IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE ATHAR MINALLAH

CRIMINAL APPEAL NO. 82 OF 2022
(Against the judgment dated 08.11.2016 passed by the Peshawar High Court, Abbottabad bench in Cr. Appeal No. 139-A/2012)

Imran Mehmood

...Appellant(s)

VERSUS

The State and another

...Respondent(s)

For the Appellant(s): Mr. Haider Mehmood Mirza, ASC

For the State: Raja Muhammad Rizwan Ibrahim Satti, ASC

For the Complainant: Ms. Humaira Jabeen, in person

Date of Hearing: 13.02.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellant Imran Mehmood along with two co-accused was tried by the learned Sessions Judge, Haripur pursuant to a case registered vide FIR No. 566 dated 23.12.2010 under Sections 302/324/34 PPC read with Section 13 of the Arms Ordinance at Police Station Saddar, Haripur for committing murder of Ghulam Murtaza and Ghulam Kibriya, father and uncle of the complainant and for attempting to take life of complainant and her mother. The learned Trial Court vide its judgment dated 22.10.2012 while acquitting the two 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/- each to the legal heirs the deceased. In appeal the learned High Court maintained the conviction and sentence of death awarded to the appellant by the learned Trial Court. Being aggrieved by the impugned judgment, the appellant filed Criminal Petition No.

1235/2016 before this Court wherein leave was granted by this Court vide order dated 08.02.2022 and the present appeal has arisen thereafter.

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

> "2. To sum things up stated facts leading to the pressing appeal are that the complainant (Mst. Umaira Jabeen) while reporting the crime in the Casualty Ward of DHQ Hospital Haripur alleged that she was married to the accused-appellant some three (03) years back and after spending one year, due to strained relations, her husband gave her oral divorce and shunted her out from his house, thus, she was residing at her parents' house, situated at Hassan Abdal. However, on the fateful day at 17:30 hours, consequent upon obtaining a decree from the Family Court regarding dowry articles, she alongwith her mother (Mst. Naseem Bibi) and both the deceased namely, Ghulam Murtaza and Ghulam Kibriya (father and uncle respectively) including two bailiffs of the court, went to the house of the accused-appellant for taking the dowry articles, where besides the accused-appellant, his brother Ashiq and Mst. Asmat Sultan Gohar, his mother were also present. During the course of loading household dowry articles in the vehicle, Ashiq and Mst. Asmat Sultan Gohar, brother and mother of the accused-appellant, raised Lalkara to him to kill them, whereupon the accused-appellant started firing with his pistol upon the complainant party, as a result her father was hit on his chest and her uncle sustained firearm injuries on his neck and head, thus both fell on the ground and died on the spot, whereas she and her mother escaped unhurt, hence the FIR ibid."

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 thirteen witnesses. In his statement recorded under Section 342 Cr.P.C, the appellant pleaded his innocence and refuted all the allegations leveled against him. However, he did not appear as his own witness on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against him. He also did not produce any evidence in his defence.

4. At the very outset, learned counsel for the appellant contends that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which have escaped the notice of the learned courts below. Contends that the prosecution case is based on whims and surmises and it has to prove its case without any shadow of doubt but it has miserably failed to do so. Contends that the medical evidence contradicts the ocular account.

Contends that the prosecution has not been able to prove motive as alleged, which causes serious dent in the prosecution case. Contends that the reasons given by the learned High Court to sustain conviction of the appellant are speculative and artificial in nature, therefore, the impugned judgment may be set at naught. In the alternative, learned counsel contended that the occurrence took place at the spur of the moment and the same is sufficient mitigating factor to reduce the sentence of death into imprisonment for life.

5. On the other hand, learned Law Officer assisted by the complainant in person submitted that to sustain conviction of an accused on a capital charge, un-rebutted ocular evidence alone is sufficient. Contends that the ocular account is supported by the medical evidence, therefore, the appellant 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 the record with their able assistance.

7. It is the prosecution case that complainant Mst. Humaira Jabeen was married with the appellant but due to strained relations, the appellant had given him divorce a year before the occurrence. The complainant had instituted a suit for recovery of dowry articles in the court of competent jurisdiction wherein a decree had been issued against the appellant. On the fateful day and time, the complainant party along with two bailiffs of the court had arrived at the house of appellant Imran to take the dowry articles pursuant to the decree of the court. However, while the household articles were being loaded in the vehicle parked in the street, the appellant took out a pistol and opened fire at the complainant party resulting into death of father and uncle of the complainant. The unfortunate incident took place on 23.12.2010 at 05:30 pm whereas the crime report was lodged in the Casualty Ward of DHQ Hospital, Haripur at 06:25 pm just within an hour of the occurrence. The distance between the place of occurrence and the Police Station was 7 kilometers whereas the distance between Police Station and DHQ

Hospital, Haripur was 7.7 kilometers. Thus, it can be safely said that FIR was lodged with promptitude. Promptness of FIR *prima facie* shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation. There was hardly any time with the complainant or other witnesses to fabricate a false story. The occurrence took place in the broad day light and the parties were known to each, therefore, there is no chance of misidentification. The ocular account in this case has been furnished by Mst. Humaira Jabeen, complainant (PW-11), Munsif Khan, bailiff (PW-8) and Muhammad Sharif, bailiff (PW-9). 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 produced on record. These witnesses have given all necessary details of occurrence qua the date, time, place, name of accused, name of witnesses, manner of occurrence, kind of weapon used in the occurrence, the locale of injuries and the motive of occurrence. These PWs remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. There is no denial to this fact that the PWs Munsif Khan and Muhammad Sharif were bailiffs of the Family Court Haripur, who went to the house of the appellant in compliance with the decree passed by the Family Court. No doubt they are independent witnesses. They did not know the appellant before the occurrence. They also did not have any enmity or ill-will against the appellant to falsely involve him in the case. Although Mst. Humaira Jabeen was related to the deceased. However, it is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses out-rightly. If the presence of the related witnesses at the time of occurrence is natural and their evidence is straight forward and confidence inspiring then the same can be safely relied upon to award capital punishment. Learned counsel for the appellant could not point out any reason as to why the complainant has falsely involved the appellant in the present case and let off the real

culprit, who has brutally murdered her father and uncle. Substitution in such like cases is a rare phenomenon. These witnesses have reasonably explained the circumstances of their going to the house of the appellant i.e. they went there to take the dowry articles pursuant to a decree issued by the Family Court. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the persons of the deceased is concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. Reliance is placed on Muhammad Iqbal Vs. The State (1996 SCMR 908), Naeem Akhtar Vs. The State (PLD 2003 SC 396), Faisal Mehmood Vs. The State (2010 SCMR 1025) and Muhammad Ilyas Vs. The State (2011 SCMR 460). It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain conviction. Minor discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where accused caused injuries. It becomes highly improbable to correctly mention the number and location of the injuries with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give pen picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence. 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 in its entirety. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of

truth, courts should ignore minor discrepancies in the evidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. To prove the motive part of the prosecution story, the witnesses of the ocular account appeared in the witness box and deposed against the appellant. The perusal of the record reflects that neither the defence seriously disputed the motive part of the prosecution story nor the PWs were cross-examined on this aspect of the matter. In this view of the matter, we are constrained to hold that the prosecution has successfully proved the motive against the appellant. The Investigating Officer had collected four crime empties from the place of occurrence. The appellant was arrested on the same day after couple of hours of the occurrence along with the weapon of offence i.e. pistol .30 bore. Although, the weapon of offence and the crime empties were sent to Forensic Science Laboratory together on 28.01.2011 but as the appellant was arrested on the same day, therefore, the same is of no help to the appellant. According to the positive report of FSL, the empties were found fired from the weapon recovered from the appellant.

8. After three days of his arrest, on 27.12.2010, the appellant appeared before Fazal Gul, Judicial Magistrate to confess his guilt. Acquitted co-accused Ashiq was also produced before the Judicial Magistrate but it was only the appellant who showed his willingness to record his confessional statement. The said Judicial Magistrate appeared during trial as PW-3. He in categorical terms stated that the handcuffs of the appellant were removed; the Police, State counsel and the Naib Court were ousted from the court; the accused was told that he is not bound to make any statement and was given sufficient time to think over the matter. He was also informed that he is not bound to make any

confessional statement and if he does so, it would be used against him. The appellant also signed the confessional statement and put his thumb impression over it. When the appellant was confronted with such confessional statement while recording his statement under Section 342 Cr.P.C. he did not deny the same but stated that the same was extracted by the Police by using force with connivance of complainant party and the same was not recorded under the requirements of law. However, we are of the view that such assertion is just an afterthought. The evidence available on record clearly suggests that the appellant did not inform the Judicial Magistrate about the alleged coercion at the time of making his judicial confession. The appellant also did not place on record any evidence to show that the Investigating Officer was inimical towards him and forced him to confess his crime. According to Article 119 of the Qanun-e-Shahadat Order, 1984, the burden of proof to any particular fact lies on the person who wishes the court to believe its existence. There is no denial to this fact that the prosecution has to discharge the burden of proving the case beyond reasonable doubt. However, once the prosecution becomes successful in discharging the said burden, it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty. Even otherwise, if the confessional statement of the appellant is excluded from consideration, there is sufficient material available on the record in the shape of unbiased and unimpeachable ocular account supported by medical evidence, motive and recovery to sustain conviction of the appellant.

9. In the alternative, learned counsel contended that the occurrence took place at the spur of the moment, without any premeditation on the part of the appellant, therefore, the said aspect may be considered as a mitigating circumstance to reduce the sentence of death into imprisonment for life. However, we are not convinced with the argument of the learned counsel. The perusal of evidence available on record clearly shows that pursuant to the outcome of proceedings carried out in the Family Court, the appellant knew that the complainant is coming to take her dowry articles. The testimonies of all the PWs reveal

that he was duly armed with pistol and consequent events reflect his mindset. Such evidence is sufficient to indicate premeditation of appellant, therefore, he does not deserve any leniency in the quantum of punishment. Keeping in view the facts and circumstances of the present case, we are of the view that the prosecution has established each limb of its case by producing unimpeachable and trustworthy evidence. The learned High Court has evaluated the evidence in its true perspective and has come to the conclusion, which is just and equitable, hence it is neither arbitrary nor perverse. No exception can be taken to the findings arrived at by the learned High Court.

10. For what has been discussed above, we do not find any merit in this appeal, which is dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the
13th of February, 2023
Approved For Reporting
Khurram