

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

**PRESENT:**

Mr. Justice Mushir Alam

Mr. Justice Qazi Muhammad Amin Ahmed

**Jail Petition No.296 of 2016**

*(Against the judgment dated 29.03.2016 passed by the  
Lahore High Court Lahore in CrI. Appeal No.849 of 2014,  
Cr. PSLA No.126/2020 with M.R. No.230 of 2010)*

***Shaheen Ijaz alias Babu***

*...Petitioner(s)*

**Versus**

***The State***

*...Respondent(s)*

For the Petitioner(s): Sahibzada Ahmed Raza Qureshi, Sr.ASC  
Syed Rifaqat Hussain Shah, AOR

For the State: N.R.

Date of hearing: 10.09.2020.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Indicted in a private complaint, alongside his son Muhammad Umar, since acquitted, the petitioner was returned a guilty verdict; convicted vide judgment dated 29.3.2010 by a learned Additional Sessions Judge at Wazirabad, under clause (b) of section 302 of the Pakistan Penal Code, 1860, he was sentenced to death, altered into imprisonment for life by the High Court vide impugned judgment dated 29.3.2016, *vires* whereof, are being assailed on a variety of grounds.

2. Muhammad Azhar, 35/36, was fatally shot at 5:00 p.m. on 8.8.2008 within the remit of Police Station Saddar Wazirabad; the incident was reported at the police station, situating one kilometer from the venue, at 5:35 p.m. by deceased's brother Muhammad Rafique (PW-3). Besides the petitioner, his three sons, namely, Muhammad Umar, Muhammad Usman and Muhammad Abu Bakar, were arrayed in the backdrop of complaints by the deceased over

discharge of filthy water from petitioner's rooftop. The petitioner is attributed repeated fire shots, resulting into multiple injuries with blackened and burnt margins, confirmed during autopsy, conducted at 10:20 p.m. Spot inspection includes seizure of human blood and casings found wedged with a .12 caliber pump action gun (P-4), recovered pursuant to disclosure dated 03.09.2008.

3. Learned counsel for the petitioner contends that the complainant has manifestly cast a wider net to implicate the entire family and in the wake of his failure qua three out of four accused nominated in the crime report as assailants in a preconcert, there was no occasion left to still hold the petitioner as guilty; that even dated dispatch of casings (P-6/1-2) alongside gun (P-4) rendered the forensic report (Ex.PR) as inconsequential and, thus, after exclusion of motive from consideration by the High Court, reliance upon a substantially disbelieved ocular account, is an option fraught with a potential risk of error.

4. Heard. Record perused.

5. The deceased and the petitioner lived in the same neighbourhood; though disbelieved by the High Court, nonetheless, motive alleged in the crime report appears to have ignited the unfortunate situation with a past, otherwise peaceful and smooth; in this backdrop, petitioner's nomination in a broad daylight incident by resident witnesses hardly admits a space to entertain any hypothesis of mistaken identity or substitution. Prompt recourse to law straight at the police station excludes every possibility of deliberation or consultation. Petitioner's sole nomination as being the one to have targeted the deceased with five entrance wounds is a circumstance that reflects positively on complainant's conduct; nomination of co-accused with inconsequential roles notwithstanding, their presence at the scene followed by acquittal, seemingly out of abundant caution, does not tremor prosecution's mainstay qua the role assigned to the petitioner. In the totality of circumstances, presence of petitioner's sons in an incident, coming about next door, would not by itself bring them into the community of intention and as such their acquittal cannot be viewed as a circumstance casting away the entire case. Forensic report Ex.PR, though viewed with suspicion by the High Court in view of even dated dispatch of casings (P-6/1-2) with gun (P-4), nonetheless, unmistakably confirms injuries sustained by the deceased consistent

therewith. A straightforward and consistent ocular account furnished by the witnesses overwhelmingly preponderates over petitioner's plea of an accidental fire by the deceased costing his own life in a brawl wherein he admits his own presence. The plea in view of repeated fire shots widely covering different parts of deceased's body, merits outright rejection being preposterous. The courts below rightly placed implicit reliance on the prosecution evidence that squarely constituted "*proof beyond doubt*"; scales are in balance with wage settled conscionably. Leave declined.

**Judge**

**Judge**

Islamabad, the  
10<sup>th</sup> September, 2020  
Not approved for reporting  
Azmat/-