

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Jamal Khan Mandokhail
Justice Syed Hasan Azhar Rizvi
Justice Naeem Akhtar Afghan

Criminal Petitions No.548 and 602 of 2020

(Against the judgment dated 15.04.2020 passed by the Islamabad High Court, Islamabad passed in Criminal Appeal No.125 of 2018, Jail Appeal No.130 of 2018 and Murder Reference No.8 of 2018)

Chanzeb Akhtar
(in Cr. P. No.548 of 2020)
Haji Mirza Zafar
(in Cr. P. No.602 of 2020)

...*Petitioner(s)*

Versus

The State and another
(in Cr. P. No.548 of 2020)
Chanzeb Akhtar and another
(in Cr. P. No.602 of 2020)

...*Respondent(s)*

For the Petitioner(s)	: Syed Zulfiqar Abbas Naqvi, ASC (in Cr. P. No.548 of 2020)
	: Ch. Naseer Ahmed Tahir, ASC (in Cr. P. No.602 of 2020)
For the State	: Mr. Fauzi Zafar, ASC/State counsel
Date of Hearing	: 21.05.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.-

Criminal Petitions No.548 of 2020: Tried by the learned District and Sessions Judge, Islamabad-East (*trial Court*) in case FIR No.51 dated 06.02.2015, registered under Section 302 PPC at Police Station Koral, Islamabad, the petitioner was convicted under Section 302(b) PPC and sentenced to death along with payment of Rs.200,000/- as compensation to the legal heirs of the deceased and fine of Rs.100,000/-, in default whereof, he shall further

undergo simple imprisonment for six months *vide* judgment dated 17.07.2018.

2. Being dissatisfied with his conviction and sentence, the petitioner approached the Islamabad High Court (*High Court*) by filing criminal/jail appeals, whereas the trial Court transmitted the murder reference. All these matters were taken up together by the High Court and through the impugned judgment dated 15.04.2020 the appeals filed by the petitioner were dismissed, however, death sentence awarded to the petitioner was converted into life imprisonment and murder reference was answered in the negative; hence this petition for leave to appeal.

3. Briefly, facts of case are that on the fateful day i.e. 06.02.2015 at 12:15 (midnight) the complainant, namely Zafar Mehmood submitted a complaint to the Station House Officer, Police Station Koral, Islamabad alleging therein that he had been informed by Pervez Akhtar, brother of the petitioner, that the petitioner had murdered his wife, namely Munaza Sultana, sister of the complainant, with .30 bore pistol and after doing so fled away from the place of occurrence. On the basis of the complaint, FIR No.51 of 2015 was registered. On 07.02.2015, the petitioner surrendered himself before the police and got recovered the weapon of offence.

4. After completion of investigation, the challan was submitted against the petitioner and the charge under Section 302 PPC was framed against the petitioner to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced as many as 16-PWs coupled with 02-court witnesses. In his statement under Section 342 Cr.P.C., the petitioner raised his

plea of innocence. He neither opted to appear his own witness under Section 340(2) Cr.P.C. nor produced any defence evidence.

5. Learned counsel for the petitioner contends that the petitioner has falsely been roped in the case; that there was a considerable delay in sending the dead body for autopsy and there were consultation and deliberations on the part of prosecution; that the High Court has not taken into consideration the true facts and circumstances of the case; that it was a motiveless case from its beginning; that the High Court has failed to appreciate that it is a case of circumstantial evidence; that the prosecution has relied upon the testimony of Pervez Akhtar, CW-1 as the same did not surface either in the investigation or even at the trial stage rather reliance was placed on the affidavit filed by the said witness, thus the impugned judgment is not tenable in the eyes of law and is liable to be set aside. In support of his contentions, reliance is placed to the cases reported as Abdul Majeed versus The State (2011 SCMR 941), Wajahat versus Gul Daraz and another (2019 SCMR 1451) and State through Advcoate General, Khyber Pakhtunkhwa, Peshawar versus Hassan Jalil and others (2019 SCMR 1154).

6. Conversely, learned Law Officer appearing on behalf of the State has faithfully defended the impugned judgment and submits that the same is based on proper appreciation of evidence on the record. He maintains that it is a clear case warranting conviction which had correctly and lawfully been done by the High Court.

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

8. It reflects from the record that the younger sister of the complainant, namely, Munaza Sultana deceased was married to the petitioner/her cousin and on 06.02.2015 at 12:15 a.m. in the midnight while sleeping in his house he was informed by Pervez Akhtar, brother of the petitioner (CW-1), about the death of the deceased at the hands of the petitioner by way of firing with .30 bore pistol, where-after he ran away from the place of occurrence. The complainant along with Pervez Akhtar went to the house of the petitioner to see his sister where he saw that the dead body was lying on a cot. After lodging the FIR at about 02:15 a.m. in the midnight, the police party started investigation. On 07.02.2015, the Investigating Officer arrested the petitioner who himself surrendered in the police station and during the course of investigation the petitioner disclosed about the weapon of offence, .30 bore pistol, concealed in an under construction garage in the *haveli* near to his house and on his pointation said pistol along with magazine was taken into possession. The Investigating Officer received an affidavit sworn on 10.02.2015 by Pervez Akhtar, the brother of the petitioner *qua* the alleged incident. The Investigating Officer also dispatched two firearm empties of .30 bore pistol, three lead bullets from the dead body and .30 bore pistol to the Forensic Science Laboratory on 20.02.2015, 27.02.2015 and 10.03.2015, respectively.

9. From the evidence brought on the record, we find that the petitioner was last seen by Babar Iqbal, brother of the

deceased, (PW-12), fleeing away from the place of occurrence after commission of offence as the aforementioned witness was residing in a house adjacent to the petitioner's house and the said incident was notified by the petitioner's brother namely Pervez Akhtar (CW-1) through an affidavit. He was not made a witness by the Investigating Officer in the list of witnesses but was summoned by the Court as CW-1.

10. As per the FIR, on the fateful day i.e. 06.02.2015 at 12:15 a.m. (midnight), the petitioner had murdered his wife namely Munaza Sultana with .30 bore pistol by causing 06-firearm injuries on vital parts of her body. The incident was unseen, however, Babar Iqbal, brother of the deceased, who was living next door to the petitioner seen the petitioner holding a pistol in his hand while fleeing away from the place of occurrence after the firing. While appearing as PW-12, Babar Iqbal has deposed that:-

"On the night intervening 5/6 Feb, 2015, I was lying on my cot in my house when I heard the alarm of fire from the house of accused Chanzeb, whereupon I went up stairs on the roof of Pervez Akhtar who is also my cousin and brother-in-law at the time when the lights of their courtyard and room of accused were on through electric bulbs. I witnessed that accused Chanzeb was coming out of his room holding pistol in his hand and went out of the haveli through the outer gate. At that time the brother of accused Chanzeb Akhtar namely Pervez Akhtar was also present in the courtyard".

11. As per report of Forensic Science Laboratory, two crime cartridges of .30 bore pistol were collected by the Investigating Officer from the place of occurrence which were found wedded with the pistol recovered on the pointation of the petitioner

being used in the commission of offence. Neither the motive has been asserted nor brought on the record by the prosecution. We observe that the petitioner was identified by Babar Iqbal, PW-12, who had last seen the petitioner while holding pistol in his hand after the murder of the deceased. Even otherwise Babar Iqbal is the cousin of the petitioner so also brother-in-law and thus no question of misidentification arises.

12. As regards affidavit, Pervez Akhtar, brother of the petitioner, was called by the Court as his affidavit was appended with the final report submitted by the Investigating Officer, and the same was taken into possession through recovery memo dated 11.02.2015 in the police station. When confronted by the Court *why Pervez Akhtar and Javed Akhtar were not arrayed as prosecution witnesses in the list of witnesses*, the investigating officer replied that *he was apprehending that being brothers of the accused they might resile from the evidence later on*. The statement of Pervez Akhtar, CW-1, in the shape of affidavit by the petitioner was challenged before the High Court by filing a criminal revision whereby it was directed to the trial Court to decide the status of affidavit before passing the final judgment *vide* order dated 20.07.2017. However, an application from the complainant was also filed under Section 540 Cr.P.C. declaring that Pervez Akhtar recorded his statement during investigation and said witness was summoned as a court witness along with stamp vendor. No objection was raised to that application on behalf of the petitioner. When confronted with his affidavit by the Court, Pervez Akhtar, CW, acknowledged his signatures/thumb impressions thereon, however denied the contents mentioned therein. Whereas during

cross examination, he acknowledged the presence of his signatures on National Identity Card rather thumb impression. Pervez Akhtar also acknowledged that he has no enmity with Investigating Officer as well as Zafar Mehmood (*brother*). He in unequivocal terms has stated that *I have not challenged the said affidavit and its contents before any Court. Stamp vendor or typist has no enmity with me.*

13. Regarding testimony of Sami Ullah, CW-2, the Stamp Vendor, he stated in Court that stamp paper No.3892 dated 10.02.2015 was issued by him to Pervez Akhtar, CW-1 having National Identity Card No.61101-8535463-9 after obtaining his signatures on the register. On court's question, Sami Ullah has verified that:

"It is correct that I typed stamp paper No.AC-405664 in urdu what was stated by deponent Pervez Akhtar and I read over contents to him who admitted the same as correct and signed the same."

14. Considering the statement of above CWs, we find nothing in favour of the petitioner as his own brother Pervez Akhtar through an affidavit has submitted that he has seen the petitioner fleeing away from the place of occurrence after commission of an offence and thereafter informed the complainant of the case about the incident. This aspect of the matter was noted by the Investigating Officer that the complainant came to the Police Station in late night with Pervez Akhtar, brother of the petitioner. In view whereof, we find that the prosecution has established its case against the petitioner beyond any shadow of doubt.

15. It is well settled proposition of law that in the absence of premeditation to commit murder where motive is not proved by

the prosecution, the same may be considered as the mitigating factor in order to reduce the quantum of sentence in cases involving capital punishment. In the case reported as Iftikhar Mehmood and another versus Qaiser Iftikhar and others (2011 SCMR 1165), it has been ordained:-

"{6}. . . . We agree with the prosecution that motive is not sine qua non for the proof of commission of the crime and at time motive is not known to any other person other than the deceased or the accused person which never surfaced on the record. However it cannot be denied that motive is always very relevant to determine the quantum of sentence that might be awarded to a person against whom charge of murder is proved."

In the case reported as Zeeshan Afzal alias Shani and another versus The State and others (2013 SCMR 1602), this Court has held that:

"{13}. . . . if motive is not alleged or is not proved, normally the sentence of death is converted into imprisonment for life."

16. This view is also fortified in the case reported as Muhammad Yasin and another versus The State and others (2024 SCMR 128).

17. Regarding the case law cited at the bar by the learned counsel for the petitioner, the same is distinguishable to the facts and circumstances of the case. The High Court through the impugned judgment has taken into consideration all aspects of the matter factual as well as legal and has rightly reduced the sentence of death into imprisonment for life while treating the non-establishment of motive as a mitigating circumstance in favour of the petitioner.

18. We find ourselves in agreement with the reasons given and conclusions drawn by the High Court which require no interference. Learned counsel for the petitioner has failed to point out any infirmity or illegality in the impugned judgment. Consequently, this petition lacking in merit is dismissed and leave is refused.

Criminal Petition No.602 of 2020:

19. Since the main petition fails, as a natural corollary, this petition seeking enhancement is dismissed and leave is declined. Above are the reasons of our short order pronounced on even date.

Judge

Judge

Judge

Islamabad, the
21st May, 2024
Approved for reporting
*Ghulam Raza/**