

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

CRIMINAL APPEAL NO. 75-L OF 2021

(Against the judgment dated 10.05.2016 passed by the
Lahore High Court, Bahawalpur Bench in Criminal Appeal
No. 399-J/2012/BWP and Murder Reference No.
63/2012/BWP)

Amanullah

...Appellant(s)

VERSUS

The State and another

...Respondent(s)

For the Appellant(s):

Sheikh Sakhawat Ali, ASC
(Via video link from Lahore)

For the State:

Mirza Muhammad Usman, DPG

For the Complainant:

Malik Muhammad Imtiaz Mahl, ASC

Date of Hearing:

15.11.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellant Amanullah along with two co-accused was tried by the learned Additional Sessions Judge, Sadiqabad, pursuant to a case registered vide FIR No. 136/2011 dated 31.05.2011 under Sections 302/34 PPC at Police Station Bhong, Sadiqabad for committing murder of Din Muhammad, brother of the complainant. The learned Trial Court vide its judgment dated 27.11.2012 while acquitting the 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.200,000/- to the legal heirs of the deceased or in default whereof to further suffer six months SI. In appeal the learned High Court while maintaining the conviction of the appellant 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. Benefit of Section 382-B Cr.P.C. was also extended to the appellant. Being aggrieved by the impugned judgment, the appellant filed Jail Petition No. 453/2016 before this Court wherein leave was granted by this Court vide order dated 08.02.2021 and the present appeal has arisen thereafter.

2. The prosecution story as given in the impugned judgment reads as under:-

"3. Brief facts of the case as given by the complainant Muhammad Hamid (PW-5) in his 'Fard Biyan' (Ex.PG), on the basis of which the formal FIR was chalked out, are that he (complainant) was resident of Chak No. 184/P (district Rahimyar Khan) and was a blacksmith (Lohar) by profession. On 31.05.2011 at about 6.30 PM, he alongwith his brother Muhammad Din (deceased), Shabbir Ahmad son of Sikandar, resident of Chak No. 239/P and Asghar Ali son of Noor Muhammad, resident of Sanjarpur came at the residence of his maternal uncle (Mamoon) Abdul Sattar situated at Basit Solangi Mouza Noor Pur on motorcycles. In the meanwhile, Aman Ullah (appellant) while armed with 12 bore double barrel gun, Ikhtiar Ahmad (co-accused since acquitted) armed with pistol, Abdul Aziz (co-accused since acquitted) and Noor Hassan (co-accused since PO) both armed with firearm weapons came there. The appellant's co-accused namely Abdul Aziz, Ikhtiar Ahmad and Noor Hassan raised lalkara to Amanullah (appellant) that Din Muhammad should not go alive whereupon Amanullah (appellant) made a straight fire shot upon Din Muhammad hitting on his head and thereafter, he made second fire shot which landed on his left hand and left buttock, as a result whereof, he succumbed to the injuries and died at the spot. The complainant alongwith his companions tried to apprehend the accused persons but they gave threats of dire consequences. On hearing the hue and cry, many people gathered at the place of occurrence whereupon the accused persons fled away from the scene of occurrence while brandishing their weapons.

The motive behind the occurrence was that about three years ago the complainant (PW-5) was married with Mst. Irshad Bibi, daughter of Amanullah (appellant) and in Watta Satta marriage, sister of the complainant namely Allah Diwayee was married with Ihsan Ullah, son of Aman Ullah (appellant). Due to matrimonial dispute, the complainant (PW-5) had divorced his wife about two years ago whereupon Ihsan Ullah had also ousted his wife (complainant's sister) from his house who was pregnant at that time. Later on, she delivered a female child namely Mst. Raheeman Bibi, who was snatched by Ihsan Ullah on the day of her birth whereupon the complainant's sister filed a habeas corpus petition in the Sessions Courts Rahimyar Khan and as Din Muhammad (deceased) used to pursue the said case, therefore, Amanullah appellant alongwith his co-accused, on account of having grudge over the matrimonial dispute and filing of habeas corpus petition, committed the murder of Din Muhammad deceased, in furtherance of their common intention.

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 eleven witnesses. In his statement recorded under Section 342 Cr.P.C, the appellant pleaded his innocence and refuted all the allegations leveled against him. The appellant also got recorded his statement on oath under Section 340(2) Cr.P.C. and also produced Badar Ali as DW-2.

4. Learned counsel for the appellant while opening his arguments has stated that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which escaped the notice of the learned courts below. While reiterating the contentions raised before this Court when leave was granted, learned counsel squarely relied upon the grounds of leave wherein the main contention of the learned counsel was that the prosecution witnesses were not residents of the place where the occurrence had taken place and they have not given any plausible explanation for their presence at the spot at the relevant time. Contends that the prosecution witnesses are interested and related, therefore, their evidence has lost its sanctity and the conviction cannot be based upon it. Contends that the postmortem of the deceased was conducted with a delay of 10 hours for which no valid reason has been given. Contends that the prosecution has not been able to prove motive as alleged, which causes serious dent in the prosecution case. Lastly contends that the recovery of weapon of offence has also been discarded by the learned High Court, therefore, the appellant may be acquitted of the charge.

5. On the other hand, learned Law Officer assisted by learned counsel for the complainant vehemently opposed this appeal on the ground that the eye-witnesses had no enmity with the appellant to falsely implicate him in this case. It has been contended that the eye-witnesses have reasonably explained their presence at the spot at the relevant time, which is quite natural and probable and the medical evidence is also in line

with the ocular account, therefore, the appellant does not deserve any leniency from 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.

A bare perusal of the record shows that the unfortunate incident, wherein the brother of the complainant lost his life, took place on 31.05.2011 at 6.30 PM. The matter was reported to the Police instantly and the FIR was lodged on the same day at 8.40 PM i.e. just after two hours of the occurrence. Keeping in view the inter se distance between the place of occurrence and the Police Station i.e. 13.5 kilometer, the contention of the learned counsel that the FIR was delayed has no force. The occurrence took place in the broad daylight whereas the parties were known to each other, therefore, there is no chance of misidentification. The ocular account in this case has been furnished by Muhammad Hamid, complainant (PW-5) and Shabbir Ahmad (PW-6). Although both these witnesses were not residents of the locality where the occurrence took place but they have reasonably explained their presence at the place of occurrence at the relevant time by stating that they had come to the house of their maternal uncle Abdul Sattar in connection with the matter of their land situated in Basti Solangi, Mouza Noor Pur. It is not denied by the defence anywhere that the said witnesses had no land in the vicinity. The presence of the said witnesses in the house of their maternal uncle cannot be termed as unnatural. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the appellant or adverse to the prosecution could be brought on record. Both these PWs remained consistent on each and every material point inasmuch as they made deposition according to the circumstances surfaced in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. The medical evidence available on the record further corroborates the ocular account so far as the nature,

time, locale and impact of the injuries on the person of the deceased is concerned. So far as the argument of the learned counsel for the appellant that the postmortem of the deceased was conducted after a delay of 10 hours is concerned, the learned High Court has rightly observed that no question regarding the reason for the said delay was put to Dr. Gohar Abbas (PW-1). Further, in a developing country like ours, it cannot be expected that the medical staff along with other facilities is readily available during the odd hours of the night that too in a remote area of southern Punjab, hence, this contention has no legal force, which is repelled. Nonetheless, the injuries ascribed to the appellant on the body of the deceased were found available by the Doctor, who conducted postmortem examination. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence. As far as the question that the complainant was brother of the deceased, therefore, his testimony cannot be believed to sustain conviction of the appellant is concerned, this Court has time and again held that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses. Learned counsel for the appellant could not point out any plausible reason as to why the complainant has falsely involved the appellant in the present case and let off the real culprit, who has committed murder of his real brother. Substitution in such like cases is otherwise a rare phenomenon. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query he could not point out any major contradiction, which could shatter the case of the prosecution. Even if there are some minor discrepancies, which do not hamper the salient features of the prosecution case, the same should be ignored. Even otherwise, the accused cannot claim benefit of such minor discrepancies. So far as the motive part of the prosecution story is concerned, the learned High Court has discarded the same by holding that the motive as alleged does not appeal to a prudent mind because if the complainant had divorced the daughter of the appellant,

then the appellant must have committed his murder and not of his brother. However, in our view there is a very strong motive, which is not only orally proved but the pendency of the habeas corpus petition by the sister of the complainant and deceased in the Sessions Court, which was being pursued by the deceased, leaves no room to disbelieve the motive part of the prosecution story. As such, we are constrained to observe that the learned High Court has discarded the motive on flimsy grounds, which cannot be accredited by any stretch of imagination. So far as recovery is concerned, admittedly the crime empties and the weapon of offence were sent to the office of Forensic Science Laboratory together, which makes it doubtful as it has been held by superior courts frequently, as such, the recovery was rightly disbelieved by the learned High Court. In these circumstances, there is sufficient evidence available to sustain the conviction of the appellant. So far as the quantum of punishment is concerned, keeping in view the fact that recovery was disbelieved, the learned High Court has already taken a lenient view and converted the sentence of death into imprisonment for life to meet the ends of justice, hence, it leaves no room for us for further deliberation on this score.

7. For what has been discussed above, we do not find any merit in this appeal, which is dismissed. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
15th of November, 2022
Approved For Reporting
Khurram