

1670
Ph: 9214461
Fax: 9220406

REGISTERED
No.Crl.Ps.113-P & 114-P/2015- SCJ
SUPREME COURT OF PAKISTAN
Islamabad, 13.06.2020

From The Registrar,
Supreme Court of Pakistan.
Islamabad.

To ✓ The Registrar,
Peshawar High Court.
Peshawar. 40 AR P

Subject: CRIMINAL PETITION Nos.113-P & 114-P/2015

| | |
|------------------------|-----------------------|
| Zubair Khan | (in Crl.P.113-P/2015) |
| Hasham Ali | (in Crl.P.114-P/2015) |
| Versus | |
| Hashim Ali and another | (in Crl.P.113-P/2015) |
| Muhammad Din & others | (in Crl.P.114-P/2015) |

On appeal from the Order/Judgment of the Peshawar High Court,
Peshawar dated 02/06/2015 in Cr.R.23-P/2012 & Crl.A.No.94-P/2012

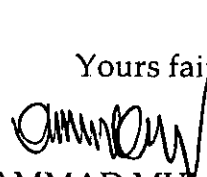
Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment of this Court dated 21/01/2020 dismissing the above cited cases in the terms stated therein for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order/Judgment:

Yours faithfully,


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE AMIN-UD-DIN KHAN

CRIMINAL PETITIONS NO.113-P OF 2015 & 114-P OF 2015

(On appeal from the judgment of the Peshawar
High Court, Peshawar dated 02.06.2015
passed in CrI. Appeal No. 94-P of 2012)

Zubair Khan (CrI.P.113-P/15)

Hasham Ali (CrI.P.114-P/15)

... Petitioner(s)

VERSUS

Hasham Ali & another (CrI.P.113-P/15)

... Respondent(s)

Muhammad Din & others (CrI.P.114-P/15)

For the Petitioner(s)

: Mr. Abdul Fayaz, ASC

(in CrI. P. 113)

Mr. Iltaf Khan, ASC

(in Cr.P. 114)

For the State

: Malik Akhtar Hussain Awan, AAG KPK

Date of Hearing


: 21.01.2020

ORDER

MANZOOR AHMAD MALIK, J. CrI. P. No. 114 of 2015:

After a regular trial, the petitioner Hasham Ali was convicted by the learned trial court, vide its judgment dated 15.02.2012, under Sections 302(b)/34 PPC and was sentenced to imprisonment for life on two counts. He was also directed to pay compensation of Rs.400,000/- to the legal heirs of deceased in terms of Section 544-A, Code of Criminal Procedure, in default whereof to undergo S.I. for six months. For his conviction under Section 324 PPC, the petitioner was sentenced to two years R.I., with a direction to pay fine of Rs.20,000/- in default whereof to undergo one month S.I. The sentences of imprisonment were ordered to run concurrently and benefit of *Section 382-B, Code of Criminal Procedure was extended to the petitioner.

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal before the Peshawar High Court, Peshawar, which was dismissed through the impugned judgment. Hence, the instant criminal petition for leave to appeal.

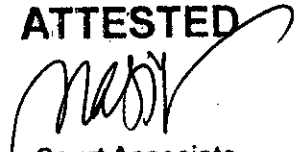
2. Prosecution case against the petitioner as divulged from the contents of FIR, registered on the statement of complainant Muhammad Deen, is that on the fateful day and time, the petitioner alongwith his co-accused Sardar Ali, Asim Ali and Ameen (since absconding) made firing at the complainant side, as a result whereof Shahid succumbed to the injuries at the spot, whereas Mehar Deen was injured, who later on died in the hospital.

3. We have heard learned counsel for the convict-petitioner, learned counsel for the son of deceased Mehar Din (petitioner in connected petition) and learned Additional Advocate General, KPK at length and have perused the available record with their assistance.

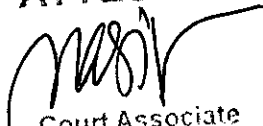
4. It has been observed by us that the occurrence in this case, as per prosecution, had taken place on 28.12.2009 at 5.05 p.m. and the matter was reported to police within thirty minutes of the occurrence, as a result whereof formal FIR was registered at 05.35 p.m. The promptitude in reporting the matter to police rules out possibility of deliberation and consultation.

5. Learned counsel for the petitioner vehemently contended that in this case the prosecution only produced complainant Muhammad Din (PW1), whereas PW Asif, who has been cited as a witness in the FIR, was given up by the prosecution and adverse inference can easily be drawn under the Qanun-e-Shahadat Order, 1984 that said eyewitness was not

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

ready to support the case of the prosecution. In this respect, it has been observed by us that in criminal cases it is the quality of evidence and not the quantity which is relevant. A scrutiny of statement of complainant Muhammad Din (PW1) recorded before the trial Court reveals that he remained consistent on all the material aspects of the case and his testimony inspires confidence. So far as non-production of PW Asif is concerned, the complainant Muhammad Din (PW1) in his court statement has explained that another eyewitness Irfan Ullah was done to death by the petitioner side during trial and in this respect a case was separately registered. In these circumstances, it was but natural for PW Asif not to appear during trial. Even otherwise, complainant Muhammad Din (PW1) who is father of deceased Shahid and brother of deceased Mehar Din is not expected to substitute petitioner for real culprits. The medical evidence adduced by Dr. Zia ur Rehman (PW10) who conducted medical examination of Mehar Din (deceased) in injured condition, Dr. Naveed Alam (PW9) who conducted autopsy on the dead body of deceased Mehar Din and Dr. Iftikhar Ahmad (PW8) who conducted autopsy on the dead body of Shahid Khan (deceased) supports the case of prosecution against the petitioner as the doctors observed firearm injuries on the person of both deceased. In these circumstances, we have no manner of doubt in our mind that prosecution has successfully proved its case against the petitioner beyond reasonable doubt. So far as contention of learned counsel for the petitioner that positive report of FSL *qua* empties secured from the spot and weapon recovered from the petitioner is of no avail to the prosecution because petitioner has since been acquitted from the case registered against him under the Arms Act (in a separate trial), is concerned, it has been observed

ATTESTED
Court Associate
Supreme Court of Pakistan
Islamabad


by us that even if the positive-report of FSL is excluded from consideration, the prosecution has brought home the guilt of petitioner through confidence inspiring direct evidence in the shape of testimony of complainant Muhammad Din (PW1) having full support from the medical evidence. Though for a number of reasons/mitigating circumstances, the learned courts below have not awarded sentence of death to the petitioner but on our own independent estimation, it has been observed by us that the prosecution has set out a specific motive in the FIR inasmuch as the occurrence had taken place in the aftermath of a property dispute but the prosecution during trial has not produced any independent witness to prove the same and it is only the word of the complainant Muhammad Din. In these circumstances, we are of the view that prosecution has not been able to prove the motive set out by it and the premium of such non-proof must go to the petitioner. Therefore, the petitioner has rightly been sentenced to imprisonment for life on two counts, which sentence, in the circumstances of the case, meets the ends of justice.

6. For the foregoing, the instant criminal petition having no merit is dismissed and leave to appeal is refused.

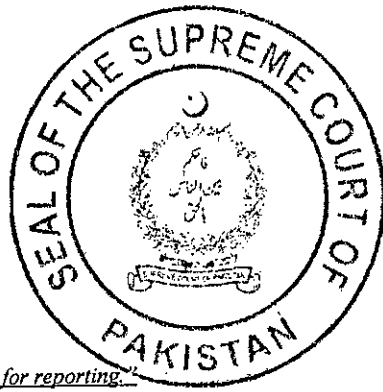
Crl. Petition No. 113-P of 2015

7. Through the instant petition, the petitioner who is son of deceased Mehar Din, seeks enhancement of sentence of respondent No.1. The petition is barred by time. The grounds mentioned in the application for condonation of delay are not acknowledged in law. As already discussed in Para 5 above, the sentence of imprisonment for life on two counts awarded to respondent No.1 by learned courts below is sufficient in the circumstances of the case. No interference in the impugned judgment is

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

called for. Crl. M.A. No. 78-P of 2015 is dismissed for being without merit.
Consequently, Crl. Petition No. 113-P of 2015 is dismissed for being barred
by time as well as on merits.



B-VI
Islamabad, the
21.01.2020

"Not approved for reporting."

Sarfaraz Ahmad/-

28/1/20

Sd/-J

Sd/-J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad