

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(D.J) AFR

CRIMINAL PETITION NO. 963-L OF 2016

(On appeal against the judgment dated 17.05.2016
passed by the Lahore High Court, Lahore in Criminal
Appeal No. 156/2012 & Murder Reference No.
97/2012)

Ijaz Ahmed

... Petitioner

VERSUS

The State etc

... Respondents

For the Petitioner: Mr. Muhammad Tahir Alam Qureshi, ASC

For the State: Mirza Muhammad Usman, DPG

Date of Hearing: 19.04.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner along with co-accused was tried by the learned Additional Sessions Judge, Ferozwala pursuant to a case registered vide FIR No. 284 dated 30.05.2009 under Sections 302/392/412 PPC at Police Station Sharaqpur Sharif, District Sheikhpura for committing robbery and murder of Touqir Ahmad, brother of the complainant. The learned Trial Court vide its judgment dated 24.01.2012 while convicting both the accused under Section 392 PPC, sentenced them to imprisonment for seven years and a fine of Rs.10,000/- each. In default of payment of fine, both the accused were to undergo two months SI. The learned Trial Court while acquitting the co-accused for the charge of murder, convicted the petitioner under Section 302(b) PPC and sentenced him to death. The petitioner was also directed to pay compensation amounting to Rs.100,000/- to the legal heirs of the deceased or in default whereof to further undergo SI for four months. In appeal, the learned High

Court while maintaining the conviction and sentences recorded against the petitioner, altered the sentence of death into imprisonment for life.

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

"2. Shabbir Ahmad complainant (PW.7) through written application Ex.P.A got registered FIR alleging that he is resident of Purani Bheni. On 30.05.2009 at about 07:00 PM Hafiz Arshad and Jahangir Abbas were coming from Mohanwal Band towards their village Purani Bheni while riding on motorcycle CD-70, when they reached at Band, two armed persons were standing there, who stopped Hafiz Arshad Ali and Jahangir Abbas on gun point, snatched mobile phone and Rs.6000/-, made them to sit in the jungle and went towards Purani Bheni while riding on the motorcycle of Hafiz Arshad. Hafiz Arshad was having another mobile phone in his pocket by which he informed his brother Akhtar Ali about the occurrence and told him that he accused persons are coming towards village while riding on a motorcycle which was snatched by them from him. On this information Touqir Ahmad Pannun brother of complainant, Amanat Ali son of Sher Muhammad, and Akhtar son of Akbar Ali, complainant alongwith many people of the village came out, on seeing them accused persons started running away while leaving behind motorcycle. The complainant and the people of the locality chased them. Both the accused started firing with their respective weapons. They alongwith other people of locality encircled the accused persons in Falsa garden of Abdul Wahid, and asked them to surrender but both the accused made straight firing on Touqir Ahmad, brother of the complainant, the fire made by accused Ijaz Ahmad with his gun 12 bore double barrel hit Touqir Ahmad, brother of the complainant to his abdomen, who succumbed to the injury at the spot. They overpowered both the accused who also sustained injuries during resistance. They snatched gun 12 bore double barrel from accused Ijaz Ahmad, while other accused, whose name afterward was disclosed as Munawar son of Shah Muhammad, caste Khokhar, resident of Faridwal, hide his gun 12 bore and snatched amount in the garden. Accused Ijaz Ahmad and Munawar, alongwith gun 12 bore owned by accused Ijaz Ahmad and snatched motorcycle were handed over to police."

3. After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced as many as 14 witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. However, he did not make his statement on oath under Section 340(2) Cr.P.C in disproof of allegations

leveled against him. He firstly opted to produce defence evidence but afterwards recorded a statement that he is not willing to produce any evidence in defence.

4. Learned counsel for the petitioner argued that there are glaring contradictions and dishonest improvements in the statements of the prosecution witnesses of the ocular account, which have escaped notice of the courts below. Contends that the prosecution has miserably failed to prove its case against the petitioner beyond reasonable doubt, therefore, there was no justification to convict the petitioner. Contends that not even a single crime empty was recovered from the crime scene and as such the recovery of weapon of offence is inconsequential. Contends that the prosecution story with regard to the recovery of the allegedly snatched amount from a 'Bagh' and the mobile is unbelievable and as such no case falling within the ambit of 'robbery' has been made out. Lastly contends that the impugned judgment is the result of misreading and non-reading of the evidence available on the record and the same is not sustainable in the eyes of law.

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the evidence led by the prosecution in the shape of ocular version duly supported by medical evidence and recovery of 12 bore gun along with snatched articles is sufficient to sustain the conviction of the petitioner, therefore, he 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 record.

As per the prosecution story, the occurrence happened in two episodes. In the first episode, the petitioner along with his co-accused allegedly snatched motorcycle, cash and mobile phone from Arshad Ali (PW-8) and Jahangir Abbas (PW-9) and fled away. As Arshad Ali was having another phone in his pocket, he informed his brother about the incident and thereafter in the second episode Akhtar Ali, brother of Arshad Ali,

Shabbir Ahmad, complainant (PW-7), Touqir Ahmad and Amanat Ali along with other villagers intercepted the petitioner while he was proceeding from Mohanwal Band to village Purani Bheni. When the petitioner saw the people, he left the motorcycle and tried to escape. When the petitioner was chased by the complainant and other people and was ultimately encircled by them, he fired from 12 bore gun, which hit Touqir Ahmad at his abdomen, who succumbed to the injury at the spot. With regard to evidence relating to robbery, we have found that the complainant in his cross-examination candidly stated that he has not seen the petitioner snatching motorcycle and other articles from Hafiz Arshad and Jahangir. It is the prosecution case that during chase, the petitioner concealed the cash under certain trees of Falsa Garden, which was subsequently recovered at his instance. However, this seems to be impossible because when the people were chasing him, it was not possible for the petitioner to dig a hole and conceal the amount therein. There is nothing in evidence as to whether the mobile phone, allegedly snatched by the petitioner, was recovered from him. No identification of said looted articles is established from the record to meet the legal requirements, hence, it cannot be considered sufficient to connect the petitioner with the commission of the crime to the extent of robbery. It is also on record that when the petitioner was apprehended, he was not on or with motorcycle, therefore, it can safely be said that recovery of motorcycle cannot be used against him. We are, therefore, of the opinion that the prosecution could not produce reliable evidence to sustain conviction of the appellant under Section 392 PPC.

7. Now coming to the second episode of the prosecution story, Shabbir Ahmad, complainant (PW-7) got recorded his statement with respect to the subsequent event, which led to murder of Touqir at the hands of the petitioner. This prosecution witness was subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be brought on record. He remained consistent on each and every material point, therefore, it can safely be concluded that his evidence is reliable, straightforward and confidence

inspiring. It is a settled principle of law that it is the quality of evidence which is to be considered and not the quantity of evidence. The evidence of one person, if found confidence inspiring, is sufficient to sustain conviction. This Court in Niaz ud Din Vs. State (2011 SCMR 725) has specifically held that *"conviction even in a murder case can be based on the testimony of a single witness, if court is satisfied that he is reliable; it is the quality of evidence and not the quantity which matters."* So far as the medical evidence is concerned, the same is in line with the prosecution story. As far as the question that the complainant was brother of the deceased, therefore, his testimony cannot be believed to sustain conviction of the petitioner is concerned, 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 unless previous enmity or ill will is established on the record to falsely implicate the accused in the case. Learned counsel for the petitioner could not point out any reason as to why the complainant has falsely involved the petitioner in the present case and let off the real culprit, who has committed murder of his real brother especially when he was apprehended at the spot after a chase of co-villagers. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit who murdered his brother and falsely involve the petitioner without any rhyme and reason. As we have held the commission of robbery doubtful due to lack of sufficient evidence, therefore, we are constrained to hold that the motive part of the prosecution is not proved. The recovery is also held to be inconsequential as no empty was recovered from the place of occurrence. So far as the quantum of punishment is concerned, the learned High Court while taking into consideration the fact that the petitioner only fired single shot coupled with the fact that motive has not been proved and the recovery is inconsequential has rightly taken a lenient view and converted the sentence of death awarded to the petitioner into imprisonment for life. No further leniency can be shown to the petitioner.

8. For what has been discussed above, while maintaining the conviction and sentence of the petitioner under Section 302(b) PPC along with compensation amounting to Rs.100,000/- to the legal heirs of the deceased or in default whereof to further undergo SI for four months, the conviction and sentence of the appellant under Section 392 PPC is set aside. This petition is converted into an appeal, partly allowed and the impugned judgment is modified accordingly. The above are the detailed reasons of our short order of even date.

Islamabad, the

19th of April, 2022

Approved For Reporting

Khurram