

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

6.5) (AFR)

CRIMINAL PETITION NO. 499 OF 2019

(On appeal against the judgment dated 20.02.2019
passed by the Lahore High Court, Rawalpindi
Bench in Criminal Appeal No. 393/2018)

Tajamal Hussain Shah

... Petitioner

VERSUS

The State and another

... Respondents

For the Petitioner:

Mr. Talat Mehmood Zaidi, ASC

Mr. Muhammad Sharif Janjua, AOR

For the State:

Mirza Muhammad Usman, DPG

Date of Hearing:

21.04.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner was tried by the learned Additional Sessions Judge, Jand, Attock pursuant to a case registered vide FIR No. 238 dated 07.11.2009 under Sections 302/34 PPC at Police Station Jand, Attock, for committing murder of Muhammad Sajjad, son of the complainant. The learned Trial Court vide its judgment dated 06.04.2018 convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life. He was also directed to pay compensation amounting to Rs. 300,000/- to the legal heirs of the deceased Muhammad Sajjad or in default whereof to further undergo SI for six months. Benefit of Section 382-B Cr.P.C. was also extended to him. In appeal, the learned High Court maintained the conviction and sentences recorded by the learned Trial Court.

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

"2. As per brief facts narrated in complaint Exh.PL, complainant Muhammad Aslam son of Khan Mulakh (since deceased) was resident of Chapri, he was cultivator by profession. On 07.11.2009 at about 04.30 p.m. complainant was present at Hussaini Chowk Chapri, while his son Muhammad Sajjad (since deceased) was proceeding to the shop of one Jabir for purchasing mobile card. Aashiq Hussain Shah son of Dildar Hussain Shah, Tajamal Hussain and Nazakat Hussain sons of Aashiq Hussain residents of Chapri were sitting on the chairs outside their Baitakh. After purchasing the card on returning back to home, when Muhammad Sajjad son of complainant reached near the house of Ashiq Hussain Shah, Nazakat Hussain son of Ashiq Hussain caught hold of Muhammad Sajjad while abusing, he started scuffling and called his father and brother that today Muhammad Sajjad beaten him. On which Tajamal Hussain son of Ashiq Hussain while abusing took out pistol 30 bore from his Dhab and made fire shot on Muhammad Sajjad, which landed on his chest, who became injured and fell down. On seeing the occurrence, complainant went forward to rescue his son, on which Ashiq Hussain Shah son of Dildar Hussain took out pistol and made fire shot on complainant, which landed on the right arm of complainant, Ashiq Hussain made 2nd fire shot, which landed on the rib of right side; in the meanwhile, Ghulam Raza son of Jewan Khan, Zulfiqar Ahmad son of Bashir Ahmad, Muhammad Razzaq son of Noor Khan alongwith other people while seeing the occurrence came and rescued them. Motive behind the occurrence is that quarrel had took place between Nazakat Hussain Shah and Wajid son of complainant prior, due to which Ashiq Hussain Shah along with his son, in furtherance of common intention, in order to take revenge of their disgrace injured them. Complainant alongwith his son Muhammad Sajjad were being taken to hospital in injured condition for medical treatment, on the way Muhammad Sajjad succumbed to the injuries."

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 19 witnesses and one CW. In his statement recorded under Section 342 Cr.P.C, the petitioner 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. At the very outset, learned counsel for the petitioner argued that there are material contradictions and discrepancies in the prosecution evidence, which have not been properly dealt with by the courts below. Contends that the injury ascribed to the petitioner by the witnesses of the

ocular account was on chest of the deceased but the same is contradicted by the medical evidence. Contends that the plea of alibi of the petitioner was verified by the Investigating Officer but the same has not been given any credence. Contends that the prosecution has to prove its case without any shadow of doubt but it has miserably failed to prove its case. Contends that the reasons given by the learned courts below to sustain conviction of the petitioner are speculative and artificial in nature and resulted into miscarriage of justice, therefore, the impugned judgment may be set aside.

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the evidence led by the prosecution in the shape of ocular version duly supported by medical evidence is sufficient to sustain the conviction of the petitioner. He contends that any minor discrepancy in the prosecution evidence does not entitle the petitioner for acquittal. Lastly contends that the petitioner remained absconder for ten years, which clearly indicates that he was fully involved in the commission of the crime, 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 record.

The ocular account in this case is furnished by Zulfiqar Ahmed (PW-18) and Muhammad Daraz (PW-19). According to these PWs of the ocular account, the petitioner while armed with .30 bore pistol made a straight fire shot on Muhammad Sajjad, deceased, which landed on his chest, due to which he fell down and ultimately succumbed to the injury. However, this stance is contradicted by the medical evidence. According to Dr. Raheem Khan (PW-15), who conducted postmortem examination of the deceased Muhammad Sajjad, the injury on the chest, just above the nipple of the deceased, was an exit wound and the margins of the wound were black whereas the entry wound was on the back of the deceased i.e. at thoracic spine. The blackening around the wound shows that the fire shot would have been made from a close range but according

to the site plan, the petitioner was shown standing at a distance of 18 steps away from the deceased. This major discrepancy raises serious doubts on the credibility of the prosecution witnesses of the ocular account. It was petitioner's stance that on the fateful day and time, he was not present at the place of occurrence and was visiting his cousin, who was posted at 62 Signal Battalion Misrial Road, Rawalpindi and in-fact the deceased alongwith 25/30 persons attacked upon his house while armed with lethal weapons and beat his father. This plea of alibi of the petitioner was inquired into by the Investigating Officer i.e. Mehmood Khan, SI (PW-17), who after thorough investigation found the same to be true. The I.O. also got a verification letter dated 2.02.2017 issued by the Commanding Officer of 62 Battalion, which was placed on record. In support of this assertion, Havaladar Tamraiz Khan, 62 Signal Battalion appeared as DW-7 and stated on oath that on the fateful day and time, the petitioner was physically present at 62 Signal Battalion. This plea of alibi finds support from record produced by DW-7. The pistol .30 bore allegedly recovered on the pointation of the petitioner was transmitted to the Punjab Forensic Science Agency but the matching report of the same with crime empties recovered from the spot was negative, therefore, the recovery of pistol becomes inconsequential. According to the prosecution the motive of the occurrence was previous quarrel between co-accused Nazakat Hussain Shah (tried separately) and Wajid, son of the complainant. However, the prosecution failed to produce the said Wajid in order to prove the motive part, therefore, it can safely be concluded that prosecution could not prove the motive part of the story. So far as the argument of the learned Law Officer about the absconsion of the petitioner is concerned, it is settled law that absconsion cannot be viewed as a proof for the offence, which cannot be made basis for conviction, rather it is the prosecution who has to prove its case independently without any reasonable shadow of doubt. In Rasool Muhammad Vs. Asal Muhammad (PLI 1995 SC 477) this Court has held that mere absconsion cannot be made a ground to discard the relief sought for as disappearance of a person after the occurrence is but natural if he is involved in a murder case rightly or wrongly. In these

circumstances, a doubt in the prosecution case has arisen, benefit of which must be given to the petitioner. It is a 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.

7. For what has been discussed above, this petition is converted into appeal and allowed and the impugned judgment is set aside. The petitioner 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
21st of April, 2022
Approved For Reporting
Khurram