

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmed Malik
Mr. Justice Sajjad Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.1001-L of 2017,
Jail Petition Nos.461 & 462 of 2017

(Against judgment dated 11.04.2017 passed by
Lahore High Court Lahore in Cr. Appeal No.1130 of
2016 & CSR No.17-T of 2016)

Haroon Bin Tariq

(in Cr. P. No.1001-L/2017)

Zulfiqar Ali alias Muhammad Ali & another

(in J.P. No.461/2017)

Mst. Raaj Sanam

(in J.P. No.462/2017)

...Petitioner(s)

Versus

The State & 2 others

(in Cr. P. No.1001-L/2017)

The State

(in J.P. No.461 & 462 of 2017)

...Respondent(s)

For the Petitioner(s):

Ch. Akhtar Ali, AOR,
(in Cr. P. No.1001-L/2017)
Mr. Talat Mahmood Zaidi, ASC
(in JP No.461 & 462/2017)

For the State:

Ch. Sarwar,
Additional Prosecutor General Punjab

Date of hearing:

16.10.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J. A petty brawl graduated into a violent incident claiming two lives with equal number of injured, at 6.30 p.m. on 29.7.2013 within the precincts of Police Station B Division Gujrat. The incident is reported by one of the injured namely Haroon Bin Tariq, PW-9; complainant alleged that his family set up a makeshift garments stall for *Eid* in front of their house; on the fateful day, Zulfiqar Ali *alias* Muhammad Ali

and Aamir Ali with their sister Raj Sanam and mother Yasmin Butt, each armed with .30 caliber pistols mounted the assault; Yasmin exhorted the co-accused to avenge insult of the preceding incident, occurred three days back and soon thereafter dealt a butt blow to Nasir, PW-10; Muhammad Saleem Shah, a police constable in uniform, going past per chance, attempted to hold Zulfiqar Ali accused who fired upon him in his head; Raj Sanam repeatedly targeted Babar followed by Aamir Ali with the fire shot on complainant's left flank; firing in the air, the accused took to the heels. According to the complainant, Zulfiqar Ali *alias* Muhammad Ali and his brother Aamir had made obscene overtures to the female customers and for that they were admonished and it was in this backdrop that the accused avenged the insult. Haider Ali was taken on board as an abettor to the crime; they were tried by the learned Special Judge Anti Terrorism Court-II at Gujranwala; Zulfiqar and Aamir Ali being juvenile were dealt with separately. Vide judgment dated 18.2.2016, Haider Ali, the alleged abettor was let off whereas remainders were returned a guilty verdict on all counts. The learned High Court vide impugned judgment dated 11.4.2017, passed in separate appeals, acquitted Mst. Yasmin Butt from the charge; Aamir Ali was acquitted from the counts of terrorism as well as homicide of Muhammad Saleem Shah deceased; his conviction for murderous assault was maintained, however, with reduction in the sentence to 4-years RI; having served out, he has since been released; penalty of death awarded to Zulfiqar Ali *alias* Muhammad Ali as well as Mst. Raaj Sanam was reduced to imprisonment for life on all counts with concurrent commutation thereof; benefit of section 382-B Cr.P.C. inclusive; *vires* whereof are being assailed, by the convicts through Jail Petition Nos. 461 & 462 of 2017 whereas by the complainant vide Criminal Petition No.1001(L) of 2017; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the convicts has emphatically stressed upon the improbability of female participation in the occurrence; according to him, there was seemingly no occasion in the presence of male members of the family that Mst. Raaj Sanam, a youthful lady, would come forward to join the assault. The bottom line is that prosecution has cast a wider net to rope the entire clan; he has referred to the acquittal of Mst. Yasmin Butt to substantiate the

point. None is in attendance to argue Criminal Petition No.1001-L of 2017 on complainant's behalf, however, the learned Law Officer has faithfully defended the impugned judgment; he maintained that ocular account furnished by the witnesses that included the injured successfully drove home the charge with forensic support.

3. Occurrence took place in Gujrat, a sizable city, nonetheless, integrated in the web of traditional social ethos. In this milieu, participation of two ladies, each armed with a lethal weapon, accompanying the male companions, no other than real brothers, equally participating in the assault, premeditated as alleged by the prosecution, is a circumstance that fails to inspire our confidence; it is prosecution's own case that Zulfiqar Ali and Aamir Ali were armed with .30 caliber pistols and with these semi automatic weapons, they came all the way to the venue to settle the score. We do not expect that two real brothers would allow to join their mother and sister in an assignment, they could conveniently accomplish on their own. Conversely, we again find it hard to contemplate that a mother would set off her sons on a course that may possibly take them to the gallows, that too, for a trivial motive; she is already off the hook. Mst. Raaj Sanam is identically situated in the same contextual framework and as such her involvement in the crime cannot be viewed without suspicion. Jail Petition No.462 of 2017 is converted into appeal and allowed; impugned judgment is set aside; she is acquitted from the charge and shall be released forthwith, if not required in any other case.

Case of Zulfiqar Ali and Aamir Ali is distinctly structured; ocular account supported by forensic evidence is inescapably pointed upon their culpability in terms of roles individually assigned to them. Though Aamir Ali petitioner was taken out of community of intention by the High Court, his culpability in terms of role ascribed to him, has been believed by the Courts below; upon our independent analysis, we have not been able to take any legitimate exception to the conclusion drawn by the High Court. However, insofar as Zulfiqar Ali's conviction under Section 7 of the Anti Terrorism Act 1997 is concerned, we have noticed that misfortune, unanticipatedly, brought Muhammad Saleem Shah deceased, clad in police uniform, in the line of fire; he was not intended target of the assailants nor deputed at the crime scene to perform any officially assigned task; there is no independent

verification that he directed himself to the assailants in order to disengage or overpower them and in the process received fire shot during grappling from a close blank; on the contrary, medical evidence contradicts the prosecution case, as there is no blackening on the margins of solitary entry wound; possibility of a stray bullet cannot be viewed as entirely unrealistic, particularly in the presence of as many as 16 casings, secured from the spot, unambiguously suggesting volley of fires; though most unfortunate, nonetheless, his death does not additionally attract the mischief of Section 6(1)(n) of the Act *ibid*. Consequently, Zulfiqar Ali *alias* Muhammad Ali's conviction and sentence under section 7 of the Act *ibid* is set aside. Jail Petition No.461 of 2017 to the extent of Aamir Ali is dismissed, however, qua Zulfiqar Ali convict, it is converted into appeal and partly allowed in the above terms. As a natural corollary, Cr. P. No.1001-L/2017 is dismissed.

Judge

Judge

Judge

Islamabad
16th October, 2019
Azmat/-