

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mr. Manzoor Ahmad Malik
Mr. Justice Mr. Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.635 of 2019

*(Against the judgment dated 18.09.2017 passed
by the Balochistan High Court, Quetta in Crl.
(ATA) Appeal No.281 of 2007)*

Muhammad Yaseen

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s): Mr. Shabbir Rajput, ASC

For the State: Mr. Baqir Shah, State counsel

Date of hearing: 22.10.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad Yasin, appellant, was tried alongside Muhammad Hussain and Muhammad Hadi by the learned Special Judge Anti Terrorism Court-I, Quetta in the absence of absconding co-accused, namely, Qurban Ali *alias* Shutar, Zakir and Asif, for abduction and subsequent murder of Qari Haji Muhammad, 30/32, while he was on a pleasure trip with his companions Noor Muhammad (PW-4) and Fateh Khan on 30.3.2007; they were frisked and thrashed before confined in a cave wherefrom the deceased was subsequently separated from his companions, let off unscathed. Upon receipt of information, the members of the deceased family set out in his search; during the process, they were confronted and forced to retreat by the tribesmen that included the proclaimed offenders as well. Incident was reported by deceased's maternal uncle Haji Agh Muhammad (PW-1) on 5.4.2007 at Police Station Quaid Abad, District Quetta. As the investigation commenced, the appellant was confronted to the witnesses in a test identification parade held under magisterial supervision on 16.4.2007; the co-accused were also picked up by the witnesses on different dates. Upon a disclosure, on 9.4.2007, the appellant led a police contingent to a spot on *Koh-e-Murdar* for the

recovery of corpse of Qari Haji Muhammad, concealed underneath a boulder, subsequent where to, once again he got recovered a .30 caliber pistol, secured vide inventory dated 18.4.2007; he later accompanied the Investigating Officer to secure a casing from the spot, forensically found wedded with the weapon earlier recovered. The absconders were proceeded against while the appellant and co-accused, upon indictment, claimed trial that resulted into appellant's conviction under section 7(a) of the Anti Terrorism Act, 1997 read sections 302(b), 148 of the Pakistan Penal Code, 1860 vide judgment dated 12.10.2007; he was sentenced to death and three years RI on the coordinate charge whereas Muhammad Hadi co-accused was convicted under sections 395, 506, 148 read with section 34 of the Code *ibid*; he was handed down sentences ranging from 3-years to 7-years including direction for payment of fine; Muhammad Hussain co-accused was acquitted from the charge. Having served out the sentences, Muhammad Hadi has since been released. State Reference clubbed with convict's appeal, came up before a learned Division Bench of the High Court of Balochistan; with a cleavage of opinion, it was decided by a Referee Judge; majority judgment dated 18.09.2017 upheld the conviction, however, altered the penalty of death into imprisonment for life, *vires* whereof, are being assailed through leave of the Court.

2. Learned counsel for the appellant contends that there is inordinate and inexplicable delay in recourse to law which becomes all the more intriguing as it is prosecution's own case that soon after deceased's disappearance members of his clan set out in his search and that in the process they also encountered resistance and, thus, complainant's silence for so long a period raises serious question regarding the credibility of the story put-forth during the trial; he has referred to the statement of Noor Muhammad (PW-4) to argue that test identification parade, relied upon by the courts below, hardly carried any evidential significance inasmuch as the witness admittedly claimed to have already identified the appellant in his previous encounters. Inconsequentiality of the recovery of weapon and disclosure leading to the discovery of the dead body from an open space has been highlighted as missing links in the chain of circumstances. It would be grievously unsafe to maintain conviction on the basis of inconsistent, incoherent and flawed pieces of evidence belatedly put together, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment.

2. Heard. Record perused.

3. Dr. Shamim Gul Meshwani (PW-10) examined the putrefied dead body; it was burnt from neck to head, missing limbs of the body included skin and muscles from head to face. Overall condition of the corpse seriously hampered the possibility of identification beyond doubt and, according to the witness, it was identified on the basis of clothes, a mobile phone handset and some papers found in the pocket. The condition of the corpse, particularly massive burns, belies the possibility of its presence underneath a boulder, a circumstance that in retrospect seriously shadows the hypothesis of disclosure by the appellant and, thus, jolts the very foundation of the case. Even if it is assumed that the decomposed corpse was that of the deceased, its presence at an openly accessible place drastically diminishes inculcation of the disclosure, heavily relied upon by the prosecution. Presence of a mobile phone handset and papers left with the corpse to provide space to the possibility of identification by the witnesses in itself is a circumstance far from being plausible. During appellant's examination under section 342 of the Code of Criminal Procedure 1898, though the appellant was confronted with the pointing out of the place wherefrom the dead body of the deceased was recovered, nonetheless, his alleged disclosure leading to the discovery of dead body is conspicuously omitted. Statement of Noor Muhammad (PW-4) who identified the appellant is limited to the extent of handing over of *Chaddar* and *Chappal* purportedly last worn by the deceased. It is mindboggling as to why the appellant would undertake such an idiotic exercise when on the other hand he is taking pains to conceal the dead body with additional steps to set ablaze its face to blur the identity. Even if the witness is believed, his testimony does not take prosecution beyond the line of handing over of the items mentioned above. Forensic report does not advance prosecution case either inasmuch as, the seizure of casing after lapse of a period exceeding three weeks is a position that requires a pinch of salt. The story may not find a buyer. Argument that the appellant was roped in after deliberation and consultation spanning over a pretty long period of time exactly on the day the dead body was recovered cannot be dismissed out of hand. Acquittal of Muhammad Hussain though assigned a somewhat different role, nonetheless, inseparably within the integrity of the charge is yet another setback to the prosecution; the failure that went unchallenged is not without consequences. Cleavage in judicial opinion

demands extra caution. On our own independent analysis, prosecution evidence otherwise deficient and inconclusive is fraught with doubts, substantially failing to constitute chain of circumstances to conclusively establish appellant's culpability beyond doubt; appellant is entitled to benefit thereof. Impugned judgment dated 18.09.2017 is set aside; the appellant is acquitted from the charge; he has already been ordered to be released, if not required to be detained in any other case, vide short order of even date. Appeal allowed.

Judge

Judge

Judge

Islamabad, the
22nd October, 2020
Not approved for reporting
Azmat/-