

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmed Malik
Mr. Justice Sajjad Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

JAIL PETITIONS NO.10 AND 50 OF 2016

(Against the Judgment dated 26.10.2015 passed by
Lahore High Court, Lahore in Cr.A. No.215-J/2010)

Muhammad Shahbaz Ali Khalid

(in Jail Petition No.10/2016)

Shujat Ali alias Tikka

(in Jail Petition No.50/2016)

...Petitioner(s)

Versus

The State

...Respondent

For the petitioner(s): Mr. Muhammad Junaid Akhtar, ASC

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

Date of hearing: 2.10.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad Shahbaz Ali Khalid and Shujat Ali *alias* Tikka, while travelling in a public vehicle, were intercepted on 3.6.2009 within the precincts of Police Station Essakhel, District Mianwali; the former had deceitfully clad himself in a veil, however, exposed on search, with a suicide vest wrapped around his body; the explosive weighed 15 kilograms; Shujat Ali was found carrying five leads along with detonators and electric fuses; upon indictment, they claimed trial, culminating into their convictions under Section 4 read with Section 5-A of the Explosive Substances Act, 1908 read with Section 7(g) of the Anti Terrorism Act, 1997; Shahbaz Ali Khalid was additionally convicted under Section 419 of Pakistan Penal Code for impersonating himself as a female; they were sentenced to imprisonment for life with forfeiture of their

properties, Muhammad Shahbaz Ali Khalid with extra tag of three years Rigorous Imprisonment on the third count; their appeals met with no better fate in the High Court on 26.10.2015 albeit with reduction of imprisonment for life imposed upon Shujat Ali *alias* Tikka to ten years R.I.; as per report of Superintendent, High Security Prisons, Sahiwal dated 28.9.2019, he has since been released after serving out his sentence, however, since his property has been ordered to be confiscated, fate of his petition is also being decided alongside the present petition.

2. Learned counsel for the petitioners has assailed the impugned judgment on a variety of grounds; he emphatically stressed prosecution's failures ranging from omissions on vital aspects of the case, non-association of independent witnesses admittedly available at the spot to an inclusive expert report to conclusively establish lethality of the contraband. The learned Law Officer has faithfully defended the convictions and sentences consequent thereupon.

3. Heard.

4. The very genesis of the case is somewhat intriguing, inasmuch as, the crime report sans some important details without any plausible explanation; registration number of the vehicle wherein the petitioners travelled is conspicuously missing, in absence whereof, interrupted journey is relegated into a suspect detour. Similarly, crime report is also silent on the names of driver and cleaner of a public vehicle, if at all, the petitioners were surprised therein. Despite an extensive search, police have not been able to retrieve the tickets, a surer means within the realm of possibility, to establish petitioners' journey with the contraband. Muhammad Shahbaz Ali Khalid's interception, attired in feminine garments by the male personnel in the presence of public without a lady constable, that too, per chance, without prior information is a story that may not find a buyer. Prosecution's reliance on the statement of Auliya Khan (PW-3) as an expert to establish explosive potential of the contraband is beside the mark in the face of admission by the witness that he was not an expert in the field and as such hardly in a position to drive home the charge. Imprisonment for life is quite a span and an accused cannot be deprived of best portion of his life on slipshod, incoherent and suspect

evidence even in cases with heinous contours. In the totality of circumstances, prosecution case cannot be viewed as entirely free from doubt and, thus, it would be unsafe to maintain the conviction. Consequently, these petitions are converted into appeals and allowed; the impugned judgment is set aside; the appellants are acquitted from the charge. Shahbaz Ali Khalid, appellant shall be released forthwith, if not required in any other case.

Judge

Judge

Judge

Islamabad
2nd October, 2019
Not approved for reporting
Ghulam Raza/-