

[Supreme Court of Pakistan]

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

JJ

Mst. YASMEEN---Appellant

Versus

JAVED and another---Respondents

Criminal Appeal No. 8-P of 2014, decided on 30th April, 2019.

(On appeal from the judgment of the Peshawar High Court, Peshawar dated 28.07.2009 passed in Criminal Appeal No. 106 of 2008 and M.R. No. 4 of 2008)

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

---S. 302(b)---Qatl-i-amd---Appeal against acquittal---Reappraisal of evidence---Inquest report---In the relevant column of inquest report "brief history of crime", nothing was mentioned regarding facts of the case despite the claim of prosecution that matter was reported to police within three hours of the occurrence---Such circumstance alone cast serious doubts about the veracity of prosecution case against the accused and the claim of the eye-witnesses to have witnessed the occurrence---Appeal against acquittal was dismissed.

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

---S. 302(b)---Qatl-i-amd---Appeal against acquittal---Reappraisal of evidence---Night occurrence---No source of light---Admittedly occurrence took place at night at 10.00 p.m---In the FIR complainant mentioned that at the time of occurrence there was no electricity due to loadshedding---No source of light had been mentioned in the site plan either---Appeal against acquittal was dismissed.

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

---S. 302(b)---Qatl-i-amd---Appeal against acquittal---Reappraisal of evidence---Recovery and motive---During the course of investigation, nothing was recovered from the accused and he was not even connected with the motive part of the prosecution story---In a separate trial, two co-accused persons who along with the accused were equally charged by the complainant with the allegation of firing at the deceased were acquitted by Trial Court and no appeal against their acquittal was filed by the complainant---Appeal against acquittal was dismissed.

Syed Abdul Fayaz, Advocate Supreme Court for Appellant.

Iltaf Samad, Advocate Supreme Court for Respondent No.1.

Barrister Qasim Wadud, Additional A.-G., Khyber Pakhtunkhwa for the State.

Date of hearing: 30th April, 2019.

ORDER

MANZOOR AHMAD MALIK, J.---Respondent Javed, after a regular trial, was convicted by the trial court under section 302(b), P.P.C. and sentenced to death, with direction to pay compensation of Rs.100,000/- to the legal heirs of deceased. He challenged his conviction and sentence before the Peshawar High Court, Peshawar by filing a criminal appeal, whereas a murder reference was sent by the trial court for confirmation of sentence of death or otherwise. Through the impugned judgment, the learned High Court allowed the criminal appeal of respondent, set aside his conviction and sentence, answered the murder reference in the negative and acquitted the respondent of the charge framed against him. Against the said judgment, the appellant filed a criminal petition, wherein leave was granted by this Court on 18.09.2014. Hence, the instant criminal appeal.

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

3. It has been observed by us that the learned appellate court, after proper reappraisal of evidence available on record, has rendered findings of acquittal in favour of respondent. In addition to the said findings, it has been observed by us that the occurrence in this case, as per prosecution, took place on

19.02.2005 at 10.00 p.m. The matter was reported to police in the intervening night of 19/20.02.2005 at 1.00 a.m (night). The postmortem examination on the dead body of Mst. Naheeda (deceased) was conducted by Dr. Faiqa Elahi (PW7) on 20.02.2005 at 8.50 a.m. Even if delay in conducting the postmortem examination on the dead body of deceased, in the circumstances of the case, is ignored, the fact remains that in the relevant column of inquest report "brief history of crime", nothing is mentioned regarding facts of the case despite the claim of prosecution that matter was reported to police within three hours of the occurrence i.e. in the intervening night of 19/20.02.2005 at 1.00 a.m (night). This circumstance alone casts serious doubts about the veracity of prosecution case against the respondent and the claim of the eye-witnesses Mst. Yasmeen (PW5) and Mst. Kabalo (PW6) to have witnessed the occurrence.

4. The occurrence in this case, as per prosecution, had taken place in the month of February at 10.00 p.m. In the FIR, the complainant Mst. Yasmeen (PW5) has herself mentioned that at the time of occurrence there was no electricity at the place of occurrence due to loadshedding. No source of light has been mentioned in the site plan either.

5. During the course of investigation, nothing was recovered from the respondent. He is not even connected with the motive part of the prosecution story. It has been admitted by the learned counsel for the appellant that in a separate trial, co-accused of the respondent namely Muhammad Jan, Bakhtiar and Akbar Ali, who along with the respondent were equally charged by the complainant with the allegation of firing at the deceased were acquitted by the trial court and no appeal against their acquittal was filed by the complainant-appellant.

6. For the foregoing this appeal having no merit is dismissed.

MWA/Y-1/SC Appeal dismissed.