

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Justice Syed Hasan Azhar Rizvi
Justice Musarrat Hilali
Justice Naeem Akhtar Afghan

Jail Petition No. 181 of 2016

A/w.

Criminal Petition No. 154-L of 2016

(On appeal against the judgment dated 02.12.2015 of the Lahore High Court, Lahore passed in CrI. A. No. 150-J of 2014 alongwith M.R. No. 497 of 2011)

Mst. Saima Noreen	(J.P. No. 181/2016)		
Muhammad Shafiq	(CrI.P. No. 154-L/2016)	Petitioners

Versus

The State			
(In both petitions)		Respondent

For the petitioners:	Mian Liaquat Ali, ASC
(J.P. No. 181/2016)	
(CrI.P. No. 154-L/2016):	Ch. Nisar Ahmed Kausar, ASC
	(Through video link from Lahore)

For the complainant:	In person
For the state:	Mr. Irfan Zia, Addl.P.G., Punjab
Date of hearing:	17.04.2024

JUDGMENT

NAEEM AKHTAR AFGHAN, J. While acquitting co-accused Arfan Ullah Son of Muhammad Ramzan, the petitioner Saima Noreen (widow of deceased Muhammad Akmal) and the petitioner Muhammad Shafique son of Salamat Ali (with whom the petitioner Saima Noreen allegedly had illicit relations) were awarded conviction and sentence under section 302 (b)/34 PPC as follows by the court of learned Additional Sessions Judge, Okara (**‘the Trial Court’**) vide judgment dated 19.11.2011 in FIR No. 727/2010, Police Station (**‘P.S.’**) A-Division Okara which was got registered on 15.11.2010 by Muhammad Arshad son of Babu Khan (brother of deceased Muhammad Akmal) for committing murder of deceased Muhammad Akmal by strangulation:

“I hold Saima Noreen accused guilty of qatl-e-amd of Akmal deceased, she is convicted U/S 302(b)/34 PPC and is awarded the sentence of death, she shall be hanged by neck till death. She shall also pay Rs.2,00,000/- as compensation U/S 544-A Cr.PC. to the legal heirs of deceased Akmal and in default thereof to further under go six months S.I.

35. *I also hold Muhammad Shafique guilty of qatl-e-amd of Akmal deceased. He is convicted U/S 302(b)/34 PPC and is awarded sentence of death, he shall be hanged by neck till death, he shall also pay Rs.2,00,000/- as compensation U/S 544-A Cr.PC. to the legal heirs of deceased Akmal and in default thereof to further under go six months S.I."*

2. Both the petitioners challenged their conviction and sentence by filing Criminal Appeal No. 150-J of 2014 before Lahore High Court, Lahore (**the Appellate Court**). Murder Reference No. 497 of 2011 was also forwarded to the Appellate Court under section 374 of the Criminal Procedure Code, 1898 (**Cr.P.C.**).

3. While dismissing the appeal of both the petitioners and maintaining their conviction under section 302 (b)/34 PPC, their sentence of death was converted to imprisonment for life as Ta'zir with benefit of section 382-B Cr.P.C, the amount of compensation to be paid to the legal heirs of deceased was ordered to remain intact and murder reference was answered in negative by the Appellate Court vide impugned judgment dated 02.12.2015. Both the petitioners have filed the instant petitions to challenge their conviction and sentence.

4. After hearing learned counsel for the petitioners, the complainant in person and learned Additional Prosecutor General, Punjab we have perused the available record.

It is the case of the prosecution that in the night of 15.11.2010 at about 2:00 a.m. PW-3 (Muhammad Arshad brother of deceased Muhammad Akmal), PW-4 (Adnan Abid Hussain brother in law of deceased Muhammad Akmal and PW-3) along with Muhammad Ashraf (paternal uncle of deceased Muhammad Akmal who has not been produced by the prosecution at the trial) were sleeping in the adjoining room; they awoke on hearing the alarm and rushed to the adjacent room of deceased Muhammad Akmal wherein an electric bulb was on; they saw the petitioner Muhammad Shafique sitting on the chest of deceased Muhammad Akmal strangulating him with a rope wrapped around his neck while petitioner Saima Noreen and acquitted accused Arfan Ullah were holding the legs of deceased Muhammad Akmal whose hands and feet were tied; when they reached near them, the petitioner Muhammad Shafique and acquitted accused Arfan Ullah pointed out firearms (pistols) towards them; they were threatened for life; due to fear, they stopped and all the accused fled while pointing their pistols towards them; they untied hands and feet of deceased Muhammad Akmal and also removed the rope from his neck but deceased Muhammad Akmal had succumbed to the injury; they raised alarm and the *Mohalladars* gathered; after half an hour the police reached and PW-8 (investigating officer Muhammad

Ashraf Lashari S.I.) took into possession two ropes, one mat and two pillows from the place of occurrence vide recovery memo.

5. It is further the case of the prosecution that the petitioner Saima Noreen was not bearing good character and she had illicit relations with petitioner Muhammad Shafique; petitioner Muhammad Shafique used to visit petitioner Saima Noreen on the pretext of being her relative and same was objected by deceased Muhammad Akmal who was having suspicion about their character and he used to forbid petitioner Muhammad Shafique from visiting his house due to which usually quarrel took place between deceased Muhammad Akmal and the petitioner Saima Noreen.

6. It is the defence plea of the petitioner Saima Noreen that she being legal wedded wife of deceased Muhammad Akmal had no relations with petitioner Muhammad Shafique and he never visited their house; her husband deceased Muhammad Akmal, being tailor master, remained in Saudi Arabia for about seven years wherefrom he used to send his earnings to PW-3; PW-3 had usurped the earnings of deceased Muhammad Akmal; when her husband/deceased Muhammad Akmal returned back and settled in Okara, she forced her husband to demand the usurped amount from PW-3 due to which an altercation had taken place between her and PW-3 and she along with her four children were expelled from the house of her husband about one month prior to the occurrence; she was living a deserted life; she was informed about the death of her husband during day time of 15.11.2010 and when she along with her children reached the house of her husband, she was arrested by the police and was falsely implicated in the murder of her husband at the behest of PW-3 who intended to usurp the earnings of her husband and his properties.

7. It is the defence plea of petitioner Muhammad Shafique that he has no relations with the petitioner Saima Noreen; he was not present in the house of deceased in the night of the occurrence; he was active political worker of the opponent of sitting MNA Naseer Bhutta with whom Muhammad Ajmal (another brother of deceased Muhammad Akmal) was working as his personal employee; for being active political worker of the opponent of MNA Naseer Bhutta and being headman of his family, he has falsely been implicated in the instant case by PW-3 at the behest of MNA Naseer Bhutta.

8. It was the defence plea of acquitted accused Arfan Ullah that he, being an employee of petitioner Muhammad Shafique, was falsely involved by PW-3 with the connivance of the investigating officer who had conducted raids at his shop in Lahore for arrest of petitioner Muhammad Shafique and had exerted pressure upon him for getting the petitioner Muhammad Shafique arrested; due to his

failure to disclose the whereabouts of the petitioner Muhammad Shafique, he was falsely implicated by the investigating officer with the connivance of PW-3.

9. According to PW-8, PW-3 presented an application (Ex.PC) to him for registration of FIR which was sent to police station through Muhammad Ramzan Constable (not produced at the trial) on the basis whereof FIR No. 727/2010 was registered with P.S. A-Division, Okara. The acquitted accused Arfan Ullah was not nominated in the FIR and his name was introduced subsequently by PW-3 through a supplementary statement.

10. According to PW-3 and PW-4 the occurrence took place in the night of 15.11.2010 at 02:00 a.m.. According to the statements of PW-3 and PW-4 recorded at the trial, they both did not inform the police about the occurrence. None of the prosecution witness has disclosed at the trial as to who had informed the police about the occurrence or how the police reached at the place of occurrence when neither any relative of deceased Muhammad Akmal nor any inhabitant of the area had informed the police about the occurrence.

11. Record transpires that computer typed application (Ex.PC) in Urdu language bearing date nil, was submitted to SHO P.S. A-Division, Okara by PW-3 for registering FIR. According to the contents of FIR No. 727/2010 and statement of PW-8, the computer typed application in Urdu was submitted to him by PW-3 in the night of occurrence at about 02:55 a.m.

None at the trial, including PW-3, has explained as to how Ex.PC was got typed on computer in the night of the occurrence at 02:55 a.m.

12. According to PW-8 he had reached the place of occurrence along with police officials including Muhammad Arif Head Constable (PW-7) and Muhammad Ramzan where at 02:55 a.m. he received Ex.PC from PW-3 for registering FIR.

The above has been contradicted by PW-7 with the statement that he along with PW-8 had reached the place of occurrence at 06:00 a.m. on 15.11.2010.

13. The time of taking the dead body to the hospital by PW-7 i.e. 06:30 a.m. on 15.11.2010 has been contradicted by Dr. Shakeel Anjum, Medical Officer, DHQ Hospital Okara (PW-6) who stated that the dead body was brought by PW-7 for postmortem on 15.11.2020 at 01:30 p.m.

14. The site map mentions about only one door of the room of deceased Muhammad Akmal but PW-3 and PW-4 have stated that the room of deceased was having two doors. According to statement of PW-3 and PW-4 there was only

one entrance door of the house of the deceased but the site map reveals that another door also existed in the *Baithak* of the house of the deceased which was opening in the street.

15. The statements of PW-3, PW-4, PW-7 and PW-8 reveal of material contradictions and discrepancies which have shaken veracity of their testimony. According to the settled principles, material contradictions in evidence in a criminal case create doubt in the case of the prosecution and lead to reasonable possibility of the witnesses being not truthful. Reference in this regard is made to the cases of '*Buland Khan v. The State*¹, '*Muhammad Riaz v. Muhammad Zaman*² and '*Basharat Ali v. Muhammad Safdar*³.

16. According to the evidence available on record, PW-3 was married with Rahila and from the wedlock he was having children. According to PW-3, at the time of occurrence he along with his family, family of deceased Muhammad Akmal and his brother Muhammad Ajmal were residing in the house where the occurrence had taken place. According to PW-3 they heard the voice of elder daughter (Aisha aged about 8/9 years) of deceased Muhammad Akmal who was crying and saying to them that her father was given beating due to which they awoke and rushed towards the door of the room of deceased Muhammad Akmal which was not closed and was slightly open.

17. The elder daughter Aisha (aged about 8/9 years) of deceased Muhammad Akmal was mature enough to testify for supporting/corroborating the above version of PW-3 and PW-4 but the investigating officer did not record her statement and she was also not produced at the trial by the prosecution. Surprisingly, the statement of the Mst. Rahila (wife of PW-3) was also not recorded by the investigating officer nor she was produced at the trial by the prosecution to lend corroboration to the version of PW-3 and PW-4.

18. PW-3 as well as the site map is silent as to why PW-4 and Muhammad Ashraf were sleeping with PW-3 in the night of occurrence in the adjacent room and if so, where the wife and children of PW-3 were sleeping in the house at the time of the occurrence.

19. It has come on record that PW-4 was resident of Chak No. 5/4-L at a distance of ten kilometers from Okara while Muhammad Ashraf (paternal uncle of PW-3 and deceased Muhammad Akmal introduced as eye witness during

¹ 1990 SCMR 170

² PLD 2005 SC 494

³ 2017 SCMR 1601

investigation but not produced by the prosecution at the trial) was resident of Chak No. 32/2-R at a distance of 7/8 kilometers from Okara.

PW-3 and PW-4 have failed to furnish any convincing reason for stay of Muhammad Ashraf and PW-4 in the house of PW-3 in the night of the occurrence.

20. Surprisingly, PW-3, PW-4 and Muhammad Ashraf, claiming to be the eye witnesses of the occurrence, did not take the dead body of deceased Muhammad Akmal to the hospital immediately after the occurrence. As per evidence available on record, the dead body of deceased Muhammad Akmal was taken to the hospital by Muhammad Arif Head Constable (PW-7). According to the statement of PW-7 he shifted the dead body to hospital around 06:30 a.m. on 15.11.2010 and at that time the investigating officer (PW-8) was also accompanying him. PW-7 has not mentioned about the presence of PW-3, PW-4 and Muhammad Ashraf or their accompanying to the hospital with the dead body.

The above aspect also creates serious doubt about the presence of PW-3, PW-4 and Muhammad Ashraf in the house of deceased Muhammad Akmal at the time of occurrence.

21. According to the statements of PW-3 and PW-4 when they awoke on alarm they rushed to the room of deceased and on sliding the door (which was not closed) they saw the petitioner Muhammad Shafique strangulating the deceased and they saw the petitioner Saima Noreen and acquitted accused Arfan Ullah holding the legs of deceased Muhammad Akmal but they put no resistance to the accused nor took any step to save the life of deceased Muhammad Akmal.

It is alleged by PW-3 and PW-4 that they were restrained due to aiming of firearms by petitioner Muhammad Shafique and acquitted accused Arfan Ullah.

The above version of PW-3 and PW-4 is lacking corroboration as during investigation no firearms were recovered from the petitioner Muhammad Shafique and acquitted accused Arfan Ullah.

22. The unnatural conduct of PW-3, PW-4 and Muhammad Ashraf reveals of their non-presence in the house of deceased Muhammad Akmal at the time of occurrence.

23. While recording their statements at the trial, PW-3 and PW-4 have also made dishonest improvements which were duly confronted to them by the learned defence counsel. The dishonest improvements made by PW-3 and PW-4 in their statements at the trial have rendered their testimony unworthy of

reliance. According to the settled principles of law dishonest improvements made by a witness in his statement to strengthen the prosecution case casts serious doubt about veracity of his statement and makes the same untrustworthy and unreliable. Reference in this regard is made to the cases of '**Sardar Bibi v. Munir Ahmed**⁴, '**Muhammad Arif v. The State**⁵ and '**Naveed Asghar v. The State**⁶.

24. The postmortem report of the deceased is accompanied by report (Ex.PE) of the Chemical Examiner and Histopathologist of Government of Punjab contents whereof reveal that *viscera* (internal organs) of deceased Muhammad Akmal i.e. his stomach with contents, small and large gut with contents, liver, spleen, kidneys, lungs and saturated saline were sent for analysis and the following result was found:

"Tranquillizer belonging to benzodiazepine group is detected in the above viscera. However quantitative estimation is not possible."

Benzodiazepines colloquially called "benzos, are a class of depressant drugs that produce sedation and hypnosis. The most common benzodiazepines are the prescription drugs *Valium, Xanax, Halicon, Ativan and Klonopin*. In an overdose benzodiazepines can cause dangerous deep unconsciousness.

25. The report of the Chemical Examiner transpires that before strangulation, the deceased was administered tranquilizer.

26. At the trial the prosecution has not produced Muhammad Ashraf (paternal uncle of deceased Muhammad Akmal) who was mentioned as an eye witness by PW-3 and PW-4. The prosecution has also not produced Muhammad Ajmal (brother of deceased Muhammad Akmal and PW-3) about whom it has come on record that he used to reside in the *Baithak* of the house in a room whereof the occurrence had taken place and he had identified the dead body in the hospital at the time of postmortem examination by PW-6.

An adverse inference is drawn under Article 129(g) of the Qanoon-e-Shahadat Order, 1984 to the effect that had the above two witnesses been produced by the prosecution at the trial, they would not have supported the version of the prosecution.

27. On reappraisal of the evidence available on record, we have no hesitation to conclude that the occurrence of the death of deceased Muhammad Akmal by

⁴ 2017 SCMR 344

⁵ 2019 SCMR 631

⁶ PLD 2021 SC 600

strangulation was unwitnessed; the conduct of PW-8 was not fair and impartial as an investigating officer; fabrication has been made during investigation by PW-3 with the connivance of PW-8 to falsely implicate the petitioners by planting himself, PW-4 and Muhammad Ashraf as eye witnesses of the occurrence.

It is further concluded that, the prosecution has miserably failed to prove the charge against both the petitioners beyond reasonable doubt; the conviction and sentence awarded to both the petitioners by the Trial Court as well as by the Appellate Court is result of mis-reading and mis-appreciation of the evidence available on the record.

28. Both the petitions have already been converted into appeals, the same have been allowed and both the appellants have been acquitted of the charge under section 302 (b)/34 PPC vide our short order dated 17.04.2024 which reads as follows:

“For reasons to be recorded later, both these petitions are converted into appeals and allowed. The impugned judgment dated 02.12.2015 of the Lahore High Court, Lahore passed in Criminal Appeal No. 150-J alongwith Murder Reference No. 497 of 2011 is set aside. Both the appellants are acquitted of the charges leveled against them in case FIR No.727 dated 15.11.2010 registered under sections 302/34 PPC at Police Station A-Division, Okara. They shall be released from jail forthwith in the instant case if not required to be detained in any other case.”

The above are the reasons of our short order dated 17.04.2024.

Judge

Judge

Judge

Islamabad
14.05.2024
Atif/Zohaib Afzal
APPROVED FOR REPORTING