

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE FAISAL ARAB

CRIMINAL APPEAL NO. 466 OF 2017

(On appeal against the judgment dated 19.03.2014 passed by the Lahore High Court, Lahore in Murder Reference No. 305/2010 & Criminal Appeal No. 253-J/2010)

Muhammad Saleem

... Appellant

VERSUS

The State

... Respondent

For the Appellant: Ms. Aisha Tasneem, ASC

For the State: Ch. Muhammad Waheed, Addl. P.G.

For the Complainant: Mr. Muhammad Siddiq Khan Baloch, ASC

Date of Hearing: 28.02.2018

JUDGMENT

FAISAL ARAB, J.- The appellant was tried under Sections 302, 324, 380 & 411 PPC and sentenced to death for committing murder of Muhammad Yaseen vide judgment dated 18.05.2010. He was also directed to pay compensation of Rs.100,000/- to the heirs of the deceased in terms of Section 544-A Cr.P.C. and in default to undergo six months simple imprisonment. He was further convicted under Section 324 PPC for causing injury to the mother of the deceased Mst. Zaitoon Bibi and sentenced to five years rigorous imprisonment and fined to the tune of Rs.15,000/- and in default thereof to suffer a further one month's simple imprisonment. The learned High Court, however, converted

the death sentence into life imprisonment, maintaining the fines and other punishment.

2. The incident is of 20.11.2007. In the FIR, it was reported that on hearing cries of his mother at about 2.00 a.m. in the middle of the night, the complainant Muhammad Yameen alongwith Muhammad Shahid, Muhammad Aslam, Malik Sajjad rushed towards the house of his brother Muhammad Yaseen and saw the appellant inflicting dagger blows to his brother and when mother Mst. Zaitoon Bibi intervened, a dagger blow was inflicted on her stomach as well. Leaving the injured on the floor, the appellant left with the knife in his hand daring the witnesses not to come near him. Both Muhammad Yaseen and Mst. Zaitoon Bibi were then taken to hospital in injured condition where Muhammad Yaseen succumbed to his injuries. The motive, as narrated in the FIR, was that just a day earlier the deceased Muhammad Yaseen had received Rs.100,000/- from his nephew Muhammad Shahid and the appellant being his friend was well aware of this and soon after the incident, the said amount was found missing, which raised suspicion that the appellant committed murder of the deceased for money.

3. Learned counsel for the appellant contended that the postmortem was conducted with a delay of six hours; that the prosecution witnesses were related to the deceased; that it was an incident of *dacoity* in which deceased was killed by dacoits and that the motive attributed to the appellant is not believable. Learned Additional Prosecutor General and the learned counsel for the complainant, on the other hand, defended the impugned judgment.

4. Whether it was a case of robbery or there was suspicion on the appellant for having illicit relations with the wife of the deceased, as was suggested by the appellant himself in his statement recorded under Section 342 Cr.P.C, the motive will remain shrouded in mystery. The only thing that is to be seen is that whether the ocular and medical evidence as well as the recovery made by the police was so deficient that is to be lightly brushed aside.

5. It is an admitted fact that the appellant remained an absconder for about nine days. He was a friend of the deceased having his residence in the same neighborhood and known to the entire family of the deceased. It is quite surprising that he could not be found at his residence on the night of the incident, considering that the police was informed of the incident at 3:20 a.m. At that time the appellant ought to be found sleeping in his bed but he absconded. For any reason, if he had not spent the night in his house when the murder took place then he must be somewhere else. Not a single question was put to any of the prosecution witnesses that on the fateful night, he spent the night elsewhere. When a person is implicated in a case for committing murder at a place where he was not present, the most important question that is put to the prosecution witnesses in cross-examination is that the accused at the time of the incident was not even present in the locality. Nothing of the sort has come on the record. All this at least establishes that after the incident, which took place in the middle of the night at 2 a.m. the appellant could not be found at his residence.

6. PW-7 Muhammad Yameen, the complainant of the FIR and PW-8 Muhammad Shahid were residents of the same locality whereas PW-6 Mst. Zaitoon Bibi the mother of the deceased was residing in the house with the deceased where the murder took place. Hence none of the witnesses can be said to be chance witnesses. Their ocular account of the incident is also consistent. A question may arise that if the prosecution witnesses have told the truth then why they did not intervene considering the fact that the deceased received as many as fourteen stab wounds. As mentioned above, the complainant lived in the adjacent house and PW-8 Muhammad Shahid lived in the house opposite to that of the deceased. They woke up only when they heard the cries of Mst. Zaitoon Bibi. The cries of the mother reflect that scuffle between the appellant and the deceased had already started and in the process the appellant started stabbing the deceased. It would have taken the witnesses atleast a minute or so to get up from their beds and rush to the place of the incident. By that time quite a few knife blows might have already been inflicted on the deceased. There was no reason for the prosecution witnesses, more specially for Mst. Zaitoon Bibi (PW-6) who was mother of the deceased living with him in the same house and had herself received a knife blow right in her stomach to falsely implicate the appellant and conceal the fact that someone else had committed the murder of her son. Then according to the police witness soon after the arrest of the appellant on the tenth day of the incident, the knife and half of the missing money were recovered by the police at his instance. As to the medical evidence, the male doctor who conducted postmortem of the deceased and the female doctor who examined the injured Mst.

Zaitoon have both in their respective reports have given the approximate time of injuries, which coincides with the time reported by the prosecution witnesses. The testimony of eye-witnesses including complainant, the mother of the deceased who was injured, the police witness, who effected recovery of the crime weapon, the report of the serologist and the medical evidence cannot be brushed aside, which remained unshaken and do not point to any material contradiction. The only inconsistency that was tried to be highlighted by the defence counsel was that initially it was reported that the appellant had a knife in his hand which in evidence turned out to be a knife type of dagger. This inconsistency on its own strength cannot be regarded sufficient enough to discard the unshaken ocular account of the incident. There were fourteen incised wounds on the body of the deceased inflicted by a sharp edged weapon, which could either be caused by a heavy knife or a dagger. Whether it was a knife or a knife type of dagger, the same is a minor discrepancy without having any effect on the type of injuries sustained by the deceased. It all depends how a weapon is described by a witness.

7. As far as the argument that the postmortem was conducted with a delay of about six hours as the injured were taken to the hospital at 3.00 a.m. whereas the postmortem was conducted on the same day at 9.10 a.m., suffice it to say that the lethargy that is witnessed in most of the government hospitals and the fact that it is nobody's case that the deceased, a man in his forties, died of natural death, the delay in conducting the postmortem was not of such a consequence so as to brush aside the entire ocular evidence against the appellant.

8. The evidence that has come on the record was sufficient to lead both the courts below to reach the conclusion that it was the appellant who had committed murder.

9. In view of what has been discussed above, charge against the appellant has been proved beyond any shadow of reasonable doubt. This appeal having no merit is thus dismissed.

JUDGE

JUDGE

JUDGE

Islamabad,

Announced on _____ by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting

Khurram