

IN THE SUPREME COURT OF PAKISTAN
(Shariat Appellate Jurisdiction)

Shariat Appellate Bench:

Justice Qazi Faez Isa, Chairman
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan
Dr. Muhammad Khalid Masud
Dr. Qibla Ayaz

Criminal Shariat Appeal No. 2 of 2018

(Against the judgment dated 24.01.2012 of the Federal Shariat Court, Islamabad passed in Criminal Appeal No.164-L of 2004 and Crl. Murder Reference No.8-L/2005)

Imran alias Mani. ... *Appellant*

Versus

The State. ... *Respondent*

For the Appellant: Mr. Humayoun Rashid Ch., ASC.

For the State: Mr. Ahmed Raza Gillani,
Additional Prosecutor-General, Punjab.

For the Complainant: Mr. Zulfiqar Ahmed Bhutta, ASC.

Date of Hearing: 08.08.2024.

JUDGMENT

Qazi Faez Isa, Chairman. This appeal, with the leave of the Court, has been filed against the judgment dated 24 January 2012 of the Federal Shariat Court, Islamabad, whereby the judgment dated 27 May 2004 of the learned Additional Sessions Judge, Wazirabad (**'Trial Court'**) was upheld and the convictions and sentences of the appellant were maintained.

2. The Trial Court had convicted and sentenced the appellant under section 302(b) read with section 34 of the Pakistan Penal Code, 1860 (**'PPC'**) to death on two counts, respectively for the murder of Muhammad Siddique, aged about 70 years, and Ghulam Sakina, aged about 65 years (**'the deceased'**) and ordered payment of compensation of one hundred thousand rupees each to their legal heirs and in default of payment to undergo simple imprisonment for six months. The appellant was also convicted under section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (**'the Ordinance'**) for committing *zina* with co-

accused, namely, Memona, and sentenced to rigorous imprisonment for seven years and to pay a fine of ten thousand rupees. The co-accused, Memona, was granted bail on 14 October 2004 by the Federal Shariat Court, but then she disappeared and her appeal (Criminal Appeal No. 165/L of 2004) was separated from that of the appellant.

3. The prosecution case is that on 29 May 2003 Nasrullah Khan (PW-7), Khalid Hussain (PW-8) and Khalid Mehmood (who was given up by the prosecution), after saying *fajar* prayers in a nearby mosque were passing the house of the deceased at around 4.30 am and peeped through a window opening on the road of the said house and saw the appellant and co-accused Memona, who were both undressed, committing *zina*. Therefore, they banged at the outer door of the house, which was locked from inside, but no one opened it so they went to the adjacent neighbour's house but such neighbour did not open the door of his house, therefore, they went to the other adjacent neighbour's house, owned by Muhammad Nawaz. Muhammad Nawaz opened the door of his house and allowed them to enter and to jump over the common wall and thus they gained entry into the house of the deceased, where they found the said two accused in the act of killing the deceased.

4. We have heard the learned counsel for the appellant, the learned counsel for the complainant (Nasrullah Khan) and the learned Additional Prosecutor-General, Punjab ('APG'). The complainant's learned counsel and the learned APG have opposed the appeal.

5. The case put forward by the prosecution is that the said three persons peeped through a window of the house and saw *zina* being committed in the full glare of a lit bulb. And, presumably, to stop the act of *zina* entered the house of the deceased, through the neighbours house, by jumping over the common wall, and at that very moment they saw the appellant and the co-accused trying to kill the deceased. Incidentally, all the three stated eyewitnesses are related and are also related to the deceased, however, one of them (Khalid Mehmood) did not testify. Another material witness, namely, Muhammad Nawaz, also did not testify.

6. To better understand the prosecution case we examined the site plan which was prepared of the crime scene and tendered in evidence by the prosecution. The site plan shows the room in which the stated *zina* was being committed, which is at one end of the house and the room in which

the deceased were being killed lies at the very opposite end. These two rooms are separated by a courtyard and another room. The placement of the rooms is such that the deceased would not be able to see into the room where the alleged *zina* was being committed even if the doors of both these rooms were left open. Therefore, the stated motive to kill the deceased, that is, their witnessing the accused and co-accused committing *zina*, does not stand to reason, and, thus, there was no reason to silence them. It is also not the prosecution's case that the deceased were alerted and had come to investigate nor that they were killed at a place other than in their own room. It is also most unlikely, if not wholly unbelievable, that while committing *zina* the accused would suddenly be motivated to proceed to kill two elderly persons who lay sleeping. And, assuming that the accused had been found committing *zina* by the said three eyewitnesses it is but reasonable to presume that the accused would get dressed and make good their escape or would try to do so.

7. The prosecution case is further undermined when two essential prosecution witnesses were given up, and for no reason. These were the eyewitness, Khalid Mehmood, and Muhammad Nawaz, the said neighbour. The entire case of the prosecution rests on the testimony of Nasrullah Khan (PW-7) and Khalid Hussain (PW-8). Nasrullah testified that after he gained entry into the house of the deceased one of them was alive for about fifteen to twenty minutes and the other for about ten to fifteen minutes, however, he did absolutely nothing to save their lives; no first aid was rendered, no attempt made to shift them to a hospital or send for a doctor or any local medical practitioner. He testified that after spending an hour and a quarter in the house he left Khalid Mehmood to '*watch over*' the two accused and went with Khalid Hussain to report the crime to the police. This aspect of the case is also doubtful because, if his version is accepted, it would mean that two accused, who had tried to kill the deceased, were left in the custody of just one person, namely, Khalid Mehmood. As stated above Khalid Mehmood did not come forward to testify and support this aspect of the prosecution case and the alleged witnessing of the said *zina*.

8. As regards the offence of *zina* no article was recovered which may have had the appellant's semen which could be his clothing, the bedsheet/mattress, bed or any other place on which the said act was stated to have been committed. The prosecution case also has other lacunae and contradictions. And, it does not stand to reason, that *zina* was being

committed in a fully lit room, which could be seen into from the road, nor that immediately after committing *zina* the accused would set upon to kill (for no apparent reason) the deceased, who were the co-accused's in-laws.

9. We are dismayed by the utter lack of professionalism of the investigators and the prosecution of the murder of the deceased. The prosecution had completely failed to establish its case, let alone met the required test of beyond reasonable doubt. Therefore, the convictions and resultant sentences of the appellant cannot be sustained and the impugned judgment and that of the Trial Court are set aside by allowing this appeal. The appellant is acquitted of all charges levelled against him arising out of the case, being FIR No. 106/03, dated 29 May 2003, registered at Police Station Ahmed Nagar, Wazirabad, and he be released forthwith, if not required to be detained in any other case.

10. In conclusion, we may observe that faulty and defective investigations and resultant prosecutions not only heap misery on the accused and his family but also on the family of victims, and leave crimes unaccounted. This travesty could have been avoided if the investigators and prosecutors had done a better job. Judges must also be mindful of their duty to provide expeditious justice. Unfortunately, this Court remained inactive for a considerable time, which is something not envisaged by the Constitution of the Islamic Republic of Pakistan. Moreover, this Court must always be available to hear criminal cases, and the available Judges of the Supreme Court to work as Members of this Court, including during summer vacations. Leave to appeal in this case was granted on 18 September 2018 and this appeal is decided after almost six years, and for such delay this Court expresses its deepest regrets.

Chairman

Member

Member

Member

Member

Islamabad:
08.08.2024
(M. Tauseef)

Approved for reporting