

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

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

CRIMINAL PETITION NO.968 OF 2017 AND
CRIMINAL PETITION NO.891 OF 2017

(On appeal against the judgment dated 19.06.2017 passed by the Islamabad High Court, Islamabad, in Criminal Appeal No.154/2015, Jail Appeal No.153/2015, CrI. Revision No.23/2016 and M.R. No.14.2015)

Muhammad Saeed (CrI.P.968/2017)				
Waqar Ali (CrI.P.891/2017)		Petitioner(s)

Versus

The State and another (CrI.P.968/2017)
M. Saeed Khan and others (CrI.P.891/2017) ... Respondent(s)

For the petitioner

(Crl.P.968/2017) : Raja Khalid Mehmood Khan, ASC

(Crl.P.891/2017) : Mr. Talat Mahmood Zaidi, ASC

For the State : Mr. Fauzi Zafar Iqbal, ASC
(As State Counsel)

Date of hearing : 20.05.2024

JUDGMENT

Naeem Akhtar Afghan, J. On the charge of committing murder of Nagina Bibi by stabbing in her abdomen in the night of 23.10.2013 at 3:30 am in her house, in respect whereof FIR No.175/2013 dated 23.10.2013 was lodged with Police Station (**PS**) Secretariat Islamabad by Waqar Ali Khan (brother of deceased), the accused Muhammad Saeed was convicted under section 302(b) of the Pakistan Penal Code (**PPC**) and sentenced to death by learned Additional Sessions Judge VII (West) Islamabad (**the Trial Court**) vide judgment dated 5.09.2015. The convict (Muhammad Saeed) was also made liable to pay compensation of Rs.1,00,000/- under section 544-A of the Code of Criminal Procedure (**Cr.P.C.**) and in default thereof to further undergo imprisonment for six months.

2. The conviction and sentence awarded by the Trial Court was challenged by the convict initially by filing Jail Appeal No.153/2015 before the Islamabad High Court (**the Appellate Court**). Subsequently, the convict also filed Criminal Appeal No.154/2015 before the Appellate Court. The Trial Court forwarded Murder Reference No.14/2015 to the Appellate Court for confirmation or otherwise of the death sentence of the convict. The complainant (Waqar Ali Khan) also filed Criminal Revision No.23/2016 for enhancement of the compensation amount.

3. After hearing all the concerned, vide impugned common judgment dated 19.06.2017, while maintaining the conviction of the convict under section 302(b) PPC, the Appellate Court converted the death sentence of the convict into imprisonment for life with benefit of section 382-B Cr.P.C and enhanced the amount of compensation from Rs.1,00,000/- (rupees one hundred thousand) to Rs.10,00,000/- (rupees one million) in default whereof the convict was held to undergo simple imprisonment for six months.

4. Feeling aggrieved of the impugned judgment passed by the Appellate Court the convict has filed Criminal Petition for leave to Appeal No.968/2017 and the complainant has filed Criminal Petition for leave to Appeal No.891/2017 for enhancement of the sentence of the convict to death penalty.

5. After hearing learned counsel for the convict, learned counsel for the complainant and learned counsel for the State we have perused the available record. The un-natural death of deceased Nagina Bibi due to stab wound on her abdomen in the night of 23.10.2013 at 3:30 am in her house has not been disputed/denied by the defence.

6. The evidence available on record reveals that when on hue and cry of injured Nagina Bibi, her mother (PW-8 Shujat Bibi), her sister Sakeena Bibi) (not produced at trial) and her brother (the complainant/PW-13) came out of their rooms and reached the injured, she informed them that Muhammad Saeed (the convict) has fled after inflicting *Churri* blows to her; the complainant chased the convict in the street but the convict succeeded in fleeing towards the Quaid-e-Azam University, Islamabad whereafter the

complainant alongwith his mother and sister took the injured to hospital in the vehicle of neighbor (PW-10 Muhammad Akram).

7. According to the statement of PW-8, she had seen the convict while stabbing the deceased but this portion of her statement reveals of dishonest improvement at the trial. However, the statement of PW-8 and PW-13 confirms that they both had immediately responded to the hue and cry of the injured Nagina Bibi who told them about *Churri* blows inflicted by the convict.

8. Evidence reveals that the injured Nagina Bibi was immediately taken to Hospital in the vehicle of PW-10. Statement of PW-10 confirms that on her way to the hospital, the injured Nagina Bibi was reciting *Kalima* and was telling PW-13 that Muhammad Saeed (the convict) had stabbed her.

Surprisingly, the above statement of PW-10 was not disputed by the learned defence counsel during cross-examination of PW-10.

9. It was contended by learned counsel for the convict that during investigation, statement of PW-10 was not recorded by the Investigating Officer under section 161 Cr.P.C. but record transpires that 161 Cr.P.C. statement of PW-10 was duly recorded by the Investigating Officer during investigation and his name was also mentioned in the calendar of witnesses contained in the report (challan) under section 173 Cr.P.C.

10. The deceased had received stab wound on her abdomen in the night of 23.10.2013 at about 3:30 am. The MLC (Ex.PE) issued by PW-5 Dr. Tanvir Afsar Malik, CMO, Federal Government Hospital (**FGH**) Islamabad reveals that the injured Nagina Bibi was examined by him at 4:15 am on 23.10.2013 with a deep stab wound on her abdomen; she was in the state of shock; she was pulse less and she was declared dead at 5:00 am.

The postmortem report (Ex.PG/1-6) issued by PW-6 Dr. Sabina Akhter, MLO, FGH Islamabad also confirms that the deceased had sustained stab wound on her abdomen which had resulted into her death. According to the postmortem report, time between injury and death of the deceased was one hour and 35 minutes approximately.

The above confirms that the deceased Nagina Bibi remained alive for a considerable period before reaching the hospital.

11. Under Article 46 of the Qanun-e-Shahadat Order, 1984 the sanctity of a dying declaration has to be evaluated with great care and caution and the evidence consisting of dying declaration has to be appreciated with due diligence.

A dying declaration is a question of fact which has to be determined on the facts of each case. To find out truth or falsity of a dying declaration, a case is generally to be considered in all its physical environment and circumstances.

A dying declaration can be made before a private person but it should be free from any influence and the person before whom it is made has to be examined. It is necessary to ascertain that the dying declaration was made honestly, its maker was in a fit state of mind to make the statement, its maker was free from outside influence, its maker was fearing death and had made truthful statement.

Reference in above regard is made to the cases of '**Farmanullah v. Qadeem Khan**'¹ and '**Majeed v. the State**'².

12. In the instant case, the dying declaration made by deceased Nagina Bibi before PW-8, PW-10 and PW-13 implicating the convict is supported/ corroborated by the inquest report, the MLC, the postmortem report, the report of the chemical expert with regard to the blood stained clothes of the deceased and the surrounding circumstances.

Apart from consistent and confidence inspiring statements of PW-8 and PW-13, the dying declaration of deceased Nagina Bibi is duly supported/corroborated by un-challenged testimony of PW-13 who is an independent witness having no enmity for false implication of the convict.

13. On re-appraisal of the evidence available on record and after considering the circumstances of the instant case, we have no reason to discard/disbelieve the dying declaration of deceased Nagina Bibi which is supported by the confidence inspiring testimony of PW-8, PW-10 and

¹ 2001 SCMR 1474

² 2010 SCMR 55

PW-13 and is also corroborated by the inquest report, MLC, postmortem report and report of the chemical expert.

14. The Appellate Court has disbelieved the recovery of *Churri* on the pointation of the convict on 8.11.2013 from an open place of Quaid-e-Azam University Islamabad.

The above as well as absence of motive in the FIR, non proving of the motive introduced by the prosecution witnesses at the trial about the desire of the convict to marry the deceased prior to her marriage with PW-9 Sabir Ullah and single stab wound on the abdomen of deceased have rightly been considered as mitigating circumstances by the Appellate Court to award lessor sentence of imprisonment for life to the convict.

The impugned judgment passed by the Appellate Court is not suffering any illegality or irregularity warranting interference by this Court.

The above are the reasons of our short order dated 20.05.2024 whereby both the petitions were dismissed and leave to appeal was refused.

Judge

Judge

Judge

Islamabad:
30.05.2024
(M. Saeed/Zohaib Afzal, LC

APPROVED FOR REPORTING.