

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.126-P/2011

*(Against the judgment dated 23.11.2011 of the Peshawar High Court
Peshawar passed in Cr.A. No.571/2009)*

Abdul Latif

...Petitioner(s)

Versus

Noor Zaman and another

...Respondent(s)

For the Petitioner(s): Mr. Suhail Akhtar, ASC

For the Respondent(s): N.R.

Date of hearing: 28.6.2021

ORDER

Qazi Muhammad Amin Ahmed, J.- Falak Naz, 15, was shot dead at 10:45 a.m. on 28.7.2007 within the precincts of Police Station Dargai Malakand; the incident was reported by her cousin Muhammad Shakil; he blamed Noor Zaman respondent, an aspirant for her hand, to have committed the murder to avenge the refusal; he cited in the crime report one Zafar Ali as well as deceased's aunt Pashmina as witnesses of the crime, swapped by her maternal uncle Yousaf Khan (PW-6) and mother Mst. Nasreen (PW-7) to drive home the charge in the absence of the complainant.

The learned trial Judge while acquitting Muhammad Nawaz, co-accused, blamed for abetment, proceeded to convict the respondent under clause (b) of section 302 of the Pakistan Penal Code, 1860 and sentenced him to death vide judgment dated 19.11.2009, set aside by a learned Division Bench of Peshawar High Court vide impugned judgment dated 23.11.2011, primarily on the ground that after defection of all the witnesses named in the crime report, there was hardly an occasion for the trial Judge to return a guilty verdict on the strength of swapped witnesses, never named in the crime report.

2. Learned counsel for the petitioner blamed exasperating delays in the legal process to justify complainant's departure abroad for good; according to him, the witnesses though not named in the crime report, nonetheless, had seen the gory incident and, thus, their testimonies can be safely relied upon to secure the ends of justice as brutal murder of an innocent teenager must not go unpunished;

absence of a witness's name in the crime report, otherwise proving his presence at the scene to have witnessed the crime is sufficient to bring home the charge as the First Information Report is not expected to be prosecution's last word, concluded the learned counsel.

3. Heard. Record perused.

4. Gruesome murder of Falak Naz, a in her burgeoning youth, is most shocking to say the least, nonetheless, dispatching respondent to the gallows in the absence of reliable evidence, convincingly excluding every hypothesis of his innocence, is an issue altogether different. In our adversarial system of administration of criminal justice, responsibility lies with the prosecution to establish the charge "*beyond doubt*" on the preponderance of confidence inspiring evidence; the case in hand, unfortunately, fails to qualify the requisite standard/quality of proof. The complainant conveniently left the scene without even once appearing before the Court; same goes for the other witnesses that included Pashmina Bibi, no other than deceased's aunt in first degree. No doubt, First Information Report is not an encyclopedia of prosecution's case, nonetheless, it does contain certain details that serves as its mainstay in the voyage; witnesses are the most prominent part of those details as their testimonies provide evidentiary certainty regarding the guilt of an offender. Replacement of the witnesses previously named in the crime report with those, lacking reference therein, would inevitably tremor the whole edifice as the transposition reasonably hypothesizes their absence at the scene. Explanations furnished by the substituted set of witnesses find no support from the record as statement of Mst. Nasreen (PW-7), deceased's mother, is contradicted both by the Investigating Officer (PW-8) as well as the site plan of the crime scene. In the absence of confidence inspiring evidence, the respondent could not have been convicted and sentenced merely on the strength of moral certainty regarding his guilt. View taken by the High Court being in accord with the well settled principles of safe administration of criminal justice calls for no interference. Petition fails. Leave declined.

Judge

Judge

Peshawar, the
28th June, 2021
Not approved for reporting
Azmat/-