

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.960 of 2017

(Against the judgment dated 10.11.2017 passed by the High Court of Sindh Circuit Court at Hyderabad in Criminal Appeal No.S-314 of 2006)

Abbas Ali
Hajji Umar alias Ghulam Hussain

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Qari Abdul Rasheed, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Ms. Rahat Ahsan,
Addl. Prosecutor General Sindh

Date of hearing: 22.10.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Indicted alongside Mehar Ali, since acquitted, for homicide as well as murderous assault, the petitioners were returned a guilty verdict by a learned Additional Sessions Judge at Kotri; convicted on multiple counts, they were sentenced to imprisonment for life with 10-years as well as 3-years rigorous imprisonment with a direction for payment of compensation, fine and *Daman* on coordinate charges with concurrent commutation, pre-trial period inclusive, vide judgment dated 05.12.2006, upheld by the High Court vide impugned judgment dated 10.11.2017.

2. According to the prosecution, on the fateful day i.e. 15.6.1998 at about 7:15 a.m. Rab Rakhio, 45, hereinafter referred to as the deceased, along with Khamiso Behlani (PW-4) was on way towards the Campus of Sindh University Jamshoro when the petitioners armed with guns accompanied by Mehar Ali, acquitted co-accused, carrying an hatchet, suddenly emerged from the bushes and soon after exhortation targeted the deceased and Khamiso Khan PW within the view of Haji Muhammad Siddique (PW-1) and Ali Sher (PW-2) who followed them at some distance. Deceased's daughter Mst. Zareena was married with Ghulam Mustafa, who lived with his in-laws, disapproved by his father

Haji Umar petitioner; the rancor is cited as a motive for the crime. Spot inspection included seizure of blood and four casings albeit without recovery of weapons. The casualties were shifted to the hospital; Khamiso Khan PW survived the assault. Abbas Ali petitioner was arrested on 7.7.1998 shortly followed by Mehar Ali acquitted co-accused, however, Haji Umar, petitioner stayed away from law to be finally apprehended on 3.5.2004; they claimed trial in a unison. Autopsy report of the deceased as well as medico legal certificate of the injured were proved through secondary evidence furnished by Dr. Anwar Hussain (PW-12) as Dr. Abdul Hanan Sheikh had expired before his appearance in the Court; nature of injuries endured both by the deceased as well as the injured being consistent with firearm is not disputed by the defence.

3. Learned counsel for the petitioners contends that occurrence does not appear to have taken place in the manner as alleged in the crime report particularly in the backdrop of alleged motive impliedly discarded by the courts below. While referring to injured Khamiso Khan (PW-4), the learned counsel contends that he shared animus/malice in a divided household to falsely implicate the petitioners in order to settle an ongoing dispute in the family; he has emphatically highlighted absence of recovery of weapons allegedly used during the occurrence to argue that actual culprits have been substituted with the scapegoats. Acquittal of co-accused on the same set of evidence left no option for the Court except to reject the prosecution case in its entirety concluded the learned counsel. The learned Law Officer, however, has faithfully defended the impugned judgment; he argued that given the close relationship, there was no earthly reason for the family to swap the petitioners with the actual offenders.

4. Heard. Record perused.

5. Prosecution case is primarily structured upon ocular account furnished by Haji Muhammad Siddique (PW-1), Ali Sher (PW-2) and Khamiso Khan (PW-4); the last being injured during the episode; they have furnished graphic details of the occurrence without being trapped into any serious narrative conflict. Both sides, being part of the same household, questions of mistaken identity or substitution are the possibilities beyond comprehension. There is a remarkable promptitude in recourse to law by the witnesses that included an injured, medically examined under a police docket. Though the Investigating Officer failed

to recover the weapons used during the occurrence, nonetheless, the failure does not tremor the prosecution case otherwise firmly founded on ocular account furnished by the witnesses who plausibly explained their presence at the crime scene. Inconsequential and directionless cross-examination mainly comprising bald suggestions vehemently denied fails to undermine the preponderance of prosecution case. Acquittal of co-accused with a role vastly distinguishable as well as inconsequential appears to be inspired by a judicial caution and as such does not adversely impact upon the integrity of the charge. View taken by the courts below being well within the remit of law calls for no interference. Petition fails. Leave declined. However, the petitioners shall benefit from the modification in impugned judgment recorded in the short order of even date, reproduced below:

"For reasons to follow, jail petition filed by both the convicts, argued by Qari Abdul Rasheed, ASC, fails. Leave is declined. Convictions recorded and sentences awarded consequent thereupon are maintained with benefits already extended, however, the amount of Daman imposed upon the convicts, in the peculiar facts and circumstances of the case and having regard to the extreme advance age of the convicts, is reduced to Rs.1000/-."

Judge

Judge

Judge

Islamabad, the
22nd October, 2020
Not approved for reporting
Azmat/-