

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE ATHAR MINALLAH

(AFR)

CRIMINAL APPEAL NO. 190 OF 2020

(Against the judgment dated 21.10.2015 passed by the
Lahore High Court, Rawalpindi Bench in Criminal Appeal
No. 38-J/2010, Criminal Revision No. 56/2010 and Murder
Reference No. 100/2010)

Ali Asghar @ Aksar

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s):	Syed Rifaqat Hussain Shah, ASC
For the State:	Mirza Muhammad Usman, DPG
For the Complainant:	Mr. Muhammad Bashir Paracha, ASC
Date of Hearing:	07.12.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellant Ali Asghar was tried by the learned Additional Sessions Judge, Attock, pursuant to a case registered vide FIR No. 258 dated 21.08.2009 under Section 302 PPC at Police Station Saddar, Attock for committing murder of Ehsan Ullah, brother of the deceased. The learned Trial Court vide its judgment dated 15.02.2010 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/- to the legal heirs of the deceased or in default whereof to further undergo six months SI. In appeal the learned High Court maintained the conviction and sentence of death under Section 302(b) PPC. The amount of compensation and the sentence in default whereof was also maintained. Being aggrieved by the impugned judgment, the appellant filed Jail Petition No. 501/2015 before this Court wherein

leave was granted by this Court vide order dated 05.03.2020 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 disclosed by Naveed Akram, complainant (PW-10) in his statement on the basis of which formal crime report was recorded, are that they are three brothers. On 21.08.2009, he along with his elder brother Ehsan Ullah and Iftikhar Khan (PW-11) was sitting in their Baithak situated in Mauza Mongiwal. His brother Ehsan Ullah went out towards their agricultural farm. He and Iftikhar Khan (PW-11) also followed him. At 04.30 pm, when they reached near the shop of one Abdul Manan which was closed due to Jumma tul Mubarik and Ali Asghar, appellant, was standing near the shop who raised lalkara to Ehsan Ullah, deceased, that he had insulted him at his farm and he will teach him a lesson and after taking out .30 bore pistol from fold of his Shalwar, made straight fires at Ehsan Ullah which landed on his right hand and right side of his abdomen who after sustaining injuries fell down. The occurrence, besides him was witnessed by Iftikhar Khan (PW-11) and Azeem Khan (given up PW), who per chance was passing by there. Ali Asghar after the occurrence fled away from the spot.

The motive behind the occurrence, as disclosed by the complainant in Exh.PH was that on 20.08.2009 a quarrel took place between Ali Asghar and servant of Ehsan Ullah deceased and Ehsan Ullah reprimanded the appellant and due to this grudge, Ali Asghar has committed the murder of Ehsan Ullah. The complainant further stated that they were taking Ehsan Ullah in injured condition to hospital, Attock, who succumbed to the injuries.

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. 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. He also did not produce any evidence in his defence.

4. Learned counsel for the appellant while opening his arguments has stated that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which escaped the notice of the learned courts below. Contends that the presence of the

prosecution witnesses at the place of occurrence was doubtful and they have not explained the same. Contends that the prosecution witnesses are interested and related, therefore, their evidence 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. Lastly contends that the impugned judgment passed by the learned High Court is the result of mis-reading of the evidence, therefore, the same may be set at naught.

5. On the other hand, learned Law Officer assisted by learned counsel for the complainant vehemently opposed this appeal on the ground that the eye-witnesses had no enmity with the appellant to falsely implicate him in this case. It has been contended that the eye-witnesses have reasonably explained their presence at the spot at the relevant time, which is quite natural and probable and 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.

A bare perusal of the record shows that the unfortunate incident, wherein the brother of the complainant lost his life, took place on 21.08.2009 at 4.30 PM. The matter was reported to the Police and the FIR was lodged on the same day at 06.15 PM i.e. just after one hour and forty five minutes of the occurrence. Keeping in view the inter se distance between the place of occurrence and the Police Station i.e. 20 kilometer, the FIR is considered to be promptly lodged. The occurrence took place in the broad daylight whereas the parties were known to each other, therefore, there is no chance of misidentification. The ocular account in this case has been furnished by Naveed Akram Khan, complainant (PW-10) and Iftikhar Khan (PW-11). The complainant Naveed Akram was brother of the deceased while the other PW Iftikhar Khan was maternal uncle (*khaloo*) of the deceased. Both these witnesses were residents of the same

locality where the occurrence took place, therefore, their presence at the place of occurrence on the fateful day and time is not unnatural. 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 brought on record. Both these PWs remained consistent on each and every material point inasmuch as they made deposition according to the circumstances surfaced in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. The medical evidence available on the record further corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person 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. As far as the question that the prosecution witnesses are interested and related, therefore, their evidence has lost its sanctity is concerned, it is now settled that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses. Learned counsel for the appellant could not point out any plausible reason as to why the complainant has falsely involved the appellant in the present case and let off the real culprit, who has committed murder of his real brother. Substitution in such like cases is a rare phenomenon. 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. It is settled law that even if there are some minor discrepancies, the same should be ignored if they do not hamper the salient features of the prosecution case. As long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. 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. From the place of occurrence, two crime empties of .30 bore pistol were recovered. The same were sent to Forensic Science Laboratory on 26.08.2009 whereas the pistol recovered from the appellant was subsequently sent to FSL on 03.09.2009 much prior to the dispatch of the pistol. According to the report of the FSL, the crime empties matched with the weapon recovered from the appellant. In these circumstances, there is sufficient material available on record to sustain conviction of the appellant. However, so far as the quantum of punishment is concerned, we are of the view that the same requires consideration. According to the prosecution, on 20.08.2009 a quarrel took place between the appellant and servant of Ehsan Ullah, deceased. The deceased had reprimanded the appellant and due to this grudge, the appellant committed the murder of Ehsan Ullah. The prosecution has also produced servant of the deceased namely Sher Ahmed as PW-7. In his statement, Sher Ahmed deposed that the appellant wanted him to work with him and he asked him to leave the job of the deceased. A bare perusal of the statement of the said witness reveals that the real motive of the appellant was with the said Sher Ali, therefore, the actual motive to commit the murder of Ehsan Ullah remained shrouded in mystery. It is now well established that if a specific motive has been alleged by the prosecution then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence. Otherwise, the said motive might be considered a mitigating circumstance in favour of an accused. However, where no motive is alleged, the capital punishment can be awarded keeping in view the evidence led by the prosecution. In these circumstances, we are of the view that the penalty of death would be harsh. Consequently, while maintaining the conviction of the appellant under Section 302(b) PPC, the sentence of death is altered into imprisonment for life duly provided under the statute. The amount of

compensation and the sentence in default whereof is also maintained. Benefit of Section 382-B Cr.P.C. is also extended to the appellant.

7. For what has been discussed above, this appeal is partly allowed and the impugned judgment is modified as stated in the preceding paragraph.

Islamabad, the
7th of December, 2022
Approved For Reporting
Khurram