

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Sayyed Mazahar Ali Akbar**Naqvi, JJ****RAZA and another---Petitioners****Versus****The STATE and others---Respondents**

Criminal Petitions Nos. 1124-L and 1120-L of 2015, decided on 25th June, 2020.

(Against the judgment of the Lahore High Court, Lahore dated 14.09.2015 passed in Murder Reference No. 276/2011 and Criminal Appeal No. 996/2011)

Penal Code (XLV of 1860)---

---Ss. 302(b) & 302(c)---Qanun-e-Shahadat (10 of 1984), Art. 27---Qatl-i-amd---Reappraisal of evidence---Sentence, reduction in---Instigation by accused---Single fire shot---First plea that accused took after his arrest and commencement of investigation was that deceased had made an attempt to commit rape with sister of accused; that when mother of accused went to reprimand the deceased, he started abusing his mother and also grappled with her; that resultantly the accused flared up and under the heat of passion made a single fire shot on the deceased---Such stance taken by the accused remained consistent throughout during the course of investigation as well as the trial---During investigation, the first plea raised by the accused was found correct by the Investigating Officer---Such first plea of accused was admissible in evidence under Art. 27 of the Qanun-e-Shahadat, 1984---Record clearly spelt out that occurrence had taken place due to the act of the deceased, which enraged the mental faculty of the accused and under the impulses of the same the present occurrence had taken place---Benefit of the same was available to the accused, for which many circumstances were not required rather a glimpse of the same was always deemed sufficient---Sentence inflicted upon the accused by Courts below under S. 302(b), P.P.C. was not made out, therefore, the Supreme Court converted the sentence from imprisonment for life under S. 302(b), P.P.C. to imprisonment for 10 years under S. 302(c), P.P.C.---Petition for leave to appeal was converted into appeal and partially allowed.

Ch. Walayat Ali, Advocate Supreme Court for Petitioner (in Criminal Petition No. 1124-L of 2015).

Nemo for Petitioner (in Criminal Petition No. 1120-L of 2015).

Jaffar, Additional Prosecutor General for the State.

Date of hearing: 25th June, 2020.

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.---Criminal Petition for leave to appeal under section 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been assailed by the petitioner calling in question impugned judgment dated 14.09.2015 passed by Lahore High Court, Lahore in Murder Reference No.276/2011 and CrI. Appeal No.996/2011.

2. As per prosecution story portrayed in the FIR No.203/2009 dated 04.06.2009, offence under section 302, P.P.C. registered with Police Station Saddar Farooqabad Sheikhpura (Exh.PD) lodged at the instance of one Allah Ditta son of Lal Din, (PW-3) is that he is resident of Herchand and they are three brothers and he is eldest. The complainant and his younger brother Qurban reside with their parents at Herchand whereas brother Ramzan live separately. On 03.05.2009 at evening, the complainant along with his father came to the house of brother Muhammad Ramzan because his daughter was sick. They were talking to each other when at about 7:00 p.m. Raza son of Niaz i.e. a neighbor of Ramzan called him outside. The complainant with father also came out of the house along with Ramzan. Ayisha Bibi wife of Ramzan followed and came out of the house. Raza was armed with Carbine, he raised lalkara to Muhammad Ramzan that he had entered into an altercation with his mother, therefore, he will teach a lesson and thereafter accused made a fire shot with his Carbine 12 bore which hit Muhammad Ramzan on his abdomen, below the chest. Muhammad Ramzan fell down

being injured whereas accused fled away from there. The occurrence was witnessed by the complainant, his father and Bhabi Ayisha. The injured was taken to Sheikhpura Hospital but he was referred to Mayo Hospital, Lahore. Initially the FIR was registered under section 324, P.P.C. but when the injured died on 08.05.2009, offence under section 302, P.P.C. was added.

3. After registration of the aforesaid case, investigation was carried out and petitioner was challaned while placing his name in column No.3 of the report under section 173, Cr.P.C.

On receipt of challan, the learned Trial Court formally charge sheeted the petitioner vide order dated 12.08.2010 to which he pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced as many as 13 witnesses. The petitioner was examined under section 342, Cr.P.C., however, he opted not to appear in his defence as his own witness in terms of section 340(2), Cr.P.C. to disprove the allegations levelled against him.

4. The learned trial court after conclusion of trial found that the prosecution succeeded to prove allegations against the petitioner, hence convicted him under section 302(b), P.P.C. and sentenced him to death. The petitioner was further burdened to pay compensation of Rs.1,00,000/- to be paid to the legal heirs of the deceased in terms of section 544-A, Cr.P.C. In default thereof, he was further ordered to undergo simple imprisonment for six months.

5. The petitioner being aggrieved by the judgment of the learned trial court dated 07.06.2011 filed Criminal Appeal No.996 of 2011 before the Lahore High Court, Lahore whereas the learned trial court forwarded Murder Reference No.276 of 2011 for confirmation of the sentence of death inflicted upon the petitioner in terms of section 374, Cr.P.C. The learned Division Bench of High Court vide judgment dated 14.09.2015 converted death sentence of the petitioner into imprisonment for life whereas amount of compensation and imprisonment in its default prescribed by the learned Trial Court was ordered to be maintained. Benefit of section 382-B, Cr.P.C. was also given to him. Hence, instant petition.

6. At the very outset, learned counsel for the petitioner argued that in fact both the courts below have not attended the circumstances of the case in its true perspective and convicted the petitioner under section 302(b), P.P.C., which is not substantiated from the record. Contends that as far as occurrence is concerned, the same has been admitted by the petitioner while making his statement under section 342, Cr.P.C. Adds that a specific plea was taken by the petitioner before the Investigation Officer that the deceased made an attempt to commit rape with sister of the petitioner namely Saima Bibi. Contends that plea of the petitioner was found correct during the course of investigation as such the conviction and sentence recorded by learned Courts below is not sustainable in the eye of law. Contends that when it is established from the record that petitioner has committed the occurrence on the question of 'ghairat', therefore, the petitioner is entitled for the benefit of the same and as such the appropriate sentence could be under section 302(c), P.P.C.

7. On the other hand, learned Law Officer has not seriously controverted the contentions raised by learned counsel for the petitioner as the same is spelled out from the record.

8. We have heard the learned counsel for the parties and gone through the record.

9. Admittedly, the occurrence had taken place within the local limits of Police Station Saddar Farooqabad, District Sheikhpura. There is no denial to this fact that the allegation against the petitioner is that he caused fire-arm injury with Carbine, which landed on the abdomen near the chest of the deceased Muhammad Ramzan. The injured was taken to District Headquarter Hospital, Sheikhpura from where he was referred to Mayo Hospital, Lahore however, he succumbed to the injuries on 08.05.2009 and as such the provision of section 302, P.P.C. was added in the crime report. The petitioner since his arrest and commencement of investigation has raised first plea wherein it has been mentioned that deceased had made an attempt to commit rape with his sister. The mother of petitioner Maqsoodan Bibi had gone to reprimand Muhammad

Ramzan deceased upon which he started abusing mother of the petitioner and also grappled with her. The petitioner approached there he could not afford the conduct of the deceased and as such he

flared up and under the heat of passion could not resist and as such made a single fire shot. The stance taken by the petitioner remained consistent throughout during the course of investigation as well as the trial. During investigation, the first plea raised by the petitioner was found correct by the Investigating Officer. It is an admitted fact that first plea of the accused is admissible in evidence under Article 27 of the Qanun-e-Shahadat Order, 1984 ("Order of 1984"). Article 27 of Order 1984 is general principle enabling the Investigating Officer to record the same whereas Article 28 is mere an exception. As a general rule evidence not forming part of the transaction is not admissible whereas Articles 27/28 are an exceptions to the said general principle by laying down a rule that admissibility of those fact which might not be tendered in evidence to prove it but these are relevant to prove the status/mind the person committing it. For example the guilt, intent, knowledge, negligence, malice etc., and in all the intentions qua these conditions would be an admissibility as it is provided under Article 27 of the Order of 1984. Article 27 of the Order of 1984 has extended the scope to meet the question qua the existence of person state of mind or bodily feeling and all these facts and their existence in the state of affair has turned relevant.

During the course of proceedings before the learned Trial Court, the suggestion qua the state of mind referred above was also put to the prosecution witnesses of ocular account PW-3 and PW-4, respectively. Now the question, which requires determination, only relates to the quantum of sentence in the given facts and circumstances narrated above.

10. As observed earlier, that the occurrence had taken place due to the act of the deceased, which enraged the mental faculty of the petitioner and under the impulses of the same the instant occurrence had taken place, the same is spelled out from the record and as such the benefit of the same is available for which so many circumstances are not required rather the glimpse of the same is always deemed sufficient, which has been established by the Superior Court from time to time.

11. For what has been discussed above, we are of the considered view that sentence inflicted upon the petitioner by learned Courts below under section 302(b), P.P.C. is not made out, therefore, keeping in view the facts narrated above, instant petition is converted into appeal and same is partially allowed and we convert the sentence from imprisonment for life under section 302(b), P.P.C. to imprisonment for 10 years under section 302(c), P.P.C. whereas amount of compensation and imprisonment in its default prescribed by the learned Trial Court is ordered to be maintained. Benefit of section 382-B, Cr.P.C. is also extended. The Criminal Petition No. 1120(L)/2015 filed by the complainant for enhancement of sentence, having no substance, is dismissed.

MWA/R-2/SC Order accordingly.