

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Maqbool Baqar

Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition Nos.1322-L, 1296-L & 1297-L of 2013**

*(Against judgment dated 30.10.2013 of the Lahore High Court, Lahore passed in CrI. Appeal No.934/2010, Revision No.568/2010 with M.R. No.232/2010)*

***Muhammad Rafique alias Neela***

*(in Cr. P. No.1322-L/2013)*

***Mushtaq Hussain***

*(in Cr. P. No.1296 & 1297-L/2013)*

*...Petitioner(s)*

**Versus**

***The State***

*(in Cr. P. No.1322-L/2013)*

***Muhammad Rafique alias Neela, etc.***

*(in Cr. P. No.1322-L/2013)*

*...Respondent(s)*

For the Petitioner(s):

Sardar Khuram Latif Khan Khosa, ASC  
(in Cr.P. No.1322-L/2013)

For the Complainant:

Mr. Mazhar Ali Ghallu, ASC  
(in Cr.P. No.1296 & 1297-L/2013)

For the State:

Mr. Muhammad Jaffar,  
Addl. Prosecutor General Punjab.

Date of hearing:

06.03.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Muhammad Rafique *alias* Neela, Muhammad Naveed and Muhammad Saeed, real brothers inter se, along with their father Jafar Hussain were indicted for homicide by the learned Sessions Judge Toba Tek Sindh; they were accused by Mushtaq Hussain (PW-11) for stabbing Nazim Hussain, deceased, 30, to death at 10:30 a.m. on 23.10.2009 within the precincts of Police Station Kamalia District Toba Tek Singh; Jafar Hussain accused was blamed to have instigated the crime; petitioner is attributed fatal hatchet blow to the deceased; remainders are assigned abrasions on the back of left upper arm and below right knee, respectively measuring 2 x 1 cm and 1 x 1 cm.

According to the prosecution, on the fateful day, deceased on a motorbike, was surprised by the accused, in the backdrop of a previous brawl.

The petitioner was returned a guilty verdict vide judgment dated 8.4.2010; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860 and sentenced to death whereas Muhammad Naveed and Muhammad Saeed, co-accused to imprisonment for life for being in the community of intention; Jafar Hussain was acquitted from the charge. The High Court maintained petitioner's conviction albeit with alteration of death penalty into imprisonment for life while acquitting Muhammad Naveed and Muhammad Saeed from the charge vide impugned judgment dated 30.10.2013, *vires* whereof, are being assailed both by the complainant as well as the convict. Issues being inter linked, the captioned petitions are being decided through this single judgment.

2. Learned counsel for the petitioner/convict contends that after acquittal of three out of four accused, each assigned a distinct role, there was no occasion for the High Court to rely upon the same discredited evidence qua the petitioner to maintain his conviction. Learned counsel for the complainant, contrarily, not only prayed for reversal of death penalty but also acquittal recorded qua the co-accused on the ground that there was no occasion for the High Court, after it had believed the witnesses, to acquit the respondents assigned a role confirmed by medical evidence merely on a conjectural premise. Learned Law Officer wholeheartedly agreed with the conclusions drawn by the High Court.

3. Heard. Record perused.

4. Petitioner is assigned fatal blow. According to the autopsy report, conducted at 2:30 p.m. same day, it is an incised wound of quite an extensive nature, penetrating into brain cavity; it is consistent with hatchet P-3, found stained with blood, forensically opined that of human origin, recovered pursuant his disclosure on 6.11.2009. Infliction of the fatal blow at petitioner's hand has unanimously been confirmed by the witnesses; occurrence being a broad daylight affair on a thoroughfare within the vicinity of inhabitation, inculpatory investigative conclusions, being in line therewith, have not been found by us as open to any legitimate exception. Jafar Hussain, real father of the accused, is saddled with instigation; he has rightly been acquitted

by the trial Court; whereas triviality of abrasions, swayed on the High Court to exercise caution qua Muhammad Naveed and Muhammad Saeed is an equally expedient choice. Doctrine of abundant caution is a silver lining in our jurisprudence to ensure safe administration of criminal justice and application thereof does not necessarily imply destruction of entire volume of evidence, if otherwise found sufficient to sustain the centrality of the charge. Though, the Medical Officer has not been cross-examined during the trial, nonetheless, upon analysis, abrasions came about during the occurrence, admit possibilities, exculpatory in nature. The High Court has been well within remit to let off the respondents; wage settled is conscionable in circumstances. Scales are in balance. Petitions fail. Leave declined.

**Judge**

**Judge**

Lahore, the  
6<sup>th</sup> March, 2020  
Not approved for reporting  
*Azmat/-*