

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Present :

Naimatullah Phulpoto,

J.

Zulfiqar Ali Sangi,

J.

(1) CrI. Jail Appeal No.D-59 of 2018.

(2) CrI. Jail Appeal No.D-60 of 2018.

Appellant : Nawab @ Waloo, through Mr. Habibullah G. Ghouri
advocate.

Respondent : The State, through Mr. Ali Anwar
Kandhro Additional Prosecutor General.

Date of hearing: 11.11.2020.

Date of decision: 11.11.2020.

J U D G M E N T .

Naimatullah Phulpoto, J- Appellant Nawab @ Waloo son of Turab Ali Qambrani, was tried by learned Judge, Anti-Terrorism, Shikarpur, in Special Case No.30/2018, in Crime No.02/2018 under section 302, 311, 34, PPC & 6/7 of ATA, 1997, registered at Police Station Dilawar Marfani, District Shikarpur and in Special Case No.31/2018, in Crime No.03/2018 under section 23(1)A Sindh Arms Act, 2013, registered at Police Station Dilawar Marfani, District Shikarpur. Both cases were tried together, on conclusion of trial vide judgment dated.13.10.2018, appellant was convicted and sentenced as under :

- a. Accused Nawab is convicted for an offence punishable under section 302(a) PPC and sentenced to suffer R.I for life imprisonment. As per record, the deceased Mst. Zarina has left behind her father (70 years), mother (65 years) daughter (03 years) and son (1 1/2 year), therefore, accused is ordered to pay compensation of fine Rs.3,00,000/-(three lacs) to the legal heirs of deceased namely Mst. Zarina. As per record, the deceased Rizwan has left behind his mother (52 years), wife (23/24 years),

three sons (6 year, 5 year and 2 year respectively) daughter (03 years) and two brother, therefore, accused Nawab is ordered to pay compensation of fine of Rs.3,00,000/- to the legal heir of deceased Rizwan as compensation under section 544-A Cr.P.C and in default of payment of recovery of aforesaid amount the accused shall suffer further imprisonment for period of two years.

- b. Accused Nawab is further convicted for an offence punishable under section 7(a) of Anti-Terrorism Act 1997 and sentenced to suffer R.I for life imprisonment. He is also ordered to pay fine of Rs.50,000/- (fifty thousands) and in case of default of payment of fine, he shall suffer R.I for two months more.
- c. Accused Nawab is also further convicted for an offence punishable under section 23(i)A Sindh Arms Act 2013 and sentenced to suffer R.I for (07) seven years.

2. All the sentences were directed to run concurrently. Appellant was extended benefit of Section 382 Cr.P.C. Separate appeals are preferred by the appellant through Senior Superintendent, Central Prison Sukkur in both crimes which were admitted for regular hearing.

3. Brief facts of the prosecution case as mentioned in the impugned judgment in the main case are as under :

"The brief facts of crime No.02/2018 are that complainant SIP Shahzado Khan Dashti SHO PS Dilawar Marfani lodged FIR on 14.03.2018 at 1900 hours at PS stating therein that on the same day he along with his subordinate staff proceeded from PS vide roznamcha entry No.5 at 1200 hours for patrolling in the area, during patrolling when reached near village Ghulam Hussain Jafferi at 1300 hours, he received spy information that one Nawab @ Waloo son of Turrab Ali Qambrani r/o village Dewal Qambrani Taluka Shikarpur along with one unknown relative has killed his wife namely Zarina and one Rizwan son of Usman Bagrani Talpur by fire shot on allegation of karap and are trying to conceal the dead bodies. On receiving such information they proceeded towards pointed place and reached at village Dewal Qambrani near house of accused Nawab from eastern side at 1330 hours. They saw two persons armed with guns who on seeing police party escaped away towards northern side of jungle. They identified one accused to be Nawab @ Waloo Qambrani and could not identify other accused. They alighted from police mobile and entered into house of accused and saw two dead bodies, one was of man and other was of woman lying in the katcha chhapra of house, some ladies were sitting beside

the dead bodies. Out of them two ladies Mst. Janat Khattoo wife of Turrab Qambrani and Mst. Pathani wife of Saleh Qambrani disclosed that one dead body is of Rizwan Talpur and other is of Mst.Zarina wife of Nawab Qambrani. Both ladies further disclosed that accused Nawab along with one unidentified accused has killed his wife Mst. Zarina and Rizwan by fire shots on the allegation of karp and have escaped away. They saw dead body of deceased Rizwan who sustained fire shot on chest, belly and back side, blood was oozing and was died. They also saw dead body of Mst. Zarina who has also sustained fire shot on her chest, belly and back side and was died. Thereafter complainant arranged private vehicle and took dead bodies to RHC Garhi Yasin for post mortem. After getting post mortem he handed over the dead bodies to their legal heirs and returned back to PS and lodged FIR of the incident on behalf of State accordingly."

4. Facts of offshoot case have also been mentioned in the same judgment.

5. After usual investigation, challan was submitted against the accused. Offshoot case was ordered to be tried with the main case as provided under section 21-M of Anti-Terrorism Act, 1997.

6. Trial Court framed charge against the accused, he pleaded not guilty and claimed to be tried. At the trial, prosecution examined PW-1 Dr. Dayal Das M.O at Ex.6. PW-2 ASI Nazeer Shah at Ex.7. PW-3 complainant, SHO Shahzado Dashti at Ex.8. PW-4 lady Dr. Baby Akhtar WMO at Ex.9 and PW-5 Inspector/I.O Imtiaz Ahmed Khoso at Ex.10. All the P.Ws produced relevant documents. Thereafter, prosecution side was closed. The trial Court recorded statement of the accused under section 342, Cr.P.C in which accused claimed false implication of this case and denied the prosecution allegations. The trial Court after hearing the learned counsel for the parties and assessment of evidence vide judgment dated.13.10.2018 convicted and sentenced the appellant as stated above.

7. Learned advocate for the appellant at the very outset argued that learned Judge, Anti-Terrorism Court, Shikarpur, had no jurisdiction to try the case under the provisions of Anti-Terrorism Act, 1997, as it was case of honour killing, which is not the act of terrorism. It is further submitted that case may be remanded to Court of ordinary jurisdiction for trial. In support of submissions, he has relied upon the judgment of the Honourable Supreme Court reported

in the case of *KHUDA-E-NOOR v. THE STATE* (PLD 2016 Supreme Court 195).

8. Mr. Ali Anwar Kandhro, learned Addl. P. G appearing for the State, conceded to the legal position raised by the learned advocate for the appellant and prayed for remand of the cases to the learned Sessions Judge, Shikarpur, for conducting the trial in the matters in accordance with law.

9. We have carefully heard the learned counsel for the parties and studied the case law.

10. Perusal of the impugned judgment dated 13.10.2018, reveals that Mst.Zarina and Rizwan were killed on the allegation of illicit relations/honour killing. The relevant portion of judgment of the trial Court regarding honour killing is reproduced as under :

"From the perusal of record it transpire that the prosecution has succeeded to bring trustworthy evidence against the accused persons. All the witnesses were subjected to lengthy and searching cross examination, but defense failed to shack their credibility and veracity except a few immaterial discrepancies and minor contradictions which are not fatal to discard the straight forward and confidence inspiring testimony of the witnesses. The motive of offence is also established fully and there is nothing to disbelieve the evidence available on record.

On the other hand the accused has failed to prove case of false implication and the plea of accused is that he has been involved in this case falsely is not convincing as the accused has failed to substantiate the plea.

It has also been usually observed that the people commit such type of offence and kill the innocent woman while imposing allegation of karap due to dispute arising in between them over the various matter. It has also been observed that such type of offence are not being registered by the family members of the deceased due to fear and to earn enmity, the present case is example for one of them. The accused has committed double murder and as per complainant he saw the dead bodies of both deceased in the same katcha house where the women were sitting. The police had no an enmity with the present accused to implicate him falsely in this case, therefore, in view of reasons and discussions, I am of the considered view that prosecution has succeeded to prove guilt of accused Nawab beyond shadow of reasonable doubt. Further more such type of offence spread in the locality and creates terror and insecurity in the mind of local people as well as the legal

heirs of the deceased. Accordingly points under discussion 2 to 5 are decided as proved beyond shadow of doubt.

Point No.6.

In view of my finding and reasons stated above, I have come to the conclusion that prosecution has proved its case against the accused. It has also been established that present accused Nawab killed his wife Mst. Zarina and one Rizwan on the false allegations of karap.

11. The crucial question involved in these appeals is as to whether learned Judge, Anti-Terrorism Court had jurisdiction to try this case under the provisions of Anti-Terrorism Act, 1997. By virtue of the provisions of Section 6 of ATA, 1997 any action falling within any of the categories of cases mentioned in S.6(2) of the Anti-Terrorism Act, 1997 could not be accepted or termed as "terrorism" unless the said action was accompanied by a "design" or "purpose" specified in S.6(1)(b) or (c) of the said Act. The Honourable Supreme Court in the case of *KHUDA-E-NOOR v. THE STATE* (supra) has already held that the case of honour killing shall not be termed as case to be tried under the provisions of Anti-Terrorism Act, 1997. Relevant portion of the aforesaid judgment is reproduced as under :

"3. The crucial question involved in this appeal is as to whether the learned Sessions Judge, Mastung was justified in holding that the case in hand was one of honour killing and, thus, it was a case of "terrorism" attracting the exclusive jurisdiction of an Anti-Terrorism Court or not. It also needs to be examined as to whether the High Court of Balochistan, Quetta was justified in declaring in the case of Gul Muhammad (supra) that by virtue of the provisions of Section 6(2)(g) of the Anti-Terrorism Act, 1997 all cases of honour killing are to be tried by an Anti-Terrorism Court. We have minutely gone through the said judgment passed by the High Court of Balochistan, Quetta and have found that for holding that all cases of honour killing attracted the definition of "terrorism" the High Court had only relied upon the provisions of Section 6(2)(g) of the Anti-Terrorism Act, 1997 without appreciating that by virtue of the provisions of Section 6 of the Anti-Terrorism Act, 1997 any action falling within any of the categories of cases mentioned in sub-section (2) of Section 6 of the Anti-Terrorism Act, 1997 could not be accepted or termed as "terrorism" unless the said action, was accompanied by a "design" or "purpose" specified in Section 6(1)(b) or (c) of the said Act. If the interpretation of Section 6(2)(g) of the Anti-Terrorism

Act, 1997 advanced by the High Court of Balochistan, Quetta in the said judgment were to be accepted as correct then all cases of a person taking the law in his own hands are to be declared or accepted as cases of terrorism but that surely was not the intention of the legislature. The provisions of Section 6 of the Anti-Terrorism Act, 1997 which define "terrorism" clearly show that the said section is divided into two main parts, i.e., the first part contained in Section 6(1)(b) and (c) of the said Act dealing with the mens rea mentioning the "design" or the "purpose" behind an action and the second part falling in Section 6(2) of the said Act specifying the actions which, if coupled with the mens rea mentioned above, would constitute the offence of "terrorism". This scheme of Section 6 of the Anti-Terrorism Act, 1997 had unfortunately not been considered by the High Court of Balochistan, Quetta while rendering the judgment mentioned above and, thus, we have every reason to declare that the said judgment passed by the High Court of Balochistan, Quetta had not laid down the law correctly and had in fact misconceived the legal position contemplated by Section 6 of the Anti-Terrorism Act, 1997."

12. The case in hand was a case of honour killing as set up in the FIR and during the trial the motive set up in the FIR was same. The trial Court has also come to the conclusion that it was the case of honour killing as reflected in the last paragraphs of the impugned judgment. It is clear that offence was committed with no design or purpose contemplated by section 6(1)(b) or (e) of the Anti-Terrorism Act, 1997. We have thus, entertained no manner of doubt that in the present case, learned Judge, Anti-Terrorism Court had no jurisdiction to try it, therefore, impugned judgment was without jurisdiction and conviction and sentence recorded by the trial Court vide judgment dated.13.10.2018 are set aside. Resultantly by consent both cases are remanded to learned Sessions Judge, Shikarpur, for trying himself or to make it over to any other Additional Sessions Judge for trial in accordance with law, without being influenced by the judgment passed by the Judge, Anti-Terrorism Shikarpur. It is expected that learned Sessions Judge, after hearing the arguments shall decide the case within two months in accordance with law.

13. In the view of above both Appeals are accordingly disposed of.

Judge

Judge

M.Y.Panhwar/ **