

P L D 2001 Supreme Court 96

Present Sh. Riaz Ahmed, Rana Bhagwandas and Mian Muhammad Ajmal, JJ

MUHAMMAD AKRAM KHAN---Appellant

versus

THE STATE---Respondent

Criminal Appeal No.410 of 1994, decided on 20th September, 2000.

(On appeal from the judgment of the Lahore High Court, Lahore, dated 29-5-1993 passed in Criminal Appeal No.669/88).

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

----S. 302---Constitution-of Pakistan (1973), Art.185(3)---Contention was as to whether implicit reliance could be placed on the prosecution evidence so as to completely rule out the plea taken by the accused---Leave to appeal was consequently granted to accused by Supreme Court to re-examine the prosecution case vis-a-vis the defence plea to ensure safe administration of justice.

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

----S. 302---Constitution of Pakistan (1973), Arts. 8(1) & 9---Honour killing ---Violative of Fundamental Rights---Prosecution witnesses - were reliable having no motive of their own to charge the accused falsely and their -relationship with the deceased alone could not render their testimony unreliable---Defence plea of the murder having been committed under grave and sudden provocation appeared to be a cooked up story in order to create a dent in the prosecution version at tire trial---Nobody had any right nor could anybody be allowed to take law in his own hands to take the life of anybody in the name of "Ghairat"---Neither the law nor the religion permitted the so called honour killing which amounted to "Qatl-i-Amd" simpliciter---Such iniquitous and vile act was violative of the Fundamental Right as enshrined in Art.9 of the Constitution which provided that no person would be deprived of life or liberty except in accordance with law and any custom or usage in that respect was void under Art.8(1) of the Constitution---Motive not being directly against the deceased,- plea of "Ghairat" could not be deemed to be a mitigating circumstance in the case---High Court, through a well-reasoned judgment, had confirmed the death sentence awarded to accused---Appeal was dismissed by Supreme Court in circumstances.

Arshad Ali Chaudhary, Advocate Supreme Court for Appellant.

Dil Muhammad Tarar, Advocate Supreme Court for the State.

Date of hearing: 20th September, 2000.

JUDGMENT

MIAN MUHAMMAD AJMAL, J.---This appeal by leave of the Court is directed against the judgment of the Lahore High Court, Lahore dated 29-5-1993, whereby Criminal Appeal No.669/88 of the appellant was dismissed confirming his death sentence.

2. Brief facts of the case are that on 5-4-1987 at 7-00 p.m., a case under section 302, P.P.C. was registered with Police Station Kamar Meshani, District Mianwali against the appellant on the statement of Muhammad Ayyaz for the murder of Niaz Muhammad. The allegations are that on the day of occurrence Muhammad Ayyaz, P.W. and Mehar Dil P.W. on one motorcycle while Niaz Muhammad brother of Muhammad Ayyaz and Ahmad Khan on the other, were returning from Makkarwal after enquiring about the health of one Muhammad Aslam at about Jhakki Degarwela. When they reached near Wandha Buchanwala on the metalled road, the appellant armed with a 7 m.m. rifle came, aimed his rifle at Niaz Muhammad and commanded him to stop -the motorcycle. Niaz Muhammad stopped the motorcycle and the moment he got down, the appellant fired three shots at him, which hit him on his right lower chest and abdomen. The appellant decamped from the spot. Niaz Muhammad died at the spot. The motive as given in the F.I.R. was that in November, 1986, Muhammad Akram appellant "had fired at Muhammad Sadiq, the cousin of Muhammad Ayyaz P.W., thus, a case under section 307, P.P.C. was registered against him and he was on bail in that case. About 10/11 days prior to the occurrence, Niaz Muhammad deceased and said Muhammad Sadiq had a scuffle with the appellant at Tarrag Bus Stop and in vengeance, the appellant committed the offence. The appellant was charged under section 302, P.P.C. to which he did not plead guilty and claimed trial. To prove its case, the prosecution produced Dr. Sher Ali Khan, P.W.1, Muhammad Mumtaz - P.W.2, Muhammad Akram P.W.3, Zia Ullah P.W.4, Hayat Ullah Khan P.W.5, Madad Khan P.W.6, Ghulam Asghar Khan P.W.7, Asmat Ullah Khan P.W.8, Muhammad Ayyaz complainant P.W.9, Mehar Dil P.W.10 and Muhammad Sarwai Khan P.W.11. The appellant in his statement under section 342, Cr.P.C. stated:--

"I am innocent. Muhammad Sadiq, a paternal cousin of the deceased, was suspected of having illicit relations with my sister Mst. Harridan. My co-villagers narrated me about this liaison and I on 22-11-1986, when Muhammad Sadiq was present near my house, fired at him. I was challaned and sent to judicial lock-up. The matter was resolved by the elders of the families and a compromise according to the inmates of the area, was effected, wherein the' deposed that I was to be released on bail and in this context they submitted sworn affidavits before the trial Court. I was released on bail. On the day of occurrence, at about 7-DO p.m my sister Mst Hamidan had gone to the nearby field owned- by Mst. Alam Khatoon. I came out of the house per chance and saw that Mst, Hamidan, my sister, was talking with the deceased, while standing in the wheat field. I apprehended that the deceased hid come at the instance of Muhammad Siddiq, to convey some message or to abduct her for him. I under the impulse of "Ghairat" fired at the deceased, because he caused grave and sudden provocation, The people of my village told me after I was released on bail, that Muhammad Sadiq was still having contact with my sister My sister managed to escape in nearby field. I came back to my house and narrated the occurrence to my father, who produced me before the police. The present case has been fabricated, with the stated facts, with the connivance of the local police, as the complainant is a man of influence. I am Jat by caste. The complainant and the remaining P.Ws. are Pathan and we are in minority and thus the police challaned me. "

Learned Judge, Special Court for Speedy Trial No.VIII, Sargodha vide his judgment dated 28-5-1988 convicted the appellant under section 302, P.P.C., and sentenced him to death plus fine of Rs.30,000 or in default of payment thereof to undergo five years' R.I. On recovery, Rs.20,000 out of fine amount, were ordered to be paid to the legal heirs of the deceased as compensation under section 544-A, Cr.P.C. The appellant challenged his conviction and sentence through Criminal Appeal No.669 which was dismissed by the Lahore High Court, Lahore vide its judgment impugned herein. Leave to appeal was granted by this Court to re-examine the prosecution case vis-a-vis defence plea, as under:--

"I have perused the prosecution evidence. The place of occurrence is admittedly 2-1/2 miles away from the village of the deceased and the P.Ws. Both the eye-witnesses are

related to the deceased and though the occurrence is alleged to have taken place at Jhikki Degarwela' and on the metalled road, it was not witnessed by any independent person from the locality with the result that no independent witness has appeared in support of the prosecution case. I have also noticed that Ayyaz P.W.9 has denied at the trial that Sadiq was his first cousin though he had admitted in the F.I.R. Exh.PH that Sadiq was his paternal cousin. He has also denied that the motive in the case of firing at Sadiq was that the petitioner suspected him of having illicit relations with his sister Mst. Hamidan though this was the motive stated in F.I.R. Exh.DC registered in that case. P.W.9 also denied the factum of compromise between the petitioner and Muhammad Sadiq in the case under section 307, P.P.C. even though his sister's husband Hafeez Ullah who was a P.W. in that case had sworn an affidavit to support the compromise. Similarly; Mehr Dil P.W. has also tried to suppress his relationship with Muhammad Sadiq though in his police statement Exh.DB, he had stated that Muhammad Sadiq was his paternal cousin. He has also denied the cause of the petitioner firing at Sadiq. In the circumstances, question arises whether implicit reliance could be placed on the testimony of these witnesses so as to completely rule out the plea taken by the petitioner. I am, therefore, of the view that. The prosecution case vis-a-vis the defence plea needs to be re-examined to ensure safe administration of justice."

3. We have heard the learned counsel for the appellant and the State and' have gone through the record of the case. As far defence version is concerned, though the appellant has admitted the commission of the crime in his statement under section 342, Cr.P.C. that he under the impulse of "Ghairat" fired at the deceased under grave and sudden provocation, who was talking to his sister Mst. Harridan in the fields owned by Mst. Khatoon, where wheat crop was standing apprehending that the deceased had come to convey the message of Muhammad Sadiq or to abduct her for him, but this version is not supported by any evidence on the record. The motive as given in the F.I.R. is that in November, 1986 the appellant had fired at Muhammad Sadiq, the cousin of the complainant, against whom a case under section 307, P.P.C. was registered. At the time of the present occurrence, the appellant was on bail in that, case. About 10/11 days prior to the occurrence, the said Muhammad Sadiq and Niaz Muhammad belaboured him and in retribution the appellant killed Niaz Muhammad deceased. The motive as set up by the prosecution is mostly based on presumption and is a mere guess that the offender might have acted under its presumed motive but the real motive is known to the offender who only knows as to what motivated him to commit the offence. Hence the motive given by the offender has to be given more weight. According to the appellant, the deceased was talking with his sister in the field, where he fired at him but according to the prosecution, the occurrence had taken place on the metalled road. The deceased was done to death at point No.1 of the site plan, wherefrom blood-stained earth and motorcycle, on which deceased was going to his village, were recovered and taken into possession vide Exh.PD and PF, respectively. It is to be noted that. point No. 1 is -on the metalled road which belies the defence plea that the occurrence had taken place in the field. The appellant suspected Muhammad Sadiq for having illicit relations with Mst. Hamidan, his sister, and due to such suspicion he attempted at his life and a case under section 307, P.P.C. was registered against him vide F.I.R. No. 169, dated 22-11-1986 at Police Station Kamar Mashani, which according to the appellant was resolved by compromise and on. the basis thereof, he was released on bail. Neither there is any evidence on the record nor it has been alleged by the appellant that the deceased had bad eyes on Mst. Hamidan, therefore; defence plea which is not supported-by any evidence., i; not sustainable as such, it was not a case of sudden or grave provocation in so far as deceased was concerned. The prosecution has proved its case through reliable witnesses who had no motive of their own to charge him falsely. Although P.Ws. were related to the deceased but they had no animus against the appellant to involve him falsely in a case entailing capital punishment. The prosecution version is supported by the recovery of the rifle at the instance of the appellant which matched with the empties recovered from the spot as per report of the Forensic Science Laboratory. The defence taken by the appellant

that he committed the offence under the impulse of "Ghairat" under grave and sudden provocation, has not been proved by him by any cogent evidence, therefore, it cannot be given undue importance. After examining the prosecution case and defence version in juxtaposition, we find that the prosecution has proved its case against the appellant beyond reasonable doubt through reliable witnesses, who had no motive of their own to charge the appellant falsely and mere relationship of the witnesses with the deceased would not render their testimony unreliable. It appears that defence plea was cooked up at the trial in order to create dent in the prosecution version. Legally and morally speaking, no body has any right nor can anybody be allowed to take law in his own hands to take the life of anybody in the name of "Ghairat". Neither the law of the land nor religion permits so-called honour killing which amounts to murder (Qatl-i Amd) simpliciter. Such iniquitous and vile act is violative of fundamental right as enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan which provides that no person would be deprived of life or liberty except in accordance with law and any custom or usage in that respect is void under Article 8(1) of the Constitution. In this case,, the plea of "Ghairat" cannot be deemed to be a mitigating circumstance as the motive was not directly against the deceased. The death sentence awarded to the appellant was confirmed by the learned High Court under section 374, Cr.P.C. through a well-reasoned judgment, which is not open to any exception. This appeal is accordingly, dismissed.

Appeal dismissed.

