

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

8/25

PRESENT:

Justice Jamal Khan Mandokhail
Justice Musarrat Hilali
Justice Naeem Akhter Afghan

Jail Petitions No.314 & 315/2017 and Crl.P.L.A.576-L/2017

[Against a common judgment dated 15.03.2017 passed by the Lahore High Court, Lahore in Crl.A. Nos.1691 & 1692/2012, M.R. No.438/2012 and Crl. Rev. No.369/2016]

Muhammad Nasir Butt, etc

(in J.P.314/2017)

Baqir Butt

(in J.P.315/2017)

Muhammad Zahid Amjad

(in Crl.P.576-L/2017)

...Petitioners

Versus

The State

(in J.P.314/2017)

The State

(in J.P.315/2017)

The State, etc

(in Crl.P.576-L/2017)

...Respondents

For the Petitioner
(in J.Ps.314 & 315/2017)

: Mr. Qaisar Mehmood Sara, ASC

(in Crl.P.576-L/2017)

Mr. Mushtaq Ahmad Mohal, ASC
(via video link from Lahore)
(and also for the respondents in
J.Ps.314 & 315/2017)

For the State

: Mirza Abid Majeed, Addl. PG Punjab

Date of Hearing

: 9th December, 2024

JUDGMENT

Naeem Akhter Afghan, J:- On the charge of committing murder of Amjad Ali (**the deceased**), Abid Ali (**the deceased**) , causing injuries to Muhammad Majid Amjad (**PW-10**) and a passerby Shehbaz (not produced at the trial), the petitioners

Muhammad Nasir Butt and Baqir Butt (**the convicts**) were awarded the following conviction and sentence by the learned Additional Sessions Judge, Narowal (**the Trial Court**) *vide* judgment dated 29th September 2012 in FIR No.60/2010 registered with Police Station, Rayya Khas, Narowal, on 16th May 2010 by Muhammad Zahid Amjad (**the complainant**);

- (i) The convict Muhammad Nasir Butt was convicted under section 302(b) of the Pakistan Penal Code (PPC) and sentenced to death as Tazir with compensation of Rs. 200,000/- to be paid to the legal heirs of the deceased under section 544-A Cr.P.C. The amount of compensation was ordered to be recovered as arrears of land revenue. In default of payment of compensation of the convict was held liable to further suffer Simple Imprisonment (**SI**) for six months.
- (ii) The convict Baqir Butt was convicted under section 302(b) PPC and sentenced to life imprisonment as Tazir with compensation of Rs. 200,000/- to be paid to the legal heirs of the deceased under section 544-A Cr.P.C. The amount of compensation was ordered to be recovered as arrears of land revenue. In default of payment of compensation of the convict was held liable to further suffer Simple Imprisonment (**SI**) for six months.

2. Both the convicts challenged their conviction and sentence by filing Appeals before the Lahore High Court. Murder Reference No. 436/2012 was also forwarded to the Lahore High Court for confirmation or otherwise of the death sentence of the convicts.

3. The appeals of both the convicts were dismissed by the Lahore High Court *vide* impugned common judgment 26th January, 2016, however, while answering Murder Reference in negative the death sentence of the convict Muhammad Nasir Butt was altered from death to imprisonment for life.

4. Feeling aggrieved of their conviction and sentence awarded by the Lahore High Court, the convicts have filed the instant Jail

Petitions. The complainant has filed Crl.P.L.A for enhancement of the sentence of the convicts.

5. After hearing learned counsel for the convicts, learned counsel for the complainant and learned Additional Prosecutor General Punjab, we have perused the available record. According to the prosecution version, on 16th May 2010 at about 06:00 p.m, the complainant alongwith his father Amjad Ali and brothers Muhammad Majid, Abid Ali and Muhammad Hamid Amjad were present in their Haveli; the accused Muhammad Nasir Butt, Asad Butt, Waqas Butt, Waheed Butt, Shahid Butt, Baqir Butt, Ayub Butt and three unknown persons armed with firearms forcefully came there and started firing; the fire shots of accused Baqir Butt and Asad Butt, father of the complainant Amjad Ali hit on front of his chest; Ayub Butt and Asad Butt raised Lalkara to kill sons of said Amjad Ali whereupon the remaining accused Nasir Butt, Waqas Butt, Waheed Butt and Shahid Butt started firing with their pistols hitting Muhammad Majid and Abid Ali; due to firing of the accused passerby Shehbaz also got injured. The complainant and Sikhawat Ali shifted the injured to the local hospital of Narowal where Amjad Ali succumbed to his injuries and the remaining injured were referred to Lahore. Later on Abid Ali also succumbed to his injuries; Abdul Jabbar and Muhammad Hamid Amjad had witnessed the occurrence; the motive of the occurrence was the altercation between Muhammad Hamid Amjad (brother of the complainant) and convict Baqir Butt, prior to the occurrence.

6. In their statements recorded at the trial, the complainant Zahid Amjad (PW-3), Muhammad Hamid Amjad (PW-4) and injured Muhammad Majid Amjad (PW-10) have made dishonest

improvements for assigning specific role to each accused, which creates serious doubt about the veracity of their testimony and it is not safe to place reliance on their statements. Reliance in this regard is placed on the case of “**Muhammad Jahangir v. The State**”¹.

7. The statement of the complainant is also suffering from material contradictions with regard to the standing position of both the injured as compared to the site plan and statements of the other witnesses due to which serious doubt has arisen about the presence of the complainant at the place of occurrence as well as about veracity of his statement. Reliance in this regard is placed on the case of “**Muhammad Riaz v. The State**”².

8. Eleven crime empties allegedly recovered from the crime scene and one 30 bore pistol allegedly recovered on the pointation of the convict Baqir Butt were sent together to the FSL. The FSL report is negative.

9. No private witness of the locality was associated to attest the alleged recovery of crime weapon on the pointation of convict Baqir Butt. Due to non-association of any private witness of the locality to attest the recovery of alleged weapon of offence/lack of independent corroboration, the same is disbelieved. Reliance in this regard is placed on the case of ‘**Muhamamd Ismail v. The State**’³.

10. At the trial, the prosecution has not produced the injured passerby Shehbaz and Abdul Jabbar who was mentioned to be an

¹ 2024 SCMR 1741

² 2024 SCMR 1839

³ 2017 SCMR 898

eye-witness of the occurrence by the complainant. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above two witnesses been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of '**Mst. Saima Noreen v. The State**⁴'.

11. The motive of the occurrence was stated to be altercation between Muhammad Hamid Amjad (brother of the complainant) and convict Baqir Butt prior to the occurrence by the complainant. Muhammad Hamid Amjad, allegedly present at the crime scene during the occurrence, was neither targeted by the accused nor he received any injury. As per statement of Shumaila (DW-1) the deceased Abid Ali had held her hand in the street, in the meanwhile the convict Baqir Butt (brother of Shumaila) came there and rescued her from Abid Ali and at the same moment Abid Ali made firing on them and she received firearm injuries at her arm. The alleged motive lacks the force necessary to connect the convicts with the commission of the offence. Reliance in this regard is placed on the case of '**Muhammad Ijaz v. The State**'⁵.

12. All the above infirmities in the case of the prosecution lead us to the conclusion the prosecution has failed to prove the charge against the convicts beyond reasonable doubt. It is further concluded that conviction and sentence awarded to the convicts by the Courts below are the result of mis-appreciation of evidence available on record.

⁴ 2024 SCMR 1310

⁵ 2024 SCMR 1507

The above are the reasons of our short order of even date which reads as follows:

'J.P. Nos.314 & 315/2017:

For the reasons to be recorded separately, these petitions are converted into appeals and are allowed. The impugned judgments dated 15.03.2017 and 29.09.2012 passed by the Lahore High Court and the Trial Court, respectively, are set aside. The appellants are acquitted of the charge. They be released from the jail if not required to be detained in any other case.

Crl.P.576-L/2017:

2. In view of the fact that the conviction and sentence awarded to the respondent/convict through the impugned judgments have been set aside by allowing their appeals. Therefore, present petition for enhancement of sentence or otherwise has become infructuous. Consequently, this petition is dismissed as having become infructuous'.

Islamabad

9thDecember, 2024

Hamaish K, RO, Zohaib, LC/-

'Approved for reporting'