

[Supreme Court of Pakistan]

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

Criminal Appeal No. 176-L of 2013, decided on 7th March, 2019.

(On appeal from the judgment of the Lahore High Court, Lahore dated 06.04.2010 passed in Criminal Appeal No. 1924 of 2004 and M.R. No. 753 of 2004)

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

---Ss. 302(b) & 34---Qatl-i-amd, common intention---Reappraisal of evidence---Accused and his co-accused were alleged to have murdered the deceased---Trial Court sentenced the accused to death---High Court reduced sentence of accused from death to imprisonment for life---Held, that occurrence in the present case, as per prosecution took place at 4.30 p.m.---Matter was reported to police on the same day at 5.45 p.m., as a result whereof formal FIR was registered at 6.45 p.m.---Apparent promptitude in reporting the matter to police and registration of FIR was hardly of any avail to the prosecution because the postmortem on the dead body of deceased was conducted after delay of more than 23 hours of reporting the matter to police---Complainant (father of deceased) claimed that during the time of occurrence he was posted as a police official in a city different to the one where the incident took place, but since he was on leave he was with his deceased son in the city where the incident took place---In his cross-examination, complainant claimed that he had produced proof of leave before the investigating officer, however, the investigating officer denied such assertion of complainant and stated before the Trial Court that the complainant never provided any documentary proof regarding his leave---Complainant further claimed that police reached first at the place of occurrence where murder of deceased took place, but the investigating officer stated that the police party reached another place of occurrence before visiting the place where deceased was murdered---Serious doubts were found on record regarding the presence of eyewitnesses at the place of occurrence at the relevant time and their claim of witnessing the occurrence---Direct evidence of complainant and another witness had been disbelieved up to the Supreme Court to the extent of co-accused, therefore, it was of paramount importance to see as to what independent corroboration was available on record to distinguish the case of accused from that of his acquitted co-accused---Scrutiny of evidence showed that no such corroboration was available on record---Empties secured from the spot and the weapon (pistol) allegedly recovered from the possession of accused at the time of his arrest were sent to the office of Forensic Science Laboratory on the same day i.e. on 21-03-2002 after the arrest of accused on 23-01-2002---In such circumstances, the report of Forensic Science Laboratory (FSL) could not be relied and was legally inconsequential---Conviction and sentence of accused was set aside and he was acquitted of the charge framed against him---Appeal was allowed accordingly.

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

---S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Motive---Previous enmity---Motive was always a double-edged weapon---Previous enmity could be a reason for the accused to commit the alleged crime, but it could equally be a reason for the complainant side to falsely implicate the accused in the case for previous grouse.

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

---S.302(b)---Qatl-i-amd---Reappraisal of evidence---Benefit of doubt---Benefit of slightest of doubt must go to accused.

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

---S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence---Concocted evidence provided by chance witnesses--Where the Court reached a conclusion that the eyewitnesses were chance witnesses; they had not witnessed the occurrence and the prosecution story was concocted by the prosecution witnesses, then the case of the accused merited plain acquittal.

Mian Muhammad Ilyas, Advocate Supreme Court for Appellant.

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

Complainant in person.

Date of hearing: 7th March, 2019.

JUDGMENT

MANZOOR AHMAD MALIK, J.---Being dissatisfied with the investigation of case by local police in case FIR No. 548 dated 24.12.2001, offence under sections 302, 324, 337-F(iii), 148, 149, P.P.C. registered on his statement at Police Station Raiwind Saddar, District Kasur, the complainant Sultan Ahmad instituted a private complaint, wherein appellant Muhammad Ashraf @ Acchu and co-accused Saeed Ahmad were summoned to face trial. On conclusion of trial, the learned trial Court, vide its judgment dated 26.11.2004, convicted the appellant under section 302(b)/34, P.P.C. and sentenced him to death. Co-accused Saeed Ahmad was also convicted under section 302(b)/34, P.P.C. and awarded imprisonment for life. Both the convicts were directed to pay compensation of Rs.50,000/- each to the legal heirs of deceased, in terms of section 544-A, Code of Criminal Procedure, in default whereof to undergo SI for six months each. Benefit of section 382-B, Code of Criminal Procedure was extended to co-convict Saeed Ahmad. The trial Court through the same judgment acquitted the appellant and his co-convict Saeed Ahmad of the charges of committing intentional murder of Mst. Vakeelan Bibi and causing injuries to Musarrat Shaheen. Co-accused Labba, Naveed Ahmad and Amanat Ali were declared proclaimed offenders and perpetual warrant of their arrest were issued. It has come on record that co-accused of appellant Muhammad Ashraf son of Ishaq was murdered before trial.

2. Aggrieved of their convictions and sentences, the appellant and his co-convict Saeed Ahmad filed a joint criminal appeal before the Lahore High Court, Lahore. A murder reference was sent by the trial court for confirmation of sentence of death of appellant or otherwise. Through the impugned judgment, the learned appellate court, allowed the criminal appeal to the extent of co-convict Saeed Ahmad and by extending benefit of doubt acquitted him of the charge. The criminal appeal to the extent of appellant was dismissed with the modification that by maintaining his conviction under section 302(b), P.P.C., his sentence of death was converted into imprisonment for life. Murder reference was answered in the negative. Benefit of section 382-B, Code of Criminal Procedure was extended to the appellant. Thereafter, the appellant filed a criminal petition before this Court, whereas the complainant also filed a criminal petition against acquittal of co-accused Saeed Ahmad and for enhancement of sentence of the appellant. The said criminal petition was

dismissed by this Court vide order dated 20.02.2013. Through the same order, leave to appeal was granted by this Court in the criminal petition filed by the appellant. Hence, the instant criminal appeal.

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

4. The incident in this case as per the facts narrated by the complainant Sultan Ahmad in the FIR and in the private complaint has three episodes. In the first episode, it is the case the complainant Sultan Ahmad that he was employed in Punjab Police; that he was on leave; that he had gone to Raiwind to purchase household articles; that after purchase of said articles, when he returned to Adda Basti Bhail, he saw his son Liaqat Ali standing in front of a shop of Milk Shake; that at 4.30 p.m. appellant Muhammad Ashraf @ Achhu son of Muhammad Ali armed with pistol .30 bore, Saeed Ahmad, armed with pistol .30 bore and Muhammad Ashraf son of Ishaq (since dead) armed with pistol .30 bore came at the Adda; that a lalkara was raised by the appellant, whereupon he himself fired with his pistol 30 bore which fire hit Liaqat Ali on his forehead on the right side; that second fire was shot by Saeed Ahmad, which hit Liaqat Ali on his abdomen; that third fire was shot by Muhammad Ashraf son of Ishaq which hit Liaqat Ali on left side of his buttock. Liaqat Ali succumbed to injuries at the spot. The complainant further alleged that when Liaqat Ali had fallen on the ground, all the three accused persons made firing on him, which hit on different parts of his body. According to complainant, the occurrence was witnessed by Aman Ullah and Abdul Shakoor PWs as well. The second and third episodes of the incident as narrated by the complainant in the FIR and in the private complaint do not relate to the appellant and his co-accused as in those episodes they did not participate and they have already been acquitted by the trial court of the charges of committing intentional murder of Mst. Vakeelan Bibi and causing injuries to Musarrat Shaheen. The said acquittal was not challenged by the complainant or the State any further. Therefore, we are not discussing that part of the case lest it may prejudice the case of either side after arrest of absconding co-accused.

5. The occurrence in this case, as per prosecution, took place on 24.12.2001 at 4.30 p.m. The matter was reported to police on the same day at 5.45 p.m., as a result whereof formal FIR was registered at 6.45 p.m. The apparent promptitude in reporting the matter to police and registration of FIR is hardly of any avail to the prosecution because the postmortem on the dead body of Liaqat Ali was conducted on 25.12.2001 at 4.15 p.m. i.e. after delay of more than 23 hours of reporting the matter to police. Dr. Zulfiqar Ahmad (PW4) who conducted autopsy on the dead body of Liaqat Ali (deceased) categorically stated in his cross-examination that he had received dead body of Liaqat Ali few minutes prior to autopsy. He further stated that neither from the application for postmortem (Ex.PE) nor from other record it is indicated that any application was submitted for depositing the dead body in the mortuary of hospital on 24.12.2001. He asserted that in routine it is necessary that whenever dead body is required to be deposited in mortuary then application in this respect is essential. Muhammad Saleem, 728-C (PW5) is the policeman who escorted dead body of Liaqat Ali to the hospital. In his statement during trial, he stated that he escorted the dead body of Liaqat Ali from place of occurrence to DHQ Hospital, Kasur for postmortem examination on 24.12.2001. In his cross-examination, he stated that he had escorted the dead body of Liaqat Ali to the hospital after one hour of reaching at the place of occurrence. The investigating officer of the case Javed Raza, SI appeared before the trial court as PW14. According to him, after report of crime, he reached at the place where Liaqat Ali was murdered at about 7.00 p.m. and the dead body of Liaqat Ali was available there. He further stated that application (Ex.PE) for autopsy of Liaqat Ali was handed over to constable for its onward transmission to DSP on 25.12.2001. It has further been observed by us that it is the case of complainant Sultan Ahmad (PW9) that during the days of occurrence, he was posted in District Mianwali and that he had gone to Village Bhail on leave. In his cross-examination, he claimed that he had produced proof of leave before the investigating officer Javed Raza (PW14). In turn, Javed Raza, investigating officer

(PW14) denied this assertion of complainant and stated before the trial court that the complainant never provided any documentary proof regarding his leave. The complainant further claimed in his statement recorded during trial that he still had the proof of his leave with him but on record no such proof is available. It is the claim of the complainant Sultan Ahmad (PW9) that police reached at the place of occurrence where murder of Liaqat Ali took place firstly. But the investigating officer Javed Raza (PW14) stated that the police party including him reached at the place of occurrence where Mst. Vakeelan Bibi was murdered at first and they reached at the place where murder of Liaqat Ali had taken place at 7.00 p.m. The complainant Sultan Ahmad (PW9) stated before the trial court that during the days of occurrence, Aman Ullah PW (not produced) and Abdul Shakoor (PW11) were jobless. He volunteered that in those days they were working as labour in a factory. He further stated that Aman Ullah had his shop at Adda Basti Bhail and during the days of occurrence said shop was not being run by anybody as the same was being repaired. Abdul Shakoor (PW 11), however, stated in his examination in chief that he along with Aman Ullah was proceeding to their houses from their shops. In his cross-examination, he stated that he was not doing anything to earn his livelihood during the days of occurrence but was getting constructed his shops. In the same breath he stated that he was not the owner of shops but his brother Aman Ullah was the owner of shops. Abdul Shakoor (PW 11) admitted in his cross-examination that he had now shown to the investigating officer the shops being constructed by them. All these circumstances cast serious doubts regarding the presence of eye-witnesses at the place of occurrence at the relevant time and their claim of witnessing the occurrence.

6. Sequel to above discussion, it has been observed by us that it is the consistent stance of complainant Sultan Ahmad (PW9) in the FIR, in the private complaint and before the trial Court that the fire so shot by co-accused Saeed Ahmad hit Liaqat Ali on the front of his abdomen. Dr. Zulfiqar Ahmad (PW4), who conducted autopsy on the dead body of Liaqat Ali did not observe any entry wound on the abdomen of Liaqat Ali. The complainant Sultan Ahmad further alleged that after his son Liaqat Ali fell on the ground, the appellant, co-accused Saeed Ahmad and co-accused Muhammad Ashraf son of Ishaq (since dead) made firing at the deceased. Saeed Ahmad was acquitted by the learned appellate court. His acquittal was challenged before this Court but said petition of complainant was dismissed at leave granting stage. In these circumstances, when the direct evidence of Sultan Ahmad (PW9) and Abdul Shakoor (PW11) has been disbelieved up to this Court to the extent of co-accused Saeed Ahmad, it is of paramount importance to see as to what independent corroboration is available on record to distinguish the case of appellant from that of his acquitted co-accused. After scrutiny of evidence, it has been observed by us that no such corroboration is available on record because the empties secured from the spot and the .30 bore pistol allegedly recovered from the possession of appellant at the time of his arrest were sent to the office of FSL on the same day i.e. on 21.03.2002 after the arrest of appellant on 23.01.2002. In these circumstances, the report of FSL cannot be relied and is legally inconsequential.

7. The motive is always a double-edged weapon. The complainant Sultan Ahmad (PW9) has admitted murder enmity between the parties and has also given details of the same in his statement recorded before the trial court. No doubt, previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse.

8. After evaluating the case from all possible angles, it has been observed by us that the learned appellate court, on reappraisal of evidence available on record, has given following observations while dealing with the case of co-accused Saeed Ahmad (since acquitted) and the appellant:-

"13..... In the first occurrence regarding murder of Liaqat Ali, deceased the witnesses are the complainant and Abdul Shakoor, his close relative. Sultan, complainant is the father of the deceased. The presence of

both these witnesses at the place of occurrence is advertently per chance. Sultan Ahmad, complainant has come at the shop from Raiwind, thereafter he saw the occurrence whereas Abdul Shakoor PW was coming from his job at home when he statedly saw the occurrence. Both of them were only per chance available at the site from where they saw the occurrence..... So it is clear that the injuries attributed to Muhammad Saeed, appellant are non-existent on the dead body of Liaqat Ali. It also indicates that the witnesses were not there and that's why later on after seeing the injuries they have got registered the FIR. There is a possibility that they have not seen the occurrence"

14..... This situation further creates doubt regarding the witnesses who had implicated the innocent persons by concocting the whole new story. The complainant is a police employee and was on duty and as per chance he was available at the time of occurrence at the place of occurrence. It appears that the occurrence has taken place in a different manner and he being the police official concocted and created different story just to implicate maximum persons and to conceal the murder of Mst. Vakeelan Bibi."

9. After recording such observations, the learned appellate court has gone on to render findings of guilt against the appellant. This approach of learned appellate court is totally misplaced. It is well settled that benefit of slightest doubt must go to an accused and in a case where the Court reaches a conclusion that eye-witnesses were chance witnesses; they had not witnessed the occurrence and the prosecution story is concocted by the PWs, then the case of the accused merits plain acquittal.

10. For what has been discussed above, the instant criminal appeal is allowed. The conviction and sentence of appellant Muhammad Ashraf @ Acchu are set aside. He is acquitted of the charge framed against him. He is on bail. His sureties are ordered to be discharged.

MWA/M-10/SC Appeal allowed.