

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE SARDAR TARIQ MASOOD

SUO MOTO CASE NO.15 OF 2015

(Suo Moto action regarding acquittal of Mustafa Kanju S/o Siddique Kanju (Former State Minister) and his four Security Guards due to lack of evidence)

Attendance

Mr. Razzaq A. Mirza, Addl. AG.Pb.
Mr. Ehtesham Qadir Shah, PG Punjab.
Mushtaq Sukhera, IG Punjab.
Sultan Ahmed Ch. DIG (Inv) Lahore.
Kamran Adil, AIG Legal
Nasir Abbas Panjutha, DSP, (Inv). Lahore.
Khalid Abu Baka Shah, DSP (Inv), CIA/OC
Syed Imtiaz Hussain Shah, Inspector/IO.
Mehboob Alam, ASI
Ejaz Ahmed, HC.
Aamir Hameed, HC
Muhammad Shehbaz, HC.
Muhammad Naseer, HC
Furqan Masih, Constable.
Muhammad Idrees, Constable.
Waseem Abbas s/o Muhammad Yar
Nadeem S/o Muhammad Aslam
Muhammad Ishaq S/o Ahmed Bakhsh
Muhammad Qasim S/o Muhammad Yousaf
Muhammad Yousaf S/o Ameer

Sohail Afzal S/o Muhammad Afzal (Complainant)
Qaiser Afzal S/o Muhammad Afzal (Witness)
Farooq S/o Muhammad Yousaf (Witness)
Waqas Waseem S/o Muhammad Waseem (Witness)

Ghazala Rauf Sd/o Rauf (Mother)
Manahil D/o Rauf (Sister)
Rimsha D/o Rauf (Sister)
Hasnain S/o Zahoor (injured witness)
Zahoor S/o Noor Ahmed.
Raja Shujah (R) Capt.
Col. (R) Ayub Jaffary.
Muhammad Ashraf S/o Ali Muhammad
Sakhawat S/o Bashir Ahmed.
Muhammad Arshad S/o Muhammad Deen.

Date of hearing 16-11-2015

ORDER

On 10.11.2015, the I.G. Police, Punjab, filed his report and this Court directed appearance of legal heirs of the deceased Zain and the prosecution-witnesses including the Complainant on 16.11.2015. On 16.11.2015, the L.Rs of the deceased Zain and prosecution-witnesses of the case appeared in the Court. The deceased was survived by a mother and two sisters, as his father had died one and half year before the incident. Mst. Ghazala, mother of the deceased, present in Court, has stated that she is too weak to fight against the killers of his deceased son, as the accused party is very powerful. This Court has extended assurance to her that she is not required to fight herself but it is the duty of the State to ensure that citizens of this Country enjoy equal protection of law guaranteed under the Constitution and if any injustice is done, it is the obligation of the State to remedy it by brining the culprits to book.

2. In order to understand the view point of the L.Rs of the deceased, the Court called them in Chambers and heard them individually. Mst. Ghazala, the mother of the deceased, told us in Chambers that she is a poor lady and after untimely death of her husband, she is earning the living of her family comprising of two daughters and a son, who was killed on a footpath/road in the evening of 1.4.2010. She has further informed the Court that her brothers are also from lower middle class family and hardly make their both ends meet and in this background, she and her daughters after the incident are scared and disturbed. Out of the two daughters one namely Manahil stated that she cannot appear in the examinations because of the apprehensions regarding her safety. Mst. Ghazala further stated that State should take steps to ensure that those who have killed her son be punished. She, in so many words, has stated that she has not forgiven the accused persons nor has entered into any compromise nor was terrorized by any one. According to her, it was the duty of the State to collect material against culprits and prove their

guilt. We have also called brothers of Mst. Ghazala and heard them besides the injured Muhammad Hasnain, who perhaps was not giving true story.

3. We, in the given circumstances, are shocked to see the state of affairs where a mother of a young boy because of her weaknesses and other shortcomings is being compelled to give up her right to seek justice. The procedure provided under our present criminal justice system is very cumbersome. We can understand that the L.Rs of Zain deceased have lost confidence not only in the police but also in State machinery. They feel insecure and need to be assured that justice will be done.

4. Prima facie, the manner in which the police has investigated the case is not transparent. We have failed to understand that why in a case of this nature the police had not produced the prosecution witnesses before the Magistrate for recording their statements under Section 164 Cr.P.C. We inquired from the police officials, present in Court, as to what prevented them from getting recorded the statements of the witnesses under Section 164 Cr.P.C, but no plausible explanation was offered from their side.

5. The Prosecutor General, Punjab, has informed us that the state has preferred an Appeal before the Lahore High Court against acquittal of the accused persons named in the F.I.R, taking all the available grounds. He submits that the propriety demands that these proceedings be deferred till the pending Appeal of the State is decided by the learned Lahore High Court, as any finding and/or observation made in these proceedings may cause prejudice to the case of either party.

6. We do not, in the peculiar facts and circumstances of the case, intend to comment on any aspect of investigation/prosecution at this point of time as it may influence the outcome of the pending Appeal filed by the State, therefore, we

adjourn this case sine die. Once the State Appeal is decided by the learned High Court, intimation shall be given by the Prosecutor General, Punjab, to this Court through the Registrar with a copy of the judgment immediately. Upon receipt of a copy of the judgment of the High Court, this Court may, if deem necessary, revive the present proceedings. We expect that the learned Lahore High Court shall decide the Appeal of the State expeditiously, preferably within two months from the date of communication of this Order. We may observe that if the L.Rs of the deceased or the injured victim seek protection of the police, then the I.G Police shall attend to the request.

7. A copy of this order be faxed to the Registrar of the Lahore High Court, Chief Secretary, I.G Police, Home Secretary, Prosecutor General, Advocate General, Punjab, and the L.Rs of the deceased Zain for their information and compliance. Office is further directed to immediately send back the R&P of the trial Court so that no delay is caused in hearing of the State Appeal.

8. Adjourned in terms of para 6 hereinabove.

Judge

Judge

Judge

Announced in open Court on _____.

Judge