

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

JAIL PETITION NO. 206 OF 2019

(On appeal against the judgment dated 11.03.2019 passed by the Lahore High Court, Rawalpindi Bench in Criminal Appeal No. 394/2018)

Muhammad Ijaz

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s): Syeda B.H. Shah, ASC

For the State: Mirza Abid Majeed, DPG

Date of Hearing: 08.05.2023

JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Petitioner Muhammad Ijaz was tried by the learned Additional Sessions Judge, Rawalpindi pursuant to a case registered vide FIR No. 66 dated 19.04.2012 under Section 302 PPC at Police Station Chountra, Rawalpindi for committing murder of Mst. Naveeda Bibi, daughter of the complainant. The learned Trial Court vide its judgment dated 26.03.2018 convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life. He was also directed to pay compensation amounting to Rs.200,000/- to the legal heirs of the deceased or in default whereof to further suffer six months SI. Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioner. In appeal the learned High Court maintained the conviction and sentence recorded by the learned Trial Court.

2. The prosecution story as given in the impugned judgment reads as under:-

"3. Precisely stated the case of prosecution, as unveiled by Ghulam Akbar (PW-14) is to the effect that on 19.04.2012 he along with his wife, namely, Ghulam Shafian went to fields in order to harvest wheat crops; that at about 12:00 noon his daughter, namely, Naveeda Bibi, who was married with accused Muhammad Ejaz about 14/15 years back and at present was residing with him due to the strained relation with her husband, after giving meals to them went back to the house; that at about 02:15 pm after harvesting wheat crops, the complainant, his wife, Muhammad Qurban and Abdul Latif along with their cattle reached in the street nearby his house; that he heard reports of fire shots from his house, upon which complainant along with persons mentioned above rushed towards his house and saw Muhammad Ejaz while decamping and brandishing his pistol therefrom; that Naveeda Bibi was found screaming in the room while smeared with blood and shortly thereafter died."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced seventeen witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. However, he neither appeared as his own witness on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against him nor produced any evidence in his defence.

4. At the very outset, learned counsel for the petitioner contended that it was an un-witnessed occurrence and the petitioner has been falsely involved in this case against the actual facts and circumstances. Contends that the whole case of the prosecution is based upon the statements of two witnesses, who furnished the evidence of *waj takar* and the same is partisan and it does not inspire confidence. Contends that the prosecution witnesses are at variance on salient features of the prosecution version, as such, the same cannot be made basis to sustain conviction of the petitioner. Contends that the motive in this case is shrouded in mystery and the report of the Forensic Science Laboratory with regard to weapon of offence is negative, which makes the prosecution case doubtful. Lastly contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer vehemently opposed this petition on the ground that the witnesses had no enmity with the petitioner to falsely implicate him in this case and the medical evidence is also in line with the ocular account, therefore, the petitioner does not deserve any leniency from this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

A bare perusal of the record shows that the unfortunate incident, wherein the daughter of the complainant was done to death, took place on 19.04.2012 at 02:30 pm whereas the matter was reported to the Police on the same day at 06:05 pm. The distance between the place of occurrence and the Police Station was 18 kilometers. Thus, it can safely be said that FIR was lodged with promptitude. Ghulam Akbar, complainant (PW-14) and Abdul Latif (PW-15) had heard the gunshot and witnessed the petitioner fleeing away from the place of occurrence after commission of offence while he was having a pistol in his hands. Evidence of these witnesses is in the nature of *waj takar*, the probative strength of which rests in the doctrine of *res gestae* in view of Article 19 of the Qanun-e-Shahadat Order, 1984. The said doctrine of *res gestae* is based upon the assumption that statements of witnesses that constitute part of the *res gestae* are attributed a certain degree of reliability because they are contemporaneous making them admissible by virtue of their nature and strength of their connection with a particular event and their ability to explain it comprehensively. These prosecution witnesses were residents of the same locality, therefore, their presence at the place of occurrence was natural. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be brought on record. These witnesses have given all necessary details of occurrence qua the date, time, place, name of accused, name of witnesses, manner of occurrence, kind of weapon used in the occurrence, the locale of injuries and the motive of occurrence. These PWs remained consistent on each and every material

point inasmuch as they made deposition according to the circumstances surfaced in this case, therefore, it can safely be concluded that their statements are reliable, straightforward and confidence inspiring. There is no denial to this fact that these PWs were related with the deceased but the law in this regard is well settled. A related witness cannot be termed as an interested witness under all circumstances. A related witness can also be a natural witness. If an offence is committed within the presence of the family members then they assume the position of natural witnesses. In case, their evidence is reliable, cogent and clear, the prosecution case cannot be doubted. However, a related witness would become an interested witness when his evidence is tainted with malice and it shows that he is desirous of implicating the accused by fabricating and concocting evidence but the learned counsel for the petitioner could not show us anything in this regard. The Court is required that the evidence of an eye-witness who is a near relative of the victim should be closely scrutinized. Learned counsel for the petitioner could not point out any plausible reason as to why the complainant has falsely involved the petitioner in the present case and let off the real culprit, who has committed murder of his daughter. Substitution in such like cases is a rare phenomenon. The medical evidence available on the record further corroborates the prosecution case so far as the nature, time, locale and impact of the injuries on the person of the deceased is concerned. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query she could not point out any major contradiction, which could shatter the case of the prosecution. Where discrepancies are of minor character and do not go to the root of the prosecution story and do not shake the salient features of the prosecution version, they need not be given much importance. As the report of the Punjab Forensic Science Laboratory is negative, therefore, the recovery of weapon of offence is inconsequential. So far as motive part of the prosecution story is concerned, the learned Trial Court has rightly disbelieved the motive by holding that is a vaguely formulated motive because no material evidence

could be placed on record to prove the motive. There is no denial to this fact that the petitioner remained absconder for a long period of more than five years, which is also a corroboratory piece of evidence against him. The learned courts below have already taken a lenient view while awarding the sentence of imprisonment for life to the petitioner, which in our view leaves no room to further deliberate on this point. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the petitioner has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

7. For what has been discussed above, we do not find any merit in this petition, which is dismissed and leave to appeal is refused. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

Islamabad, the
8th of May, 2023
Approved For Reporting
Khurram