

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel

Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.40 of 2017

*(Against the judgment dated 27.05.2014
passed by the Lahore High Court
Bahawalpur Bench in Criminal Appeal
No.97-J of 2010 with M.R. No.8 of 2010)*

Gulshan Shah

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Tayyab Wattoo, ASC

For the State: Mirza Abid Majeed,
Deputy Prosecutor General Punjab

Date of hearing: 30.11.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Safdar Shah, 30 and his brother Iqbal Shah, 35, were done to death at 8:00 a.m. on 15.4.2003 within the precincts of Police Station Qaim Pur of District Bahawalpur. The petitioner and his brother Zia Shah (since P.O.), no other than their paternal nephews, along with their father, were arrayed as accused in the crime report lodged by deceased's brother Ayyaz Hussain Shah (PW-1) at 11:00 a.m.

According to the complainant, his father had forsaken his son Ashiq Shah for being disobedient and, thus, also withheld his share in the property and in this backdrop, his sons assaulted the deceased with an hatchet and club on the fateful day.

The accused absconded after the occurrence, Zia Shah, being still away from law till date, however, the petitioner was arrested on 24.1.2006 to contest indictment that resulted into his conviction vide judgment dated 25.02.2010; convicted on two counts under clause (b) of Section 302 of the Pakistan Penal Code, 1860, he was sentenced to death and imprisonment for life respectively; the High Court maintained the conviction, however, altered penalty of death into imprisonment for life vide impugned judgment dated 27.05.2014, pre-trial period inclusive, vires whereof, are being assailed through captioned jail petition, argued by Mr. Muhammad Tayyab Wattoo, ASC; he contends that in a divided family, fraught with animosity, the courts erred in placing implicit reliance on the testimony of witnesses,

manifestly interested without proper corroboration; that there is nothing on the record to demonstrate that Muhammad Shah had ever ostracized his son Ashiq Shah so as to deprive him of his share in the legacy; that acquittal of Ashiq Shah raised the entire edifice of the prosecution to the ground, leaving no space to sustain the conviction. Learned Law Officer has faithfully defended the impugned judgment by arguing that division in the family notwithstanding, the case is firmly structured upon ocular account furnished by the natural witnesses with no earthly reason to swap or substitute the actual offenders; he has further elaborated that the admitted division in the household, in fact, served as a strong motive that appears to have prompted the petitioner and his co-accused to take on the deceased in their prime youth and in a manner most brute and callous.

2. Heard. Record perused.

3. Acquittal of Ashiq Shah, assigned no role whatsoever, does not cast its shadows to possibly space an exit to the petitioner who armed with hatchet (P-1) fatally stabbed Iqbal Shah, a circumstance that convincingly conjoins medical evidence with ocular account furnished by witnesses, no less than three in number, unanimously pointing their finger upon the petitioner; the testimony does not suffer from any serious infirmity or flaw reflecting upon credibility of the deponents. The cross-examination has further highlighted the cleavage in the family and, thus, seemingly there was no occasion for the High Court to even discard the motive in order to mould the sentence of death into imprisonment for life, disregarding the magnitude of violence suffered by the deceased, however, a *fait accompli* too late in the day to be revisited in the absence of any motion by the complainant or the State. Petitioner's long absence from law is yet another aspect that intriguingly reflects upon the hypothesis of his innocence. The courts below have rightly relied upon the prosecution evidence to return and uphold a guilty verdict that calls for no interference. However, given the role assigned to the petitioner qua Iqbal Shah deceased alone, sentences awarded to the petitioner shall run concurrently with the benefit already extended. Petition fails. Leave declined.

Judge

Judge

Islamabad, the
30th November, 2020
Not approved for reporting
Azmat/-