

[Supreme Court of Pakistan]

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

Criminal Petitions Nos. 1116-L and 1143-L of 2015, decided on 25th June, 2020.

(Against the judgment dated 10.09.2015 passed by the Lahore High Court, Lahore in Crl. Appeal No. 12-J of 2011 and Murder Reference No. 125 of 2011)

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

----S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Occurrence took place at 0:800 a.m. and it was reported to the police on the same day at 10:15 p.m.---Delay of two hours and fifteen minutes in reporting the crime to the police was not material keeping in view the peculiar circumstances of the case such as the gender of the complainant, who was a female, and 11 miles distance between the place of occurrence and the police station---Record did not show any deliberate or conscious delay in reporting the matter to the police---Ocular account was furnished by widow (complainant) and brother in law of the deceased---Occurrence took place in front of the house of the complainant and place of occurrence was never disputed by the defence---Presence of the complainant at the time and place of occurrence could not be doubted by any stretch of imagination---Ocular account was fully supported by the medical evidence---Prosecution had successfully brought home guilt against the accused beyond any reasonable doubt---Petition for leave to appeal was dismissed and leave was refused.

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

----S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence---Sentence, reduction in---Death sentence reduced to imprisonment for life---Mitigating circumstances---Circumstances which rightfully persuaded the High Court to alter the sentence of death of accused to imprisonment for life were that the recovery of 12 bore double barrel gun was not believable; that motive behind the occurrence could not be proved; and that single fire shot on the person of deceased was attributed to the accused---Alteration of the sentence of death to imprisonment for life by the High Court was fully justified in such circumstances---Petition for leave to appeal was dismissed and leave was refused.

Malik Rab Nawaz, Advocate Supreme Court for Petitioner (in Criminal Petition No. 1116-L of 2015).

Mian Ghulam Rasool, Advocate Supreme Court for Petitioner (in Criminal Petition No. 1143-L of 2015).

Muhammad Amjad Rafiq, Additional P.G. for the State.

Mian Ghulam Rasool, Advocate Supreme Court for the Complainant.

Date of hearing: 25th June, 2020.

JUDGMENT

MANZOOR AHMAD MALIK, J.---Sarwar petitioner with his sister Sugharan Bibi faced trial before the learned Additional Sessions Judge Chiniot in case FIR No.371 of 2001 dated 03.09.2001 offence under sections 302/34, P.P.C. registered at Police Station Saddar Chiniot. After regular trial, he was convicted under section 302(b), P.P.C. and sentenced to death with compensation of Rs.200,000 (rupees two hundred thousand only) payable to the legal heirs of the deceased and in default thereof to undergo simple imprisonment for six month. Through the same judgment, Sugharan Bibi was acquitted of the charge. Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal whereas the learned trial court transmitted murder reference. Both these matters were taken up together by a learned Division Bench of the Lahore High Court and through the impugned judgment, appeal filed by

the petitioner was dismissed. His sentence of death, however, was altered to life imprisonment. Amount of compensation and the sentence of imprisonment in default thereof as ordered by the learned trial court were maintained. He was extended benefit of section 382-B, Code of Criminal Procedure. Aggrieved of the decision of the learned appellate court, Sarwar petitioner has filed Criminal Petition No.1116-L of 2015 whereas Mst. Parveen Bibi complainant has filed Criminal Petition No.1143-L of 2015.

2. Precisely, the prosecution case as set out in the FIR and narrated by both the witnesses of ocular account, while appearing before the learned trial court, is that Sarwar petitioner while armed with a .12 bore gun fired at Anwar (deceased) as a result whereof he died at the spot.

3. We have heard learned counsel for the petitioner as well as learned Additional Prosecutor General for the State assisted by learned counsel for the complainant and with their able assistance have gone through the relevant record.

4. The occurrence in this case took place at 0.800 a.m. on 03.09.2001 and it was reported to the Police on the same day at 10.15 p.m. The delay is two hours and fifteen minutes in reporting the crime to the Police is not material keeping in view the peculiar circumstances of the case such as the gender of the complainant and 11 miles distance between the place of occurrence and the Police Station. Therefore, we hold that there was no deliberate or conscious delay in reporting the matter to the Police.

5. Ocular account in this case was furnished by Mst. Parveen Bibi (PW.2) widow of the deceased and Jahangir (PW.3) who was brother in law (sala) of the deceased. The occurrence took place in front of the house of the complainant and place of occurrence was never disputed by the defence. Presence of the complainant at the time and place of occurrence cannot be doubted by any stretch of imagination. Jahangir was resident of other village but has given a specific reason for his presence at the place of occurrence which is to the effect that he along with others had visited the house of the deceased to patch up the matter between Anwar (deceased) and Sarwar (petitioner). Therefore, we hold that both the witnesses of ocular account were present at the spot and had witnessed the crime being committed by Sarwar petitioner.

6. It is case of the prosecution that Sarwar petitioner fired two shots at Anwar (deceased) with a .12 bore double barrel gun and only one shot landed on the person of the deceased. While conducting post mortem on the dead body of Anwar (deceased) Dr. Saif Ullah Haral (PW.5) observed one firearm entry wound. Therefore, we hold that the ocular account is fully supported by the medical evidence.

7. In the circumstances, we hold that the prosecution has successfully brought home guilt against the petitioner beyond any reasonable doubt. Therefore there is no merit in Criminal Petition No.1116, which is dismissed and leave to appeal is refused.

8. Now we take up Criminal Petition No.1143-L of 2015, filed by the complainant. We have observed that there are certain circumstances in this case which persuaded the learned Lahore High Court for altering the sentence of death of Sarwar respondent No.1 to imprisonment for life inasmuch as recovery of .12 bore double barrel gun was not believed by both the learned courts below; motive behind the occurrence could not be proved and single fire shot on the person of deceased is attributed to the petitioner. In these circumstances, the alteration of the sentence of death to imprisonment for life by the learned appellate court is fully justified. Resultantly, there is no merit in Criminal Petition No.1143-L of 2015, which is dismissed and leave to appeal is refused.

MWA/S-27/SC Petition dismissed.