

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Dost Muhammad Khan
Mr. Justice Sardar Tariq Masood

Criminal Appeal No. 315 of 2012

(Against the judgment dated 29.12.2011 passed by the High Court of Balochistan, Quetta in Criminal Jail Appeal No. 11 of 2011 and Murder Reference No. 06 of 2011)

Nasrullah alias Nasro

...Appellant

versus

The State

...Respondent

For the appellant:	Malik Shakeel-ur-Rehman Khan, ASC
For the complainant:	Mr. Tariq Mehmood, Sr. ASC Syed Rifaqat Hussain Shah, AOR
For the State:	Mr. Tahir Iqbal Khattak, ASC
Date of hearing:	07.03.2017

JUDGMENT

Asif Saeed Khan Khosa, J.: Nasrullah *alias* Nasro appellant had allegedly murdered his wife namely Mst. Hameed Bibi at about 10.30 A.M. on 29.04.2010 by firing at her in his own house in village Arbaseen in the area of Police Station Saddar, Loralai and for commission of the said murder he was booked in case FIR No. 42 registered at the said Police Station on the same day. After a regular trial the appellant was convicted by the trial court for an offence under section 302(b), PPC and was sentenced

to death which conviction and sentence of the appellant had subsequently been upheld and confirmed by the High Court. Hence, the present appeal by leave of this Court granted on 27.06.2012.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and also to consider the question regarding quantum of the appellant's sentence and with the assistance of the learned counsel for the parties we have reappraised the evidence and have also attended to the question of the appellant's sentence.

3. It is not disputed that Zahir Khan complainant (PW4) was not an eyewitness of the alleged occurrence and according to the complainant he had received an information about the murder of his sister on telephone whereafter he had gone to the house of the deceased, had taken the deadbody to the hospital and had thereafter lodged an FIR. It had never been stated by the complainant in the FIR lodged by him that when he had reached the house of the deceased the eyewitnesses namely Taveez Khan (PW1) and Raza Khan (PW5) were present in that house at that time or that it was the said eyewitnesses who had informed him of the occurrence through telephone. It has been found by us to be intriguing that the above mentioned eyewitnesses had claimed to have seen the occurrence wherein Mst. Hameed Bibi had been critically injured but surprisingly the said eyewitnesses had never taken the injured victim to the hospital for medical treatment and till the arrival of the complainant at the house of occurrence the deadbody of Mst. Hameed Bibi was still lying in that house and it was he who had statedly taken the deadbody to the hospital. Such unusual conduct of the above mentioned eyewitnesses surely raised an eyebrow.

4. Both the eyewitnesses produced by the prosecution, i.e. Taveez Khan (PW1) and Raza Khan (PW5) were cousins of Mst. Hameed Bibi deceased and admittedly they lived about eighty

kilometers away from the scene of the crime. The said eyewitnesses had claimed that they had come to the house of occurrence in order to see their cousin namely Mst. Hameed Bibi deceased but no particular reason for coming to the house of the deceased at that particular point of time had been stated by them nor any such reason had been established through any independent evidence. The medical evidence had contradicted both the above mentioned eyewitnesses inasmuch as Taveez Khan (PW1) had stated before the trial court that Mst. Hameed Bibi deceased had received a fireshot on her chest whereas the medical evidence showed that the firearm wound found on the chest of the deceased was an exit wound. Raza Khan (PW5) had stated before the trial court that both the shots fired by the appellant had hit Mst. Hameed Bibi deceased but the medical evidence confirmed that it was only fireshot which was received by the deceased and that fireshot had made an entry wound as well as an exit wound. The English version of the statement made by Raza Khan (PW5) shows that it was not just the complainant and the local police which had taken the deadbody of Mst. Hameed Bibi deceased from the spot to the hospital but on that occasion even the present appellant had accompanied them to the hospital. The Urdu version (vernacular) of the statement of the said witness, however, omitted the name of the present appellant from those who had taken the deadbody of the deceased from the house of occurrence to the hospital. It had been suggested to the eyewitnesses by the defence that the deceased had committed suicide and if that were so then accompanying of the deadbody by the present appellant to the hospital fitted well with that version. The High Court had itself concluded in so many words that the motive set up by the prosecution based upon strained relations between the spouses had not been proved. The alleged recovery of a pistol from the appellant's possession during the investigation was legally inconsequential because the report of the Forensic Science Laboratory brought on the record shows that the recovered pistol and the secured crime-empties had been received by the Forensic Science Laboratory together on one and the same day.

5. It has been argued by the learned counsel for the complainant that in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) this Court had held that where a wife of a person or any vulnerable dependent dies an unnatural death in the house of such person then some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. The learned counsel for the complainant has maintained that the stand taken by the appellant regarding suicide having been committed by the deceased was neither established by him nor did it fit into the circumstances of the case, particularly when the medical evidence contradicted the same. Be that as it may holding by this Court that some part of the onus lies on the accused person in such a case does not mean that the entire burden of proof shifts to the accused person in a case of this nature. It has already been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts presence of some eyewitnesses and such claim of the prosecution is not established by it there the accused person could not be convicted merely on the basis of a presumption that since the murder of his wife had taken place in his house, therefore, it must be he and none else who would have committed that murder. In the case in hand the eyewitnesses produced by the prosecution lived eighty kilometers away from the scene of the crime, their stated reason for presence in the house of occurrence at the time of the incident in issue had never been established through any independent evidence, their presence at the spot had not even been mentioned by the complainant in the FIR lodged by him and the conduct displayed by the said eyewitnesses was such that they did not inspire confidence at all. The eyewitnesses produced by the prosecution had been clearly contradicted in this case by the medical evidence and no independent corroboration had been received by them through any other source inasmuch as the

motive set up by the prosecution had not been proved and the alleged recovery of the weapon of offence was legally inconsequential. In a case of this nature the appellant could not have been convicted for the alleged murder merely because he happened to be the husband of the deceased.

6. For what has been discussed above a conclusion is inescapable that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. This appeal is, therefore, allowed, the conviction and sentence of the appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in connection with any other case.

Judge

Judge

Judge

Islamabad

07.03.2017

Approved for reporting.

Arif