

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik and Syed Mansoor Ali Shah, JJ**ALTAF HUSSAIN---Appellant****Versus****The STATE---Respondent**

Criminal Appeal No. 62-L of 2018, decided on 27th November, 2018.

(On appeal from the judgment of the Lahore High Court, Lahore dated 27.05.2015 passed in Crl. Appeal No. 1543 of 2010, Crl. Revision No. 277 of 2013 and PSLA No. 7 of 2013)

(a) Penal Code (XLV of 1860)---

---S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence--- Delay in reporting matter to police and lodging of FIR---Present case was registered under the orders of the Justice of the Peace on 19.03.2006 regarding an occurrence alleged to have taken place on 09.02.2006 and as such there was a delay of forty days in reporting the crime to the police without any plausible explanation---Complainant stated in his examination-in-chief that they reported the matter to the police repeatedly but the case was not registered, however, such assertion was not substantiated by any document---Deceased was medically examined in injured condition through police on 9.2.2006 i.e. the date of occurrence, therefore, the inordinate delay in setting the machinery of law in motion spoke volumes against the veracity of prosecution version---Doctor who had examined the deceased was not produced before the court---Motive behind the occurrence and alleged recovery of a dagger at the instance of the accused were not believed by the courts below for valid reasons---Besides the accused three other co-accused persons were also indicted in the case, who were acquitted by the Trial Court and appellate court and their acquittal had attained finality---Prosecution had failed to prove its case against the accused beyond reasonable doubt---Appeal was allowed and the accused was acquitted of the charge framed against him.

(b) Penal Code (XLV of 1860)---

---S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Presence of eye-witnesses at the scene of occurrence doubtful---Ocular account of the incident was furnished by the complainant and another eye-witness, however, perusal of statement made by deceased before his death did not disclose their presence at the scene of occurrence, therefore, it was highly unsafe to rely on the statements of both these witnesses to maintain conviction and sentence of the accused on a capital charge---Prosecution had failed to prove its case against the accused beyond reasonable doubt---Appeal was allowed and the accused was acquitted of the charge framed against him.

(c) Penal Code (XLV of 1860)---

---S. 302(b)---Qatl-i-amd---Witnesses, reliance upon---Scope---When a set of witnesses was disbelieved to the extent of some accused the same could not be believed to the extent of remaining accused facing the same trial without there being any independent and strong corroboration.

Shahid Azeem, Advocate Supreme Court and Naveed Ahmad Khawaja, Advocate Supreme Court for Appellant.

Mazhar Sher Awan, Additional P.-G. for the State.

Mst. Murid Fatima mother of the deceased and wife of the Complainant in person.

Date of hearing: 27th November, 2018.

JUDGMENT

MANZOOR AHMAD MALIK, J.---Appellant Altaf Hussain and three of his co-accused Nisar Ahmad, Muhammad Aslam and Mst. Amiran were indicted by the learned Additional Sessions Judge, Shorkot, District Jhang to face trial in case FIR No. 137 of 2006 dated 19.03.2006 offence under sections 337-F(iv), 336 and 34, P.P.C. (later on added sections 302 and 324, P.P.C.) registered at Police

Station City Shorkot, District Jhang. On conclusion of trial, the learned trial court, vide its judgment dated 08.05.2010, convicted the appellant under section 302(b), P.P.C. and sentenced him to imprisonment for life. He was further ordered to pay Rs.2,00,000/- (rupees two lakh only) as compensation under section 544-A, Code of Criminal Procedure to the legal heirs of the deceased and in default of the payment of compensation he had to undergo simple imprisonment for six months. Benefit of section 382-B, Code of Criminal Procedure was extended to the appellant. Through the same judgment, the learned trial Court while extending the benefit of doubt, acquitted Nisar Ahmad, Muhammad Aslam and Mst. Amiran co-accused of the appellant. Aggrieved of his conviction/sentence, the appellant filed a criminal appeal before the learned High Court. The complainant also filed a criminal revision for enhancement of sentence of the appellant. Petition for Special Leave to Appeal was also filed against acquittal of Nisar Ahmad, Muhammad Aslam and Mst. Amiran. The learned High Court through the impugned judgment dismissed the criminal appeal of the appellant as well as the criminal revision and PSLA filed by the complainant. Thereafter, the appellant filed a criminal petition for leave to appeal, wherein leave to appeal was granted by this Court on 09.11.2018 to reappraise the entire evidence available on record for safe administration of criminal justice. Hence, the instant criminal appeal.

2. We have heard counsel for the appellant, learned Additional Prosecutor General for the State as well as mother of the deceased present in person and have also gone through the relevant record.

3. This case was registered under sections 337-F(iv), 336 and 34, P.P.C. at Police Station Shorkot City District Jhang under the orders of the learned Justice of the Peace Jhang on 19.03.2006 regarding an occurrence alleged to have taken place on 09.02.2006 and as such there is a delay of forty days in reporting the crime to the Police without any plausible explanation. While appearing before the learned trial court as PW.3 Saeed Ahmad complainant stated in his examination-in-chief that they reported the matter to the police repeatedly but the case was not registered, however, this assertion was not substantiated by any document. During the cross-examination he stated that he got (Exh.PA) drafted from an Araiz Navees (deed writer) on 18.03.2006 and the case was got registered on the following day. We have also observed that during the course of investigation statement of Sajjad Ahmad (deceased) then injured was recorded by the Police which has been brought on record as Exh.PH but even in the said statement there is no explanation whatsoever regarding the delay in reporting the matter to the Police. Moreover, it has been observed by us that Sajjad Ahmad (deceased) was medically examined in injured condition through police on 09.02.2006 at 1.45 p.m. i.e. the date of occurrence. Therefore, this inordinate delay in setting the machinery of law in motion speaks volumes against the veracity of prosecution version.

4. Ocular account in this case was furnished by Saeed Ahmad complainant "(PW.3) and Khan Muhammad (PW.4). However, perusal of the statement (Exh.PH) of Sajjad Ahmad (deceased) does not disclose the presence of these two witnesses and it was stated by him before the Police that after raising hue and cry, the male members were attracted to the scene, who beseeched the assailants and rescued him. Therefore, it is highly unsafe to rely on the statements of both these witnesses to maintain conviction and sentence of the appellant on a capital charge.

5. It is case of the prosecution that "Sajjad Ahmad injured remained admitted in the Allied Hospital Faisalabad and was medically examined there. His MLC was brought on record as Exh.PE/1 but the doctor who had examined Sajjad Ahmad was not produced before the court.

6. Motive behind the occurrence and alleged recovery of a dagger at the instance of the appellant were not believed by the learned courts below for valid reasons and upon our own independent appreciation of evidence we do not find any reason to differ with the well reasoned findings of the learned courts below qua motive and recovery of dagger.

7. There is another aspect of the case. As stated earlier besides the appellant three other persons were also indicted in this case three of whom namely Nisar Ahmad, Muhammad Aslam and Mst.

Amiran were acquitted by the learned trial court. PSLA No.67 of 2013 filed by the complainant against their acquittal was dismissed by the learned appellate court which was not assailed any further either by the complainant or the State and as such their acquittal attained finality. It is well settled by now that if a set of witnesses is disbelieved to the extent of some accused the same cannot be believed to the extent of remaining accused facing the same trial without there being any independent and strong corroboration. Upon scrutiny of the material available on record we have not been able to find any corroboration to maintain conviction and sentence of the appellant on a capital charge.

8. For what has been discussed above, we have no manner of doubt in our minds that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The instant criminal appeal is, therefore, allowed. The impugned judgments of the learned courts below to the extent of appellant Altaf Hussain are set aside. He is acquitted of the charge framed against him. He shall be released forthwith, if not required to be detained in any other criminal case.

MWA/A-2/SC Appeal allowed.