

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:

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

Cr. Appeal No.425/2019 & Cr. Petition No.632/2020

*(Against the judgment dated 23.02.2016 of the Lahore High Court,
Rawalpindi Bench passed in CrI. Appeal No. 492/2011)*

Shaukat Hussain

...Appellant

Versus

The State thr. PG Punjab & another

...Respondents

For the
appellant/petitioner:

Mr. Ansar Nawaz Mirza, ASC
Syed Rifaqat Hussain Shah, AOR
(in CrI.A. No. 425/2019)

For respondent No. 2:

Malik Waheed Anjum, ASC
(in CrI. A. 425/2019)

For the State:

Mr. Irfan Zia, DPG Punjab

Date of hearing:

14.03.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J:-

Cr.A.No.425 of 2019: Through this appeal, by leave of the Court, the appellant has called in question the judgment dated 23.02.2016 passed by the Lahore High Court, Rawalpindi Bench, whereby criminal appeal filed by him was dismissed, however, his death sentence was altered into imprisonment for life. *Vide* order dated 21.10.2019 leave was granted in the following terms:-

"The learned counsel for the petitioner states that the incident took place on 3rd May, 2008 at 11:30 am in front of a disputed plot of land claimed by both the deceased Amjad Kiyani and Rab Nawaz co-accused. The petitioner and Rab Nawaz were shown to have fired upon the deceased. However, Rab Nawaz was acquitted on the same evidence. Muhammad Paris was injured in the

incident. Three persons were nominated for the murder of Amjad Kiyani and for causing injuries to Muhammad Paris, namely, Shaukat Mehmood (the petitioner), Rab Nawaz and Ali Raza, however, Muhammad Paris, who was injured, was not produced as a prosecution witness on the pretext that he was mentally unstable because if he had testified he would not have supported the case of the prosecution. It is next contended that the stated eyewitnesses, namely, Azhar Kiyani (PW-7) and Syed Zubair Shah (PW-8) resided at a distance of 8 to 10 kilometers from the crime scene and had not offered any plausible explanation for their presence at the crime scene on the said date. It is pointed out that the learned Trial Court had come to the conclusion that both the sides were not telling the truth and if this was the case the benefit of doubt ought to have been extended to the petitioner.

2. Leave to appeal is granted, inter alia, to consider the above submissions. Appeal be prepared on the present record however the parties will be at liberty to add thereto if relevant record has not already been filed."

2. The appellant was tried by the learned Additional Sessions Judge, Rawalpindi in case FIR No.181 dated 03.05.2008, offence under Sections 302/34, PPC, registered at Police Station Saddar Beroni, District Rawalpindi and was convicted under Section 302(b) PPC and sentenced to death for committing the murder of Amjad Kiyani and to pay compensation of Rs.100,000/- under Section 544-A Cr.P.C. to the legal heirs of the deceased *vide* judgment dated 29.09.2011.

Being aggrieved, the appellant filed a criminal appeal before the High Court challenging his conviction and sentence; the complainant filed criminal appeal assailing the acquittal of the co-accused, whereas the trial Court transmitted murder reference. All these matters were taken up together by a division bench of the High Court and through the impugned judgment, the appeal filed by the appellant was dismissed by altering his death sentence into

imprisonment for life, whereas that of the complainant was dismissed and the Murder Reference was answered in the negative; hence this appeal.

3. Precisely facts of the case, as narrated in the FIR dated 03.05.2008, are that: the complainant, namely, Azhar Kiyani along with Muhammad Paris and Amjad Kiyani deal with the property business. On the fateful day, they were proceeding towards village Dhulla on a motorcycle which was driven by Amjad Kiyani deceased. Zubair Hussain Shah was following them on his car bearing No.MH/914. At about 11.30 am, when they reached at Mauza Khasla Khurd in front of a disputed plot, Shaukat Hussain, appellant and accused Rab Nawaz, armed with *Kalashnikovs*, whereas Ali Raza, armed with *gaintee*, in order to commit their murder ambushed. The appellant raised a *lalkara* and fired with his *Kalashnikov* which hit Amjad Kiyani on his chest. Second fire was made by Rab Nawaz accused hitting on the neck of Amjad Kiyani. They fell down on the ground. Ali Raza accused inflicted *gaintee* blows on the head and left knee joint of Muhammad Paris. On hue and cry, the complainant ran away from the spot and saved his life. By brandishing their weapons, the accused persons decamped from the place of occurrence. Amjad Kiyani succumbed to the injuries at the spot. The motive behind the occurrence is that Rab Nawaz etc. have some dispute over the plot with Muhammad Paris, PW and due to the said reason, Amjad Kiyani was done to death and Muhammad Paris was injured.

4. Learned counsel for the appellant states that the incident took place on 03.05.2008 at 11:30 a.m. in front of a disputed plot claimed by both the deceased Amjad Kiyani and Rab Nawaz, co-accused; the appellant and Rab Nawaz were shown to

have fired upon the deceased, however Rab Nawaz was acquitted of the charge on the same set of evidence; three persons namely, Shaukat Hussain (the appellant), Rab Nawaz and Ali Raza, were nominated for the murder of Amjad Kiyani and for causing injuries to Muhammad Paris, however, Muhammad Paris was not produced as a prosecution witness; that the stated eyewitnesses, namely, Azhar Kiyani (PW-7) and Zubair Hussain Shah (PW-8) resided at a distance of 08 to 10 kilometers from the place of occurrence and they have not offered any explanation for their presence at the place of occurrence on the fateful day; the appellant has falsely been roped in the case; there is a delay of about four hours in reporting the matter to the police; there was previous enmity *inter se* the parties; that only two fires have been attributed to the appellant as well as the co-accused, however, as many as 16 empties were recovered from the crime scene as such medical evidence is not corroborating the story of the prosecution and that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt, hence the appellant deserves acquittal in the case.

5. Conversely, learned Deputy Prosecutor General assisted by the learned counsel for the complainant, has opposed the contentions raised by the learned counsel for the appellant. Learned Law Officer states that 04 hours delay in lodging FIR is not fatal to the case against the appellant keeping in view the distance of Police Station from the place of occurrence; that one set of evidence disbelieved to the extent of co-accused cannot be disbelieved to the extent of the appellant if the same is proving the guilt of the appellant and the Trial Court has rightly done so by believing the same; that the investigating officer showed negligence by not

proving the crystal clear case against the co-accused, Rab Nawaz; that 05 empties recovered from the place of occurrence matched with the *Kalashnikov* (P.7) recovered from the appellant. He contends that all the circumstances lead to the involvement of the appellant in the murder and prove him guilty, thus he does not deserve any leniency.

6. We have heard the learned counsel for the parties as well as the learned Law Officer at a considerable length and perused the material available on the record with their able assistance.

7. As per contents of FIR, the occurrence in this case took place on 03.05.2008 at 11:30 a.m. and the matter was reported to the Police on the same day at 3:30 p.m. and as such there is a delay of about four hours in reporting the crime to the Police whereas Police Station was situated at a distance of about 20 kilometers from the place of occurrence. No explanation at all was furnished for causing delay in reporting the crime to the Police. The contention that approximately four hours delay in lodging FIR is a normal thing does not appeal to the mind. Had the matter been reported within reasonable time, the police would have easily reached at the place of occurrence within about an hour. Why the matter has not been reported immediately by the eye-witnesses is a question which could not be satisfactorily explained by the witnesses during their evidence. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out.

8. We note that on the same set of evidence, the accused persons have been acquitted of the charges, whereas the appellant has been convicted and sentenced, benefit whereof should have also been extended to the appellant. Muhammad Paris, the injured,

shown as a witness in the calendar of witnesses in the charge sheet has not been produced by the prosecution for evidence in support of its case without any cogent and plausible reason, thus has withheld the best evidence. The case of the prosecution is on weak footings and for the reasons aforementioned, the benefit of doubt arises in favour of the appellant.

9. For what has been discussed above, this appeal is allowed; the judgments passed by the Trial Court and High Court dated 29.09.2011 and 23.02.2016, respectively are set aside to the extent of the appellant; the appellant is acquitted of the charge and be released forthwith from jail, if not required to be detained in any other case.

Criminal Petition 632/2020

10. Since the petitioner has been acquitted of the charge, as a natural corollary, this petition is disposed of.

11. The above are the reasons of our short order of even date which is reproduced below:-

"For the reasons to be recorded later, the appeal is allowed. The judgments dated 29.09.2011 & 23.02.2016 of the Trial Court and the Appellate Court respectively are set aside to the extent of the appellant. The appellant is acquitted of the charge. He be released forthwith from jail if not required in any other case. Since the appellant has been acquitted, Criminal Petition No.632/2020 is disposed of."

Judge

Judge

Judge

Islamabad, the
14th March 2024
Not approved for reporting
*Ghulam Raza/**