions and why did he wait for the two years. Thus, we agree with the High Court's view that, in the absence of any other corroborating evidence, it does not appear to be a sound and reasonable motive as stated by the prosecution for the commission of the offense.

15. We find it necessary and compelling to reiterate that the cornerstone of the criminal justice system is the effective functionality of the investigating agency and prosecution. The principle of fair trial and due process under Article 10A of the Constitution specifically mandates this.¹⁴ The dispensation of justice and fair adjudication require that the accused be equitably treated, investigated, and prosecuted in accordance with the law. However, we find that in the case at hand, the entire prosecution evidence is marred by inherent improbabilities and material defects, aside from concerns about the credibility of the witnesses. It is the duty of the prosecution to establish the guilt against the accused beyond a reasonable doubt. The House of Lords in *Woolmington* has held that the accused is not bound to satisfy the court of their innocence.¹⁵ While applying *Woolmington*, the Federal Court in *Safdar Ali* has held that the burden of proving the general issue of the accused's guilt lies, from first to last, upon the prosecution.¹⁶ The facts and circumstances of the instant matter clearly cast a shadow of doubt on the prosecution's case, which has failed to prove the guilt of Respondent No.1 beyond reasonable doubt.

¹⁴ **10A.Right to fair trial.** For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

¹⁵ *Woolmington v. Director of Public Prosecutions* [(1935) AC 462] (**Woolmington**).

¹⁶ *Safdar Ali v. the Crown* (PLD 1953 Federal Court 93).

This entitles him to the presumption of innocence by law. In the *Tariq Pervez* case, this Court has held that the accused is entitled to the benefit of the doubt ‘*not as a matter of grace and concession but as a matter of right.*’¹⁷ Our concern herein is that a faulty investigative process will continuously dampen trust and confidence in the criminal justice system. Time has come for the investigation agency to recognize these inherent flaws and concerns in its methodology, and it needs to work towards specializing its investigative functions and separating the same from other police duties.

16. In light of the above, we hold that the findings rendered by the High Court do not suffer from any flaw or error, hence, the instant Criminal Petition is dismissed. Leave is refused.

JUDGE

JUDGE

JUDGE

Islamabad
17.04.2024
‘Approved for Reporting’
Azmat | Kehar Khan Hyder/-

¹⁷ Tariq Pervez v. the State (1995 SCMR 1345) (**Tariq Pervez**).