

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood

Mr. Justice Mazhar Alam Khan Miankhel

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.406 of 2017

*(Against the judgment dated 24.02.2017 of the Lahore High Court,
Rawalpindi Bench passed in Cr.A.404/2011 and MR No.66/2011)*

Noor Zaman

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s):

Ch. Afrasiab Khan, Sr. ASC

Sh. Ahsan ud Din, ASC

Ch. Akhtar Ali, AOR

For the State:

Mr. Muhammad Jaffar,

Addl. P.G. Punjab

Date of Hearing

22.02.2022.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.:- Muhammad Irfan, 50, along with his wife Rafia Begum, 45, was attending Khan Muhammad accompanied by his brother Fateh Muhammad inside his house located within the precincts of Police Station Saddar Talagang, at 6:30 p.m. on 12.3.2009 when Noor Zaman petitioner armed with a .30 caliber pistol surprised them; aggrieved over denial of some piece of land by Muhammad Irfan, no other than his real brother, the petitioner targeted him with repeated fire shots; Rafia Begum rushed inside a room to save herself, however, the petitioner followed and dealt her 5/6 fire shots; brandishing the weapon, he left the premises, followed by the witnesses, to come across Halima Bibi, 30/35, in the lane to confront his wrath, she was shot on different parts of her body. The petitioner took to the heels while the casualties were shifted to THQ Hospital Talagang; Rafia Bibi died at the spot, Muhammad Irfan succumbed to the injuries following day whereas Mst. Halima Bibi on 22.3.2009.

Investigation commenced on the complaint of Khan Muhammad

(PW-15). Inspection of crime scenes include seizure of blood from different points, forensically opined as of human origin; 12 casings collected from different points were found wedged with the pistol (P-6), recovered pursuant to a disclosure by the accused subsequent to his arrest on 5.5.2009.

Upon indictment, the petitioner claimed trial; the learned trial Judge vide judgment dated 26.09.2011 returned a guilty verdict on three counts of homicide; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, he was sentenced to death on each with a direction to pay compensation, confirmed/upheld vide impugned judgment dated 24.02.2017, leave to appeal wherefrom is being prayed on the grounds that colossal loss of lives, notwithstanding, there was no occasion for the trial Judge to convict the petitioner on capital charge with ultimate penalty in the absence of "*proof beyond doubt*" inasmuch as in the totality of circumstances neither there was any occasion for the witnesses to be at the spot nor they could escape unscathed as per case set up by the prosecution itself; it is next argued that dispatch of casings coincides with the date of petitioner's arrest and as such positive forensic report cannot be viewed as a corroborative support. Motive was not put to the petitioner and it is so observed by the High Court itself and, thus, the failure of the prosecution on this count not only tremors the entire prosecution structure but also constitute a mitigating circumstance to alter penalty of death into imprisonment for life, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment; he argued that occurrence, a daylight affair, in a small hamlet, the preponderance of prosecution evidence left no space to entertain any hypothesis other than petitioner's guilt. An inconsequential omission regarding the motive does not mitigate enormity of offence that cost three innocent persons their lives, two in their prime youth, over a petty cause.

2. Heard. Record perused.

3. Misfortune struck close members of the family; Muhammad Irfan deceased was real brother of the petitioner whereas his wife Rafia Bibi, a sister-in-law; third victim Haleema Bibi, being wife of Muhammad Zaman, is related with the deceased in the same degree; litigation raging between the petitioner and Muhammad Irfan heavily cost the family, division wherein is an obvious aftermath. On

the other side of the divide, Khan Muhammad (PW-15) and Fateh Muhammad (PW-16), real brothers *inter se* are, nonetheless, members of the same clan; both of them pointed their fingers singularly upon the petitioner as being the sole perpetrator of the crime. We have gone through their statements to find them in a comfortable unison on all the salient details of the occurrence as well as issues collateral therewith; being resident of the same neighbourhood, their presence cannot be doubted merely on the ground that Fateh Muhammad (PW-16) was busy in the marriage ceremony of his son on the fateful day and, thus, according to the learned counsel, had no occasion to visit the deceased. The learned counsel has taken us through a portion of cross-examination, best viewed as half cooked inasmuch as it sans relevant timing and details regarding the marriage ceremony so as to entertain hypothesis of his exclusion from the scene. Similarly, old age and weak eye sight with frail health do not reflect upon his credentials as a truthful witness at the age of 65 to hypothesize mistaken identity of a close relative, figuring singularly on the scene. Preponderance of ocular account, being consistent with medical evidence and durations given therein, in itself constitute "*proof beyond doubt*" inescapably pointed upon petitioner's culpability. Proved to the hilt, it is an open and shut case. Petitioner's plea that the deceased fell victim to celebratory fires in the marriage ceremony is a story too preposterous to find a buyer given the points dead bodies were found during the spot inspection, locations confirmed through seizure of blood.

Alternate plea of lesser penalty in view of omission to put motive to the accused in his examination under section 342 of the Code of Criminal Procedure, 1898 or dispatch of casings on the day of petitioner's arrest are the issues entirely beside the mark. Examination of accused under section 342 of the Code is not a dogmatic ritual involving vitiating impact; the fundamental purpose of such examination is to enable the accused to explain any circumstance appearing in the evidence against him and that may be done at any stage of inquiry or trial without previous warning and the accused is under no obligation even to respond to that; it is essentially a communication between accused and the Judge. The underlying purpose is not to take the accused by surprise; he must be aware of the accusation and material being adduced in support thereof. The record shows that the petitioner was fully aware of the motive set up by the prosecution; his counsel specifically cross-examined the

witnesses about the ongoing dispute. See Khan Muhammad (PW-15), *".....there was no dispute of Haleema with Noor Zaman accused in any capacity. Rafia deceased had no litigation with Noor Zaman in an independent capacity but her husband Irfan was in litigation with Noor Zaman accused. During the whole investigation, we never produced any document relating to the litigation between Noor Zaman and Muhammad Irfan deceased. During the investigation, no disputed land between Noor Zaman accused and Irfan deceased was shown to the I.O. I do not know the nature of dispute between accused and Muhammad Irfan deceased"*. Similarly, while cross-examining Fateh Muhammad (PW-16), the witness responded to a query regarding motive *"It was in my knowledge that there was litigation between Irfan and Noor Zaman. We did not give any copy of the litigation to the police during investigation."* Thus, it is not open to the defence that the petitioner did not know as to why he was in the dock. It is high time to get out of the quagmire of hyper technical past so as to adopt a more realistic and dynamic approach to ensure an effective administration of criminal justice, a sine qua non to maintain peaceful equilibrium in the society; an inconsequential lapse or failure to observe a procedural formality without causing prejudice or handicap to an accused in his defence cannot be allowed to deny justice to the victim of crime. Similarly, presumption of genuineness is attached to the official acts both under article 129 (e) of the Qanun-i-Shahadat Order, 1984 as well as under Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973, supreme law of the land and, thus, in the absence of a positive proof to the contrary, pleaded specifically, a delayed dispatch by itself cannot be viewed with suspicion. Three innocent persons including two women in their prime youth have been done to death with repeated fire shots, two in the safety of their home, in a manner most callous and brute, thus, the wage settled is conscionable in circumstances; scales are in balance. No interference is called for. Petition fails. Leave declined.

Judge

Judge

Judge

Islamabad, the
22nd February, 2022
Azmat/-