IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE ATHAR MINALLAH

CRIMINAL APPEAL NO. 560 OF 2020
(Against the judgment dated 24.01.2017 passed by the Lahore High Court, Lahore in Criminal Appeal No. 288-J/2013 and Murder Reference No. 304/2013)

Sarfraz, and
Allah Ditta

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s): Mr. Sagheer Ahmed Qadri, ASC

For the State: Mirza Muhammad Usman, DPG

For the Complainant: Nemo

Date of Hearing: 02.01.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellants were tried by the learned Additional Sessions Judge, Pindi Bhattian, pursuant to a case registered vide FIR No. 170 dated 13.06.2011 under Sections 302/34 PPC at Police Station Sukheke, Hafizabad for committing murder of Haq Nawaz and his wife Mst. Tharri Bibi, cousin and sister-in-law of the complainant. The deceased were also parents of appellant Sarfraz. The learned Trial Court vide its judgment dated 11.09.2013 convicted the appellants under Section 302(b) PPC and sentenced them to death on two counts. They were also directed to pay compensation amounting to Rs.300,000/- to the legal heirs of each deceased or in default whereof to further undergo SI for six months on each count. In appeal the learned High Court maintained

the conviction and sentence of death awarded to the appellants by the learned Trial Court. The amount of compensation and the sentence in default whereof was also maintained. Being aggrieved by the impugned judgment, the appellants filed Jail Petition No. 81/2017 before this Court wherein leave was granted by this Court vide order dated 09.09.2020 and the present appeal has arisen thereafter.

2. The prosecution story as given in the impugned judgment reads as under:-

> "2. Brief facts of the case as narrated in the FIR recorded on the written application (Ex PA) filed by Muhammad Bashir son of Rasheed Ahmad are that I am resident of Nawan Maneka and is agriculturist by profession. On 13.6.2011, my cousin Haq Nawaz son of Muhammad Hussain, caste Maneka Bhatti, resident of Deh informed me through telephone that his son Sarfraz is giving threats to him that he would kill him if land is not given to him. On which, I along with Muhammad Khan son of Saif Ali, caste Bhatti, resident of Deh came at Dera of Haq Nawaz (deceased), where he was present on roof. We sat at roof along with Haq Nawaz and his wife Tharri Bibi, when we were discussing the matter at about 12.30 night, Sarfraz Ahmad son of Haq Nawaz Bhatti, Allah Ditta alias Mangu son of Allah Yar, Muslim Sheikh and one unknown person came at roof of the Dera. Sarfraz demanded land from Haq Nawaz who refused and replied that you had already taken your share of land and sold the same and now you had no share in the land. On this, Sarfraz brought out pistol from his Shalwar and fired a burst hitting on head of Haq Nawaz who succumbed to injuries at the spot. Then Allah Ditta inflicted a hatchet blow on face of my Bhabi Tharri Bibi wife of Haq Nawaz, which cut left side of her mouth. Tharri Bibi also succumbed to injuries at the spot. Sarfraz committed murder of my cousin and Bhabi on abetment of his brothers-in-law Altaf Hussain, Ikram Hussain sons of Munawar and Munawar son of unknown, caste Maneka Bhatti, resident of Chak Qadir, Tehsil & District Hafizabad who told the accused that if he would murder his parents he could get the whole land. This occurrence was witnessed by me, Muhammad Khan and Arslan son of Haq Nawaz, when we tried to rescue the deceased, accused also gave threats to us and fled away from the spot; hence, this FIR."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced eleven witnesses. In their statements recorded under Section 342 Cr.P.C, the appellants pleaded their innocence and refuted all the allegations leveled against them. However, they did not opt to appear as their own witness on oath as provided under Section 340(2)

Cr.P.C in disproof of the allegations leveled against them. They also did not produce any documentary evidence.

4. At the very outset, learned counsel for the appellants argued that it was an unseen occurrence and the prosecution witnesses of the ocular account were not present at the spot. Contends that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which escaped the notice of the learned courts below. Contends that the prosecution witnesses were not residents of the place where the occurrence had taken place and they have not given any plausible explanation for their presence at the spot at the relevant time. Contends that the prosecution witnesses are interested, therefore, their evidence has lost its sanctity and the conviction cannot be based upon it. While reiterating the arguments at the time of grant of leave, he submitted that Arslan, son of the deceased, who was inmate of the house was given up and thus the prosecution withheld best evidence by not producing him. Contends that the prosecution has not been able to prove motive as alleged, which causes serious dent in the prosecution case. Contends that the occurrence took place in the dark hours of the night but no source of light has been mentioned by the prosecution. Contends that the recoveries of weapon of offence from the appellants are inconsequential and cannot be made basis to sustain conviction of the appellants. Lastly contends that the reasons given by the learned High Court to sustain conviction of the appellants are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer vehemently opposed this appeal on the ground that the eye-witnesses had no enmity with the appellants to falsely implicate them in this case. It has been contended that the eye-witnesses have reasonably explained their presence at the spot at the relevant time, which is quite natural and probable and the medical evidence is also in line with the ocular account, therefore, the appellants do not deserve any leniency from this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

7. It is cardinal principle of criminal jurisprudence that each criminal case has its own facts, which has to be dealt with according to its peculiar facts and circumstances. The present case is the glaring example of the same wherein the complainant of this case, who was not the inmate of the house rather was cousin of the deceased Haq Nawaz, had to lodge the crime report when admittedly he was residing six kilometers away from the place of occurrence. Prior to taking into consideration the contents of the crime report, few aspects of the case qua, (i) motive, (ii) time of occurrence, (iii) manner of occurrence, and (iv) subsequent events, are essential for their determination to arrive at a just conclusion in the interest of safe administration of criminal justice. Besides, as per contents of the crime report, the occurrence had taken place at 12:30 am on 13.06.2011 whereas the FIR was lodged at 01:30 am, which clearly reflects that the same was registered without any inordinate delay. Perusal of the crime report reflects that the aforesaid crime report was incorporated in response to Rapat No. 32 dated 13.06.2011, which was lodged in response to an application received by Arif Ishaq, ASI/Duty Officer of Police Station Sukheki on 13.06.2011. During the course of proceedings before the Trial Court, the complainant Muhammad Bashir (PW-1) stated before the Court that he moved an application (Ex.PA) for registration of case, which bears his signature, without disclosing time and the name of the subscriber of the application. He further stated before the Court that he proceeded towards Police Station on a motorbike along with Muhammad Khan (PW-2) and reached there within 15 minutes after the occurrence i.e. approximately at 01:30 am. It is not mentioned anywhere that where and when this application was drafted when it is an admitted fact that the “Police Karvai” was conducted in Police Station. The whole proceedings narrated by Muhammad Bashir (PW-1) are squarely contradicted by Muhammad Khan (PW-2) as according to him Police arrived at the place of occurrence and completed every aspect of investigation i.e. (i) collection

of crime empties, (ii) blood stained earth from both places where deceased were done to death, (iii) recorded statements of PWs including Muhammad Khan (PW-2) at the spot by the Investigating Officer. Muhammad Sahara, Investigating Officer while appearing as PW-11 stated in the court that he visited the place of occurrence and performed "Police Karvai" as per rules. He also assigned Sikandar Hayat, Constable, to escort the dead bodies to mortuary for conducting post-mortem examination. All these statements are contradictory to each other on salient features, which creates dent in the genuineness of prosecution version, especially when it is an admitted fact that complainant is a distant relative residing at a distance of 6 kilometers while real son of deceased namely Arsalan who was inmate of the same house is absent in every material aspect of the case, which is a serious lapse. All this makes it clear that the complainant was not present at the place of occurrence at the relevant time. This Court being the Court to do complete justice under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973, is under bounden duty to scrutinize each and every bit of "crime report". At the same time, it is the duty of this Court to scrutinize other aspects surfaced during the course of proceedings before the Trial Court to decide the lis to avoid any injustice to either of the party. There is no denial to this fact that the occurrence had taken place in the odd hours of the night. However, no source of light has been mentioned by the Investigating Officer either in the FIR, rough site plan, scaled site plan or even during the course of proceedings before the Trial Court.

8. As far as ocular account furnished by Muhammad Bashir, complainant (PW-1) and Muhammad Khan (PW-2) is concerned, admittedly, both these witnesses were not residents of the locality and were residing at a distance of 5/6 kilometers away from the place of occurrence. It is an apathy to point out that not a single person from the inmates of the house or from surrounding inhabitants appeared in support of the prosecution version and the whole prosecution case is silent about this aspect of the matter. It is claim of Muhammad Bashir, complainant, that he had received telephonic call from the deceased at 05:00 pm that

his son i.e. appellant Sarfraz is demanding his share of land from inheritance in the lifetime of his father. He also threatened him that if he did not do so he would kill him. Thereafter, the complainant informed Muhammad Khan (PW-2) at about 06:00/06:15 pm and reached the *dera/*house of said Muhammad Khan at about 06:30 pm. As Muhammad Khan was taking meal, the complainant remained present at his house for about half an hour and then both of them went to the residence of deceased Haq Nawaz on a motorbike and reached there at 8/8:30 PM. We have noticed that the time consumed by them in approaching the place of occurrence could be hardly half an hour. However, according to complainant's own showing, he reached the residence of the deceased after one and half hour. The whole record is silent as to what the PWs remained doing in the residence of the deceased during the interregnum period, which clearly reflects that they were not present at the place of occurrence, rather they managed to appear as witnesses after due consultation and deliberation. No record of either the deceased making the call or the complainant receiving the call was produced on record. During cross-examination, the complainant admitted that his sister was married with one Nasar and a dispute took place between the said Nasar and Haq Nawaz deceased over the property. The said Nasar had also caused firearm injury to the deceased and pertaining to said occurrence, FIR was also registered. He also admitted that in the said case, he had supported said Nasar and the occurrence had taken place due to his cause. The admission of the complainant clearly makes it essential that he was inimical towards the deceased Haq Nawaz. In such circumstances, it seems impossible that deceased would have invited an inimical person for his help.

9. Another very material aspect, which requires its interpretation because it can hit the root of prosecution case is that Arsalan, who was son of the deceased and was stated to have witnessed the occurrence, was given up at the time of trial. In view of the above, the claim of the defence that it was an unseen occurrence and the appellants have been made scapegoat with *mala fide* intention to grab the whole

ancestral property belonging to the deceased carries much weight. Article 129 of the Qanoon-e-Shahadat Order, 1984, empowers the court to presume the existence of any fact, which it thinks likely to have happened with regard to common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. In Mst. Zarsheda Vs. Nobat Khan (PLD 2022 SC 21), it was held that "adverse inference for non-production of evidence is one of the strongest presumptions known to law and the law allows it against the party who withholds the evidence". In Muhammad Naeem Khan Vs. Muqadas Khan (PLD 2022 SC 99), this Court while relying on Article 129 of the Qanoon-e-Shahadat Order candidly held that "where a party keeps hold of the witnesses, the presumption would be that if such witnesses were produced, their testimony must be against him, therefore, adverse inference of withholding evidence goes against the party who failed to call the concerned person engaged in the transaction, who was in a better position to give firsthand and straight narrative of the matter in controversy". In Mst. Shahnaz Akhtar Vs. Syed Ehsan ur Rehman (2022 SCMR 1398) this Court observed that "presumption is a rule of law that ascribes a straightforward probative denomination to accurate statistics and fosters a high degree of probability unless upset and annulled by evocative proof to the satisfaction of the Court and in the event of two equal presumptions, the Court may prefer that which best accords to the facts and circumstances of the case". Reliance is also placed on Muhammad Jabran Vs. The State (2020 SCMR 1493) & Muhammad Sarwar Vs. Mumtaz Bibi (2020 SCMR 276).

10. As far as motive part of the prosecution story is concerned, appellant Sarfraz had been given his share of the land from inheritance by his father i.e. the deceased Haq Nawaz, which was allegedly sold out by him but still he was claiming his share. Perusal of the record clearly reveals that no details of the property, which was inherited by the deceased father and the share of the land which was earlier given to the appellant, has been given. It is now well established that if a specific motive has been alleged by the prosecution then it is duty of the prosecution to establish

the said motive through cogent and confidence inspiring evidence. Otherwise, the same would go in favour of the accused. Admittedly, the Investigating Officer had collected one crime empty from the place of occurrence on 13.06.2011. The weapon of offence i.e. .30 bore pistol was allegedly recovered on the pointation of the appellant Safraz on 28.06.2011. Thereafter, both the crime empty and the weapon of offence were sent to Punjab Forensic Science Agency together. This Court in a number of cases has held that if the crime empty is sent to the Forensic Science Laboratory after the arrest of the accused or together with the crime weapon, the positive report of the said Laboratory looses its evidentiary value. Sending the crime empties together with the weapon of offence is not a safe way to sustain conviction of the accused and it smacks of foul play on the part of the Investigating Officer simply for the reason that till recovery of weapon, he kept the empties with him for no justifiable reason. Blood stained hatchet was also allegedly recovered on the pointation of appellant Allah Ditta from his house after 15 days of the occurrence. Such recovery is not worth believing as it was not expected from the accused to keep blood stained weapon at his house as there was ample time to destroy or washout the said weapon. Even otherwise, admittedly the said house was a joint house wherein the other members of the appellant's family were also residing. In these circumstances, the recoveries are inconsequential.

11. Mere heinousness of the offence if not proved to the hilt is not a ground to punish an accused. It is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the appellants to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. This Court in the case of Mst. Asia Bibi Vs. The State (PLD 2019 SC 64) while

relying on the earlier judgments of this Court has categorically held that "*if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1995 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048).*" The same view was reiterated in Abdul Jabbar vs. State (2019 SCMR 129) when this Court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

12. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside. The appellants are acquitted of the charge. They shall be released from jail unless detained/required in any other case. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
2nd of January, 2023
Approved For Reporting
Khurram