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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN
MR. JUSTICE SHAKEEL AHMAD

Jail Petition No.555 of 2017

(On appeal against the judgment dated 07.06.2017 passed by the Lahore High Court, Lahore in Criminal Appeal No.1044/2012 & Murder Reference No.241/2012)

Muhammad Nawaz

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Ms. Aisha Tasneem, ASC

For the State: Mirza Abid Majeed, DPG Punjab

Date of Hearing: 12.03.2025

...

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Muhammad Nawaz, petitioner was tried by the learned Sessions Judge, Chiniot, pursuant to a case registered vide FIR No.162 dated 11.04.2002, under Section 302 PPC at Police Station Chenab Nagar, District Chiniot. The learned Trial Court vide its judgment dated 17.05.2012, convicted the petitioner under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.2,00,000/- to the legal heirs of the deceased as envisaged under section 544-A Cr.P.C and in default whereof to further undergo simple imprisonment for six months. In appeal, the learned High Court while maintaining the conviction of the petitioner under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The amount of compensation and the

sentence in default thereof were maintained. Benefit of Section 382-B Cr.P.C, was also extended in favour of the petitioner.

2. Arguments heard. Record perused.

3. As per contents of the FIR (Ex.PE/1), on 11.04.2010 at about 11.00 a.m, Ghulam complainant (PW-7), along with Aman Ullah (PW since given up) and Ijaz Ahmad (PW-8), came to Kot Wasava in order to see daughter of the complainant namely Mst. Azran Bibi (deceased), who was married with Muhammad Nawaz petitioner. They found that Mst. Azran Bibi (deceased), was not present in her house, whereupon, they proceeded to the agricultural fields of the petitioner and when they reached there, they saw that Muhammad Nawaz (petitioner), attempted to snatch the children from Mst. Azran Bibi (deceased) and on her resistance, the petitioner inflicted *Kassi* blows, which landed on her head and neck. Mst. Azran Bibi succumbed to the injuries at the spot, whereas the petitioner fled away from the place of occurrence.

Motive behind the occurrence was that two days prior to the occurrence, a quarrel took place between the petitioner and his wife Mst. Azran Bibi (deceased), therefore, the deceased intended to come to the house of the complainant along with her children but she was not permitted by the petitioner to do so. A day before the occurrence, Mst. Azran Bibi (deceased), informed the complainant through telephone about the above-referred quarrel, whereupon the complainant along with the PWs came to the village of the petitioner and witnessed the occurrence, hence the FIR of this case.

4. We have noted that the occurrence in this case took place in village Kot Wasava, Tehsil Lalian, whereas the abovementioned

eye-witnesses were residents of Chak No.466 Khanowana, Tehsil Bhowana and as such they were chance witnesses. In order to justify their presence at the spot at the relevant time, the above-mentioned eye-witnesses stated that two days prior to the occurrence, Mst. Azran Bibi (deceased), called her father Ghulam complainant (PW-7), through telephone and asked him to see her. No phone number of Mst. Azran Bibi (deceased) or Ghulam complainant (PW-7), was mentioned in the FIR or in the statements of the prosecution eye-witnesses rather Ghulam complainant (PW-7), stated during his cross-examination that he did not maintain any telephone. He further stated that his uncle maintains telephone, however, he was unable to tell the telephone number of his uncle. He further stated that Mst. Azran Bibi (deceased), was not holding a telephone, however, she made a telephone call from the phone of another person. He next admitted that he cannot tell the name of the person, whose telephone was used by his daughter namely Mst. Azran Bibi (deceased). We are, therefore, of the view that the reason mentioned by the prosecution eye-witnesses for their presence at the place of occurrence, which was situated in a different village could not be established in this case, hence it is not safe to rely upon their evidence as observed in the judgments reported as "Mst. Sughra Begum and another v. Qaiser Pervez and others" (2015 SCMR 1142) and "Muhammad Irshad v. Allah Ditta and others" (2017 SCMR 142).

5. It is further noteworthy that there is conflict between the ocular account and the medical evidence of the prosecution. According to the evidence of the prosecution eye-witnesses, only two injuries on the body of Mst. Azran Bibi (deceased), were

inflicted by Muhammad Nawaz petitioner i.e., on the head and neck of the deceased but according to the medical evidence brought on the record by the prosecution through Dr. Fozia Yaqoob (PW-1), there were four incised wounds on the body of the deceased. Apart from the injuries on the head and neck of the deceased i.e., injuries No.1 & 4, there was injury No.2, which was incised wound on the front of both sides of chest. There was another injury i.e., injury No.3, which was an incised wound on the front of right shoulder joint of the deceased. The said two injuries were not explained by the prosecution eye-witnesses. Ghulam complainant (PW-7), during his cross-examination insisted that the deceased received only two injuries on her body but as mentioned earlier according to the medical evidence, there were four injuries on the body of the deceased. The abovementioned conflict between the ocular account and the medical evidence shows that in-fact the prosecution eye-witnesses were not present at the spot at the relevant time because, had they been present at the time of occurrence then they should have given the correct number of injuries sustained by Mst. Azran Bibi (deceased). In the cases reported as "Muhammad Ali v. The State" **(2015 SCMR 137)** and "Usman alias Kaloo v. The State" **(2017 SCMR 622)**, the evidence of eye-witnesses was disbelieved and the benefit of doubt was extended to the accused persons of the said cases, on the ground of conflict between ocular account and medical evidence regarding number of injuries sustained by the deceased.

6. It is also noteworthy that the conduct of the prosecution eye-witnesses was un-natural. According to the contents of the FIR,

the complainant party was comprising of three persons i.e., Ghulam complainant (PW-7), Aman Ullah (PW since given-up) and Ijaz Ahmad (PW-8), whereas Muhammad Nawaz (petitioner) was alone at the relevant time. The petitioner was statedly not armed with any formidable firearm weapon and he was only holding a *Kassi* in his hand at the relevant time. As per site plan (Ex.PD), the intervening distance between the petitioner and the prosecution eye-witnesses was only 10 Karams (about 20/22 paces) but neither they tried to save the deceased nor restrained the petitioner from inflicting *Kassi* blows on the body of the deceased. They even did not try to apprehend the petitioner after the occurrence. They stood like silent spectators at the time of occurrence and allowed the appellant to inflict repeated *Kassi* blows on the body of the deceased. Ghulam complainant (PW-7), was father of the deceased, whereas Aman Ullah (PW since given up), was uncle and Ijaz Ahmad (PW-8), was cousin of the complainant and as such they all were closely related to the deceased but they did not try to save the deceased from the petitioner at the time of occurrence nor they apprehended the petitioner after the occurrence. Their abovementioned un-natural conduct makes their presence at the spot at the relevant time highly doubtful as observed in the judgments reported as "Pathan v. The State" (2015 SCMR 315), "Zafar v. The State and others" (2018 SCMR 326) and "Liaquat Ali v. The State" (2008 SCMR 95).

7. Insofar the recovery of *Kassi* (P-4), at the pointing out of the petitioner is concerned, in absence of any positive report of Punjab Forensic Science Agency, the same is inconsequential as observed in the case reported as "Zahoor Ahmad v. The State" (2017 SCMR

1662). Even the learned High Court has disbelieved the recovery of Kassi (P-4), at the pointing out of the petitioner in paragraph No.14, of the impugned judgment.

8. As per prosecution case, the motive behind the occurrence was that two days prior to the occurrence, a quarrel took place between the petitioner and his wife Mst. Azran Bibi (deceased), therefore, the deceased intended to come to the house of the complainant along with his children but she was not permitted by the petitioner to do so. In this respect, we have noted that there is nothing on the record to show that there was any previous rift between the spouses and even Ghulam complainant (PW-7), admitted during his cross-examination that the deceased never visited his house in angry state of affairs between the spouses and there was no previous dispute between the parties. Relevant part of his statement made in this respect reads as under:-

“.....Azra Bibi never visited me in angry state of affair between spouses. There was no previous dispute between spouses.....”

Furthermore, there is no witness, who had seen the motive incident. Even no suit for dissolution of marriage or recovery of maintenance allowance, custody of children etc filed by the deceased has been produced in the evidence in order to show that the relationship between the petitioner and the deceased was strained. According to the prosecution's own case, the petitioner and Mst. Azra Bibi (deceased) both along with their children went to their agricultural fields on the day of occurrence, which shows that their relationship was normal and there was no dispute between them. We are, therefore, of the view that the motive

alleged by the the prosecution has not been proved in this case and the same has rightly been disbelieved by the learned High Court in paragraph No.14, of the impugned judgment.

9. Keeping in view all the above-mentioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the petitioner beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as "Tariq Pervez v. The State" (1995 SCMR 1345) and "Muhammad Akram v. The State" (2009 SCMR 230). Consequently, this petition is converted into an appeal and allowed. The impugned judgment is set aside. The petitioner is acquitted of the charge while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

Islamabad, the
12th of March, 2025
~~Not~~ Approved For Reporting
Ahtzaz