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SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Faez Isa
Mr. Justice Mazhar Alam Khan Miankhel

Criminal Appeal No.122-L/2012

[On appeal from the judgment dated 9.6.2010 passed by the Lahore High Court, Lahore Multan Bench, Multan in CrI.A.No.130/2005 and M.R.No.213/2005).

Muhammad Shoban

..Appellant

The State

...Respondent

For the appellant : Mr. Zulfiqar Ahmed Bhutta, ASC
Mr. Ahmed Nawaz Chaudhry, AOR (Absent)
For the Respondents(s) : Mr. Ahmed Raza Gillani, Addl. Prosecutor
General, Pb
Date of Hearing : 18.10.2018

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, JUDGE- The appellant namely Muhammad Shoban Son of Niaz Ahmed Caste Rajput resident of Chak No.75-C/TDA, Tehsil Karor, District Layyah alongwith Shafaqat Ali alias *Mithu* and Muhammad Iqbal was booked in case FIR No.310 dated 1.10.2004 registered under Sections 302,324,34 PPC at Police Station, Fatehpur, Tehsil Karor, District Layyah on the report of Ghulam Abbas/complainant (PW-8) son of Khursheed. On the day of occurrence at 8.00 am when the complainant alongwith his brother Muhammad Ilyas (deceased) was going to *Addah* Chak No.217/TDA, the appellant Muhammad Shoban, armed with pistol, Shafaqat Ali @ *Mithu*, also armed with pistol, and Muhammad Iqbal

empty handed intercepted them near a vacant plot of Mst. Mehr Jehan Sial. Shafaqat Ali @ *Mithu* raised an alarm of alert that they will teach lesson to them for admonishing them in the evening a day before the occurrence, whereupon the appellant Muhammad Shoban fired two shots on the person of Muhammad Ilyas (deceased) which hit him on the front of his chest and near left elbow joint. He fell down after receiving said bullet injuries. Shafaqat Ali co-accused then tried to fire upon the complainant but he caught hold of him. The appellant then fired at the complainant on the direction of Muhammad Iqbal co-accused which hit him on the left leg whereas the second fire was missed and instead of hitting the complainant one Zahid Umar a passerby was hit. On hearing the fire shots, their father Khursheed Ahmed and Muhammad Ramzan (PW-9) alongwith others were attracted and on seeing them the accused decamped from the spot. Motive for the offence was that a day before the occurrence Muhammad Ilyas (deceased) had reprimanded the appellant and Shafaqat Ali @ *Mithu* as to why they were wandering around his house. It was also alleged in the FIR that the appellant had illicit relations with Mst. Nasreen Bibi sister-in-law (*Saali*) of Muhammad Ilyas (deceased).

2. The appellant after registration of the case faced trial in the Court of Additional Sessions Judge, *Karor*, District *Layyah* who after a regular trial convicted the appellant under Sections 302 (b) PPC and sentenced him to death with compensation under Section 544-A Cr.P.C. of Rs.1,00,000/- (one lac) to be paid to the legal heirs of the deceased and in default of payment of the same the appellant to further undergo S.I. for six months. The appellant was further convicted under Section 337-F (iii) PPC, and was sentenced for two years R.I. with payment of Rs.25,000/- as

Daman to each of the injured person in default of which the appellant was ordered to be kept in jail till the payment is made.

3. The above conviction and sentences of the appellant were confirmed by the High Court while dismissing his appeal vide impugned judgment dated 9.6.2010, hence the present appeal with leave of the court dated 23.5.2012.

We have heard the learned counsel for the appellant and Mr. Ahmad Raza Gillani, learned Additional Prosecutor General, Punjab, Lahore.

4. Learned counsel for the appellant firstly tried to make out a case for acquittal of the appellant on merits but when confronted with leave granting order wherein learned counsel for the appellant at the very outset had asked for reduction of sentence from death to imprisonment for life instead of pressing his petition on merits, the learned counsel for the appellant had no words to say much less its rebuttal. Perusal of the ocular account furnished by the eye witnesses would also confirm the culpability of the appellant for the commission of the offence for which he has been charged. The medical evidence is also in full support of ocular account besides the corroborative piece of evidence in the shape of recovery of four empties and pistol and a positive report of Forensic Science Laboratory (FSL) in this regard. The appellant even has not denied his presence at the spot at the time of occurrence and took a plea of defence by firing at the deceased after snatching a pistol from him but that plea of self-defence was not established on the record and was rightly held by the trial court to be an afterthought. By keeping in view the above, we can understand that the appellant at the time of grant of leave to file appeal had in his mind the above referred material so far that matter he straight away opted to ask for reduction of his sentence.

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Yes! The only aspect of the case which goes in favour of the appellant is the motive part of the case. The motive alleged by the prosecution is of illicit relations of the appellant with the sister-in-law (*Saali*) of the deceased and the alleged words of reprimand by the deceased to the appellant and Shafaqat Ali @ *Mithu* his co-accused in the evening of a day before the occurrence. The burden to prove the motive part of the occurrence was upon the prosecution but record of the case would reveal that the same though alleged in the FIR but has not been proved. So mere alleging a motive would not be sufficient to accept and rely upon the same. The law of the land in this regard is much settled by now that absence of motive or absence of proof of the same would be a sufficient mitigating circumstance to determine the quantum of sentence. We can lay hands on some of the latest judgments of this court for a matter of reference i.e. Mst. Nazia Anwar v. The State (2018 SCMR 911), Nadeem Ramzan vs. The State (2018 SCMR 149), Haq Nawaz vs. The State (2018 SCMR 21), Ghulam Muhammad vs. State (2017 SCMR 2048), Saif Ullah vs. State (2017 SCMR 2041), Waris Ali vs. The State (2017 SCMR 1572). So keeping in view the above discussion, we are of the considered view that the prosecution has utterly failed to prove the motive so alleged in the FIR, benefit of which for the purpose of quantum of sentence in this case will have to go to the appellant and the appellant in the given circumstances, cannot be awarded major penalty of death.

5. This appeal, in the circumstances, by maintaining the conviction of the appellant under Section 302 (b) PPC, is partly allowed and sentence of death is converted into life imprisonment. Benefit of Section 382(B) Cr.P.C is also extended to the appellant. Remaining sentences of payment of *Daman*, compensation etc. are also maintained.

6. The above are the reasons for our short order of even date which reads as under:-

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" We have heard the learned counsel for the appellant. For reasons to be recorded later, this Criminal Appeal is partly allowed in terms that conviction of the appellant is maintained, however, his sentence of death is converted into life imprisonment with benefit of section 382-B Cr.P.C. The remaining sentences of fine etc. shall remain intact."

Islamabad
18.10.2018
'Sarfraz'/-

~~Not Approved For Reporting~~