

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Amin-ud-Din Khan

Criminal Petition Nos.955-L and 973-L of 2016

(Against judgment dated 24.06.2016 of the Lahore
High Court Lahore passed in Cr. A. No.70 of 2012
along with M.R. No.101 of 2012)

Safdar Abbas & another

(in Cr.P. No.955-L/2016)

Ghulam Sarwar

(in Cr.P. No.973-L/2016)

...Petitioner(s)

Versus

The State & another

(in Cr.P. No.955-L/2016)

The State & two others

(in Cr.P. No.973-L/2016)

...Respondent(s)

For the Petitioner(s):

Mr. Shahid Azeem, ASC
(in Cr.P. No.955-L/2016)
Mr. Asghar Ali Gill, ASC
(in Cr.P. No.973-L/2016)

For Respondents No.2 & 3:

Mr. Shahid Azeem, ASC
(in Cr.P. No.973-L/2016)

For Respondent No. 2:

Mr. Asghar Ali Gill, ASC
(in Cr.P. No.955-L/2016)

For the State:

Mirza Abid Majeed, Deputy Prosecutor
General Punjab

Date of hearing:

3.12.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Safdar Abbas and Akhtar Abbas, petitioners, real brothers *inter se*, are in receipt of a guilty verdict, returned by a learned Additional Sessions Judge at Jhang vide judgment dated 23.12.2011; they were tried, through a private complaint, alongside four others for committing Qatl-i-Amd of Muhammad Bukhsh on 5.4.2008 within the precincts of Police Station 18-Hazarvi District Jhang in the backdrop of a motive relating to divergent claims on a piece of agricultural land; one of the accused, namely, Mubeen Saghar is still away from law under a perpetual warrant of arrest; the co-accused were acquitted from the charge while the petitioners stand convicted under clause (b) of section 302 read with section 34 of the Pakistan Penal Code, 1860; they were sentenced

to death, altered into imprisonment for life by a learned Division Bench of Lahore High Court Lahore vide impugned judgment dated 24.06.2016, *vires* whereof are being assailed, primarily, on the ground that evidence disbelieved qua majority of the accused, each identically placed, cannot be pressed into service, in the absence of independent corroboration, to sustain the charge vis-à-vis the petitioners, a position vehemently contested on behalf of the complainant.

2. Heard. Record perused.

3. Petitioners' father, namely, Charagh co-accused is assigned multiple club blows to Muhammad Bukhsh deceased; same is charge against Muzaffar co-accused; remainder of the accused, though assigned no harm to the deceased, nonetheless, are ascribed effective roles to the PWs; they are closely related being members of the same clan and in the totality of circumstances given the accusation, their roles cannot be bifurcated without nullifying the entire case. Motive cited in the crime report is non-specific; investigative conclusions were inconsistent with the case set up by the complainant. Recoveries are inconsequential. Complainant abandoned his case against the acquitted co-accused after failure of his petition seeking leave to appeal in the High Court. In this backdrop, no intelligible or objective distinction can be drawn to hold the petitioners guilty of the charge in isolation with their co-accused. Prosecution evidence, substantially found flawed, it would be unsafe to maintain the conviction without potential risk of error. Criminal Petition No.955-L/2016 is converted into appeal and allowed, impugned judgment is set aside, the petitioners/appellants shall be released forthwith, if not required to be detained in any other case.

As a natural corollary, complainant petition seeking enhancement is dismissed.

Judge

Judge

Judge

Islamabad

3rd December, 2019

Not approved for reporting

Azmat*