

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.137-L of 2017

(On appeal from the judgment dated 25.02.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No.1935 of 2012 and Capital Sentence Reference No.39-T of 2012).

Khurram

...Appellant(s)

VERSUS

The State, etc

...Respondent(s)

For the Appellant(s)	: Mr. Sher Afghan Asadi, ASC
For the State	: Mr. Mazhar Sher Awan, Additional Prosecutor General, Punjab
Date of Hearing	: 15.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Atif Sajjad, 15/16, worked as an Apprentice with his father, Sajjad Ahmed, PW, an Auto Mechanic; on fateful day i.e. 28.6.2012 at 11.30 a.m. he left shop to fetch grocery items and deposit utility bills; he did not return; suspecting abduction, his disappearance is reported to the police on the following day. Muhammad Munir, SI, PW, attempted to locate the abductee through his cell phone, however without success. Abdul Qayyum and Muhammad Sabir, PWs joined investigation on 16.7.2012; they nominated Bilal, Khurram, Ajmal and Amir as the suspects; they saw the abductee with the accused on 28.6.2012. It is in this backdrop that appellant was arrested same day; Bilal, co-accused is still away from law. Consequent upon their disclosure, a dead body was recovered from a house, concealed beneath a floor, identified as that of Atif Sajjad. According to autopsy report, it was at advanced stage of putrefaction, partially skeltonized with unidentifiable features.

Through supplementary statement dated 3.8.2012, the complainant blamed the accused to have demanded ransom to the tune of rupees two crores, information, thenceforth, withheld by him out of concern for his son's life. Upon conclusion of trial *vide* judgment dated 14.11.2012, learned Judge, Anti Terrorism Court-1, Gujranwala convicted the appellant alongside Ajmal and Amir, co-accused, for homicide, abduction for ransom and screening of evidence; they were sentenced to death. The learned High Court acquitted Ajmal and Amir, co-accused from the charge; however, appellant's conviction was maintained with Capital Sentence Reference returned in the affirmative.

2. Abdul Qayyum, PW-11 and his brother Muhammad Sabir, PW-12 are the star witnesses; both of them, with one voice, claimed to have last seen the deceased in accused's company, seemingly, volitional. They have given the date of encounter as 28.6.2012, while conspicuously omitting the point of time thereof. The witnesses were once again together on 16.7.2012 when they visited the complainant to fix an electric generator; having seen him perturbed, upon inquiry, they shared information with him; disclosure diverted course of investigation towards the accused. One may find it hard to buy the story, capturing details, at a thorough fare in a crowded city at an unspecified point of time as well as with purpose of presence, vague by all means, that too per chance, incidentally required by the prosecution to prosecute its case. The script is far from being plausible. Acquittal of the identically placed co-accused adds to predicament of these witnesses.

The dead body was recovered from a premises, statedly owned by Ghaffar Ahmed, CW-1; on motion dated 25.10.2012 by the State, he was summoned for 13.11.2012 to establish that the house was rented to the accused and that it was the same place wherefrom the dead body was recovered; exercise was taken in the midst of the trial. While a Court has ample power to send for witnesses for just decision of the case, nonetheless, power of this amplitude must be exercised with circumspection without disturbing the adversarial balance of the trial. There was no

statement of the witness recorded during the investigation; no proof of ownership or tenancy as admitted by the witness. Such a sudden move and reliance thereon to the detriment of an accused, cannot be viewed as conscionable. There is yet another reason to discard this piece of evidence as according to the witness the house was jointly occupied by the accused including those acquitted from the charge. Advance stage of putrefaction, with elimination of facial features, without DNA analysis, represents a real issue regarding the identity of the corpse, recovered in pursuance to a joint disclosure though statedly recorded, one by one, nonetheless in the same session.

3. On the whole prosecution's case structured upon the statements of three witnesses, in alliance at each step, is fraught with doubts otherwise it is hard to distinguish appellant's culpability from the acquitted co-accused. Criminal appeal is allowed, impugned judgment is set aside. The appellant is acquitted from the charge. He shall be released forthwith, if not required in any other case. Above are the reasons of our short order of even date which is reproduced as under:-

"For detailed reasons to be recorded later, the instant criminal appeal is allowed. The conviction and sentence of the appellant Khurram are set aside. He is acquitted of the charge framed against him. He shall be released forthwith, if not required to be detained in any other criminal case."

JUDGE

JUDGE

JUDGE

Lahore, the
15th of May, 2019
Ghulam Raza/*