

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,

JJ

MUHAMMAD ILYAS and another---Appellants

Versus

AMEER ALI and another---Respondents

Criminal Appeals Nos. 142-L and 143-L of 2015, decided on 6th May, 2019.

(On appeal from the judgment of the Lahore High Court, Lahore dated 6.11.2013 passed in Criminal A. No. 600 of 2011, Criminal A. No. 735 of 2011, Criminal Revision No. 725 of 2011 and M.R. No. 203 of 2011)

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

---S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence---Motive not proved---Vague motive was set out in the FIR and the eye-witnesses, while appearing before the Trial Court made material improvements and introduced rather a different motive---In the FIR it was alleged that occurrence had taken place because of a quarrel between deceased and accused and co-accused persons a year prior to the occurrence, however, while appearing before the Trial Court, the witnesses of ocular account stated that the accused side had been pressurizing the complainant side to enter into a compromise and on refusal of the complainant side, the occurrence had taken place---In such circumstances, the motive set out by the prosecution remained far from being proved---Case of prosecution against the accused for the murder of deceased was not proved beyond reasonable doubt---Appeal was allowed and accused was acquitted of the charge of murder.

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

---Ss. 302(b) & 149---Qatl-i-amd, unlawful assembly---Reappraisal of evidence---Rule of consistency---Case against accused similar to that of co-accused not charged for murder---Case of the prosecution, against the accused and his co-accused to the extent of murder of deceased was on the same pedestal---One firearm injury was attributed to the accused on the chest of deceased, whereas two firearm injuries were attributed to co-accused on the chest and neck of deceased---As per doctor all the three injuries contributed towards the death of deceased, however the Trial Court found that every accused person was responsible for his own act and for injury on the person of deceased, therefore, the co-accused in question was not convicted for murder under S. 302(b), P.P.C.---Since the prosecution failed to bring on record any strong and independent corroboration to distinguish the case of accused from that of said co-accused, therefore, in the circumstances of the case, it could safely be held that case of prosecution against the accused for the murder of deceased was not proved beyond reasonable doubt---Furthermore no injury on the person of any injured prosecution witness was attributed to the accused, thus, the accused stood absolved from the vicarious liability under S. 149, P.P.C. to the extent of injuries on the persons of injured prosecution witnesses---Appeal was allowed and accused was acquitted of all charges.

Muhammad Taqi Khan, Advocate Supreme Court and Ms. Tasneem Amin, Advocate-on-Record for Appellants (in Criminal A. 142-L of 2015).

Rashid Javed Lodhi, Advocate Supreme Court for Appellants (in Criminal A. No. 143-L of 2015).

M. Anwar Bhaur, Advocate Supreme Court for Respondents Nos. 1-4 (in Criminal A. No. 142-L of 2015).

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

Date of hearing: 6th May, 2019.

ORDER

MANZOOR AHMAD MALIK, J.---Criminal Appeal No. 143-J of 2015: After a regular trial, the appellant Ameer Ali was convicted by the trial court under section 302(b), P.P.C. and sentenced to

death for committing Qatl-i-amd of Ijaz Ahmad. Along with him Ghulam Hussain, Abbas and Shehbaz were also convicted and sentenced under different penal provisions; detail whereof is given in Para 1 of the impugned judgment, whereas nine others who were also indicted along with appellant and his co-convicts were acquitted and the trial court after giving them benefit of doubt. The appellant and his co-convicts filed criminal appeals before the learned Lahore High Court, Lahore. A murder reference was also sent for confirmation of sentence of death of appellant. The complainant filed a criminal appeal and criminal revision against acquittal of co-accused and for enhancement of sentences of co-convicts. Through the impugned judgment, the learned appellate court answered the murder reference in the negative, dismissed the appeal of the appellant and converted his sentence of death into imprisonment for life. The appeal of co-convicts Ghulam Hussain, Abbas and Shehbaz was also dismissed through the impugned judgment. The criminal revision and the criminal appeal filed by the complainant met the same fate. Thereafter, the appellant filed a jail petition, wherein leave was granted by this Court on 02.12.2015 and on the strength of leave granted to appellant, leave was also granted in the criminal petition filed by the complainant for enhancement of sentences of appellant and co-convicts Ghulam Hussain, Abbas and Shahbaz. Hence, the instant appeals.

2. The machinery of law was set into motion through FIR (Exh.PE/1) drafted on the statement (Exh.PE) of Muhammad Ilyas complainant. It is case of the prosecution in the FIR that the complainant along with five others including the deceased and injured prosecution witnesses was proceeding to participate in a festival (maila) and in the way they were assaulted by Ameer Ali (appellant) and eleven others. Firearm injury on the person of Ijaz Ahmad (deceased) was attributed to Ameer Ali (appellant). Similarly a fireshot on the person of the said deceased was also attributed to Shahbaz. Thereafter murderous assault and specific injuries were attributed to Ghulam Hussain, Shahzad, Abbas and Ibrar. Motive behind the occurrence, as alleged in the FIR was that one year prior to the occurrence there was a quarrel between Ijaz (deceased) and Ameer Ali and others and due to that grudge the assault was launched.

3. We have heard learned counsel for the parties at length and have perused the available record with their assistance.

4. It is the case of the prosecution that during the occurrence, the fire so shot by appellant Ameer Ali with his repeater .12 bore hit Ijaz Ahmed on his chest, whereas the second fire shot by Shahbaz, co-convict with his 12 bore double barrel gun hit Ijaz Ahmed on his neck and chest. During the postmortem examination of Ijaz Ahmed (deceased), Dr. Muhammad Javaid (PW1) observed three firearm wounds on his person: Injury No. 1 is a firearm wound on left of his chest, front and below nipple Injury No. 2 is a firearm wound on the left side of chest above left nipple; and injury No.3 is a firearm wound on base of left side of neck. According to doctor, all the three injuries were sufficient to cause death in ordinary course of nature. Perusal of charge sheet reveals that co-accused Shahbaz along with appellant and other acquitted co-accused were charged by the trial court under sections 148, 302 read with sections 149, 324 read with sections 149, 449 and 324, P.P.C.. However, the learned trial court after appraisal of evidence concluded that every accused was responsible for the act done by him individually and as such said court did not convict co-accused Shahbaz under section 302(b), P.P.C. for the murder of Ijaz Ahmed notwithstanding the fact that in the FIR and in the statement of eye-witnesses recorded before the trial court, he was attributed two firearm injuries on the person of Ijaz Ahmed (deceased) and as per doctor, all the three firearm injuries contributed towards death of Ijaz Ahmed (deceased). Before the learned High Court, the complainant Muhammad Ilyas filed a criminal appeal against the acquittal of co-accused of the appellant and a criminal revision for enhancement of sentence of fine of appellant Amir Ali and for enhancement of sentences of co-convicts Ghulam Hussain, Shahbaz and Abbas to death as they committed the crime in furtherance of their common intention and common object. The criminal appeal and criminal revision filed by the complainant (appellant in connected appeal) was dismissed by the learned High Court. It is relevant to mention here

that the complainant did not file any separate appeal against the acquittal of Shahbaz for the murder of Ijaz Ahmed (deceased), who was attributed specific injuries on the person of Ijaz Ahmed (deceased) not only in the FIR but in the statements of eye-witnesses. Before this Court as well, the complainant has not specifically challenged the acquittal of co-accused Shahbaz for the murder of Ijaz Ahmed (deceased). In these circumstances, it is to be seen what independent corroboration is available on record which could distinguish the case of the appellant from that of his co-accused/co-convict Shahbaz.

5. During course of investigation, a gun (P7) was recovered from the appellant along with live cartridges but the report of the FSL is confined only to its working order. Similarly a gun (P.8) was recovered from co-convict/co-accused Shahbaz with cartridges but the report of FSL qua that gun is also confined to its working order. The learned trial court has already disbelieved this piece of evidence.

6. The motive behind the occurrence was not believed by the learned appellate court. On our own independent scrutiny, it has been observed by us that a vague motive was set out in the FIR and the eye-witnesses, while appearing before the trial Court made material improvements and introduced rather a different motive. In the FIR it was alleged that occurrence had taken place because of a quarrel between Ijaz Ahmad (deceased) and appellant etc a year prior to the occurrence. However, while appearing before the trial court, the witnesses of ocular account stated that the appellant's side had been pressurizing the complainant side to enter into a compromise and on refusal of the complainant side, the occurrence had taken place. In these circumstances, the motive set out by the prosecution remained far from being proved.

7. It is relevant to mention here that no injury on the person of any injured PWs is attributed to the appellant. The learned trial court has concluded that every accused in this case is responsible for his own act and for injury on the person of deceased or injured PWs. Thus, the appellant stands absolved from the vicarious liability under section 149, P.P.C. to the extent of injuries on the persons of injured PWs Liaqat Ali (PW11) and Shahzad (PW12).

8. It is crystal clear that the case of the prosecution, against the appellant and his co-accused/co-convict Shahbaz to the extent of murder of Ijaz Ahmed (deceased) was on the same pedestal. At the cost of reiteration, it has been observed by us that significantly one injury was attributed to the appellant on the chest of Ijaz Ahmed, whereas two injuries were attributed to Shahbaz on the chest and neck of deceased and as per doctor all the three injuries contributed towards the death of Ijaz Ahmed. Since the prosecution failed to bring on record any strong and independent corroboration to distinguish the case of appellant from that of his co-accused Shahbaz, therefore, in the circumstances of the case, it can safely be held that case of prosecution against the appellant for the murder of Ijaz Ahmed (deceased) is not proved beyond reasonable doubt.

9. For what has been discussed above, the instant criminal appeal is allowed. The conviction and sentence of appellant Ameer Ali 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.

Criminal Appeal No. 142-L of 2015.

10. Since we have acquitted Respondent No. 1 Ameer Ali in the preceding paragraphs, therefore, the instant appeal to his extent has lost its relevance, which is dismissed accordingly.

11. So far as prayer of appellant for enhancement of sentences of Respondents Nos. 2 to 4 is concerned, it has been observed by us that the reasons assigned by the learned High Court for dismissing the criminal revision filed by the appellant are neither arbitrary nor fanciful or capricious, warranting interference by this Court. Therefore, the instant criminal appeal to the extent of Respondents Nos. 2 to 4 being without merit is also dismissed.

MWA/M-66/SC Appeal allowed.