

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Petition No.44 of 2019

(Against order dated 11.12.2018 passed by the
Peshawar High Court Peshawar in W.P. No.2395-P
of 2018)

Sadiq Ullah & another

....Petitioner(s)

Versus

The State and another

....Respondent(s)

For the Petitioner(s): Mr. Hussain Ali, ASC

For the State: Malik Akhtar Hussain,
Addl. A.G. KPK

For the Respondent(s): Mr. Abdul Fayyaz, ASC

Date of hearing: 27.07.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Asma Rani, 18/19, a medical student, was shot dead at 15:20 p.m. on 27.1.2018 within the remit of Police Station K.D.A. Kohat; incident was reported by her brother Muhammad Irfan, who blamed the petitioners for the crime; deceased's refusal to tie knot with Mujahid Ullah accused is cited as a motive behind the gruesome incident that sent a shock wave throughout the realm. It is in this backdrop that the accused were sent to face trial before a Court constituted under the Anti Terrorism Act, 1997; the accused pleaded for the trial in regular jurisdiction, a request declined by the learned Special Judge vide order dated 7.5.2018, upheld by a learned Division Bench of the Peshawar High Court vide impugned judgment dated 11.12.2018, *vires* whereof, are being assailed primarily on the ground that notwithstanding the shocking nature of the incident, the accused are entitled for a trial in regular jurisdiction as the facts and circumstances of the case san nexus with "*Terrorism*" as contemplated by section 6 of the Act *ibid*; reliance has been placed on the case of Ghulam Hussain & others Vs. The State & others (PLD 2020 SC 61) wherein this Court has authoritatively settled juridical parameters for trial of offences in the special jurisdiction. Learned counsel for the respondent has defended the impugned judgment on the ground

that the brutality inflicted upon the poor soul and the ensuing aftermaths thereof not only devastated a family who lost a brilliant youth but also rippled lasting fear that necessitated an appropriate and speedy response, being ensured by the Special Court; the learned counsel has also alleged threat to the witnesses, vulnerably placed, to argue that remission of the case into the regular jurisdiction would obstruct the conclusion of trial.

2. Heard. Record perused.

3. There are no benign murders nor the aftermaths of violence endured by its victims and anguish suffered by their families can be euphemistically quantified in an empirical gauge, though the magnitude thereof and concomitant loss differently impact the surroundings, inevitably to be gripped by fear and shock, however, the intensity of brutality and loss of life, consequent thereupon, by themselves do not bring a violent act within the contemplated purview of "*Terrorism*", a distinct phenomena to achieve, through violent means, ends other than settlement of personal scores, therefore, while the tragedy that befell upon the poor soul evokes profound shock and deserves to be appropriately visited, on the strength of evidence, so as to ensure justice to the family, it nonetheless, cannot be equated with "*Terrorism*" to dock the accused in special jurisdiction, therefore, the case is withdrawn from the Court of Judge ATC-I Peshawar and entrusted to the learned Sessions Judge Peshawar; he shall conclude the trial in jail premises with all convenient dispatch by recording evidence of the remaining witnesses. The Chief Secretary, Khyber Pakhtun Khaw, shall make arrangements of holding of trial in jail premises. The Inspector General of Police, Khyber Pakhtun Khaw, shall ensure safe conduct to the witnesses. The impugned judgments are set aside; petition is converted into appeal and allowed in the above terms.

Judge

Judge

Judge

Islamabad, the

27th July, 2020

Not approved for reporting

Azmat/-