

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE JAMAL KHAN MANDOKHAIL

CRIMINAL APPEAL NO. 293 OF 2020

(On appeal against the judgment dated 09.03.2016 passed by the Lahore High Court, Rawalpindi Bench in Criminal Appeal No. 19-J/2012 and Murder Reference No. 16/2012)

Bashir Muhammad Khan

... Appellant

Versus

The State

...Respondent(s)

For the Appellant: Raja Muhammad Rizwan Ibrahim Satti, ASC

For the State: Mr. Muhammad Jaffer, Addl. P.G.

Date of Hearing: 07.02.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellant Bashir Muhammad Khan along with three co-accused was proceeded against in terms of the case registered vide FIR No. 387/2008 dated 29.11.2008 under Sections 302/109/34 PPC at Police Station Kahuta, District Rawalpindi for committing murder of Sagheer Hussain son of the complainant. However, co-accused Muhammad Waqar and Muhammad Shahid were discharged from the case on the basis of supplementary statement of the complainant while co-accused Badshah Khan was declared proclaimed offender. The learned Trial Court vide its judgment dated 22.02.2012 convicted the appellant under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.100,000/- to the legal heirs of the deceased to be recoverable as arrears of land revenue. In default of payment of fine, the appellant was directed to further undergo imprisonment for a period of six months. However, in appeal the learned High Court altered the sentence of death into imprisonment for life. The amount of

compensation and the sentence in default whereof was maintained. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. *The prosecution story as given in the judgment of the learned Trial Court reads as under:-*

"Muhammad Saleem complainant maintained through the above petition that his son Sagheer Hussain was doing the business of shuttering with Zakir Mehmood, Rustam Javed and Habir ur Rehman, at Punjaar Chowk, Kahuta. Sagheer Hussain deceased victim had obtained contract of under construction house of Zia Ullah. The contract for the construction of above said house was obtained by Badshah Khan who had sublet the contract for the plaster of said house to Muhammad Bashir accused, Shahid and Waqar. On the fateful morning of 29.11.2008 Sagheer Hussain son of the complainant alongwith Zakir, Rustam and Habib ur Rehman went to the place of work. At about 9.00 AM when son of the complainant took the pipe for having water, Muhammad Bashir accused pulled the said pipe upon which altercation took place between them. During this altercation Bashir accused made straight fireshot of pistol .30 bore hitting Sagheer Hussain on his mouth and teeth. The second fireshot made by Shahid with pistol .30 bore hit right buttock of Sagheer Hussain. In the meanwhile Waqar made third fire with pistol .30 bore hitting on left buttock of Sagheer Hussain who fell down and succumbed to the injuries at the spot. The motive behind had been altercation taking place on 28.11.2008 about taking of water. The occurrence was committed at the instance of Badshah Khan accused."

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 15 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 opt to appear under Section 340(2) Cr.P.C. to lead defence evidence.*

4. *Learned counsel for the appellant contended that the complainant had not witnessed the occurrence himself and had nominated three accused in the case for making effective firing on the person of the deceased on the basis of information conveyed to him by Habib-ur-Rehman, Zakir Mehmood (PW-9) and Rustam Javed*

(PW-10) but Habib-ur-Rehman was not produced as a witness before the Trial Court whereas Zakir Mehmood (PW-9) and Rustam Javed (PW-10) subsequently resiled from their earlier statement recorded under Section 161 Cr.P.C and testified that the co-accused Shahid and Waqar had not fired upon the deceased. Contends that the complainant in his supplementary statement has also exonerated the said two co-accused. Contends that the three crime empties recovered from the place of occurrence did not match with the pistol allegedly recovered from the appellant but the learned courts below did not take this into consideration. Lastly contends that the learned High Court while passing the impugned judgment has not taken into consideration the above-said aspects of the matter and has not appreciated the evidence in its true prospective, therefore, a great miscarriage of justice has been done.

5. On the other hand, learned Law Officer has defended the impugned judgment. He contended that the appellant has committed murder of an innocent person and the evidence available on record is sufficient to prove the case against him, therefore, he does not deserve any leniency by 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.

The perusal of the record clearly reveals that the complainant had not seen the occurrence and had nominated the appellant and co-accused in the crime report for committing murder of his son by firing upon him on the basis of information received from Habib-ur-Rehman, Zakir Mehmood (PW-9) and Rustam Javed (PW-10). However, Habib-ur-Rehman was not produced as a prosecution witness while Zakir Mehmood (PW-9) and Rustam Javed (PW-10) subsequently resiled from their earlier statement recorded under Section 161 Cr.P.C and testified that the co-accused Shahid and Waqar had not fired upon the deceased. It is also an admitted position that the complainant in his supplementary statement recorded after one and half month of the occurrence i.e. 15.01.2009 had also exonerated the said two co-accused Muhammad Waqar

and Muhammad Shahid. When during the cross-examination the PWs were confronted about their earlier statements recorded under Section 161 Cr.P.C. they could not give any plausible explanation. Delayed recording of statement of PW under Section 161 Cr.P.C. reduces its value to nil unless and until it is explained rendering justifiable reasonings. Reliance is placed on the judgment reported as Abdul Khaliq Vs. The State (1996 SCMR 1553). This judgment was followed by this Court in another judgment reported as Noor Muhammad Vs. The State (2020 SCMR 1049) as also in an unreported judgment passed in Criminal Petition No. 537/2021. Keeping in view the conduct of the PWs, it would not be safe to only rely upon their statements to sustain conviction of the appellant and there must be some independent corroboration to the extent of his involvement in commission of the crime. So far as the recovery of pistol .30 bore from the appellant is concerned, as per the report of the Forensic Science Laboratory the crime empties of .30 bore did not match with the pistol, therefore, the recovery is held inconsequential. As far as the abscondence of the appellant for a period of about six months is concerned, this question was not put to the appellant in his statement under Section 342 Cr.P.C, therefore, the same cannot be used against him. The medical evidence is inconsistent with the ocular account as regards injury No. 3 on the right hip of the deceased is concerned, which in-fact was an exit wound but according to the prosecution witnesses of ocular account the same was an entry wound. In these circumstances, a dent in the prosecution's case has been created, benefit of which must be given to the appellant. It is a settled law that 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's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

7. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside. Appellant is acquitted of the charge. He shall be released from jail forthwith unless detained in any other case.

JUDGE

JUDGE

JUDGE

Islamabad, the
7th of February, 2022
Approved For Reporting
Khuram