

P L D 2001 Supreme Court 101

Present: Sh. Riaz Ahmed, Rashid Aziz Khan and Iftikhar Muhammad Chaudhry, JJ

QUTAB-UD-DIN---Appellant

versus

THE STATE---Respondent

Criminal Appeal No.265 of 1997, decided on 17th October, 2000.

(On appeal from the judgment dated 8-4-1997 of the Lahore High Court, Lahore passed in Criminal Appeal No.584 of 1994):

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

----Ss. 302(b)/34---Appraisal of evidence---F.I.R. had been promptly lodged assigning to accused the role of inflicting dagger blows on the chest of the deceased---Case of the accused was distinguishable from the case of the acquitted three co-accused---Principle of "falsus in uno falsus in omnibus" being not applicable, Courts were empowered to scan the evidence to reach a conclusion as to whether the testimony of a witness could be believed simultaneously against one set of accused and discarded against the other, subject to independent corroboration on a particular point qua the accused against whom such evidence was to be believed---Eye-witnesses had corroborated each other fully on material points and successfully stood the test of cross-examination---Conviction and sentence of accused were upheld in circumstances.

Ghulam Sikander and another v. Mamaraz Khan and others PLD 1985 SC 11; Tawaib Khan and another v. The State PLD 1970 SC 13; The State v. Mushtaq Ahmad PLD 1973 SC 418; Muhammad Shafi and others v. The State 1974 SCMR 289; Bakka v. The State 1977 SCMR 150; Khairu and another v. The State 1981 SCMR 1136; Ahmed and others v. The State 1982 SCMR 1049; Aminullah v. The State PLD 1982 SC 429; Muhammad Nawaz v. The State 1984 SCMR 190; Khairu v. The State 1981 SCMR 1136; Muhammad Ahmed v. The State 1997 SCMR 89 and Mir Hassan v. The State 1999 SCMR 1418 ref.

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

----Ss. 302(b)/34---Appreciation of evidence---Maxim: "Falsus in uno falsus in omnibus"---Applicability---Rule of "falsus in uno falsus in omnibus" has got no application to administration of criminal justice prevailing in the country---Courts, however, are empowered to scan the evidence to reach a conclusion as to whether the evidence furnished by a witness can be believed simultaneously against one set of accused and can be discarded against the other set of accused, subject to independent corroboration on a particular point qua the accused against whom such evidence is to be believed.

Ghulam Sikander and another v. Mamaraz Khan and others PLD 1985 SC 11; Tawaib Khan and another v. The State PLD 1970 SC 13; The State v. Mushtaq Ahmad PLD 1973 SC 418; Muhammad Shafi and others v. The State 1974 SCMR 289; Bakla v. The State 1977 SCMR 150; Khairu and another v. The State 1981 SCMR 1136; Ahmed and others v. The State 1982 SCMR 1049; Aminullah v. The State PLD 1982 SC 429; Muhammad Nawaz v. The State 1984 SCMR 190 ref.

Sardar Muhammad Ghazi, Advocate Supreme Court for Appellant.

Arshad Ali Chaudhry, Advocate Supreme Court for A.G., Punjab for the State.

Date of hearing: 17th October, 2000.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, J.---This appeal is filed by leave of the Court against the impugned judgment dated 8th April, 1997 passed by Lahore High Court, Lahore whereby conviction/sentence against appellant Qutab-ud-Din son of Ghulam Muhammad for the murder of Pervaiz son of Iqbal Khan, was maintained.

2. Precisely stating facts of the case as gleaned from F.I.R. Exh.PD registered at Police Station Saddar Faisalabad on the complaint of Abdul Jabbar son of Iqbal Khan are that on fateful day an altercation ensued between deceased Pervaiz and Shams-ud-Din acquitted accused who wanted to sit on the front seat of the wagon whereas the latter being conductor of the wagon did not allow him to sit on the said seat. Subsequent to the happening of this incident acquitted accused Shams-ud-Din alias Shami alongwith appellant Qutab-ud-Din, Muhammad Shafiq and Qasim launched attack upon Pervaiz when he was sitting on a cot under a shed in front of shop of Shah Muhammad which was closed at that time because Shamsuddin alias Shami wanted to take revenge for not allowing him to sit on the front seat of the wagon. In the process of launching attack appellant stabbed the deceased on his chest with a dagger due to which he fell down whereas acquitted accused Shami is said to have made firing with shot gun in the air and Muhammad Shafiq and Qasim though were empty-handed remained standing during the incident. On hearing reports of firing P.W. Abdul Jabbar (complainant) reached at the place of incident and saw the occurrence. He managed to remove his injured brother to Civil Hospital, Faisalabad but on his way he succumbed to injuries. Thereafter at about 7-00 p.m. P.W. Abdul Jabbar lodged F.I.R. which was recorded by Malik Mushtaq Ellahi, S.-I. The Investigating Officer recovered blood-stained earth vide Exh.PE. He also prepared site plan Exh.PA and also took other incriminating articles into possession: The accused persons were arrested by him on 18th August, 1993. On 31st August, 1993 Qutab-ud-Din got recovered dagger from the house of acquitted accused vide recovery memo. Exh.PB. On the same day acquitted accused Shams-ud-Din alias Shami also got recovered .12 bore gun vide recovery memo. Exh.PC.

3. On completion of investigation of the accused all the accused were sent up to face trial before Additional Sessions Judge, Faisalabad. Accused facing trial did not plead guilty, therefore, prosecution adduced evidence in support of its case. Learned, trial Court also recorded statement of accused under section 342, Cr.P.C. and also examined Dr. Muhammad Ishaq as defence witness. No one amongst the accused opted to make statement under section 340(2), Cr.P.C.

4. Learned Additional Sessions Judge, Faisalabad/trial Court vide judgment dated 12th October, 1994 acquitted accused Muhammad Shafiq and Qasim whereas appellant and Shams-ud-Din alias Shami were convicted/sentenced as under:--

"Under section 302(b)/34, P.P.C.: Imprisonment for life with Rs.20,000 each as compensation under section 544-A, Cr.P.C. to the legal heirs of deceased, failing which they shall undergo further R.I. for six months with benefit of section 182-B, Cr.P.C."

Both the convicts preferred appeal before Lahore High Court, Lahore which has been disposed of by means of impugned judgment in pursuance whereof Shamsuddin alias Shami has been exonerated of the charge whereas sentence of the appellant awarded to him by the trial Court was maintained.

5. Learned counsel for the appellant contended that as the evidence of eye-witnesses has not been accepted against the acquitted accused Shamsuddin alias Shami, Muhammad Shafiq and Qasim, therefore, the same set of evidence cannot be believed against the appellant, as such he is also entitled for the benefit of doubt. He further argued that the prosecution case appears to be improbable because appellant Qutab-ud-Din has no personal motive to cause death of Pervaiz deceased. Inasmuch as the Appellate Court as well as trial Court are not clear as to whether the incident had taken place in sequence of incident which took place between Shamsuddin alias Shami and Pervaiz deceased in the morning of the fateful day or the incident which has given rise to instant proceedings and incident which had taken place earlier to it were one and the same and if it is so then the appellant or his brother Shamsuddin alias Shami have no motive to murder Pervaiz. He also emphasised that the recovery of crime dagger at the pointation of appellant has been disbelieved by trial Court, therefore, the prosecution possesses no evidence to connect the appellant with the commission of the offence.

6. On the other hand learned counsel for the State contended that P.W. Abdul Jabbar and Muhammad Asif have fully implicated the appellant for the commission of the offence and their testimony gets independent corroboration from other incriminating material namely the blood-stained earth which was found stained with human blood as per report of Chemical Examiner Exh.PL. The medical evidence produced by Dr. Muhammad Anwar Sulehri Exh.PG. Learned counsel also pointed out that appellant Qutab-ud-Din in his statement under section 342, Cr.P.C. has not denied the incident. However, his plea was that Shamsuddin acquitted accused (real brother of appellant) had a quarrel with Pervaiz during course whereof deceased inflicted a, dagger blow on Ramzan who was guest of Shamsuddin with whom he has gone to board him on the wagon but as the name of Ramzan was not known, therefore, at the instant of one Riasat Ali appellant was falsely involved in this case alongwith his two other brothers on account of a previous grudge in which appellant has supported to his opponents in a murder case in which two sons of Riasat Ali were convicted and sentenced to death and life imprisonment respectively.

7. We have heard learned counsel for parties and have also gone through the available record carefully, As per the contents of F.I.R. it was promptly lodged at P.S. Saddar, Faisalabad wherein appellant Qutabuddin was assigned role of inflicting dagger blows on the chest of the deceased. So far as brother Shamsuddin alias Shami is concerned no role of inflicting injuries to the deceased was assigned to him although it was stated that he had a gun in his hand with which he was firing. As far as the remaining two accused namely Muhammad Shafiq and Qasim are concerned their presence was also shown at the place of incident but empty-handed. Thus for these reasons the case of the appellant is distinguishable from the case of three other accused. It may also be stated that during investigation no empty from the place of occurrence was taken into possession to support allegations against Shamsuddin alias Shami. Similarly he became entitled for exculpation on getting benefit of doubt because on the dead body of Parvaiz no fire-arm injuries were noticed by P.W. Dr. Muhammad Anwar Sulehari as per report Exh.PG..

8. As far as the principle of falsus in uno falsus in omnibus is concerned it has got no application so far as criminal justice prevailing in this country is concerned. However, the Courts are empowered to scan the evidence to reach at a conclusion as to whether the evidence furnished by a witness can be believed simultaneously against one set of accused and can be discarded against the other set of accused, however, subject to independent corroboration on particular point qua the accused against whom such evidence is to be believed. In this behalf if any authority is needed reference can be made to case of Ghulam Sikandar and another v. Mamaraz Khan and others PLD 1985 SC 11. relevant para from the above judgment is reproduced hereunder:--

"It is often said that the principle falsus in uno falsus in omnibus is not applicable in Pakistan. The same principle has been described in some cases, slightly differently; namely; that the testimony of an eye-witness should not be treated as indivisible although there is no consensus with regard to the later view. A contrary view has also been held. Expressed in a more direct manner a similar rule in the administration of criminal justice which is half-mark of Islamic Jurisprudence, that when a witness has been found false with regard to the implication of one accused about whose participation he had deposed on oath the credibility of such witness regarding involvement of the other accused in the same occurrence would be irretrievably shaken. However, as a matter of convenience a rule has been developed in Pakistan since the famous case of Ghulam Muhammad v. Crown (PLD 1951 Lah. 66) pronounced by late Chief Justice Muhammad Munir that where it is found that a witness has falsely implicated one accused person, ordinarily he would not be relied upon with regard to the other accused in the same occurrence. But if the testimony of such a witness is corroborated by very strong and independent circumstances regarding other the reliance might then be placed on the witness for convicting the other accused. For further and practical application of this rule the following cases can be instructive; (particularly if the principle of indivisibility of credibility laid down in the Privy Council cases Muhammad Faiz Bakhsh v. The Queen (PLD 1959 PC 24) is to be ignored:--

Tawaib Khan and another v. The State PLD 1970 SC 13;

The State v. Mushtaq Ahmad PLD 1973 SC 418;'

Muhammad Shafi and others v. The State 1974 SCMR 289;

Bakka v. The State 1977 SCMR 150;

Khairu and another v. The State 1981 SCMR 1136;

Ahmed etc. v. The State 1982 SCMR 1049;

Aminullah v. The State PLD 1982 SC 429;

Muhammad Nawaz v. The State 1984 SCMR 190.

It is to be emphasised that the sub-rule of 'separating the grain from the chaff', has been demonstrated in many cases by applying the sure test--whether the same tainted ocular evidence has received corroboration from independent and equally strong inculpatory evidence/circumstance(sic)/ accused.

The afore-discussed main rule shall suffer serious change if and when it is examined in the light of the Islamic Principles. But for the time being even if the rule generally followed by the superior Courts is applied to this case it would be very essential to seek strong and independent corroboration against each one of the accused on account of various reasons discussed in the High Court judgment as also in this judgment. No such corroboration is forthcoming against Khan Beg and Maqbul Illahi. Therefore, maintaining their acquittal on this ground alone would be amply justified".

The above view has been followed in the cases (i) Khairu v. State 1981 SCMR 1136; Muhammad Ahmed v. State 1997 SCMR 89 and Mir Hassan v. State 1999 SCMR 1418.

9. The evidence furnished by P.W: Abdul Jabbar relating to the role of convict/appellant seems to be truthful because despite of lengthy cross-examination defence failed to impeach intrinsic portion of his statement. As far as P.W. Muhammad Asif the second eye-witness is concerned he has also fully corroborated the statement of P.W. Abdul Jabbar on material points. His statement as well stood the test of cross-examination but without any favourable result to defence.

P.W. Dr. Muhammad Anwar Sulehari examined the dead body of Pervaiz and found a stab wound 2-1/2 c.m. D.N.P. on the outer side of left side of chest middle part. 6 c.m. from the left nipple at 4-00 O'clock position. Corresponding cuts on Qamiz and Bunyan were present which were blood-stained. He also noticed an abrasion 1-1/2 c.m. x 1 c.m. at the front of right knee.

No question was put to the doctor to deny the cut marks on the clothes of the deceased. As far as inquest report Exh.PJ is concerned it also confirms that deceased had sustained an injury on his chest.

10. As far as objection of the learned counsel for the appellant that convict Qutabuddin has no motive to commit the crime is concerned that is not acceptable for the reason that Shamsuddin alias Shami being his real brother had fought with deceased Pervaiz which incident took place at Wagon Stand, therefore, all the accused approached the deceased as they wanted to take revenge of the insult of Shamsuddin allegedly caused by Pervaiz to him, therefore, notwithstanding the fact as to whether the incident is in continuation of the earlier incident of the morning or not the fact remains that appellant was present at the place of incident and as per evidence referred to hereinabove he has inflicted dagger blows on the chest of the deceased. However, if the motive was weak its benefit he has already drawn because instead of awarding him normal penalty of death he got conviction/sentence under section 302(b), P.P.C. for life imprisonment, thus the argument so put forward by the appellant's counsel merit no consideration.

As such for the foregoing reasons we are of the opinion that the prosecution has successfully established guilt against appellant, therefore, no interference in the impugned order is called for. Accordingly the appeal is dismissed.

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