

Present: Qazi Faez Isa and Syed Mansoor Ali Shah, JJ

GHULAM RASOOL---Petitioner

Versus

The STATE---Respondent

Jail Petition No.249 of 2018, decided on 1st September, 2022.

(Against the order of Lahore High Court, Multan Bench dated 31.01.2018 passed in Crl. A. No. 235 of 2012 and Crl. R. No.125 of 2012).

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

---S. 302(b)---Qatl-i-amd---Re-appraisal of evidence---Prevalent practice in rural areas of referring to persons by their nicknames (aliases)---Discrepancy in the name of accused mentioned in the FIR and the name of the convict---Whether there was doubt as to identity of accused---Counsel for the petitioner submitted that one "Rasool Bakhsh" was mentioned in the FIR to have caused the injury to the deceased and there was no explanation on record of the case that the present accused, "Ghulam Rasool", was the same person mentioned in the FIR, therefore, it created a reasonable doubt as to the involvement of the accused in the commission of the alleged offence, which entitles him to be acquitted---Validity---Complainant and the accused were residents of the same vicinity, and throughout the proceedings of the case from the arrest of the accused till his conviction, no question as to the identity of the accused was ever raised---In rural areas of the province, where the occurrence took place, it was a matter of common knowledge that people were usually known by their nicknames (aliases), and their exact names were often not known to others---Alias of accused i.e. "Rasoola", was also mentioned in the FIR together with name "Rasool Bakhsh"---Accused, in the present jail petition, had himself mentioned his name as "Ghulam Rasool" alias "Rasoola"; his name, "Ghulam Rasool" alias "Rasoola", was mentioned in the investigation proceedings including the recovery memos, in the Challan, in the statements of the prosecution witnesses and in his own statement recorded under Section 342, Cr.P.C.---Contention as to doubt of the identity of the accused was therefore found baseless---Petition for leave to appeal was dismissed and leave was declined.

(b) Constitution of Pakistan---

---Art. 185(3)---Discretionary jurisdiction vested in the Supreme Court under Article 185(3) of the Constitution, exercise of---Scope---In the matter of granting leave to appeal, the Supreme Court does not function as an ordinary court of appeal, and in order to justify the grant of leave to appeal it must be shown that the case involves some important question of law or the impugned finding of fact is the result of gross misreading or non-reading of the material evidence or is so shocking or improbable that no reasonable person could have arrived at it on the basis of the evidence available on the record of the case.

Syeda B.H. Shah, Advocate Supreme Court for Petitioner.

Mirza Abid Majeed, Addl.P,G, Punjab for the State.

Sardar Usman Sharif Khosa, Advocate Supreme Court for the Complainant.

Date of hearing: 1st September, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---Through the present jail petition for leave to appeal, the petitioner impugns the judgment dated 31.01.2018 of the Lahore High Court, whereby the appeal of the petitioner filed against the judgment of the trial court has been dismissed. The trial court had convicted the petitioner for the offence of committing murder of the complainant's son, Muhammad Ilyas, and sentenced him to imprisonment for life, under section 302(b), P.P.C.

2. Learned counsel for the petitioner submits that one Rasool Bakhsh, not Ghulam Rasool, was mentioned in the FIR to have caused the injury to the deceased (Muhammad Ilyas) and there is no explanation on record of the case that the petitioner, Ghulam Rasool, is the same person mentioned in the FIR as Rasool Bakhsh. Therefore, she contends, it creates a reasonable doubt as to the involvement of the petitioner in the commission of the alleged offence, which entitles the petitioner to be acquitted while giving him the benefit of this doubt. We are not impressed by this contention. The complainant and the petitioner are residents of the same vicinity,

and throughout the proceedings of the case from the arrest of the petitioner till his conviction, no question as to the identity of the petitioner was ever raised. It is a matter of common knowledge that in rural areas of Punjab, people are usually known by their nicknames (aliases), and their exact names are often not known to others. The petitioner's alias, Rasoola, was also mentioned in the FIR together with name Rasool Bakhsh. The petitioner, in the present jail petition¹, has himself mentioned his name as Ghulam Rasool alias Rasoola. His name, Ghulam Rasool alias Rasoola, is mentioned in the investigation proceedings including the recovery memos, in the Challan, in the statements of the prosecution witnesses and in his own statement recorded under section 342, Cr.P.C. The contention as to doubt of the identity of the petitioner is therefore found baseless.

3. The next contention of the learned counsel for the petitioner is that the injury on the neck of the deceased, which led to his death, could not have been caused by a simple knife (churri) allegedly recovered from the petitioner. Dr. Abdul Rehman (PW-12), who conducted the post-mortem examination of the deceased, deposed in cross-examination that any sharp-edged weapon might cause the injury found on the neck of the body of the deceased. In view of the statement of PW-12, this contention of the learned counsel for the petitioner does not detract from the prosecution's case that the recovered churri was the weapon of offence.

4. Having heard the learned counsel for the parties at some length and examined the record of the case, we find that both the trial court and the High Court have concurrently recorded their findings of fact as to the culpability of the petitioner, after a thorough examination of the prosecution evidence. It is a well-settled principle² in regard to the exercise of discretionary jurisdiction vested in this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973, that in the matter of granting leave to appeal, this Court does not function as an ordinary court of appeal, and in order to justify the grant of leave to appeal it must be shown that the case involves some important question of law or the impugned finding of fact is the result of gross misreading or non-reading of the material evidence or is so shocking or improbable that no reasonable person could have arrived at it on the basis of the evidence available on the record of the case. The learned counsel for the petitioner has not been able to point out any misreading or non-reading of the material evidence that could justify interference with the concurrent findings of fact, nor does the case involve any important question of law for determination by this Court. The leave to appeal is therefore declined and the petition, dismissed.

MWA/G-16/SC Petition dismissed.