

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik and Syed Mansoor Ali Shah, JJ

WARIS and another---Petitioners

Versus

The STATE and others---Respondents

Jail Petition No. 456 of 2015, Criminal Petitions Nos. 121-L of 2017 and 1304-L of 2015, decided on 23rd July, 2020.

(On appeal against the judgment dated 01.10.2015 passed by the Lahore High Court, Lahore in Criminal Appeals Nos. 116-J, 700 of 2011 and Murder Reference No. 222 of 2011)

Penal Code (XLV of 1860)---

---S. 302(b)---Constitution of Pakistan, Art. 185(3)---Qatl-i-amd---Leave to appeal, petition for---Contentions of accused that that there was a delay of about three hours in the registration of FIR: that the doctor stated in his cross examination that death might have been caused twelve hours prior to the postmortem examination; that as per prosecution case apart from the accused, two other co-accused persons also caused kasi blows on the head of the deceased, whereas another co-accused caused a blunt injury on the back of the deceased; that the doctor observed that the three injuries on the body of deceased individually and collectively were sufficient to cause death in ordinary course of nature; that the Trial Court while disbelieving the evidence of complainant and a prosecution witness acquitted all three co-accused persons; that the appeal against acquittal of said co-accused persons was dismissed by the High Court through the impugned judgment: that motive behind the occurrence was disbelieved by the High Court and kasi recovered on pointation of accused was not blood stained; that the same set of evidence which had been disbelieved by the courts below qua acquitted co-accused persons could not be relied to convict the accused on a capital charge particularly when there was no independent corroboration---Held, that said contentions needed consideration---Leave to appeal was granted to re-appraise the entire evidence on record for safe administration of justice.

Malik Rab Nawaz, Advocate Supreme Court for Petitioners (in J.P. No. 456 of 2015).

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

Dr. Abdul Basit, Advocate Supreme Court for the Complainant.

Date of hearing: 23rd July, 2020.

ORDER

MANZOOR AHMAD MALIK, J.---

Jail Petition No. 456 of 2015: Learned counsel for the petitioner contends that there is delay of about three hours in the registration of FIR that doctor (PW.5) stated in his cross-examination that death might have been caused twelve hours prior to the post-mortem examination, that it is the case of prosecution that along with the petitioner Waris, co-accused Zafar and Nasir alias Lachoo caused kasi blows on the head of deceased Noor Muhammad whereas co-accused Hakim alias Hako caused a blunt injury on the back of Noor Muhammad (deceased); that the doctor (PW.5) observed that injuries Nos.1, 2 and 3 individually and collectively were sufficient to cause death in ordinary course of nature; that the learned trial court while disbelieving the evidence of complainant (PW.3) and Umer Hayat (PW.4) acquitted co-accused Zafar, Nasir alias Lachoo and Hakim alias Hako; that the appeal against acquittal of aforesaid co-accused was dismissed by the learned High Court through the impugned judgment that motive behind the occurrence was disbelieved by the learned High Court and kasi recovered on the pointation of petitioner, was not blood-stained. He vehemently contended that the same set of evidence which has been disbelieved by the learned courts below qua co-accused of the petitioner (since acquitted) cannot be relied to convict the petitioner on a capital charge particularly when there is no independent corroboration.

2. The contentions raised need consideration. Leave to appeal is therefore, granted in this case to reappraise entire evidence available on record for safe administration of justice.

Criminal Petitions Nos.121-L of 2017 and 1304-L of 2015: To be heard along with the appeal arising out of connected jail petition.

MWA/W-4/SC Leave granted.