

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

**PRESENT:**

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

**Jail Petition No. 282 of 2017**

*(Against the judgment dated 26.01.2017  
passed by the Lahore High Court Lahore  
Multan Bench Multan in Crl. Appeal No.689-  
J and 840 of 2012 with M.R. No.77 of 2011)*

***Muhammad Ramzan***

*...Petitioner(s)*

**Versus**

***The State***

*...Respondent(s)*

For the Petitioner(s): Mr. M. Sharif Janjua, ASC

For the State: Ch. Muhammad Sarwar Sandhu,  
Addl. Prosecutor General Punjab

Date of hearing: 12.10.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** The petitioner, alongside his brothers, namely, Muhammad Akram, Muhammad Aslam and Nazar Hussain, stands convicted by a learned Additional Sessions Judge, vide judgment dated 15.06.2011, for committing *Qatl-i-Amd* of Mushtaq Ahmad, 45, at 9:00 a.m. on 15.10.2010 within the precincts of Police Station Saddar Vehari in the backdrop of a dispute over turn of water; he was sentenced to death while the remainders to imprisonment for life; the High Court altered penalty of death into imprisonment for life while acquitting the co-convicts from the charge vide impugned judgment dated 26.01.2017.

Incident was reported by deceased's widow Khurshid Bibi (PW-7) in the DHQ Hospital at 10:35 a.m; she was statedly present with the deceased while irrigating the field when the accused, armed with clubs, confronted them within the view of Javed Abbas and Fateh Sher PWs. Muhammad Akram exhorted his companions whereupon the petitioner

dealt the deceased a club blow on his head; as he felled on the ground, the co-accused thrashed him with multiple blows; commotion attracted the neighbourhood whereupon the accused took to the heels. The injured was medically examined 10:07 a.m. at D.H.Q. Hospital Vehari where he was brought by his cousin Nazeer Hussain; relevant column sans reference to police docket, however, the name of a PQR as Mumtaz Ahmed is mentioned therein. The medical officer, after receipt of a fee of Rs.200/- examined him to find a swelling measuring 8 cm x 10 cm on the left side of the skull; after a brief struggle, he succumbed to the injury, a short while later. The petitioner, alongside co-accused, was arrested on 01.11.2010; pursuant to disclosures, they led to the recovery of clubs P-3, P-4, P-5 and P-6, albeit without blood stains. From amongst the accused, Nazar Hussain, statedly deaf and dumb, was medically examined same day through a Magisterial order of even date; he was noted with a wound with ruptured skin on the left side of skull; a cross-version agitated by the accused soon failed with the police, despite a direction by the Justice of Peace. Upon indictment, the accused claimed trial that resulted into their conviction under clause (b) of section 302 of the Pakistan Penal Code, 1860 primarily on the strength of ocular account furnished by Mst. Khurshid Bibi (PW-7) and Fateh Sher (PW-8), confronted by the accused with a counter plea of assault, unleashed in the first place, by the deceased on Nazar Hussain co-accused, supported by medico legal certificate as well as a direction for registration of a cross case by a Justice of Peace.

2. Learned counsel for the petitioner contends that ocular account disbelieved by the High Court qua three out of four accused cannot provide evidential basis to single out the petitioner on a capital charge, particularly after exclusion of motive by the High Court; inconsequential recoveries also fail to qualify additional corroboration required to rescue the charge, next argued the counsel. The counter-version, vividly spelt out by the skull injury of Nazar Hussain co-accused, has been pressed into service to argue that the genesis of the occurrence, shrouded into mystery, the petitioner cannot be blamed with any degree of certainty for inflicting solitary injury as each of the assailant was independently assigned blows to the deceased and, thus, trapped by a wider net, his conviction cannot be maintained without possibility of error. The learned Law Officer has faithfully defended the impugned judgment.

3. Heard. Record perused.

4. The deceased, gasping for his life, was first examined at 10:07 a.m; medico legal certificate Ex.PE sans details about examinee's physical condition in terms of his orientation to time and space or otherwise at the said point of time. Police *Karwai* recorded by Zahid Hussain SI tends to suggest that he took over the deceased unconscious in injured condition in the emergency ward of DHQ Hospital Vehari to get him examined through Mumtaz Ahmed PQR, surprisingly without injury statement and a police docket, apparently, to have been issued after the injured had already been examined. Relevant column of Ex.PE reflects name of Nazeer Hussain son of Abdullah who brought the injured to the hospital; he is conspicuously absent both at the crime scene as well as the report and as to how he was able to escort the injured on his own to the hospital is a circumstance that clamours explanation; one Riaz is mentioned to have paid a fee of Rs.200/- for medical examination against his signatures whereas no fee was required for a medical examination in a police case as is evident by a cross on the relevant portion of Ex.PE relating to exemption for a police case; a cover up through overwriting as Govt. Fee on Ex.PE is a ludicrous attempt to hoodwink the reality. The deceased, still alive, was certainly brought by individuals other than mentioned in the crime report, a real possibility unmistakably suggested by Ex.PE and in retrospect tears apart the structure supporting the charge.

Entire family comprising four brothers has been aligned in the crime report, each armed with a club and taking on the deceased; the solitary wound though proved fatal, nonetheless, does not correspond with the array and, thus, argument that the prosecution had cast a wider net merits serious consideration; with a real possibility of presence of innocent proxies, identification of the actual offender, through human endeavour, is an exercise fraught with potential risk of error, attribution of first blow assigned to the petitioner notwithstanding.

Misfortune struck the neighbours, who otherwise lived in peaceful harmony, on a small event involving diversion of water by Nazar Hussain, a deaf and dumb member of petitioner's family, as is evident from the charge as well as his examination under section 342 of the Code of Criminal Procedure 1898; he has been acquitted from the

charge and it is also on the record that he received an injury during the brawl in his head for which the prosecution has not taken the investigating agency or the Court into confidence. These circumstances inescapably intrigue upon the integrity of the prosecution story; though ominous, nonetheless, calculated to have massively withheld relevant details of the events that occurred on the fateful day; concomitant uncertainty would inevitably cast away the entire case; it would be unsafe to maintain the conviction. Petition is converted into appeal and allowed; impugned judgment is set aside; the petitioner/ appellant is acquitted of the charge and shall be released forthwith, if not required to be detained in any other case.

**Judge**

**Judge**

**Judge**

Islamabad, the  
12<sup>th</sup> October, 2020  
Not approved for reporting  
Azmat/-