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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Amir Hani Muslim
Mr. Justice Qazi Faez Isa
Mr. Justice Mazhar Alam Khan Miankhel

Criminal Appeal No.181/2012
(On appeal from the judgment dated 28.02.2011
passed by the Lahore High Court, Lahore in
M.R. No.160/04)

Majeed Masih

Appellant

Versus

The State

Respondent

For the Appellant:

Ms. Aisha Tasneem, ASC

For the State:

Ch. Muhammad Sarwar Sidhu, Addl.P.G.Pb.

Date of Hearing:

20.02.2017

JUDGMENT

Mazhar Alam Khan Miankhel, J.- Majeed Masih, appellant herein, was booked in case FIR No.542/2003 registered under Sections 302, 337-F(ii) and 337-F(iii) PPC at Police Station, Thekriwala, District Faisalabad for the alleged murder of Mst. Elizabeth on the report of Yaqoob Masih her husband. After a regular trial, the appellant was convicted and sentenced by the trial Court as under:-

"Under Section 302 (b) PPC.

Death with further direction to pay Rs.100,000/- as compensation to the legal heirs of Mst. Elizabeth deceased as required u/s 544-A Cr.P.C. or in default thereof six months SI.

Under Section 337-F(ii) PPC.

Three years R.I.

Under Section 337-F (iii) PPC.

Three years RI and to pay Daman of Rs.20,000/-.

Benefit of Section 382-B Cr.P.C. was also extended to him."

The appellant did not question his conviction and sentences by filing any appeal but the High Court while receiving the murder reference as abundant caution and to secure the ends of justice appointed a counsel at the State expense and after hearing the parties, the conviction and sentences against

the appellant on all the above charges were maintained and confirmed. Hence the instant appeal by the leave of this Court granted vide order dated 6.03.2012.

Leave to appeal in this case had been granted in order to reappraise the evidence and today, with the assistance of the learned counsel for the parties, we have undertaken the said exercise.

2. The record of the case would reveal that the occurrence took place at a time when the deceased lady at about 5:15 a.m. had gone to ease herself at the call of nature in the nearby fields. The Complainant-Yaqoob Masih (PW-8), Samuel Masih (PW-7) and Ashraf Masih (PW-6) as a matter of routine were also going to attend the call of nature. When they reached at the place of occurrence, the deceased lady while coming back was attacked by the appellant, armed with *churri*, by giving two consecutive blows one on the right flank and the other on the left front side of her chest. Samuel Masih being ahead of the two eye-witnesses came forward to apprehend/rescue her but the appellant also inflicted two blows of *churri* one after the other on his left arm near elbow and decamped from the scene brandishing the *churri*. The complainant and the other PWs took care of Mst. Elizabeth but she succumbed to her injuries. The local police was attracted to the spot on getting information of the occurrence at about 7:50 a.m.

The occurrence as reported was witnessed by the above named three persons. The presence of the PWs as has come on the record is but natural and a matter of routine in the villages. In reply to a question PW Ashraf Masih has abruptly said that they often meet early in the morning while going to answer the call of nature. The 02 eye-witnesses i.e. the Complainant and the Samuel Masih were closely related to the deceased lady i.e. the husband and the brother respectively. Their evidence for this reason requires a careful reappraisal. Whereas the third eye-witness i.e. Ashraf Masih though

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resident of the same village and of the same *baradri* but an independent witness was alleged to be a chance-witness so his evidence too would require careful examination. The ocular account given by all the three witnesses appears to be true, natural, trustworthy and confidence inspiring and the same remained un-shattered during the lengthy cross-examination and the defence bitterly failed to extricate anything harmful to the prosecution case. PW Ashraf Masih has satisfactorily explained his presence at the spot. He has given the eye-witness account which remained un-shattered in lengthy cross-examination. His testimony was so natural that he showed his unawareness regarding the character of the appellant and if at all considered to be a chance-witness even then his testimony being in conformity with the ocular evidence cannot be discarded merely for the reason that he was a chance-witness when the same is confidence inspiring and trustworthy. Nothing has been brought on the record by the defence as to why he being an independent witness would falsely depose against the appellant. His presence, as stated above, at the place of occurrence has also appeared to be natural and the same has not been shattered by the defence. So the statement of such witness gets more importance. Reference in this regard can be made to the cases of Anwar Shamim and another versus The State (2010 SCMR 1791) and Mst. Sughra Begum and another versus Qaiser Pervez and others (2015 SCMR 1142).

3. The medical evidence brought on the record in the shape of PW-1 Dr. Safia Mughal and the post-mortem report (Exh.PA) are also in line with the ocular account furnished by the eye-witnesses and there appears no reason to disbelieve the same. The alleged delay of 10 to 12 hours in post-mortem and death has duly been explained on the record. The police station is situated at a distance of 10 k.ms. and the police was attracted to the spot on getting information of the occurrence at about 7:50 a.m.. There is nothing on

the record to reflect that the village where the occurrence took place was connected with the police station with a metalled road. So the time consumed in the entire process is quite justifiable. Recovery of blood stained *churri* (Exh.PG) at the pointation of appellant with a positive report of Forensic Science Laboratory (Exh.PO) is yet another supportive aspect of the case.

4. As for as the motive part of the case is concerned, the appellant being nephew (*Bhanja*) of the complainant was forbidden by him to visit his house and this act of the complainant to say provoked/instigated the appellant to commit the murder of the lady appears to be un-believable for the reason that for such an act one would not go for such an extreme step of committing murder and that too of the person with whom he has no motive. Besides the above, the appellant in his statement under Section 342 Cr.P.C. has tried to make out a case that the complainant had doubt in his mind that appellant had illicit relations with his wife and at the time of occurrence after seeing the appellant in the company of his wife he got provoked and committed the murder of his wife and Samuel Masih, the brother of the deceased lady, also received injuries while apprehending the complainant to save her sister. This story, on the face of it, appears to be absurd as the deceased lady at the time of her murder was in advance stage of her pregnancy. The eye-witnesses were also put such type of suggestions but the defence could not get any support for such plea and the appellant failed to prove and establish his special stance/defence plea for which burden under Article 121 of the Qanoon-e-Shahdat Order, 1984 was upon him to prove the same. He even did not bother to get himself examined under Section 340(2) Cr.P.C. to establish his stance. Mere allegations and denial of occurrence would not be sufficient to give him a clean chit especially in a case where the eye-witness account has gone un-shattered.

5. The scanning of the entire record would make us to believe that motive for the commission of murder of the deceased lady remains shrouded in mystery and the law on the point is settled by now that failure on the part of prosecution to prove motive set by it or even absence of motive may be a factor to persuade the Court to withhold the extreme sentence of death because reason for the murder remained un-known. Reference in this regard, amongst others, can be made to the cases of Muhammad Asif Vs. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others Vs. The State (2017 SCMR 148). So in the circumstances, we have been persuaded to withhold the appellant's death sentence and to substantiate it by sentence of imprisonment for life.

6. In view of what has been discussed above, we partly allow this appeal by converting the death sentence of the appellant to that of imprisonment for life. He is extended benefit of Section 382-B Cr.P.C. In addition, the appellant shall be liable to pay compensation of Rs.100,000/- under Section 544-A Cr.P.C. to the legal heirs of the deceased and or in default thereof shall undergo six months S.I. However, all the sentences shall run concurrently.

The above are the reasons for our short order of even date which reads as under:-

" For reasons to be recorded later, this Criminal Appeal is partly allowed to the extent that the death sentence awarded to the Appellant is converted into life imprisonment. The Appellant would be entitled to the benefit of Section 382-B Cr.P.C. In addition to the sentence of life imprisonment the Appellant shall be liable to pay compensation of an amount of Rs.1,00,000/- to the legal heirs of the deceased under Section 544-A Cr.P.C. and in default thereof shall undergo six months S.I. All the sentences awarded to the Appellant shall run concurrently."