IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

Jail Petition No.195 of 2017

[Against the order dated 02.02.2017 passed by the Lahore High Court, Rawalpindi Bench passed in Cr.A. No.440 of 2013 and M.R. No.59 of 2013)

Iftikhar Hussain alias Kharoo *...Petitioner(s)*

Versus

The State *...Respondent(s)*

For the Petitioner(s)	:	Mr. Haider Mehmood Mirza, ASC Along with petitioner in person *(Through video link Lahore)*
	:	
For the State	:	Mirza Abid Majeed, Deputy Prosecutor General, Punjab
For the Complainant	:	Qaiser Abbas s/o M. Shafi deceased
Date of Hearing	:	08.05.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Iftikhar Hussain *alias* Kharoo, petitioner faced trial before the learned Additional Sessions Judge Chakwal in case FIR No.52 dated 17.02.2009 registered under Section 302, PPC at Police Station Kallar Kahar, District Chakwal. After a regular trial, he was convicted under Section 302(b) PPC and sentenced to death along with compensation of Rs.200,000/- under Section 544-A Cr.P.C. to be paid to the legal heirs of the deceased. In default thereof, to further undergo six months simple imprisonment. Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal, whereas the trial Court transmitted the murder reference.

Both these matters were taken up together by the Lahore High Court Rawalpindi Bench and through the impugned judgment dated 02.02.2017, the sentence of the petitioner was altered into rigorous imprisonment for life while keeping the amount of compensation and imprisonment in default intact. Murder Reference was answered in the negative. Benefit of Section 382-B Cr.P.C. was also extended to him, hence this jail petition.

2. Precisely, the facts of the case as narrated in the First Information Report are that on the fateful day i.e. 17.02.2009 at about 5:05 pm, the complainant, namely Muhammad Shafi, along with his son, Kamran Hussain, were proceedings to the house of Ibrar Hussain to help him for work of bricks when at about 5:30 pm they reached near the *janazagah* of Mohallah Islamabad Bhoun, the petitioner, armed with *churri*, came there and raised a *lalkara* that he will teach a lesson for insulting him at *Akhara,* a wrestling place, on the eve of *Eid-ul-Azha.* The petitioner inflicted *churri* blow which landed on the lower left side of the neck of Kamran Hussain. The petitioner/accused inflicted another *churri* blow which landed on the left side of his forehead. His son fell on the ground. On hue and cry, his son namely Muhammad Imran and Muhammad Asif son of Ameer Khan came there and witnessed the occurrence. The petitioner while seeing the witnesses ran away from the spot while brandishing his *churri*. The son of the complainant succumbed to the injuries at the spot.

The motive behind the occurrence is that his son Kamran Hussain deceased had defeated the petitioner in a weight lifting competition held in the year 2008 on the eve of *Eid-ul-Azha.*

3. 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; that the ocular account furnished by the eye witnesses is inconsistent with the medical history of the deceased and that the prosecution has miserably failed to prove its case against the petitioner.

4. 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 the occurrence took place at daylight and parties *inter se* are the resident of same area and 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.

5. 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.

6. It is the case of the prosecution that the petitioner namely Iftikhar Hussain *alias* Kharoo committed murder of Kamran Hussain on the grudge that he defeated the petitioner in *Akhara* on the eve of *Eid-ul-Azha*. The parties *inter se* are the close relatives inasmuch as the complainant is not only father of the deceased but also maternal uncle of the petitioner.

7. In order to prove the charge against the petitioner, the prosecution has primarily relied upon the statements of two eye witnesses, namely Muhammad Shafi, the complainant (PW-10) and

Muhammad Imran(PW-12), father and brother of the deceased, respectively, the motive, post mortem examination report, recovery of crime weapon and absconsion of the accused.

8. As far as motive is concerned, same stands disproved. Since, no evidence was produced by the prosecution to substantiate the motive of the accused to commit the murder of the deceased, specifically in light of the fact that, petitioner/ accused has no previous enmity with the complainant party, therefore motive set up by the prosecution in the FIR was disbelieved by the High Court.

9. As far as recovery of crime weapon i.e. *Churri*, is concerned, the same is held to be inconsequential by the Courts below because it was recovered after 4 years of the alleged occurrence and was not sent to the Forensic Science Laboratory.

10. If motive part and recovery of crime weapon is excluded, the entire case of prosecution rests on the testimonies of two eye-witnesses, post mortem report, and absconsion of the accused.

11. Perusal of the statement of eye-witness namely Muhammad Shafi, complainant (PW-10) reveals that he in cross examination contradicts his version taken in examination in chief as well as the story narrated in the FIR. Relevant portion there-from is reproduced as under:-

> "On the fateful day, I was present in my house. My house is at a distance of 200 feet from the alleged place of occurrence. Ibrar and Iftikhar are real brothers. They had a joint house. <u>The alleged occurrence was told to me by Asif Raza witness as soon as the deceased fell on ground</u>."
>
> **(Emphasis added)**

In the same vein statement of Muhammad Imran (PW-12) is also contradictory. Its relevant portion from examination in chief is reproduced as below:-

> "On 17.02.2009 at about 5.30 pm, I alongwith Muhammad Asif were present near Janaza Gah. My father Muhammad Shafi alongwith my Brother Kamran Hussain deceased were proceeding towards house of Ibrar Hussain for bricks work. When we reached near to Janaza Gah situated at Mohallah Islamabad Bhoun, I saw Iftikhar Hussain accused present in court having a churri in his right hand and raising a lalkara that he had come to teach a lesson for insulting him in the Akhara."

On the contrary, he himself contradicts his version in cross-examination by stating that he was not present at the place of occurrence, as reproduced below:-

> "... on the awful day, I had left my hotel at 01:00pm and was present in my house. I did not receive information of occurrence while sitting in house. Voluntarily said that I was attracted at the place of occurrence on a hue and cry of my brother deceased. ... the hue and cry would be audible from our house but not visible from our house. I reached at place of occurrence 4/5 minutes prior to the arrival of my father at the place of occurrence.
> ... I reached at place of occurrence within two minutes of hearing of noise."

Thus, mere perusal of the testimonies of both eye-witnesses make their presence at the spot highly doubtful. Moreover, PW Asif Raza who was cited to be eye-witness of the case did not support the prosecution case and exonerated the accused from the alleged commission of offence.

12. The medical evidence was furnished by Doctor Nadeem Hasnain (PW-6), who on 17.02.2009 conducted autopsy on the dead body of the deceased Kamran Hussain and noted two injuries on the body of deceased. He opined that probable time that elapsed between injury and death was 20-40 minutes and between death and post-mortem was 6 to 10 hours. It has been time and again ruled by this Court that delay in sending body for the post mortem is reflective of the absence of witnesses at the place of occurrence. Had they been present at the place of occurrence, they would have

strived to save the life of deceased and immediately shifted him to the hospital. However, contrary to normal reaction, father and brother of deceased, here neither shifted the deceased to hospital nor accompanied him when the same was sent to hospital by the police. This behaviour alone creates a sufficient doubt in their presence at the place of occurrence. Reliance is placed on Muhammad Rafiq alias Feeqa versus The State.[1]

This fact also finds corroboration from the fact that perusal of post-mortem report and inquest report reveals that dead body was brought to hospital at 11.00 PM by the Police and was identified by the Yasir Abbas and Ali Raza (PW-14). Thus, eye-witnesses were also not the ones who had identified the dead body of the deceased at the time of the post-mortem report. In absence of physical proof qua presence of the witnesses at the crime scene, the same cannot be relied upon. In this respect, reference can be made to the case of Muhammad Rafiq versus. State,[2] wherein this Court has ruled as under:-

> "It is an admitted position that no blood-stained earth had been collected from the stated place of occurrence and also that the F.I.R. had been lodged with a noticeable delay and post-mortem examination of the dead body had also been conducted with significant delay in the following afternoon. All these factors had pointed towards a real possibility that the murder in issue had remained un-witnessed and time had been consumed by the local police in procuring and planting eye-witnesses and in cooking up a story for the prosecution. As if this were not enough the record of the case shows that the related and chance eye-witnesses produced by the prosecution had failed to receive any independent corroboration or support."

13. In view of the material contradictions in the statements of eye-witnesses and the fact that they did not accompany the deceased in the hospital and that their names were

---

[1] (2019 SCMR 1068)

[2] (2014 SCMR 1698)

neither mentioned in Inquest report nor in post-mortem report as the identifiers of the dead body speaks volumes about the absence of the eye-witnesses at the place of occurrence. Hence, their testimonies are unreliable.

14. 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. Eye-witness 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. 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."

15. Learned Deputy Prosecutor General has also laid much emphasis on the abscondence of the petitioner as proof of his guilt. The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with substantive piece of evidence. This Court in the case of Asadullah versus. Muhammad Ali,[4] has held as follows:-

> "The object of corroborative evidence is to test the veracity of the ocular evidence. Both have, therefore, to be read together and not in isolation as the learned Judges did in the instant case."

---

[3] (2017 SCMR 986)

[4] (PLD 1971 SC 541)

This Court in the case of Rasool Muhammad v. Asal Muhammad,[5] has ruled as under:-

> "Abscondence per se is not a proof of the guilt of an accused person. It may, however, create suspicions against him but suspicions after all are suspicions. Consequently, we find the impugned judgment of acquittal as neither perverse, nor the reasons given for acquittal as artificial. We, therefore, refuse to interfere with the impugned judgment."

16. In the case of Muhammad Sadiq versus. Najeeb Ali,[6] this Court has observed that abscondence itself has no value in the absence of any other evidence. It was also held in the case of Muhammad Khan versus. The State,[7] that abscondence of the accused can never remedy the defects in the prosecution case. In the case of Gul Khan versus. The State,[8] this Court has held as under:-

> "The abscondence of an accused itself may not point out towards his guilt. It depends upon the facts and circumstances of each case as to whether abscondence is a pointer or not This view was taken by this Court in the judgment reported as Aminullah v. The State (PLD 1976 SC 629). It was laid down that abscondence as a circumstance proving the guilt is based upon the assumption that the guilty man tries to escape from the police violence, the innocent man rushes to the police to vindicate his innocence. It was further held by this Court such assumption is based upon several other assumptions and it would not be safe to hold that abscondence of an accused automatically amounts to proof of his guilt."

Similarly, in the cases of Muhammad Arshad versus. Qasim Ali,[9] Pir Badshah versus. The State,[10] and Amir Gul v. The State,[11] it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account is untrustworthy as mentioned above, therefore, no conviction can be based on abscondence alone.

---

[5] (1995 SCMR 1373)

[6] (1995 SCMR 1632)

[7] (1999 SCMR 1220)

[8] (1999 SCMR 304)

[9] (1992 SCMR 814),

[10] (1985 SCMR 2070)

[11] (1981 SCMR 182)

Reliance is placed on the cases of Muhammad Farooq and another versus. The State,[12] and Rohtas Khan versus. The State.[13]

17. Serious doubts in the case of prosecution have been overlooked by the Courts below. This Court has maintained a consistent approach that 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.[14] Therefore, the expression is of fundamental importance to our criminal justice system. It is one of the principles, which seeks to ensure that no innocent person is convicted.[15] Thus, it is the primary responsibility of the prosecution to substantiate its case against the accused, and the burden of proof never shifts, except in cases falling under Article 121 of the Qanun-e-Shahadat Order, 1984.

18. 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. The burden of proof lies entirely with the prosecution, and the accused is not required to provide evidence to refute the prosecution's claims. 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.

---

[12] (2006 SCMR 1707)

[13] (2010 SCMR 566).

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

[15] Ibid para 5.,

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

20. 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.

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

Judge

Judge

Judge

Islamabad, the
8th May, 2024
APPROVED FOR REPORTING
*Ghulam Raza/Paras Zafar**