

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Jamal Khan Mandokhel

Criminal Appeal Nos.15-Q & 16-Q of 2020

(Against the judgment dated 03.09.2018 passed by the High Court of Balochistan, Quetta in Cr. A. No.390 of 2016)

Muhammad Iftikhar

(in both cases)

...Appellant(s)

Versus

The State

(in both cases)

...Respondent(s)

For the Appellant(s): Syed Ayaz Zahoor, Sr.ASC
Mr. Gohar Yaqoob Yousafzai, AOR

For the State: Mr. Mushtaq Ahmed Qazi,
Addl. A.G. Balochistan

For the Complainant: Mr. Ahsan Rafique Rana, ASC

Date of hearing: 01.11.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.- Syed Zulfiqar, 42, was shot dead during the night between 27/28-1-2015 within the precincts of Police Station Qaidabad, Quetta; the appellant conveyed information to deceased's brother Jawad Hussain (PW-1) who attended the casualty in Civil Hospital Quetta. A solitary fire shot on the right side of face was opined as fatal. The complainant named the appellant as suspect without citing any motive for the crime.

Indicted before the learned Addl. Sessions Judge-II Quetta, the appellant claimed trial, pursuant where to, the prosecution produced a number of witnesses, complainant being the most prominent of them, who reiterated his case in the witness-box. The appellant confronted prosecution evidence with a denial, blaming the deceased, a drug addict, to have committed suicide, albeit in the premises they lived together. The learned trial Judge proceeded vide judgment dated 24.11.2016 to convict the appellant under clause (b) of section 302 of

the Pakistan Penal Code, 1860 and sentenced the appellant to imprisonment for life with a direction to pay compensation, upheld by a learned Judge-in-Chamber of the High Court of Balochistan vide impugned judgment dated 03.09.2018, being assailed through leave of the Court.

2. Learned counsel for the appellant contends that entire prosecution case is structured upon a misconceived and misplaced suspicion as there is no eye witness of the occurrence and no other than the appellant himself informed the complainant about the suicidal death of the deceased being his friend with whom he lived in the same premises; he has further argued that it was appellant himself who brought the deceased to the hospital in a bid to save his life; mere fact that the deceased lived with the appellant by itself is no proof that the appellant committed the crime. Contrarily, the learned Law Officer, assisted by counsel for the complainant, argued that the deceased resided with the appellant and it was within his exclusive knowledge as to what befell upon him as the story of suicide is negated by medical evidence whereunder the medical officer ruled out possibility of suicide pursuant to cross-examination conducted on behalf of the appellant; he adds that recovery of a .9 mm pistol wedded with the casing secured from the spot, in the totality of circumstances, constituted *proof beyond doubt* sufficient to sustain the conviction.

3. Heard. Record perused

4. Complainant is not an eye witness of the crime nor anyone else came forward to disclose the circumstances leading to the unnatural death of the deceased. It is also a common ground that the appellant not only took the deceased to the hospital but also informed the complainant at an odd hour of the night. Locale of injury being the face below the right eye with blackened margins is a possible choice for a person hell bent to take his own life. There is no positive opinion by the medical officer that ruled out the possibility of suicide; the conviction is based upon an indiscreet suggestion by defence lawyer with a grievous inaptitude and, thus, the appellant should not be allowed to be victim of a bad choice of his defence. Totality of circumstances fails to qualify to sustain the capital charge. Mystery of the occurrence is fraught with doubts and, thus, it would be unsafe to maintain the conviction. Criminal Appeal No.15-Q of 2020 is allowed; the impugned judgments of the courts below are set aside; the appellant

is acquitted of the charge; he has already been ordered to be released forthwith, if not required to be detained in any other case.

Criminal Appeal No.16-Q of 2020 stands dismissed as not pressed.

Judge

Judge

Judge

Quetta, the
1st November, 2021
Azmat/-