

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Amin-ud-Din Khan

Criminal Petition No.290 of 2020

(Against the judgment dated 28.2.2020 of the
Peshawar High Court, Peshawar passed in Cr.
Revision No.200-P of 2019)

Muhammad Uzair Jamal

...Petitioner(s)

Versus

The State and another

Respondent(s)

For the Petitioner(s): Syed Asghar Hussain Shah Sabzwari
Mr. Mehmood A. Sheikh, AOR

For the State: Mr. Arshad Hussain Yousafzai, ASC

Date of hearing: 22.07.2020.

ORDER

Qai Muhammad Amin Ahmed, J.- Ms. Gulalay, 27/28, a student of M.Phil, was shot dead inside the safety of her home located within the precincts of Police Station Cantt. Nowshera at 3:45 p.m. on 2.2.2019 in a family function, scheduled to fix her marriage date; incident was reported by Ashfaq Ahmed Khan who accused the petitioner for the crime. According to the complainant, the petitioner aspired to marry the deceased, already betrothed and it was in this background that he on the fateful day murdered the young lady within the view of the witnesses; he was subdued by the attendants and produced before the police along with the weapon of offence. Autopsy was conducted same day at 4:40 p.m. and the Medical Officer observed no less than seven entry wounds on different parts of the body. The petitioner was sent to face trial before an Additional Sessions Judge at Nowshera; he moved an application on 8.5.2019, purportedly under section 465 of the Code of Criminal Procedure 1898 wherein he took the following grounds:

2. *“That, the accused/petitioner is suffering from different mental ailments from the last so many years.*

3. *That the accused/petitioner has remained patient of various doctors and in this connect, also remained admitted in hospitals.*
4. *That, the accused/petitioner after remanding to the judicial lock up is lodged in the mental hospital at Peshawar Prison, being dangerous for the life of others and is still there. (Copy of doctor prescription and certificate attached.*
5. *That the accused/petitioner in such circumstances is unable to defend himself within the parameter of the law during the course of trial.”*

Pursuant to the above pleas, opinion from the Jail Doctor was solicited vide order dated 27.5.2019 whereupon Senior Medical Officer, Central Prisons Peshawar, furnished the opinion dated 11.06.2019, reproduced below:

“It is submitted that the above named accused was shifted from Judicial Lockup Nowshera on 23.2.2019 for Psychiatry treatment. He was admitted in Detain Unit/Psychiatry Wards for observation of Psychiatrist on the same day.

He was under the observation of Psychiatrist Dr. Muslim District Specialist Psychiatrist w.e.f. 23.2.2019. He was diagnosed as a case of Depressive illness and advised Tab Prothadine 75 mg one at night daily. He was examined by concerned Psychiatrist Dr. Muhammad Tariq on 30.5.2019 with the remarks that the accused may please be shifted back to Nowshera Jail as there is no Court Letter regarding his treatment/Standing Medical Board Report.”

The learned Additional Sessions Judge declined the motion vide order dated 6.9.2019, impugned before the Peshawar High Court through a revision petition with no better outcome on 28.2.2020, vires whereof, are being assailed primarily on the ground that the petitioner, undergoing psychiatric trauma, was neither cognizant of the consequences of his act nor he can properly defend himself during the trial on account of ongoing terminality of his mental disorder. It was further prayed that in view of inconclusive nature of earlier report, dismissal of petitioner’s plea is likely to result into miscarriage of justice, warranting interference by this Court. The learned Law Officer faithfully defended the impugned judgment.

2. Heard. Record perused.

3. Certainly it is for the trial Court to settle the question of petitioner’s innocence or guilt on the strength of evidence with all available procedural safeguards, nonetheless, for the limited purpose of examination

of his plea raised before us, available material irrefutably suggests homicidal death of a young lady in her prime youth, assassinated inside her parental dwelling with repeated fire shots, seven in number, with an offensive/lethal weapon, on an occasion, most important in her life; this unmistakably evinces a design to eliminate her with no chance of survival; given the occasion/gathering, she being the sole target to the exclusion of others, additionally indicates that the assassin had a preconceived/premeditated target and a purpose that he flawlessly achieved in a short span of time without any bullet left in the chamber. It would be rather naive to expect such a meticulous execution from a person with frail faculties or capacities without inflicting slightest harm to his own person or anyone else present at the venue; he appears to have done it most craftily. It is also a common ground that the petitioner and the deceased studied together in the same university and, thus, former's inclination for a bond, a suggested motive for the crime, is a possibility that cannot be viewed as being unrealistic; deceased's engagement standing in impediment thereto. While the petitioner was certainly entitled to his obsessions and ideals; he had no right to enforce his wish through a method, most violent; he fully well knew that he couldn't tie knot with a corpse and the sole purpose of the deadly assault appears to be chauvinistically motivated to deny the deceased a life of her own choice, a trend unfortunately not uncommon in our society.

5. In the above backdrop, we have examined entire record annexed with the present petition to evaluate petitioner's acclaimed mental incapacity. According to Psychiatrist report, the petitioner after having been kept under observation from 23.2.2019 onward, was diagnosed as a case of "*Depressive Illness*" and prescribed "*Tab. Prothadine 75 mg*" one at night. Depression is a natural concomitance of the crime and one may hardly find a prisoner facing corporal consequences, possibly the gallows to stay unperturbed; it is a state of mind primarily governed by a variety of factors including fear, regret or remorse; such inevitable disequilibriums are not recognized by law to hold the process of justice in abeyance. An offender can claim immunity from prosecution on the basis of unsound mind if at the time of commission thereof, he by reason of unsoundness of mind, was incapable of knowing the nature of the act or lacked knowledge on account thereof about its being wrong or contrary to law (*See section 84 of the Pakistan Penal Code, 1860*) and in so asserting he has to be clear and categorical in his claim. By raising such a plea, an offender takes

upon himself the responsibility to discharge the onus and in the event of his failure, the Court would draw a contra presumption. It has not been petitioner's plea in his application dated 8.5.2019 before the learned trial Court. Without taking plea of unsound mind and by referring to some unspecified "*different mental ailments*" asserted that he was unable to defend himself. For determination of such a claim, an accused may be examined "*by the Civil Surgeon of the District or such other medical officer as the Provincial Government directs.....*". Part VIII Chapter XXXIV Special Proceedings recognizes only dangerous or incapacitating lunacy to suspend the trial and take measures provided thereunder. "*Depressive Illness*" is not a disease or incapacity recognized by law as a justification to deny justice to the victims of crimes or their families nor does it allow digging out of acclaimed incapacity by a Physician of offender's own choice, other than the designated medical officers. View taken by the learned trial Judge, upheld by the learned High Court, being well within the remit of law, calls for no interference. The above observations, being issue specific, shall not cast their shadow upon the outcome of the trial, to be essentially settled under *Due Process of Law* on the strength of evidence alone. Petition fails. Leave declined.

Judge

Judge

Judge

Islamabad, the
22nd July, 2020
Not approved for reporting
Azmat/-