

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE ATHAR MINALLAH

JAIL PETITION NO. 553 OF 2017

(On appeal against the judgment dated
06.06.2017 passed by the Lahore High Court,
Lahore in Criminal Appeal No. 106-J/2014 and
Murder Reference No. 79/2014)

Aqil

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s):

Mr. Rizwan Ibrahim Satti, ASC

For the State:

Mirza Abid Majeed, DPG

Date of Hearing:

16.02.2023

JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Petitioner Aqil along with three co-accused was tried by the learned Additional Sessions Judge, Chiniot pursuant to a case registered vide FIR No. 356 dated 05.10.2011 under Sections 302/364-A/337-A(I)/337-L(ii)/109 PPC at Police Station Langrana, Chiniot for committing murder of Mst. Mukhtar Bibi and Mst. Allah Maufi, mother and sister of the complainant and for causing injuries to the complainant. The learned Trial Court vide its judgment dated 27.02.2014 while acquitting the co-accused, convicted the petitioner under Section 302(b) PPC and sentenced him to death on two counts. He was also directed to pay compensation amounting to Rs.50,000/- on each count to the legal heirs of both the deceased. In default he was to suffer six months SI on each count. 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 on two counts. 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. Prosecution case in brief unfolded in the F.I.R. **(Ex.PA)** by Mst. Farhat Bibi complainant **(PW-2)** is that she is resident of Chak No.211/J.B and was married to Azhar whereas her maternal uncle/appellant Aqil was married to Tasleem Bibi, sister of her husband as a result of exchange. However, because of strained family relations, complainant was divorced by her husband Azhar and due to this reason, wife of Aqil also went to her parents' house. On 05.10.2011 at about 07:30 a.m. complainant alongwith her mother Mukhtar Bibi and two sisters Allah Muafi and Allah Shafi was going towards Chak Sarghana for picking cotton and when they reached near the land owned by Allah Yar Joota within the jurisdiction of Chak No.211/J.B, appellant Aqil alongwith his co-accused Ulfat and Umer Hayat came at the spot on a motorbike driven by accused Ulfat, who asked the appellant that the complainant's family had collapsed his matrimonial life, therefore, they should not be spared, upon that appellant Aqil made four consecutive fires with his pistol hitting near right chest, belly, right shoulder and at the right flank of Mukhtar Bibi, who fell down, then, the appellant again made four consecutive fires hitting at the left arm, near left chest, left flank and right hand of Allah Muafi, who also fell down. When the complainant raised hue and cry, co-accused of the appellant Umer Hayat gave fist blows hitting at the lower part of left eye and he also snatched her minor daughter Samreen Bibi aged about 6 years. On hearing hue and cry, PWs Goga and Riaz reached at the spot and witnessed the occurrence and on seeing them, appellant alongwith his co-accused Ulfat and Umer Hayat while making aerial firing fled away from the spot on the motorbike and also took away daughter of the complainant Samreen Bibi. Complainant alongwith the PWs tried to rescue Mukhtar Bibi and Allah Muafi but they both succumbed to the injuries.

Motive behind the occurrence as per FIR. **(Ex.PA)** is that appellant Aqil was married in exchange of the complainant Mst. Farhat Bibi and when she was divorced by her husband, the wife of appellant also left his house and went to her parent's house, due to that grudge, appellant alongwith his co-accused Ulfat and Umar Hayat in furtherance of their common intention has committed murder of Mukhtar Bibi and Allah Muafi on the abetment of accused Atta and also snatched daughter of the complainant for the purpose of committing her murder."

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 ten 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 on the same set of evidence, three co-accused of the petitioner have been acquitted but the petitioner has been convicted, which is against the canons of justice. Lastly 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 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.

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 mother and sister of the complainant lost their lives,

took place on 05.10.2011 at 07:30 am whereas the FIR was registered on 08:55 am i.e. just after one hour and 25 minutes of the occurrence. The distance between the place of occurrence and the Police Station was 25 kilometers. Thus, it can safely 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 Mst. Farhat Bibi, complainant (PW-2) and Mst. Allah Shafi (PW-3). These PWs were residents of the same locality where the occurrence took place and they along with the deceased were going towards fields to pick cotton. 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. Farhat Bibi had sustained injuries during the occurrence, which have fully been supported by the medical evidence given by Dr. Shagufta Zahoor, who appeared as PW-5. 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. In the circumstances of the case, both these witnesses were the only and most natural witnesses. There is no denial to this fact that these PWs were related with the deceased but merely for this reason they cannot be called "interested" witnesses. The term "related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit in seeing an accused person punished. A witness who is a natural one and is

the only possible eyewitness in the circumstances of a case cannot be said to be "interested"." In the present case, the eye witnesses, one of whom was an injured eye-witness have spoken consistently and cogently in describing the manner of commission of the crime in detail. The testimony of an injured eyewitness carries more evidentiary value. The Court is not persuaded that their evidence is to be discarded merely because they happen to be related 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 her mother and sister. Substitution in such like cases is a rare phenomenon. 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. Minor 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. 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. We may point out that 'discrepancy' has to be

distinguished from 'contradiction'. Contradiction in the statement of the witness is fatal for the prosecution case whereas minor discrepancy or variance in evidence will not make the prosecution case doubtful. It is normal course of the human conduct that while narrating a particular incident there may occur minor discrepancies. Parrot-like statements are always discredited by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounts to contradiction, regard is required to be made to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witnesses were making the statement. There are always normal discrepancies, howsoever, honest and truthful a witness may be. Such discrepancies are due to normal errors of observation, memory due to lapse of time and mental disposition such as shock and horror at the time of occurrence. Material discrepancies are those which are not normal and not expected of a normal person. The recovery of weapon of offence was inconsequential as admittedly no crime empty was recovered from the place of occurrence. The complainant had alleged a specific motive that the petitioner Aqil was married with her husband's sister in exchange of the complainant Mst. Farhat Bibi. When she was divorced by her husband, the wife of the petitioner also left his house and went to her parent's house and due to this grudge, the petitioner committed murder of complainant's mother and sister. However, the learned High Court has rightly disbelieved the motive by holding that the incident of divorce took place two years prior to the occurrence, therefore, what happened immediately before the occurrence, which provoked the petitioner to take lives of two innocent persons, remained shrouded in mystery. Hence, the motive part of the prosecution case does not inspire confidence so as to term it is as a cause of the murder. So far as the acquittal of the three co-accused of the petitioner is concerned, the case of the petitioner is distinguishable to that of the acquitted co-accused simply for the reason that none of them had caused any injury to any of the deceased. Keeping in view the fact that motive has been disbelieved and the recovery is inconsequential, 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.

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

JUDGE

JUDGE

JUDGE

Islamabad, the
16th of February, 2023
Approved For Reporting
Khurram