

P L D 2003 Supreme Court 1

Present: Sh. Riaz Ahmad, C.J., Abdul Hameed Dogar and Muhammad Nawaz Abbasi, JJ

MUHAMMAD AJMAL---Petitioner

Versus

THE STATE through Advocate-General, Punjab---Respondent

Criminal Petition for Leave to Appeal No.80 of 2002, decided on 17th October, 2002.

(On appeal from the judgment dated 14-12-1999 of the Lahore High Court, Multan Bench, Multan, passed in Criminal Appeal No. 110 of 1997 and Murder Reference No. 109 of 1997).

Penal Code (XLV of 1860)---

----Ss. 302/109---Juvenile Justice System Ordinance (XXII of 2000), S.7-- Constitution of Pakistan (1973), Art.185(3)---Age of accused---Trial Court as well as Appellate Court while discarding the School Leaving Certificate produced by the accused had rightly concluded that he was not below the age of 18 years on the day of incident---Accused had neither agitated the point of his minority during investigation nor produced any documentary evidence, but took such plea for, the first time in the trial which appeared to be an afterthought---Ocular account furnished by the eye-witnesses including the injured witness was fully corroborated by medical evidence, motive, recovery of weapon of offence at the instance of accused and positive Serologist's Report--Accused had committed the cold-blooded murders of his mother-in-law and her mother in a brutal and atrocious manner and he did not deserve any leniency in the matter of sentence---Impugned judgment did not call for any interference---Leave to appeal was refused accordingly.

M. Saleem Sheikh, Advocate Supreme Court for Petitioner.

Nemo for Respondent.

Date of hearing: 17th October, 2002.

JUDGMENT

ABDUL HAMEED DOGAR, J.--By this, petition, petitioner Muhammad Ajmal seeks leave to appeal against the judgment dated 14-12-1999 whereby his Criminal Appeal No. 110 of 1997 was dismissed and the conviction and sentence of death awarded by the trial Court was maintained. Murder Reference No. 109 of 1997 forwarded by the trial Court for confirmation of death sentence was also accepted.

2. Briefly, stated the facts of the prosecution case are that on 31-10-1995, complainant Bashir Ahmad, a cultivator, his brother Allah Bachaya and nephew Abdul Majeed had gone to Jampur in connection with some personal work and while leaving he asked his wife Mst. Nazi Mai to bring his daughter Amen Mai, the wife of the petitioner, for her medical check-up to Jampur who during those days was residing with the complainant due to some differences with her husband. It was at about 10-30 a.m., the complainant and others after completing their work were waiting at Traffic Chowk Jampur, there appeared one Coaster coming from Jampur side and stopped near Ghalla Godown. The complainant and others went near the Coaster and saw that the petitioner was standing

in front of the door of the Coaster. Meanwhile, Mst. Nazir Mai, wife of the complainant, Mst. Mithan Mai, wife of Pari Khan, his mother-in-law and Mst. Amin Mai his daughter alighted from the Coaster. Within their sight, the petitioner took out knife from his pocket and caused three successive knife blows on Mst. Nazir Mai which hit on her chest, abdomen and wrist of left hand. Mst. Mithan Mai, her mother tried to intervene but she was also caused knife blow by the petitioner on the left side of her abdomen. The complainant and the other witnesses tried to catch hold of the petitioner but he succeeded in decamping in the crowd. Both of the injured were removed to the hospital Jampur where Mst. Nazir Mai succumbed to the injuries on arrival whereas Mst. Mithan Mai was admitted in injured condition who also later on succumbed to the injuries. The motive behind the occurrence was that in exchange of the marriage of Mst. Amin Mai, daughter of the complainant, Mst. Taj Mai, the sister of the petitioner, was married to Sabir Hussain son of the complainant. Due to differences, both of them were residing with their parents. On account of such grudge, the petitioner committed the aforesaid murders on the instigation of his elder brother Mitho.

3. On the same day, the police arrested the petitioner. On 4-11-1995, he while in police custody led to the recovery of blood-stained knife lying under the tree near railway gate. The police also took into possession blood stained Shalwar of the petitioner. Accused Mitho was also arrested but was found innocent during the investigation. He, however, was sent up to face trial along with the petitioner.

4. Dr. Faiz Ullah Khan Lund (P. W.2) conducted autopsy on the dead bodies of Mst. Nazir Mai and Mst. Mithan Mai respectively and found the following injuries on their persons:

Deceased Mst. Nazir Mai

- (i) An incised wound 2 c.m. x 1 c. m. x going deep (stab wound) on the left side of front of chest 8 c.m. below left clavicle and 3 c.m. lateral to the sternum.
- (ii) A stab wound 2 c.m. x 1-1/2 c.m. x going deep on the lateral aspect of right side of abdomen between 11th and 12th ribs.
- (iii) An incised wound 2-1/2 c.m. x 1 c.m. x bone deep on the lateral aspect of left forearm just above the wrist joint. The cloth bears the corresponding holes of injuries.

Deceased Mst. Mithan Mai

An incised wound/stab wound 3-1/2 c.m. x 1 c.m. x going deep on left side of abdomen 13 c.m. lateral to the umbilicus. On opening the abdominal cavity was full of blood.

5. At the trial, the prosecution in order to establish its case examined as many as 12 prosecution witnesses.

6. The petitioner in his statement recorded under section 342, Cr.P.C. denied his involvement in the case but while answering to the question as to why he was implicated, he replied as under:

"Mst. Nazir Mai was a supplier of girls of her family to other persons as prostitute and Mst. Mithan Mai used to help her in these matters. Pir Bakhsh P.W. had levelled allegation of Zina against Mst. Nazir Mai deceased and had objected her illicit relations with one Abdul Aziz Waran and Nazir Lanjwani. She was also having illicit terms with Rahim Bahhsh son of Allah Diwaya P.W. Pir Bakhsh P.W. had quarrelled with his sister Mst. Nazir Mai on this account and as a result of that quarrel, Pir Bakhsh was ousted from the house built on

the land of Bashir Ahmed complainant one month prior to the occurrence. Nazir Mai and Mithan Mai were not traceable for the previous night to the occurrence. Bashir Ahmad complainant had been making search of the above ladies and Pir Bakhsh P.W. had accompanied Bashir Ahmed. Both the ladies had been murdered by some one and I and my brother Mithoo had been involved due to suspicion and due to the reasons that Bashir Ahmad complainant wanted the divorce of Mst. Amin Mai from me. I have also been involved due to the enmity with the complainant because Ghulam Qadir a real paternal uncle of mine and the co-accused had divorced the real sister of the complainant namely Mst. Sakeena, who was afterwards sold out by said Ghulam Qadir after having been declared Kali. They, P. Ws. have deposed against me falsely due to the enmity and being close related of the deceased. P. Ws. are also allegedly chance witnesses. "

7. He however, did not examine himself on oath under section 340(2), Cr.P.C. but examined Master Muhammad Arif, P.T.C. teacher in his defence who produced his school leaving certificate.

8. On the conclusion (if the trial, accused Mitho was acquitted from the charge whereas the petitioner was found guilty of the charge under section 302/109, P.P.C. and was sentenced to death on two counts. He was ordered to pay Rs.30,000 as compensation under section 544-A, Cr.P.C. to the legal heirs of Mst. Nazir Mai and in default thereof to undergo S.I. for three months. He was also ordered to pay Rs.20,000 as compensation to the legal heirs of Mst. Mithan Mai deceased or in default whereof to undergo an imprisonment for two months' S.I.

9. We have heard Mr. M. Saleem Sheikh, learned Advocate Supreme Court in detail and have also gone through the record and the proceedings of the case in minute particulars.

10. No doubt, the petition filed by the petitioner from Jail has been shown to be barred by 85 days, but in view of the circumstances of the case, we condone the delay as dismissal on such technical ground will cause grave injustice to him thus intend to dispose of the same on merits.

11. At the very outset, learned counsel for the petitioner stated that he will advance his arguments only on the ground of age as according to him, the petitioner at the time of incident was minor and a juvenile offender, thus his case would be covered under section 7 of Juvenile Justice System Ordinance, 2000. According to him, the petitioner was born on 18-2-1982 as such on the day of incident he was child being below the age of 18 years. In support, he examined Muhammad Arif as D. W.1 who produced his school leaving certificate. According to the statement under section, 342, Cr.P.C. of the petitioner, recorded at the trial, he was of 20 year, of age on 21-11-1996. Faking into consideration this aspect of the matter, he would even be below 18 years of age on the day of occurrence, therefore, being child would be entitled to the special remission granted by the President of Pakistan's Letter No. F.8/41/2001-Ptns. dated 13th December, 2001, whereby the President in exercising his prerogative under Article 45 of the Constitution of Islamic Republic of Pakistan, 1973, on the advice of the Chief Executive, has been pleased to grant special remission in sentences.

12. We have given our anxious thought to the above contentions but do not find any force therein, as per record of the case, the complainant preferred an application to produce evidence in rebuttal which was allowed and Liaquat Iqbal, Nikah Registrar was examined as C. W.1. According to him, the petitioner was of 18 years of age at the time of Nikah which took place on 18-10-1995. In proof, he produced the copy of such Nikahnama. It would be pertinent to note that it was the petitioner with himself disclosed that he was 18 years, of age at the time of his Nikah. Complainant Bashir Ahmad in his cross-examination denied the suggestion that the age of the petitioner

would be about 14 years and 8 months but voluntarily stated that he as well as his daughter were of equal ages. Irrespective of the above, the trial Court as well as the Appellate Court have rightly discarded school leaving certificate produced by the petitioner while advancing cogent reason that it was for the first time, the petitioner took the plea in the trial and had not agitated the same during investigation and produced any documentary evidence. The same therefore, appeared to be an afterthought and was thus rightly ruled out of consideration.

13. The prosecution has succeeded in bringing on record sufficient evidence whereby the guilt of the petitioner and his active participation in the commission of the offence is established. The ocular account furnished by Bashir Ahmad, injured Mst. Amin Mai and Abdul Majeed is fully corroborated from the medical evidence, motive, recovery of weapon of offence at the instance of the petitioner and positive report of Serologist leaving no room for doubt at all. The brutal and atrocious manner in which the petitioner committed the cold-blooded murders of his mother-in-law and her mother does not call for any leniency in the sentence. Moreover, the learned trial Court as well as the learned Lahore High Court have elaborately discussed every aspect of the case and have dealt with the same in detail, leaving no room for further consideration.

14. For the foregoing 'reasons, there is no good reason to interfere with the concurrent findings of the Courts below. Accordingly, the impugned judgment is maintained and the petition is dismissed and leave refused.

N.H.Q./M-693/S Leave refused.

