

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa

Mr. Justice Sarmad Jalal Osmany

Mr. Justice Dost Muhammad Khan

Criminal Appeal No.310/2006

(On appeal from the judgment dated 2.6.2004 passed
by Peshawar High Court Bench
Abbottabad in Cr.A.58/2002).

Haider Zaman

...Appellant

VERSUS

The State
Sadiq Shah

...Respondents

For the appellant:

Mr. Mushtaq Ali Tahirkheli, ASC
Ch. Akhtar Ali, AOR

For private respondents:

Mr. M. Manzoor Ahmed, ASC

For State:

Mr. Muhammad Siddique Baloch, ASC

Date of hearing:

12.3.2014

JUDGMENT

Dost Muhammad Khan, Judge,.-

This appeal with the leave of the Court dated 10.05.2006, has been filed against the order of acquittal dated 2.06.2004 of respondent No.2 namely Sadiq Shah, charged for a crime under section 302/324/34 PPC, passed by the Peshawar High Court, Abbottabad Bench.

2. Briefly stated, Haider Zaman, while reporting the crime at 12:50 hrs. on 23.01.1997 alleged as follows: -

"That on fateful day at about 10:00 hrs while present in his house, he was informed that firing was going on

in the 'Bazar', hence he left for the crime spot where he saw (i) Shafique (ii) Azhar and (iii) Sher Muhammad lying dead, while (i) Waheed (ii) Waseem and (iii) Zareen were bound in injured condition. He has further alleged that on inquiries made, he was told that (i) Nazir Shah (ii) Sadiq Shah and (iii) Akram Shah had killed the deceased while injured the three victims. Motive for the crime shown was that a day prior to the fateful day, Akram Shah and Azhar quarreled with each other. And that, the parties were not on a good terms. He added that the crime was witnessed by (i) Saleem (ii) Muhammad Sadiq and (iii) Khurshid Anwar. While adding to the charge he also implicated the Khan family of "Beer" for giving hidden support to the accused."

3. This report was taken close to the crime sport. The Investigating Officer inspected the spot and secured blood from crime spot of all the victims and the deceased besides 3 empties of 7.62 bore and a cartridge of 30 bore from the place where presence of Akram Shah was shown, 4 empties of 7.62 bore and one de-shaped spent bullets from the place of Sadiq Shah, 4 crime empties of 7.62 bore and one de-shaped bullet from the place of Nazir Shah. He also recovered a magazine of Kalashnikov loaded with 12 bullets from the rooftop of the top floor of the house of the accused along with 7 empties of 7.62 bore and one crime empty of 12 bore from the second place of the rooftop.

4. Present respondent namely Sadiq Shah surrendered before the local police while rest of the nominated accused are still absconding as was stated at the bar. On completion of the investigation charge-sheet was filed in the trial Court, in which one Jehangir and Ishtiaq were also implicated for abetment, who too faced the trial along with the respondent before the learned

Sessions Judge/Judge Special Court at Haripur. The prosecution produced 23 witnesses. After completion of the trial, Jehangir and Ishtiaq were acquitted of the charge, however, respondent Sadiq Shah was convicted and sentenced to life imprisonment on four counts and to pay Rs.100000/- to the legal heirs of each of the deceased. He was further sentenced u/s 337-B PPC for 7 years R.I. on two counts and to pay Rs.30000/- as **Daman** to victim Waseem PW.

5. On appeal filed by respondent No.2, the learned Division Bench of the Peshawar High Court, Abbottabad Bench set aside his conviction and sentence and acquitted him of all the charges.

6. We have heard the learned ASCs appearing for the parties as well as the learned counsel for the State.

7. Undeniably the appellant Haider Zaman was not an eye-witness because he reached the spot when the transaction was over. It is intriguing to note that besides having all facilities of transportation and help of friends and relatives residing close to the spot, he did not accompany the injured to the hospital, although Waheed was his real nephew, but he chose to become the maker of FIR and on the other hand eye-witnesses, who claimed to have witnessed the crime being available on the spot did not report to the police besides the three injured.

8. The testimony of the two witnesses namely PW Muhammad Sadiq being the uncle of one of the deceased and PW Waheed would show that they were not present on the crime spot but the former was inside his shop, 150 yards away from the crime

spot. It is true that the presence of injured PWs on the spot is established having been injured in the transaction, however, a careful study and appraisal of their testimony would show that they are not on one and the same page with Haider Zaman complainant. Muhammad Sadiq was examined by the police too late under section 161 Cr.PC. although he was available to the police. The question arises as to whether the injured PWs have deposed the true facts or have exaggerated the account and have given twist to the story by toeing their version to that of Haider Zaman complainant.

9. In each hospital, through a notification of the Provincial Government, Crime Reporting Centre headed by an ASI has been established since long but none from the injured reported the matter to the Center when they reached at the hospital. To cover this vacuum and omission, they stated that on reaching the hospital they became unconscious but they were contradicted by the Medical Officer, Dr. Muhammad Irshad, who examined them. The Medical Officer has stated that both the injured were fully conscious and they themselves provided their respective names, parentages and addresses to him.

10. The way and the manner, the injured PWs narrated the story step by step, attributing individual role to each one of the accused and modulated step by step the occurring of the tragedy, appear a tutored one.

11. Besides, PW Abdul Malik, SHO, who recorded *Murasila* report Ex.P/A stated that when he reached the spot, both the deceased and the injured victims were lying on the spot but in the

FIR he has clearly stated that he informed the police station to depute a police officer to prepare the injury sheets and inquest reports of the injured and the deceased.

12. We do not deem it appropriate to discuss the merits of the case so minutely lest it prejudice the case of the Prosecution as a whole because the three co-accused are still absconding. However, suffice it to say that the transaction appears to be a sudden fight and the role of the respondent in the transaction is of causing injury to one of the injured. He was arrested on 19.02.1997 and after his conviction by the Trial Court on 04.04.2002 till the date when he was acquitted by the High Court through the impugned judgment dated 02.06.2004 he had undergone more than 07 years imprisonment, both as under-trial prisoner and as a convict. And if remissions granted from time to time by the Superintendent Jail, I.G Prisons, Provincial Government and the Federal Government are added, it would be more than 10 years. More so, the immediate cause for the incident has been shrouded in mystery or at least has been suppressed by the Prosecution, rendering blood of the accused to reach at a boiling point by acting in a ruthless manner as reflected from the facts of the case, however, that very cause which in all probabilities might be serious enough has been muffled by the Prosecution.

13. It is bedrock principle of criminal jurisprudence that in a case of this nature being the result of sudden flare up, the principle of vicarious liability is not attracted so strictly like in the cases where crime is committed in a pre-planned and well calculated manner.

14. This being the case, in our view, respondent No.2 has suffered a reasonable sentence for his individual and independent act, he has committed, thus at this stage re-sentencing him after he had earned acquittal from the High Court would not be in consonance with the well settled principle of justice and that too when this Court has always exercised restraints not to interfere in the judgment of the High Court unless it is shown to be perverse, fanciful and is structured as a result of gross misreading and non reading of material evidence causing miscarriage of justice. Thus, we do not find merits in this appeal, accordingly, the same is dismissed.

15. Needless to observe that some remarks made above with regard to the merits of the case shall in no manner prejudice the prosecution case qua the absconding accused and their cases/case when they surrender and are tried, shall be dealt with strictly on merits and on the strength of evidence to be recorded during their trial.

Judge

Judge

Judge

Islamabad, the
12th March, 2014
'Nisar'

'Not approved for reporting'