

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik
 Mr. Justice Syed Mansoor Ali Shah
 Mr. Justice Amin ud Din Khan

Crl. Appeal Nos. 113-L to 116-L of 2020 &**Crl. Petition Nos. 551-L to 553-L of 2015**

(On appeal from the judgments of the Lahore High Court, Lahore dated 17.03.2015 passed in Crl. Appeal No. 2517 of 2010, Crl. Appeal No. 356-J of 2012 & Crl. Appeal No. 4-J of 2012 and CSR No. 71-T of 2010, CSR No. 17-T of 2012 & CSR No. 9-T of 2010)

Muhammad Malik	Crl. A.113	
Muhammad Nawaz	Crl. A.114	
Ghulam Mustafa @ Toori	Crl. A. 115	
Muhammad Ilyas etc	Crl. A. 116	Appellant(s)
Mst. Rasheeda Bibi	in all Crl. Ps	Petitioner(s)

Versus

The State etc	in Crl. As	
M. Malik etc	in Crl.P.551	
Ghulam Mustafa etc	in Crl.P.552	
Muhammad Nawaz	in Crl.P.553	Respondent(s)

For the Appellant(s) : Dr. Khalid Ranjha, ASC (in Crl. A. Nos. 113, 115, 116-L)
 Mr. Ali Zia Bajwa, ASC
 (in Crl. A. 114-L)

For the Petitioner(s) Hafiz Ansar ul Haq, ASC (in all criminal petitions) along with complainant and sister of deceased.

For the State : Mr. Khurram Khan, Addl. P.G. Punjab

* Date of Hearing : 03.12.2020

JUDGMENT

Manzoor Ahmad Malik, J.- Convict-appellants

Muhammad Malik (in Crl. A. 113-L), Muhammad Nawaz (in Crl. A. 114-L), Ghulam Mustafa @ Toori (in Crl. A. 115-L), Muhammad Ilyas and Muhammad Adnan (in Crl. 116-L) are accused of case FIR No. 79 dated 14.02.2007 registered on the written application (Ex.PG) of complainant Mst. Rasheeda Bibi, under sections 302, 148, 149 PPC and sections 6/7, 21-L of the Anti Terrorism Act, 1997, at P.S. Moutra, District Sialkot. In the said application (Ex.PG), it was stated by the complainant that on 14.02.2007 at about 6.15 p.m., she was present in her shop, situated adjacent to their *Haveli* along with her husband Ehsan Elahi, and sons Iftikhar Ahmad and Muhammad Afzaal. The appellants Muhammad Malik armed with rifle 8MM, Muhammad Nawaz armed with rifle 44 bore, Ghulam Mustafa @ Toori armed with Kalashnikov, Muhammad Ilyas armed with 8MM rifle and Muhammad Adnan armed with 8MM rifle along with co-accused Shahzad @ Shazi armed with Kalashnikov, Ghulam Bari armed with Kalashnikov, Mubashar Ali armed with 8MM rifle, Zeshan Ali armed with 44 bore rifle and Tanvir Abbas armed with Kalashnikov came there. On the *lalkara* raised by appellant Muhammad Malik, co-accused Shahzad @ Shazi made a burst with Kalashnikov, which hit Iftikhar on his belly; Muhammad Adnan fired at Iftikhar with his rifle which hit

him on his head and forehead; Muhammad Malik fired at Iftikhar with his rifle, which hit him on his arm, thigh and others parts of body; Ghulam Mustafa @ Toori fired a burst with Kalashnikov which hit Afzaal on his head and arms; Mubashar Ali fired with his rifle which hit on the chest and belly of Afzaal; Muhammad Ilyas fired with his rifle, which hit Afzaal on his back and legs. Ehsan Elahi, husband of complainant ran out of his shop towards *Haveli* but Ghulam Bari fired a burst of Kalashnikov which hit Ehsan Elahi on his belly and chest; Tanvir Abbas fired a burst of Kalashnikov which hit Ehsan Elahi on right ribs and back; Muhammad Nawaz fired at Ehsan Elahi with his rifle which hit him on his back, legs and different parts of body; Zeshan Ali fired with his rifle at Ehsan Elahi, which hit him on his arms and chest. Thereafter, the appellants and their co-accused while resorting to firing decamped from the spot. Ehsan Elahi, Iftikhar and Afzaal succumbed to injuries at the spot.

2. Appellants Muhammad Ilyas and Muhammad Adnan were charge sheeted by the learned trial court on 02.08.2007 under sections 148, 149, 302 PPC and section 7 of the Anti Terrorism Act, 1997. On conclusion of trial, the learned trial court, vide its judgment dated 05.06.2008, convicted the appellants under section 302(b) PPC and sentenced them to imprisonment for life each, with a direction to pay fine of Rs.50,000/- each, in default whereof to undergo SI for one

month each. Benefit of section 382-B, Code of Criminal Procedure was extended to them.

3. Appellant Ghulam Mustafa @ Toori was charge sheeted on 28.10.2009 under sections 148, 149, 302 PPC and under section 7(a) of the Anti Terrorism Act, 1997. On conclusion of trial, the learned trial court, vide its judgment dated 01.02.2010, convicted the appellant under section 302(b)/34 PPC and sentenced him to death on three counts, with direction to pay compensation of Rs.600,000/- on each count to legal heirs of deceased, in default whereof to undergo SI for six months each. He was further convicted under section 7(a) of the Anti Terrorism Act, 1997 and sentenced to death on three counts, with fine of Rs.200,000/- on three counts, in default whereof to undergo SI for six months each.

4. The appellant Muhammad Malik was charge sheeted by the trial court on 31.05.2010 under sections 148, 149, 302 PPC and section 7(a) of the Anti Terrorism Act, 1997. On conclusion of trial, the learned trial court, vide its judgment dated 16.10.2010, convicted appellant Muhammad Malik under section 302(b)/34 PPC and sentenced him to death on three counts, with a direction to pay compensation of Rs.600,000/- to the legal heirs of deceased on three counts, in default whereof to undergo SI for six months each. He was also convicted under section 7(a) of the Anti Terrorism Act, 1997 and sentenced to death on three counts, with fine of Rs.200,000/- on three

counts, in default whereof to undergo SI for six months on each count.

5. Appellant Muhammad Nawaz was charge sheeted by the learned trial court on 01.02.2012 under sections 148, 149, 302 PPC and section 7(a) of the Anti Terrorism Act, 1997. On conclusion of trial, the learned trial court, vide its judgment dated 08.05.2012 convicted and sentenced him as under:-

“ U/s 302(b)/149 PPC: sentenced to death for committing murder of Ehsan Elahi, with direction to pay compensation of Rs.200,000/- to legal heirs of deceased, in default whereof to undergo SI for six months each.

U/s 7(a) of the ATA, 1997: Sentenced to death, with direction to pay fine of Rs.200,000/-, in default whereof to undergo SI for six months.

U/s 148 PPC: Sentenced to 02 years RI, with fine of Rs.20,000/-, in default whereof to undergo SI for three months.”

6. Aggrieved of their convictions and sentences, the appellants Muhammad Malik, Muhammad Nawaz and Ghulam Mustafa @ Toori filed separate criminal appeals before the Lahore High Court, Lahore. Three capital sentence references were also sent by the trial court for confirmation of their sentences of death or otherwise. The appellants Muhammad Ilyas and Muhammad Adnan also filed a joint criminal appeal against their convictions and sentences before the Lahore High Court, Lahore. All the criminal appeals filed by the appellants and capital sentence references were decided by the learned

High Court on 17.03.2015. The criminal appeals filed by all the appellants were dismissed. The sentences of death of appellants Muhammad Malik, Muhammad Nawaz and Ghulam Mustafa @ Toori were not confirmed and capital sentence references to their extent were answered in the negative. The convictions and sentences of appellants Muhammad Malik, Muhammad Nawaz and Ghulam Mustafa @ Toori under the provisions of the Anti Terrorism Act, 1997 were set aside. All the other convictions and sentences recorded/awarded by the trial court to them including amounts of compensation and fine and sentences in default were upheld. Benefit of section 382-B, Code of Criminal Procedure was extended to them and the sentences of imprisonment of appellants were ordered to run concurrently. Similarly, the criminal appeal filed by appellants Muhammad Ilyas and Muhammad Adnan was dismissed and their convictions and sentences were not interfered with. The criminal revision filed by the complainant for enhancement of sentences of Muhammad Ilyas and Muhammad Adnan was also dismissed by the learned High Court.

7. Thereafter, the convict-appellants filed jail petitions before this Court, wherein leave to appeal was granted on 09.03.2020 and the criminal petitions filed by the complainant for enhancements of sentences of convict-appellants were ordered to be heard along with instant criminal appeals.

8. We have heard learned counsel for the convict-appellants, learned counsel for the complainant (petitioner in connected petitions) and learned Additional Prosecutor General, Punjab at length and have scrutinized the available record with their assistance.

9. All these matters emanate from case FIR No. 79 dated 14.02.2007 regarding an incident wherein the husband of complainant Ehsan Elahi and her two sons Iftikhar Ahmad and Afzaal Ahmad lost their lives. As earlier pointed out, the convicts Muhammad Malik, Muhammad Nawaz, Ghulam Mustafa @ Toori and Muhammad Ilyas along with Muhammad Adnan faced separate trials but the evidence produced in all the trials is more or less similar, therefore, we intend to dispose of all the matters through this single judgment.

10. It has been observed by us that the occurrence took place on 14.02.2007 at 6.15 p.m. The matter was reported to police by complainant Mst. Rasheeda through a written application (Ex.PB) at 7.00 p.m., whereafter formal FIR was registered at 7.30 p.m. i.e. within one hour and fifteen minutes of the occurrence. Learned counsel for the appellants tried to canvass at Bar that delayed post-mortem on the dead bodies of deceased Ehsan Elahi, Iftikhar Ahmad and Afzaal Ahmad raises serious questions *qua* the presence of eyewitnesses at the place of occurrence at the relevant time. It has been observed by us * that no question was asked by the defence from the doctors who

conducted autopsy on the dead bodies of deceased as to what point of time the dead bodies were received at the hospital and why didn't they conduct autopsy in the intervening night between 14/15.02.2007. During trial of appellant Muhammad Malik, Dr. Iftikhar Ahmed (PW3), who conducted autopsy on the dead body of Iftikhar Ahmad though stated in his cross examination that on the night between 14/15.02.2007, he was on night duty but he further stated that he did not know the exact time of arrival of dead body in the mortuary. In reply to a suggestion, the investigating officer Muhammad Rasheed SI stated in his cross examination that he despatched the dead bodies to hospital at about 11.00/11.30 p.m. Moreover, no suggestion was put to Muhammad Asif 981/HC to establish that he escorted the dead bodies to hospital after a delay of 13/14 hours.

11. In this case, the prosecution in order to bring home guilt of appellants produced complainant Mst. Rasheeda Bibi and Mst. Shamim Akhtar. The complainant Mst. Rasheeda Bibi is the wife of deceased Ehsan Elahi and mother of Iftikhar Ahmad and Afzaal Ahmad (deceased), whereas Mst. Shamim Akhtar is the daughter of Ehsan Elahi and sister of Iftikhar Ahmad and Afzaal Ahmad (deceased). Undisputedly, the occurrence took place in the shop of complainant adjacent to the *Haveli* where the complainant along with her family i.e. deceased husband and sons and Mst. Shamim Akhtar was

residing. The defence has not questioned the place of occurrence or the residence of complainant side situated adjoining to the shop. They have also not questioned the unnatural death of Ehsan Elahi, Iftikhar Ahmad and Afzaal Ahmad. In the circumstances, the presence of both the eyewitnesses i.e. Mst. Rasheeda Bibi and Mst. Shamim Akhtar at the spot at the relevant time is quite natural. The parties are residents of the same village and knew each other well before the occurrence, therefore, no question arises of mistaken identity. Being very closely related to three deceased, it does not appeal to commonsense that the eyewitnesses would let off real culprits and implicate the appellants falsely. While appearing before the trial court (in all the trials before us), both the eyewitnesses remained consistent on all the material aspects of the case and have recounted the whole episode of brutal murders of their loved ones at the hands of appellants and other co-accused in a straight forward and confidence inspiring manner. The medical evidence was adduced by Dr. Shahid Farooq, who conducted autopsy on the dead body of Ehsan Elahi; Dr. Latif Ahmad Sahi, who conducted autopsy on the dead body of Muhammad Afzaal; and Dr. Iftikhar Ahmad, who conducted autopsy on the dead body of Iftikhar Ahmad. All the three doctors observed firearm injuries on the bodies of three deceased: 07 injuries (multiple) were observed on the dead body of Ehsan Elahi; 18 entry wounds (total 35 including exit

wounds) were observed on the dead body of Muhammad Afzaal; and 15 entry wounds (total 20 including exit wounds) were observed on the dead body of Iftikhar Ahmad. All the injuries were ante-mortem and caused by firearm weapons. In this way, the medical evidence fully supports the case of prosecution against the appellants. It has come on record that after the occurrence, the appellants remained fugitive to law: Ilyas was arrested on 08.06.2007; Adnan was arrested on 30.01.2009; Ghulam Mustafa was arrested on 25.02.2009; Malik was arrested on 30.04.2010 and Nawaz was arrested on 03.05.2011. The prosecution has successfully brought on record the abscondance of appellants in this case. In these circumstances, we have no manner of doubt in our mind that the prosecution has proved its case against the appellants beyond reasonable doubt. The learned appellate court has already taken a lenient view in the case of appellants Muhammad Malik, Muhammad Nawaz and Ghulam Mustafa @ Toori by converting their sentence of death awarded to them under section 302(b) PPC into imprisonment for life as the prosecution failed to prove motive set out by it and nothing was recovered from appellant Muhammad Nawaz, whereas recovery of 8MM rifle (P1) from Muhammad Malik and Kalashnikov (P11) from Ghulam Mustafa @ Toori has been held to be inconsequential because no empty was taken into possession by the investigating agency from the spot. Similarly, no interference in the impugned judgment of

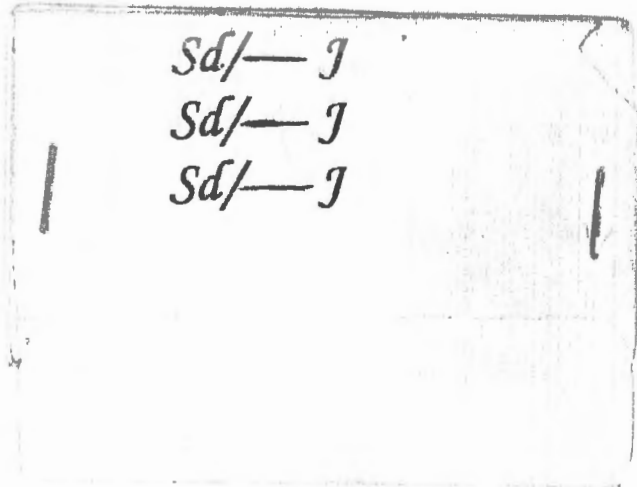
learned High Court is required, whereby the convictions and sentences of imprisonment for life of appellants Muhammad Ilyas and Muhammad Adnan awarded to them by the trial court have been maintained.

12. For the foregoing, the instant criminal appeals having no merit are dismissed and leave to appeal is refused.

Crl. Petition Nos. 551-L to 553-L of 2015

13. Through the instant criminal petitions, the petitioner (complainant) Mst. Rasheeda Bibi seeks enhancement of sentence of convict-respondents Muhammad Nawaz, Muhammad Malik and Ghulam Mustafa @ Toori from imprisonment for life to death. As already observed in the preceding paragraphs, the learned High Court has rightly converted the sentence of death of respondents into imprisonment for life because the prosecution was not successful in proving the motive set out by it and the recovery of 8MM rifle (P1) from Muhammad Malik and Kalashnikov (P11) from Ghulam Mustafa @ Toori has been held to be inconsequential because no empty was taken into possession by the investigating agency from the spot and nothing was recovered from Muhammad Nawaz. In the circumstances, no interference in the impugned judgments is called for. Therefore,

the instant criminal petitions having no merit are dismissed
and leave to appeal is refused.



Bench-I
Lahore, the
3rd of December, 2020
(K. Ance)
Not Approved for Reporting

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