

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

AFR

CRIMINAL APPEAL NO. 250 OF 2020

(Against the judgment dated 31.03.2014 of the
Lahore High Court, Lahore passed in Criminal
Appeal No.217-J/2010 and Murder Reference
No.329/2010)

Abdul Ghafoor

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s):

Nemo

For the State:

Mr. Ahmed Raza Gillani, Addl.P.G.

Date of Hearing:

30.05.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellant along with three co-accused was tried by the learned Additional Sessions Judge, Jhang, pursuant to a case registered vide FIR No. 110 dated 12.02.2007 under Sections 302/337-F(ii)/34 PPC for committing murder of Riasat Ali, son of the complainant. The learned Trial Court vide its judgment dated 23.04.2010 while acquitting three co-accused, convicted the appellant under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs. 50,000/- to the legal heirs of the deceased or in default whereof to further undergo SI for six months. He was also convicted under Section 337-F(ii) PPC for causing injury to Kalay Khan and was directed to pay Daman amounting to Rs.10,000/- to the injured. In appeal, the learned High Court while maintaining the conviction under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The amount of compensation and the sentence in

default whereof was maintained. Conviction and sentence under Section 337-F(ii) PPC was also maintained. Benefit of Section 382-B Cr.P.C. was extended to him. Being aggrieved by the impugned judgment, the appellant filed Jail Petition No. 123/2016 before this Court wherein leave was granted on 23.04.2020 and the present Criminal 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 statement of Sarang complainant (PW-09) are that on 01.02.2007 at about 04.30 pm, he along with his son Riasat Ali (deceased) and Kalay Khan injured (PW-10) was present. Abdul Ghafoor appellant came outside his house and peeped into the house of Jabbar from over the wall upon which Riasat Ali (deceased) admonished him. Abdul Ghafoor went into his house while giving threats to him. After about ten minutes, Abdul Ghafoor appellant and Zakir both armed with dagger, Asif empty handed, Nazar armed with sota, came there. Asif and Nazar raised lalkara to murder Riasat Ali on which Abdul Ghafoor appellant inflicted dagger blow which hit Riasat Ali on his head behind the right ear. Zakir accused inflict second blow with his dagger which hit Riasat Ali on his left shoulder. Kalay Khan (PW-10) tried to rescue Riasat Ali (deceased), upon which, Abdul Ghafoor inflicted dagger blow to him which landed on his abdomen. On hearing hue and cry, Zulfiqar and Mushtaq attracted towards the scene of occurrence, on which the accused fled away. Riasat Ali (deceased) was shifted to the Allied Hospital Faisalabad where he succumbed to the injuries on 12.02.2007.

The motive behind the occurrence was that one month ago Abdul Ghafoor appellant had abducted Mst. Mumtaz Bibi, niece of the complainant, but her custody was restored on the intervention of the respectables and the appellant peeped into the house to see Mst. Mumtaz Bibi.

3. After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced as many as 12 witnesses. In his statement recorded under Section 342 Cr.P.C, the appellant pleaded his innocence and refuted all the allegations leveled against him. However, he did not make his

statement on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against him. He also did not produce any evidence in his defence.

4. Vide order dated 23.04.2020, Mr. Anees Muhammad Shahzad, learned ASC was appointed by this Court to represent the appellant at State expense. However, despite repeated calls, the learned counsel did not turn up today to argue this case. However, in the interest of justice, we decided to proceed with the case on merits.

5. With the able assistance of learned Law Officer, the record of the case was perused in detail and it was pointed out that there are serious lapses on the part of the prosecution. The learned Law Officer though defended the impugned judgment but the same was done half-heartedly because of evidence available on the record, which was hard to rebut. However, he stressed upon that the prosecution has succeeded to establish the case against the appellant. He contended that the evidence led by the prosecution in the shape of ocular version duly supported by medical evidence is sufficient to sustain conviction in the given circumstances, therefore, he does not deserve any leniency by this Court.

6. We have heard learned Law Officer at considerable length and have perused the evidence available on record.

In the instant case, there is no denial to this fact that the FIR was registered after an inordinate delay of 11 days whereas Medico Legal Examination Certificate (Ex.PD) indicates that the injured PWs (one died later on) were medically examined in injured condition on the same day with reference to Rapat No. 16 dated 01.02.2007 lodged in Police Station Saddar Jhang through Constable Muhammad Daraz. However, the learned High Court while handing down the judgment, in paragraph 8 of the impugned judgment, has tried to establish that the delay in lodging the FIR is not fatal but unfortunately no valid reason has been assigned at all, which can be considered as justiciable reasoning within the parameters of the law. It would be advantageous to reproduce the said paragraph 8, which reads as under:-

"8. So far delay in lodging the FIR is concerned, it is mentioned by the complainant that immediately after the occurrence they took Riasat Ali in injured condition to the hospital and thereafter to Allied Hospital Faisalabad for treatment where they remained busy in taking care of Riasat Ali but when he died on 12.02.2007, the complainant brought the dead body to the police station and lodged the FIR.

The record reveals that Kalay Khan (PW-10) and Riasat Ali (deceased) were medically examined on the day of occurrence at 06:15 pm in DHQ Hospital Jhang. The doctor categorically stated that Riasat Ali was drowsy and disoriented, which indicates his serious condition. In the MLC of Kalay Khan and Riasat Ali, it is specifically mentioned that the said medical examination was conducted on the request of the police through rapt No. 16. Injury statements Ex.PE and Ex.PB clearly indicate that firstly, rapt No. 16 was incorporated in the Roznamcha of police station, on the day of occurrence and thereafter injury statement of Riasat Ali and Kalay Khan were prepared. In the injury statements, it is specifically mentioned that Abdul Ghafoor etc and Zakir etc (three in number) caused injuries to Riasat Ali (deceased) and Kalay Khan (PW-10). So, one thing is quite clear that on the day of occurrence firstly the complainant party went to the police station and lodged rapt No. 16, in which, the name of the appellant and Zakir was specifically given as assailants, by the deceased, injured witness and the complainant.

The stance of the complainant was that he was stopped by the respectable of the Illaqa for lodging the FIR is also supported from the fact that only rapt was lodged for medical examination and at that time no FIR was chalked out. It is also a circumstance that both the parties are known to each other and there could be no mistaken identity. In that eventuality the delay of eleven days in lodging the Fir is not fatal to the prosecution case because the same was properly explained by the complainant while lodging the FIR whereas the name of the appellant is specifically mentioned in the injury statement Ex.PB as assailant."

7. We have noted that the said Rapat has not been exhibited in evidence and it is not clear from the evidence as to whether the appellant was nominated therein for the stated crime. This Court has repeatedly considered the delay in lodging the FIR a serious lapse unless and until it is plausibly explained. Delay *per se* is a valid ground to gauge the veracity of the prosecution witnesses. In the case of Mehmood Ahmad Vs. The State (1995 SCMR 127), there was a delay of two hours in lodging the FIR. This Court while holding that the delay of two hours in lodging the FIR has assumed great significance as the same can be attributed to consultation,

taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution may wish to implicate charge and put to trial. In the FIR, the co-accused, Zakir was ascribed the role of causing injury with dagger on the left shoulder of the deceased and both the injured witnesses namely Kalay Khan (PW-10) and Mushtaq (PW-11) had testified to this effect but subsequently through written statements they exonerated the said co-accused contradicting his previous statement. The complainant in an affidavit Ex.DA had himself mentioned that Zakir was not armed with dagger and he was only present at the place of occurrence, as such, he has exonerated him from accusation of causing dragger blow. During investigation, it was also found that accused Zakir was not having a dagger at the time of occurrence and he was only present at the place of occurrence. In these circumstances, the co-accused Zakir was acquitted of the charge by the learned Trial Court. The appellant's case is based on the same set of evidence and the role ascribed to him is similar to that of the co-accused Zakir. The conduct of the prosecution witnesses casts serious doubt on their credibility. The somersault taken by the complainant regarding the accusation leveled against the appellant and co-accused, since acquitted, persuade us to extend benefit of doubt to the appellant not as a matter of grace rather as a matter of right. Keeping in view the fact that the FIR was registered with a delay of 11 days without any plausible explanation and the conduct of the prosecution witnesses, the possibility of throwing a wider net by the complainant cannot be ruled out. In these circumstances, a shadow of doubt in the prosecution case has been created, benefit of which must be given to the appellant. It is settled law that a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. 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.

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

Islamabad, the
30th of May, 2022
Approved for Reporting
Khurram