

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice M. Javed Buttar.
Mr. Justice Tassaduq Hussain Jillani.

CRIMINAL PETITION NOs.848-L, 920-L & 921-L OF 2002
AND JAIL PETITION NO.2 OF 2003 a/w CRL. MISC. No.62/2005
IN CRL. PETITION NO.920-L/2002

*(On appeal against the judgment dated 2-10-2002
Passed by the Lahore High Court, Lahore in Crl.
Appeal No.622, 637, 638/97 and M.R. No.247-T of 1997)*

<i>Ghulam Abbas</i>	...	...	<i>Petitioner</i> <i>(in Crl.P.848-L/02)</i>
<i>Munir Ahmed</i>	...	...	<i>Petitioner</i> <i>(in Crl.P.920-L/02)</i>
<i>Shaukat Ali</i>	...	...	<i>Petitioner</i> <i>(in Crl.P.921-L/02)</i>
<i>Irfan Javed and others</i>	...	...	<i>Petitioners</i> <i>(in JP.2/2003)</i>
<i>Versus</i>			
<i>The State</i>	...	...	<i>Respondent</i> <i>(in all cases)</i>

For the petitioner : *Syed Mazhar Ali Akbar Naqvi, ASC*
(in Crl.P.848-L/02)

Petitioner(s) : *Nemo.*
(in Crl.P.920-L, 921-L/02
and JP.2/2003)

For the State : *Mrs. Afshan Ghazanffar, AAG.*

Date of hearing : *12th & 13th December, 2005*

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. *Listed petitions have
been filed for leave to appeal against the judgment dated 2nd October 2002
passed by the Lahore High Court, Lahore.*

2. *Precisely stating facts of the case are that vide FIR Ex.PC/1 dated
1st April 1997 lodged by Sheikh Attique Ahmed (PW-12) at Police Station*

Cantt. Sialkot, alleging therein that when he was present in his house alongwith Zaheer Haider his business partner, his wife Farida Ateeq and two sons namely Mohsin Ateeq aged about 11/12 years and Danish Ateeq aged about 8/9 years and his father Sh. Shafique Ahmed who was lying on the bed, all of a sudden three persons duly armed with pistol entered into the room. His wife made a shriek on seeing them, his father got up from the bed and by raising Lalkara made an attempt to catch hold of one of the accused. At the same time one of the accused fired with his pistol hitting his father on his neck who fell down on the ground. The third accused kept watch while holding pistol in his hand and also threatened them that if any one of them made an attempt to move he would be met with the same fate. Two of the accused took his son namely Mohsin Ateeq to adjacent room and from an Almirah, they took away golden ornaments, one Rado Wrist watch (Ladies) and also searched for Cash. One of the accused kept watch on the inmates of room while holding pistol and also continued threatening them. The accused remained in his house for 25/30 minutes and thereafter scaled over the wall behind the house upon which he and others raised hue and cry attracting their neighbors. His father was shifted to hospital but he died on his way to hospital. Accordingly FIR of the incident was registered. Accused persons involved in the commission of offence were arrested and following six persons were sent up to answer the charge :-

1. Ghulam Abbas
2. Arshad Masih.
3. Iftikhar Ahmad alias Chand
4. Irfan Javed alias Bhaia.
5. Munir Ahmad.
6. Shaukat Ali.

Learned Trial Court vide judgment dated 6th November 1997 convicted/awarded following sentences to the accused persons :-

<i>U/s 458 PPC</i>	<i>Iftikhar Ahmed @ Chand, Arshad Masih and Ghulam Abbas</i>	<i>14 years R.I. with payment of fine of Rs.50,000/- and in default whereof to suffer further two years R.I. each.</i>
<i>U/s 458/114 PPC</i>	<i>Arfan Javaid @ Bhaia, Munir Ahmed and Shaukat Ali</i>	<i>14 years R.I. with payment of fine of Rs.50,000/- and in default whereof to suffer further two years R.I. each.</i>
<i>U/s 395 PPC</i>	<i>Ghulam Abbas, Arshad, Iftikhar Ahmad @ Chand, Arfan Javaid @ Bhaia, Munir Ahmad and Shaukat Ali.</i>	<i>R.I. for life with payment of fine of Rs.50,000/- and in default whereof to suffer further two years R.I. each.</i>
<i>U/s 396 PPC</i>	<i>Ghulam Abbas, Arshad Masih and Iftikhar @ Chand.</i>	<i>Death sentence subject to confirmation by the High Court, with payment of fine of Rs.50,000/- and in default whereof to suffer further two years each</i>
<i>U/s 396 PPC</i>	<i>Arfan Javed @ Bhaia, Munir Ahmad and Shaukat Ali.</i>	<i>R.I. for life with payment of fine of Rs.50,000/- and in default whereof to suffer further two years R.I. each.</i>
<i>U/s 412 PPC</i>	<i>Ghulam Abbas, Arahad Masih, Iftikhar Ahmad @ Chand, Arfan Javed, Munir Ahmad and Shaukat Ali.</i>	<i>10 years R.I. with payment of fine of Rs.20,000/- and in default whereof to suffer further one year R.I. each.</i>

Learned High Court, however, up-held the sentence of death of one of the petitioner namely Ghulam Abbas, whereas sentence awarded to Arshad Masih and Iftikhar Ahmed alias Chand was reduced to life imprisonment. Sentence awarded to other convicts namely Arfan Javaid @ Bhaia, Munir Ahmed and Shaukat Ali was reduced to seven years R.I. As far as remaining sentences under Section 396 PPC awarded to the convicts were maintained by the High Court by means of impugned judgment. Listed petitions have been filed on behalf of convicts for leave to appeal.

3. *Learned counsel appearing in Civil Petition No.848-L of 2002 contended that in accordance with the provisions of Section 391 read with Section 396 PPC, the accused deserve for same sentence as they are all equally responsible for the commission of offence. On having reduced the sentence of the other convicts, the sentence of the petitioner Ghulam Abbas is not liable to be maintained. To substantiate his plea he placed reliance upon the cases of Puranmal Agarwalla and others v. Rautmal Pincha (AIR 1953 “Assam 44), Shivappa and others v. Hyderabad State (AIR 1955 Hyd. 147), Geedo and others v. the State (1986 P.Cr.L.J. 2192),*

Abdul Qayyum and others v. The State (PLD 2004 Karachi 232), **Khalid Mehmood and four others v. The State** (2004 SCMR 199).

4. It may be noted that as far as convict Munir Ahmed is concerned he entered into compromise with the L.Rs. of the deceased whereas Arfan Javed @ Bhaia and Shaukat Ali are contesting the conviction awarded to them. As far as question in respect of acceptance or otherwise of the compromise is concerned, it will be dealt with in view of the judgment in the case of **Muhammad Rawab v. The State** (2004 SCMR 1170). However, at this stage having seen the law relied upon by the learned counsel of the petitioner-Ghulam Abbas, prima facie, we are of the opinion that if the sentence of death of Ghulam Abbas is maintained then remaining convicts would also be liable to the sentence for death. Therefore, while granting leave to appeal in their cases as well notices be also issued to them to explain as to why their sentences may also not be enhanced.

Thus for the above reasons, inter alia, to examine the contentions put forward by the learned for petitioners as well as merits of the case to the extent of other accused persons, leave to appeal is granted.

Chief Justice

J.

J.

Islamabad
12-12-2005
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APPROVED FOR REPORTING.