

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

JAIL PETITION NO. 883 OF 2017 AND
CRIMINAL PETITION NO. 1793-L OF 2017

(On appeal against the judgment dated 23.10.2017 passed by the Lahore High Court, Lahore in Criminal Appeal Nos. 1273 & 1125/2013, Criminal Revision No. 675/2013 and Murder Reference No. 209/2013)

Aman Ullah
Riaz Hussain

(In JP 883/2017)
(In Cr.P. 1793-L/2017)
...Petitioner(s)

VERSUS

The State etc

(In both cases)
...Respondent(s)

For the Petitioner(s):

Rana Ghulam Sarwar, ASC
(In JP 883/2017)

Mr. Shahid Tabbassum, ASC
(In Cr.P. 1793-L/2017. Through video link from Lahore)

For the State:

Mirza Muhammad Usman, DPG

Date of Hearing:

07.02.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner Aman Ullah along with co-accused was tried by the learned Sessions Judge, Bhakkar pursuant to a case registered vide FIR No. 658 dated 11.11.2010 under Sections 302/324/34 PPC at Police Station Saddar, Bhakkar for committing murder of Niaz Hussain and for causing injuries to Mst. Farzana Bibi, brother and sister-in-law of the complainant. The learned Trial Court vide its judgment dated 03.07.2013 while acquitting the co-accused, convicted the petitioner 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 suffer six

months SI. He was also convicted under Section 324 PPC and was sentenced to ten years RI with a direction to pay fine of Rs.50,000/- or in default thereof to further undergo six months SI. He was further convicted under Section 337-D PPC and was sentenced to ten years RI and to pay *Arsh* equivalent to one third of Diyat according to value fixed for the year of occurrence i.e. 2010-2011. Till payment of the same, the petitioner was ordered to be kept in jail. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioner. In appeal the learned High Court while maintaining the conviction of the petitioner under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The other conviction and sentences were maintained. The amount of compensation and the sentence in default whereof was also maintained. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioner.

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

"2. Briefly stated the case of the prosecution as unveiled by Riaz Hussain complainant (PW.3) in FIR (Exh.PB/1) is to the effect that on 11.11.2010 at about 10:30 a.m. he along with his brother Niaz Hussain and his Bhabi Mst. Farzana Bibi was present in his house situated in Basti Lugran Wali; that Aman Ullah (petitioner) armed with pistol .30 bore along with an unknown person armed with rifle came there on motorcycle and parked the motorcycle outside his brother's house; that unknown accused kept standing as guard near motorcycle while Aman Ullah (petitioner) entered in the Haveli and raised lalkara for not sparing complainant's brother and fired successive shots from his pistol hitting at the chest and belly of Niaz Hussain; that when Mst. Farzana Bibi stepped forward to rescue Niaz Hussain, Aman Ullah (petitioner) made a fire shot from his pistol which landed on her abdomen; that on hearing their hue and cry as well as reports of firing, PW Kallu Khan (given up) and Ansar Abbas (PW.19) attracted to the scene and witnessed the occurrence. They tried to apprehend Aman Ullah etc, whereupon they aimed their weapons at them and warned not to come near and made good their escape from the spot. Niaz Hussain and Farzana Bibi, who were seriously injured, were taken to HQ Hospital, Bhakkar, where Niaz Hussain succumbed to the injuries. The motive behind the occurrence statedly was the love marriage of Niaz Hussain (deceased) and Mst. Farzana Bibi."

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 twenty 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 neither appeared as his own witness on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against him nor produced any evidence in his defence.

4. At the very outset, learned counsel for the petitioner contended that there are material contradictions and discrepancies in the statements of the eye-witnesses, which have not been taken into consideration by the courts below. Contends that the PWs are interested and related to each other and their evidence has lost its sanctity. Contends that the prosecution case is based upon whims and surmises and it has to prove its case without any shadow of doubt but it has miserably failed to do so. Contends that the medical evidence contradicts the ocular account. Contends that the prosecution has not been able to prove motive and recoveries as alleged, which causes serious dent in the prosecution case. Contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer assisted by learned counsel for the complainant vehemently opposed this petition on the ground that the eye-witnesses had no enmity with the petitioner 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 petitioner does not deserve any leniency from this Court, rather his sentence of imprisonment for life may be enhanced to death.

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 and his sister-in-law sustained injuries, took place on 11.11.2010 at 10:30 am. The deceased and injured PW were firstly taken to DHQ Hospital Bhakkar where the matter was reported to the Police. The FIR was lodged on the same day at 1:45 am. The distance between the place of occurrence and the Police Station was 32 kilometers whereas as per the record the place of occurrence was one hour away from the DHQ Hospital. Thus, it can be said that FIR was lodged with promptitude. Promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation. There was hardly any time with the complainant or other witnesses to fabricate a false story. The occurrence took place in the broad daylight and the parties were known to each other, therefore, there is no chance of misidentification. The ocular account in this case has been furnished by Riaz Hussain, complainant (PW-3), Mst. Farzana Bibi, injured (PW-4) and Ansar Abbas (PW-19). Mst. Farzana Bibi was inmate of the house where the occurrence took place whereas complainant Riaz Hussain was residing in the adjacent house. Similarly, Ansar Abbas (PW-19) was resident of the same locality. Therefore, the presence of these PWs at the place of occurrence was natural. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be brought on record. These witnesses have given all necessary details of occurrence qua the date, time, place, name of accused, name of witnesses, manner of occurrence, kind of weapon used in the occurrence, the locale of injuries and the motive of occurrence. 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. Mst. Farzana had sustained injuries during the occurrence, which have fully been supported by the medical evidence given by Dr. Saira Batool, who appeared as PW-7. The testimony of this

injured PW as well as the stamp of injuries on her person clearly proves her presence at the place of occurrence. 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 and injured 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 and the same alone is sufficient to sustain conviction of an accused. Reliance is placed on Muhammad Iqbal Vs. The State (1996 SCMR 908), Naeem Akhtar Vs. The State (PLD 2003 SC 396), Faisal Mehmood Vs. The State (2010 SCMR 1025) and Muhammad Ilyas Vs. The State (2011 SCMR 460). It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain the conviction. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where accused caused injuries. It becomes highly improbable to correctly mention the number and location of the injuries with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. 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 petitioner could not point out any plausible 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. 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. The weapon of offence i.e. pistol .30 bore, recovered at the instance of the petitioner and the crime empties collected from the place of occurrence were separately sent to the Forensic Science Laboratory and the report is positive. The motive behind the occurrence was statedly the love marriage of Niaz Hussain, deceased, with Mst. Farzana Bibi. However, the learned High Court has rightly discarded the same by holding that the love marriage had taken place about two years back and the grievance of the family of Mst. Farzana Bibi had been redressed as pursuant to a compromise the daughter of the deceased Mst. Zarqa was given in the nikah of one Abdul Rehman, son of co-accused Ghulam Sarwar. Hence, the motive part of the prosecution case does not inspire confidence so as to term it is as a cause of the murder. Keeping in view the fact that motive was disbelieved, the learned High Court has rightly taken a lenient view and converted the sentence of death into imprisonment for life to meet the ends of justice, hence, it leaves no room for us to further deliberate on this point. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the petitioner has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court. Before parting with the judgment, we may observe that the petitioner was convicted under three provisions of law i.e. Sections 302(b), 324 and 337-D PPC. The impugned judgment is silent as to whether these sentences are to run concurrently or consecutively. Probably, the learned High Court inadvertently omitted to order running of the sentences of imprisonment concurrently. There is no denial to this fact that all the offences for which the petitioner was convicted had been committed in one and the same transaction, therefore, in the interest of justice, we direct that all the sentences of imprisonment shall run concurrently.

7. For what has been discussed above, we do not find any merit in these petitions, which are dismissed and leave to appeal is refused.

JUDGE

JUDGE

JUDGE

Islamabad, the
7th of February, 2023
Approved For Reporting
Khurram