

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,**JJ****BASHIR AHMAD and another---Appellants****Versus****The STATE and others---Respondents**

Criminal Appeal No. 97-L of 2016 and Criminal Petition No. 465-L of 2014, decided on 7th May, 2019.

(On appeal from the judgment dated 27.03.2014 passed by the Lahore High Court, Multan Bench in M.R. No. 46 of 2009, CrI. A. No.305 of 2008, CrI. Rev. No.95 of 2009 and CrI. P.S.L.A. No.20 of 2009)

Penal Code (XLV of 1860)---

---S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Complainant party had implicated in the present case two brothers, son of one of the brothers, and two other persons belonging from the same clan---Entire household had been implicated giving the impression that it was a case of a casting a wider net---Admittedly deceased and complainant were carrying weapons during the occurrence giving credence to the argument that complainant party was also the aggressor---Suppression of injuries sustained by the accused side was another intriguing circumstance---While the complainant was well within the remit of law to pursue his case through a private complaint, nonetheless, non-examination of investigating officer alongside some other witnesses exposed the accused to agrievous prejudice---Prosecution case was not free from doubt and thus it would be unsafe to maintain the conviction of the accused---Appeal was allowed and accused was acquitted of the charge of murder.

Malik Muhammad Saleem, Advocate Supreme Court for Appellants.

Malik Muhammad Munsif Awan, Advocate Supreme Court for Petitioners.

Mazhar Sher Awan, Additional Prosecutor-General for the State.

Date of hearing: 7th May, 2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Criminal Appeal by Bashir Ahmad, convict and Criminal Petition for leave to appeal by Mst. Kaneez Fatima, sister of Talib Hussain deceased, arisen out of incident dated 29.5.2003, with a common thread are being decided through this single judgment.

2. Prosecution case is structured upon statement of Ghulam Hussain, PW-2. According to him, on the fateful day his daughter Mst. Kaneez Mai was on her way to fetch grocery items when Naseer Bakhsh accused held her by hair, while his brother Ahmed dealt her club blow; upon receipt of information, the complainant with a pistol rushed to the spot; Naseer Bakhsh hit him with the club; the pistol felled, picked by Naseer Bakhsh accused. In the meantime, Talib Hussain deceased with .12 caliber gun is attracted to the spot. Rehmat Ali accused engaged the deceased with a hatchet blow on his right ear, later fell on the ground when Naseer Bakhsh, Ahmed Khan, Rehmat Ali, Bashir Ahmad and Muhammad Zaman caused injuries; the deceased succumbed to the injuries at the spot. Manhandling of Mst. Kaneez Mai, PW by Naseer Bakhsh is cited as motive for the crime.

Dissatisfied with police investigation, the complainant preferred to prosecute the accused through a private complaint; he blamed that crime report was not faithfully recorded by the investigating officer, otherwise biased in favour of the accused. Indictment resulted into conviction vide judgment dated 18.12.2008. For homicide, the appellant was sentenced to death besides being held in the community of intention qua the injuries suffered by the witnesses. Naseer Bakhsh, Muhammad Zaman and Ahmed Khan were convicted and sentenced for injuries to the witnesses. Appeal filed by the convict met with no better fate. A learned division bench of the Lahore High Court at Multan vide impugned judgment dated 27.3.2014 upheld the convictions albeit with alteration of death penalty into

imprisonment for life; sentences awarded to the co-accused were reduced to already undergone by them. Petition for Special Leave to Appeal by the complainant was dismissed vide the same judgment; they are in contest once again before us.

3. Well orchestrated narrative by the witnesses that includes the injured, notwithstanding, we have noticed inherent shortcomings casting their shadow on the prosecution case. Naseer Bakhsh and Bashir Ahmad are real brothers, Ahmed Khan accused is former's son. Muhammad Zaman and Rehmat Ali also hail from the same clan; the entire household is in the array and in this backdrop argument that it is a case of wider net is not entirely beside the mark. Similarly, a pistol and shotgun, admittedly with the deceased and the complainant, lend credence to hypothesis of aggression; renunciation of crime report by the complainant goes a long way to tremor the very basis of his case. Suppression of injuries of an opponent is yet another intriguing circumstance. While the complainant was well within the remit of law to pursue his case through a private complaint, nonetheless, non-examination of investigating officer alongside some other witnesses cannot be countenanced without exposing the accused to a grievous prejudice. Prosecution case is not free from doubt and thus it would be unsafe to maintain the conviction. Resultantly, Criminal Appeal is allowed, the impugned judgment is set aside. The appellant shall be at set at liberty forthwith, if not required in any other case. As a natural corollary criminal petition for leave to appeal is dismissed. These are the reasons of our short order of even date which is reproduced as under:-

"For reasons to be recorded later, the instant criminal appeal is allowed. The conviction and sentence of the appellant Bashir Ahmad is set aside. He is acquitted of the charge framed against him. The appellant is present in person as he is on bail after suspension of his sentence by the learned High Court. Therefore, his sureties are ordered to be discharged. Criminal Petition No.465-L of 2014 filed for enhancement of sentence of respondents Nos.2 - 5 is dismissed."

MWA/B-3/SC Order accordingly.