

Present:

Crl. Petition No. 522-L of 2018, Crl. Petition No. 1008-L of 2014, Crl. Petition No. 599-L of 2018, Crl. Petition No. 557-L of 2018

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| Muhammad Nawaz | <i>in CrI.P.522</i> | |
| Muhammad Iqbal | <i>in other petitions</i> | ...Petitioners |

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| The State, etc | <i>in CrI.P.522</i> | |
| Qasim Ali etc | <i>in CrI. P. 599</i> | |
| The State & others | <i>in CrI.P. 1008</i> | |
| The State etc | <i>in CrI. P. 557</i> | ...Respondents |

For the Petitioners:

Mr. Zaheer Zulfiqar, ASC
(in *Crl. P. 1008*)
Mr. Zahid Aslam Malik, ASC
(in *Crl.P. 522-L*)
Mr. M. Irfan Malik, ASC
(in *Crl.Ps 557 & 599*)
(All through video link from Lahore)

For the State: Mirza Abid Majeed, DPG, Pb.

Date of Hearing: 25.09.2023

Jamal Khan Mandokhail, J. The petitioner-convict Muhammad Nawaz and respondents Muhammad Ehsan, Qasim Ali, Muhammad Arshad, Muhammad Ramzan and Muhammad Ali were indicted in FIR lodged by Muhammad Iqbal, brother of the deceased (Complainant), for offences under sections 302, 148, 149 of the Pakistan Penal Code ("**PPC**"), Police Station Saddar, Sargodha. The complainant dissatisfied with the police investigation, instituted a Private Complaint ("**complaint**") before

the court of Additional Sessions Judge, Sargodha ("**Trial Court**"). The Trial Court convicted and sentenced Muhammad Nawaz, Muhammad Ali and Muhammad Ramzan under section 302(b) PPC and sentenced them to death. Muhammad Arshad and Qasim Ali were convicted under section 302(b) PPC and sentenced for life each, whereas, the accused Muhammad Ehsan was acquitted of the charge. The convicts being aggrieved of their convictions and sentences, filed criminal appeals before the Lahore High Court, Lahore. A murder reference was sent by the Trial Court to the High Court for confirmation of death sentences. The complainant also filed a criminal appeal against the acquittal of Muhammad Ehsan and a criminal revision seeking enhancement of sentence of Qasim Ali and Muhammad Arshad and for enhancement of compensation awarded by the Trial Court to Muhammad Nawaz and Muhammad Ramzan.

2. The High Court dismissed the criminal appeal of Muhammad Nawaz with slight modification in the judgment by converting his sentence of death to imprisonment for life, whereas, the appeals of Muhammad Ramzan, Muhammad Arshad and Qasim Ali were accepted and they were acquitted of the charge. On the other hand, the criminal appeal and criminal revision filed by the complainant were also dismissed. During pendency of the appeal, Muhammad Ali entered into a compromise with the legal heirs of the deceased, on the basis whereof, the High Court allowed the appeal and acquitted Muhammad Ali of the charge. The murder reference was answered in the negative.

3. Feeling aggrieved, convict Muhammad Nawaz filed Crl. Petition No. 522-L of 2018 against the impugned judgment dated 26.02.2018, challenging his conviction. Similarly, complainant Muhammad Iqbal filed Crl. Petition No. 1008-L of 2014, Crl. Petition No. 557-L of 2018 and Crl. Petition No. 599-L of 2018 challenging the acquittal of Muhammad Ali, Qasim Ali, Muhammad Arshad, Muhammad Ramzan and Muhammad Ehsan, as well as the conversion of death sentence of Muhammad Nawaz into imprisonment for life. All these petitions arising out of

the same FIR, are being disposed of through this consolidated judgment.

Crl. Petition No. 522-L of 2018:

4. The petitioner in this case was convicted and sentenced to death by the Trial Court. On his appeal, his death sentence was converted into imprisonment for life by the High Court, hence, this petition. Brief background of the case is that the FIR was registered on 19.06.2010 at 9.40 am, wherein the time of occurrence was shown as 7.30 am on the same day. After conducting the postmortem, the doctor in his report and in his court statement, opined that the probable time between death and postmortem was nine hours. The complainant did not explain the delay in taking the dead body from the scene of the occurrence to the hospital. Besides, the time of death mentioned by the complainant in the FIR is 7.30 a.m., but the FIR was registered after a delay of more than two hours, without any explanation in this behalf, therefore, there is a probability of consultation and deliberations before reporting the matter to the police by the complainant. Under such circumstances, false involvement of the petitioner in the case cannot be ruled out.

5. Besides, in the postmortem report, the Doctor opined that the cause of death was excessive loss of blood and hemorrhagic shock as a result of injuries No. 5, 7, 9 and 11. These injuries were assigned by the complainant jointly to all the accused persons. It is a fact that except the petitioner, rest of the accused were acquitted of the charge by the High Court and one of them by the Trial Court on the same set of evidence. The complainant has ascribed injuries jointly to all the accused and did not single out the petitioner. Under such circumstances, it would not be safe to hold him alone responsible for causing death of the deceased. It is a well settled principle of law that while extending a benefit of doubt to an accused, it is not necessary that there must be multiple infirmities and doubts in the prosecution case. A single or slightest doubt in the prosecution case, would be sufficient to be extended its benefit in favour of an accused, as

has been held by this Court in the case of Ahmad Ali¹. There are a number of flaws and contradictions in the statements of witnesses, which created doubts in the prosecution story, benefit whereof has already been extended by the *fora* below to rest of the accused. For the sake of repetition, as discussed in preceding paras, one of the convict Muhammad Ali was acquitted of the charge by the High Court on account of accepting *badal-i-sulh* by the legal heirs of the deceased and compounded their right of *qisas*, as provided by section 310 PPC, therefore, the *Wali* of deceased do not want to pursue the matter furthermore, hence did not challenge the impugned judgment. By entering into compromise with one of the co-accused, the legal heirs have limited the scope of allegation to the extent of said accused, therefore, the petitioner cannot be singled out for a single murder, in respect of which, more than one person has been charged. The role of the petitioner is similar to that of the other co-accused, therefore, he is also entitled for equal treatment, hence, deserves the benefit of doubt. The learned counsel for the petitioner has succeeded in making out a case, enabling us to convert the petition into appeal, allow it and set aside the conviction and sentence awarded to the petitioner.

Crl. Petition No. 557-L/2018:

6. Muhammad Ehsan ("**respondent**") was nominated in the FIR and was also an accused along with others in a private complaint filed by the petitioner (complainant). The respondent was acquitted of the charge by the Trial Court in the case, instituted upon the complaint, whereas remaining accused were convicted and sentenced, as alluded to in Para 1 above. The petitioner filed an appeal before the High Court against the order of acquittal passed by the Trial Court. Under section 417(2) of the Cr.P.C., appeal against acquittal in a case instituted upon a complaint, can only be filed upon grant of special leave to appeal by a High Court. Thus, seeking special leave to appeal is a condition precedent for challenging an order of acquittal passed by any court, other than a High Court. The record of the High Court does not reflect that any request for seeking special leave to

¹ 2023 SCMR 781

appeal was sought by the petitioner, while filing the appeal. Under such circumstances, without grant of special leave to appeal from the order of acquittal passed by a court subordinate to a High Court in a case instituted upon a complaint, the appeal filed by the complainant was incompetent before the High Court.

7. Besides, as has been discussed herein above, the deceased was survived by his legal heirs, who participated in the proceedings before the Trial Court as well as the High Court, but did not challenge the order of acquittal of the respondents passed by the *fora* below concurrently. The legal heirs have compounded the matter with one of the accused, who has compensated the legal heirs. This proves the fact that the legal heirs of the deceased do not want to further pursue the matter. Though the petitioner was a complainant in the private complaint and a brother of the deceased, but in the given circumstances, he has no right to go against the will of the legal heirs, who by their conduct have accepted the verdict of acquittal. Without prejudice to above, even otherwise, what has been stated and discussed herein, the prosecution has failed to succeed in proving its case against the respondent. The Courts below have declared the respondent innocent, because of lack of evidence against him. After his acquittal by two *fora* below, the respondent has earned a double presumption of innocence. The judgments passed by the courts below are based on law and facts, therefore, have reached a correct conclusion. Learned counsel for the petitioner has not been able point out any substantial question of law, illegality, procedural irregularity, or jurisdictional defect in the impugned judgment of the High Court, warranting interference.

Crl. Petition No. 1008-L of 2014

8. Muhammad Ali ("**respondent**") was nominated in the FIR and was also an accused along with others in a private complaint filed by the petitioner (complainant). He was convicted and sentenced to death by the Trial Court. Feeling aggrieved, he challenged his conviction before the High Court. During the pendency of the appeal, legal heirs of the deceased (his widow and a minor) have entered into a compromise with the respondent, on the basis whereof, he was acquitted of the charge through the

impugned judgment. Under the injunctions of Quran and *Sunnah*, and under section 309 PPC, only an adult sane *Wali* (legal heirs) may at any time waive their right of *Qisas* without any compensation or may compound his/their right of *Qisas* on accepting *badal-i-Sulh* (compensation) as provided by section 310 PPC. No doubt, the petitioner was brother of the deceased, informant of the FIR as well as a complainant in the Private Complaint, can challenge the judgment of acquittal being an aggrieved person, but in view of the fact that the legal heirs of the deceased do not want to pursue the matter further against the respondent. The petitioner has not been able to show that the right of compounding the offence exercised by the legal heirs was a result of coercion, duress or undue pressure. Thus, under such circumstances, the petitioner is estopped under the law to challenge the impugned judgment before this Court. Learned counsel for the petitioner has not been able to point out any substantial question of law, illegality, procedural irregularity, or jurisdictional defect in the impugned judgment of the High Court, warranting interference.

Crl. Petition No. 599-L of 2018:

9. Qasim Ali and Muhammad Arshad ("**respondents**") were convicted and sentenced to suffer imprisonment for life, whereas Muhammad Ramzan ("**respondent**") and Muhammad Nawaz (petitioner in Crl. P. 522-L of 2018) were convicted and sentenced to death by the Trial Court, followed by a murder reference sent to the High Court for confirmation of their sentences of death. All the convicted persons filed appeals against their convictions and sentences. The petitioner-complainant filed a criminal revision for enhancement of sentence of Qasim Ali and Muhammad Arshad, and for enhancement in the amount of compensation to the extent of Muhammad Nawaz and Muhammad Ramzan. The criminal revision filed by the petitioner-complainant was dismissed, whereas, the criminal appeals filed by Qasim Ali, Muhammad Arshad and Muhammad Ramzan were allowed and they were acquitted of the charge. The appeal filed by Muhammad Nawaz was dismissed by maintaining his conviction under section 302(b) PPC, however, his sentence was converted from death into

imprisonment for life. The murder reference was answered in the negative by the High Court.

10. Through this petition, the petitioner-complainant has assailed the impugned judgment of the High Court, pursuant to which, the respondents Qasim Ali, Muhammad Arshad and Muhammad Ramzan were acquitted of the charge. As has been discussed above that the deceased was survived by his legal heirs, who participated in the proceedings before the High Court. They accepted *Badal-i-Sulh* and compounded their right of *Qisas*, on the basis whereof, Muhammad Ali was acquitted by the High Court. The legal heirs had the right to challenge the impugned judgment, participated in the proceedings before the High Court, hence, were aware about the impugned judgment, but they did not opt to exercise their such right. No doubt, the petitioner being brother of the deceased, an informer of the FIR and complainant in the private complaint had also a right to invoke the extraordinary jurisdiction of this Court by seeking leave to appeal, but if the legal heirs of the deceased do not wish to pursue the matter, the petitioner has no authority to undermine their right guaranteed by law. On the basis of facts and circumstances of the case in hand, permitting the petitioner to pursue the matter, would amount to promoting frivolous litigation. Even otherwise, the respondents were acquitted of the charge by the High Court, because of lack of incriminating evidence, connecting them with the commission of the offence. The respondents after their acquittal, earned a double presumption of innocence. There is no substantial question of law, any illegality, procedural irregularity, or jurisdictional defect in the impugned judgment of the High Court, warranting interference, nor is there any extraordinary circumstance for grant of leave.

These are the reasons for our short order dated 25.09.2023, which is reproduced herein below:

"For reasons to be recorded later, Cr.P.L.A. Nos. 1008-L of 2014, 557-L and 599-L of 2018 are dismissed whereas Cr.P.L.A. No. 522-L of 2018 filed by Muhammad Nawaz Petitioner is converted into appeal and allowed. Conviction and sentence awarded to him vide impugned judgment dated 26.02.2018 are set

aside. He is acquitted of the charge. He be set at liberty, if not required, in any other case.”

Judge

Judge

Judge

ISLAMABAD

25th September, 2023

K.Anees and Waqas Ahmad, L.C/*

“APPROVED FOR REPORTING”