

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Yahya Afridi, JJ**MUHAMMAD AKRAM alias AKRAI---Appellant****Versus****The STATE---Respondent**

Criminal Appeal No. 160-L of 2013, decided on 7th March, 2019.

(On appeal against the judgment dated 08.03.2010 passed by the Lahore High Court, Lahore in Crl. As. Nos. 1139, 589 of 2004 and Murder Reference No. 484 of 2004)

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

----S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Complainant party made no conscious or deliberate delay in reporting the matter to police---Complainant was the brother of the deceased and also an eye-witness---Presence of both the eye-witnesses at the place of occurrence was established beyond doubt---Both eye-witnesses while appearing before the Trial Court remained consistent on all the material aspects of the case, and they, in a straightforward manner held the accused responsible for the murder of deceased---Probable time between death and postmortem as noted by doctor coincided with the ocular account---Prosecution had been successful in proving its case against the accused beyond reasonable doubt---Conviction of accused recorded under S. 302(b), P.P.C. was maintained in circumstances.

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

----S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence---Eye-witness---Presence at scene of occurrence---Plausible explanation---One of the eye-witness was a friend of deceased---Said eye-witness was an independent witness and the resident of the vicinity---In his statement recorded before the Trial Court, he stated that he had friendship with deceased for the last about 18/20 years; that the distance between his house and the house of the deceased was about 250 meters and that he was residing in the vicinity for the last 20 years---Said eye-witness had given a plausible explanation for his presence at the spot at the relevant time--- Conviction of accused for murder was maintained in circumstances.

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

----S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Identification of accused in low light---Where complainant and accused parties were closely related to each other, the identification of a close relative (accused) even in low light was not a big deal.

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

----S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence--- Sentence, reduction in---Death sentence reduced to imprisonment for life---Motive not proved---Specific motive was set out by the complainant in the FIR and in his statement recorded before the Trial Court by claiming that four days prior to the occurrence, accused along with his vagabond friends had come and stood in front of the house of the complainant, and the deceased had reprimanded the accused, whereupon an altercation took place between the two; that the accused had allegedly threatened the deceased of dire consequences and on account of such grudge, the accused committed the crime---In his cross-examination, the complainant admitted that he had never reported to police that accused along with his vagabond friends used to come and stand in front of their

house---Nothing was available on record to prove that the incidence of altercation between accused and deceased was ever reported to police---Complainant also did not disclose the names of vagabond friends of the accused who used to come and stand in front of the house of the complainant---Real cause of the occurrence had not been disclosed by either of the sides---In such circumstances, the motive set out by the prosecution remained far from being proved---Prosecution's failure to prove the motive set out by it certainly benefited the accused---Conviction of the accused under S. 302(b), P.P.C. was maintained but his sentence of death was converted into imprisonment for life.

Miss Najma Parveen, Advocate Supreme Court for Appellant.

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

Umar Hayat Sandhu, Advocate Supreme Court for the Complainant.

Date of hearing: 7th March, 2019.

JUDGMENT

MANZOOR AHMAD MALIK, J.---The appellant-Muhammad Akram @ Akrai and his co-accused Imtiaz Ahmad faced trial in case FIR No.245 dated 11.05.2001, offence under sections 302, 324, 34, P.P.C., registered at Police Station Shahdara Town, Lahore. On conclusion of trial, the learned trial Court, vide its judgment dated 09.03.2004, convicted the appellant under section 302(b), P.P.C. and sentenced him to death for the murder of Muhammad Riaz. He was also directed to pay compensation of Rs. 1,00,000/- to the legal heirs of deceased, in terms of section 544-A, Code of Criminal Procedure, in default whereof to undergo six months' S.I. Aggrieved of his conviction and sentence, the appellant filed a criminal appeal before the learned Lahore High Court, Lahore. A Murder Reference was sent by the learned trial Court for confirmation of sentence of death of the appellant or otherwise. A criminal appeal was also filed by the complainant against the acquittal of co-accused Imtiaz Ahmad. Through the impugned judgment, the learned Appellate Court while maintaining the conviction and sentence of appellant dismissed his criminal appeal and answered the Murder Reference in the affirmative. The criminal appeal filed by the complainant against acquittal of co-accused was also dismissed by the learned High Court through the impugned judgment. Thereafter, the appellant filed a jail petition before this Court, whereas the complainant filed a criminal petition against the acquittal of co-accused Imtiaz Ali. This Court, vide order dated 26.03.2013, dismissed the criminal petition filed by the complainant and granted leave in the jail petition filed by the appellant. Hence, the instant criminal appeal.

2. Facts of the case have been summarized by the learned High Court in para.3 of its judgment, which read as under:-

"3. The prosecution story, in brief as narrated in the FIR Ex.P.A/1 by Fiaz Ali, complainant PW.1 is that on 10.05.2001 at 10.30 p.m. his brother Muhammad Riaz along with his friend Muhammad Shafique went outside the house towards "Band" for a walk. After a while the complainant along with Muhammad Ilyas (given up) also went towards "Band". In the meantime Muhammad Akram, appellant and his brother-in-law Imtiaz Ahmad co-accused armed with pistols came towards the "Band". Imtiaz Ahmad raised a lalkara that Riaz should not be let alive upon which Muhammad Akram fired a shot from his revolver hitting Muhammad Riaz on the back of his head who fell down. Thereafter, Muhammad Akram appellant fired at Riaz hitting him on his umbilicus, left thigh, left shin and left shoulder. It was further alleged that the complainant, Ilyas and Shafique stepped forward to save Muhammad Riaz but they were also fired at by

Imtiaz Ahmad and Muhammad Akram who were luckily saved. Thereafter Akram and Imtiaz fled from the spot while firing in the air. Muhammad Riaz was immediately taken to Mayo Hospital, Lahore where he was admitted but he could not survive. Hence, the FIR."

3. We have heard learned counsel for the appellant, learned counsel for the complainant and learned Additional Prosecutor General at length and have perused the available record with their assistance.

4. The occurrence in this case, as per prosecution, took place on 10.05.2001 at 10.30 p.m. The matter was reported to police by the complainant Fiaz Ali from Myo Hospital, Lahore at 12.30 hours (night), as a result whereof formal FIR was registered at 1.00 hours (night). The prosecution has produced Dr. Muhammad Aslam Awan (PW7) who provided medical aid to deceased Muhammad Riaz as the latter at that time was in injured condition in the emergency of Myo Hospital, Lahore. The doctor has stated before the trial court that injured (later on deceased) was brought to hospital by complainant Fiaz Ali, real brother of deceased. In these circumstances, it has been observed by us that there is no conscious or deliberate delay in reporting the matter to police.

5. The prosecution in order to prove its case against the appellant produced complainant Fiaz Ali (PW1) and Muhammad Shafique (PW2). The complainant Fiaz Ali (PW1) is the real brother of the deceased Muhammad Riaz, whereas Muhammad Shafique (PW2) is the friend of deceased. He is an independent witness and the resident of the vicinity. In his statement recorded before the trial court, he stated that he had friendship with deceased for the last about 18/20 years; that the distance between his house and the house of the deceased is about 250 meters and that he was residing in the vicinity for the last 20 years. He has given plausible explanation for his presence at the spot at the relevant time. As earlier discussed, the doctor (PW7) who medically examined Muhammad Riaz (deceased) in injured condition stated that the deceased Muhammad Riaz was brought to hospital by Fiaz Ali (PW1), the complainant of the case. In these circumstances, the presence of both the eye-witnesses at the place of occurrence is established beyond doubt. The complainant Fiaz Ali (PW1) and Muhammad Shafique (PW2) while appearing before the trial court remained consistent on all the material aspects of the case. They in a straightforward manner held the appellant responsible for the murder of Muhammad Riaz. The main argument of learned counsel for the appellant is that it was a night time occurrence and no source of light has been mentioned by the complainant in the FIR. It has been observed by us that in the site plan which was prepared on the instructions and pointation of the witnesses, the availability of 1000 watt rod and 200 watt bulb at points E and F respectively has been shown to be lit. Even otherwise, the parties are closely related to each other and identification of a close relative even in low light is not a big deal. Dr. Muhammad Aslam Awan (PW7) medically examined Muhammad Riaz in injured condition, whereas Dr. Muhammad Nazir (PW11) conducted post-mortem examination on the dead body of Muhammad Riaz and observed five entry wounds on the person of deceased. According to doctor (PW11), injuries Nos. 1, 3, 4, 5 and 6 were caused by firearm weapon. The probable time between death and postmortem as noted by doctor coincides with the ocular account. It has been observed by us that the learned appellate court has excluded recovery of revolver from the appellant and positive report of FSL from consideration due to the reason that the empties and the revolver were sent to the office of FSL on the same day after the arrest of appellant. Even if the recovery is excluded from consideration being legally inconsequential, it has been observed by us that the direct evidence in the form of ocular account furnished by complainant Fiaz Ali (PW1) and Muhammad Shafique (PW2) is confidence inspiring which has the support of medical evidence. In these circumstances, we have no hesitation to hold that the prosecution has been successful in proving its case against the appellant beyond reasonable doubt. Having concluded so, it has been observed by us that a specific motive was set out by the complainant in the FIR and in his statement recorded before the trial court inasmuch as four days prior to the occurrence, appellant along with his vagabond friends had come and stood in front of the house of the complainant.

Muhammad Riaz (deceased) had reprimanded the appellant, whereupon an altercation took place between the two. The appellant had threatened the deceased Muhammad Riaz of dire consequences and on account of this grudge, the appellant committed the crime. In his cross-examination, the complainant Fiaz Ali admitted that he had never reported to police that appellant along with his vagabond friends used to come and stand in front of their house. There is also nothing on record to prove that the incidence of altercation between appellant and deceased was ever reported to police. The complainant also did not disclose the names of vagabond friends of the appellant who used to come and stand in front of the house of the complainant. It appears that the real cause of the occurrence has not been disclosed by either of the sides. In these circumstances, we are of the view that the motive set out by the prosecution remained far from being proved. It is well settled that when prosecution alleges something against an accused person and then fails to prove the same, the premium of such failure must go to an accused person. In this case as well, prosecution's failure to prove the motive set out by it certainly benefits the appellant.

6. For what has been discussed above, the instant criminal appeal is partly allowed. The conviction of the appellant under section 302(b), P.P.C. is maintained but his sentence of death is converted into imprisonment for life. The amount of compensation and sentence in its default are maintained. Benefit of section 382-B, Code of Criminal Procedure is extended to the appellant. The impugned judgments of the learned Courts below are modified accordingly.

MWA/M-9/SC Order accordingly.