

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik

Mr. Justice Sardar Tariq Masood

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petitions No.67-P & 68-P of 2014

(Against the judgment dated 29.05.2014 passed by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Sawat in Criminal Appeal No.29-A of 2012).

Saleem Zada and others

(in Cr.P. No.67-P/2014)

Muhammad Zada

(in Cr.P. No.68-P/2014)

...Petitioner(s)

VERSUS

The State etc.

(in Cr.P. No.67-P/2014)

Sher Zamin etc.

(in Cr.P. No.68-P/2014)

...Respondent(s)

For the Petitioner(s)
(in both cases)

: Mr. Sahibzada Asadullah, ASC

For the Respondent(s)
(in both cases)

: Mr. Zia Ur Rehman Khan, ASC

Date of Hearing

: 10.06.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Saleem Zada, Khawat Shah and Swat Shah, petitioners in Criminal Petition for Leave to Appeal No.67-P/2014 alongside Sher Zamin, respondent in Criminal Petition for Leave to Appeal No.68-P/2014 were tried for committing *qatl-e-amd* of Pir Zada as well as, attempt on Bahri Zaman *alias* Bahrey, PW; they were returned a guilty verdict by the trial Court *vide* judgment dated 7.2.2012. A learned Division Bench of the Peshawar High Court acquitted Sher Zamin from the charge, however, maintained convictions and sentences consequent thereupon of the remainder *vide* impugned judgment dated 29.5.2014; this brings the complainant and the convicts before us; both issues with a common thread are being decided through this single judgment.

2. In the backdrop of previous enmity, on eventful day i.e. 26.11.2010 at 4.30 p.m., the petitioners and the respondent intercepted Pir Zada deceased and Bahri Zaman, PW while on board

a public vehicle; forcibly de-boarded, they were dealt with hatchet blows as well as fire shots, in consequence whereof, Pir Zada succumbed to the injuries at the crime scene while the complainant with multiple injuries survived the assault. Incident was reported at the hospital and a formal case was registered 6.30 p.m. at Police Station Gagra, situated, 9/10 kilometers from the venue. The accused claimed trial, pursuant whereof, prosecution produced Bahri Zaman, PW-1 alongside Taj Habib Gul, PW-2 to bring home the charge; the latter is driver of the vehicle. Fate of the prosecution case is primarily hinged upon the statement of Bahri Zaman, PW-1. Taj Habib Gul, PW-2, driver of the vehicle though confirmed the episode, however, had not identified the assailants so as to establish their culpability. Investigative conclusions and medical evidence are in line with the statement of Bahri Zaman, PW-1; durations given in the crime report as well as by the doctor coincide with the time of occurrence; the case was registered with a remarkable promptitude; previous bad blood has not seriously been contested; it is on the basis of these pieces of evidence that the accused have been found guilty of the crime. We have gone through the statement of Bahri Zaman, the sole eye witness and found him most confidence inspiring; he alone can sustain the charge; being injured, his presence cannot be doubted. Driver of the vehicle, though reticent in his deposition, nonetheless, has unambiguously confirmed circumstances whereunder the occurrence took place. Cross examination on both the witnesses remained inconsequential and as such convictions and sentences consequent thereupon do not call for interference. Acquittal of Sher Zamin, respondent, seemingly out of abundant caution, particularly having regard to his mute presence does not offend any principle of law; there do not exist extra ordinary grounds to recall freedom. Resultantly, these petitions are dismissed and leave to appeal refused.

JUDGE

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JUDGE

