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. 297 OF 2020
(Against the judgment dated 27.06.2016 passed by the Lahore High Court, Rawalpindi Bench in Murder Reference No. 40/2013 and Criminal Appeal No. 338/2013)

Amir Muhammad Khan

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s): Mrs. Kausar Irfan Bhatti, ASC

For the State: Mirza Abid Majeed, DPG

For the Complainant: Nemo

Date of Hearing: 18.01.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellant was tried by the learned Additional Sessions Judge, Talagang, pursuant to a case registered vide FIR No. 8 dated 06.02.2013 under Section 302 PPC at Police Station Lawa, Tehsil Talagang, District Chakwal for committing murder of Adam Khan, father of the complainant. The learned Trial Court vide its judgment dated 20.07.2013 convicted the appellant under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.500,000/- to the legal heirs of each deceased. In appeal the learned High Court while maintaining the conviction of the appellant under Section 302(b) PPC, altered the sentence of death into imprisonment for life. Benefit of Section 382-B Cr.P.C. was also extended to the appellant. Being aggrieved by the impugned judgment, the appellant filed Jail Petition No. 454/2016 before this Court

wherein leave was granted by this Court vide order dated 13.05.2020 and the present appeal has arisen thereafter.

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

> "2. Brief facts of the case as per the complaint (Ex.PA) filed by Zafar Ali, complainant (PW-8) are that he was resident of Dhoke Chaki Dakhli Dhurnal and on 06.02.2012, he was grazing the cattle, at about 9.00 am, he heard noise. He went to his Dhoke, where his sister-in-law (Bhabi) Mst. Ansar Bibi (PW-9) told him that his father Adam Khan was getting ready to go to the village Dhurnal, when Amir Muhammad Khan while armed with hatchet came in the room and gave repeated hatchet blows on the neck and rear side of left hand of Adam Khan, deceased, who died at the spot.
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> 3. The motive behind the occurrence was alleged a dispute over land and construction of house."

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

4. At the very outset, learned counsel for the appellants argued that it was an unseen occurrence and the prosecution witness of the ocular account was not present at the spot. Contends that there are glaring contradictions and dishonest improvements in the statement of the eye-witness, which escaped the notice of the learned courts below. Contends that the ocular account is negated by the medical evidence and the statement of Zahid Iqbal, Halqa Patwari (PW-6), therefore, the same has lost its sanctity and the conviction cannot be based upon it. Contends that the prosecution has not been able to prove motive as alleged, which causes serious dent in the prosecution case. Contends that the recovery of weapon of offence is inconsequential because it was allegedly recovered from an open place, as

such, it cannot be made basis to sustain conviction of the appellant. Lastly 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.

5. On the other hand, learned Law Officer vehemently opposed this appeal on the ground that the eye-witness had no enmity with the appellant to falsely implicate him in this case. It has been contended that the medical evidence is also in line with the ocular account, therefore, the appellant does not deserve any leniency from 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. A bare perusal of the record reflects that the instant case, wherein the father of the complainant was done to death, took place at 09:00 am on 06.12.2012 whereas the crime report was lodged at 02:10 pm i.e. after more than five hours of the occurrence. The distance between the place of occurrence and the Police station was 21 kilometers. Nowhere in the entire evidence, the prosecution has explained the reason for the delay in reporting the matter to the Police with such a delay. The delayed FIR shows dishonesty on the part of the complainant and that it was lodged with deliberation and consultation. The prosecution case mainly hinges upon (i) the statement of Mst. Ansar Bibi (PW-9), who is the sole eye-witness of the occurrence, (ii) medical evidence, (iii) motive, and (iv) recovery on the pointation of the appellant. According to the Mst. Ansar Bibi, the occurrence took place at 09:00 am; the appellant inflicted two hatchet blows on the neck of the deceased and one blow on the back of left hand of the deceased. According to her, the occurrence took place in the house and the head of the deceased was decapitated from the rest of the body. She further stated during her cross-examination that both the head and the body were separately picked up by the Police. However, her stance is negated by the medical evidence. According to Dr. Rizwan Shahid (PW-10), the occurrence took place at 05:00 am and the

deceased was not beheaded. He further stated that there is every possibility that the injuries caused to the deceased were inflicted when he was sleeping, lying or during intoxication because the posture of the injuries showed that the injuries on the neck cannot be caused while in standing position. The statement of the doctor that the head of the deceased was not decapitated is further strengthened by Pervaiz Akhtar, SI/Investigating Officer (PW-11), who stated during his cross-examination that when he first saw the dead body, his head was not chopped up from his body. The stance of Mst. Ansar Bibi was further negated by Zahid Iqbal, Halqa Patwari (PW-6), who prepared scaled site plan. According to him, the occurrence took place at a deserted place; there was no house of anyone and there was also no blood sign at the place of occurrence. The appellant in his statement recorded under Section 342 Cr.P.C. had specifically taken the plea that in-fact it was the complainant, who being son of the deceased, had issues with him. The complainant wanted to marry his daughter with one Sher Afzal but his wife and other family members had objection over it. The deceased being father of the complainant had forbidden him from doing so but he did not do so. As a result, the wife of the complainant along with all children went to the house of the deceased. The deceased married the daughter of the complainant namely Sumaira Khatoon with Muhammad Yousaf and in the marriage ceremony the complainant did not participate. The complainant moved an application under Section 491 Cr.P.C, which has been placed on record as Ex.DB, in the Court of Additional Sessions Judge, Talagang against the deceased and others for recovery of his wife and his children. In the said application, he alleged that the deceased wanted to kill him and he has illegally detained his wife and children. Upon the said application, the learned Additional Sessions Judge, got recorded the statement of the wife of the complainant, who in categorical terms stated that she has never been detained by anyone and she along with her children is residing with her father-in-law i.e. the deceased with her free will. Thereafter, the learned Court disposed off the petition filed by the complainant vide order dated 12.07.2008. The said order has also been placed on record vide Ex.DC. It has come on the record that the appellant is grandson of the deceased and he

was being brought up by the deceased. The appellant alleged that due to the apprehension that the deceased would transfer his whole property in his name, the complainant committed murder of his father. When the appellant had taken a specific stance and in support of the same had placed on record the relevant documents, the learned High Court ought to have taken into consideration the statement of the appellant under Section 342 Cr.P.C. and would have properly scrutinized the evidence but the learned High Court even did not discuss it in the impugned judgment. As far as motive part of the prosecution story is concerned, the complainant in his statement stated that there was a dispute over land and construction of house due to which the appellant committed murder of his father. However, except for his oral assertion he did not produce any independent evidence to substantiate the motive part of the prosecution story, therefore, we are of the view that the prosecution has failed to prove motive. So far as recovery of blood stained hatchet is concerned, the same was allegedly recovered on the pointation of appellant from a thoroughfare, which was easily accessible to everyone, therefore, it is settled law that the same is inconsequential.

8. Mere heinousness of the offence if not proved to the hilt is not a ground to punish an accused. It is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. The peculiar facts and circumstances of the present case are sufficient to cast a shadow of doubt on the prosecution case, which entitles the appellants to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. This Court in the case of Mst. Asia Bibi Vs. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that "*if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq*

Pervaiz v. The State (1995 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar vs. State (2019 SCMR 129) when this Court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

9. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside. The appellant is acquitted of the charge. He shall be released from jail unless detained/required in any other case. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
18th of January, 2023
Approved For Reporting
Khurram