

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO.385/2017

(Against the judgment of the Lahore High Court, Lahore dated 12.04.2017 passed in Murder Reference No.117/2015, Criminal Appeal No.1630/2013 and Criminal Appeal No. 1631/2013)

Muhammad Afzal

...**Petitioner**

VERSUS

The State

...**Respondent**

For the Petitioner

Ms. Aisha Tasneem, ASC (at State expenses)

For the State

Mirza Muhammad Usman, DPG, Punjab

Date of Hearing:

08.10.2020

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ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J:- Criminal petition for leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been assailed by the petitioner calling in question impugned judgment dated 12.04.2017 passed by Lahore High Court.

2. As per allegation contained in the crime report bearing FIR No.292/2011, dated 30.07.2011, under section 302, 324 PPC registered with police station Kalurkot District Bhakkar, it is alleged that petitioner alongwith Mushtaq and Imam Bakhsh while armed with gun .12 bore trespassed into the land belonging to the complainant. Mushtaq raised "Lalkara" as a consequent, Muhammad Afzal made a fire with his gun .12 bore which landed on the left side of the chest of Iltaf Hussain; the second fire made by Muhammad Afzal had hit on the right side of neck. Iltaf Hussain fell on the ground; Imam Bakhsh made a fire with his gun which landed on the left shoulder of Iltaf Hussain whereas Mushtaq made a fire which landed on the index finger of left hand. The occurrence was seen by the prosecution witnesses. As a consequent of the injuries, Iltaf Hussain

succumbed to the injuries at the spot. The motive behind the occurrence was dispute over land.

3. *The complainant being aggrieved of the investigation conducted by the local police wherein they have declared Mushtaq innocent while placing his name in column No.2 of the report u/s 173 Cr.P.C., filed a private complaint. The accused persons were summoned in response to the proceedings of the said complaint. The learned trial court amalgamated State as well as private complaint and the same was disposed of with consolidated judgment dated 05.11.2013. The learned trial court convicted Muhammad Afzal u/s 302(b) PPC and sentenced to death and to pay the compensation of Rs.500,000/- under section 544-A Cr.P.C. to the legal heirs of the deceased recoverable as arrears of land revenue. The learned trial court also convicted Imam Bakhsh under section 302(b) PPC and sentenced to imprisonment for life and to pay compensation of Rs.500,000/- under section 544-A Cr.P.C. to the legal heirs of deceased recoverable as arrears of land revenue whereas the learned trial court acquitted Mushtaq by giving him benefit of doubt.*

4. *Being aggrieved by the judgment, reference was sent u/s 374 Cr.P.C. whereas the convicts filed their appeals before the learned Lahore High Court and the learned Division Bench of Lahore High Court vide judgment dated 12.04.2017, acquitted Imam Bakhsh while extending benefit of doubt whereas the death sentence inflicted upon petitioner Muhammad Afzal was converted into imprisonment for life, hence, the instant petition before us for leave to appeal.*

5. *At the very outset, it has been argued by learned counsel for the petitioner that both the learned courts below have not taken into consideration the evidence available on the record and the same has not been appreciated according to the dictates of law. Further contends that*

the complainant being aggrieved by the investigation filed private complaint just after four months of the occurrence on the ground that Mushtaq one of the accused was declared innocent. Contends that in the private complaint, a different version qua the motive has been given which itself create doubt in the genuineness of the prosecution version. Contends that one of the accused Mushtaq was acquitted by the learned trial court whereas Imam Bakhsh was given benefit of doubt by the High Court. Contends that as the bulk of prosecution case has already been found false, therefore, the petitioner is also entitled for the extension of benefit of doubt in the interest of safe administration of justice.

6. *We have heard the learned counsel for the petitioner at length and gone through the record.*

It is an admitted fact that the occurrence has taken place at 3.30 p.m. whereas the matter was reported to the police at 4.45 p.m. on the same day whereas the inter-se distance between the place of occurrence and police station is 28/29 kilometers. Perusal of the crime report clearly reflects that there is definite overt-act ascribed to the petitioner who fired twice with his gun on the vital part of the body of deceased Iltaf Hussain. The ocular account in this case is furnished by complainant Tariq Mehmood (PW-10) and Riaz Hussain (PW-11). The statements of both the prosecution witnesses qua the time, date, mode and manner of occurrence are identical. Although they were cross examined at length but nothing detrimental to the salient features of the prosecution case was detected from cross examination conducted by defence counsel. Otherwise it is an admitted fact that the occurrence has taken place in the open field whereas the parties are known to each other since long. The occurrence has taken place in the broad daylight and there is no chance of any misidentification. All these factors when

evaluated conjointly it is abundantly clear that the prosecution has succeeded to establish case without any reasonable doubt. The contention of the learned counsel qua recovery as well as the motive, we have also taken into consideration these aspects of the case. As far as the motive is concerned, while filing private complaint, the motive which mentioned in the crime report was explained, so the same cannot be said in any manner that altogether another version was introduced by the prosecution. None recovery of crime weapon and absence of report of Forensic Science Agency, the benefit of the same has already been extended to the petitioner and sentence of death was converted into imprisonment for life being alternative sentence. As far as the acquittal of Imam Bakhash is concerned, we are afraid that the learned Division Bench of Lahore High Court has not assigned any legal justification to extent the benefit of doubt. Mere mentioning of rule of caution is not sufficient to discard the prosecution version rather the learned court is supposed to extend the dictum of rule of caution which should be supported by substantial material which is lacking in this case. We are showing restrain because there is no petition filed by the complainant in this regard. The accumulative affect of the facts and circumstances when discussed in this case is that prosecution has established case against the petitioner to the hilt, hence, leaving no room for interference. As a consequence, this petition is dismissed. Leave to appeal is declined.

JUDGE

JUDGE

Islamabad

08.10.2020

Approved for reporting

Athar