

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sajjad Ali Shah

Mr. Justice Qazi Muhammad Amin Ahmed

**Jail Petition No.14 of 2016 and
Criminal Petition No.180 of 2016**

*(Against the judgment dated 27.10.2015 passed by
the Lahore High Court, Rawalpindi Bench Rawalpindi
in CrI. Appeal Nos.265 & 434/2010, CrI. Revision
No.170/2010 with M.R. No.35/RWP/2010)*

Shaukat Ali

(in J.P. No.14 of 2016)

Muhammad Akhtar

(in Cr.P. No.180 of 2016)

...Petitioner(s)

Versus

The State

(in J.P.14/2016)

Shaukat Ali & others

(in Cr.P.180/2016)

...Respondent(s)

For the Petitioner(s):

Mr. Basharat Ullah Khan, ASC
(in J.P.14/2016)

For the Complainant:

Mr. Sanaullah Zahid, ASC
(in Cr. P.180/2016)

Date of hearing:

18.09.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- The petitioner was indicted alongside seven others, since acquitted, for a fatal shot to Sakina Bibi, 45, at 7:00 p.m. on 2.7.2008 within the precincts of Police Station Domaili, District Jhelum; she succumbed to the injuries on 4.7.2008. The mischief struck the family a week before the incident in an otherwise peaceful neighbourhood, followed by a brawl between the women folk over petitioner's move to get some girls snapped through Adil PW, given up as having been won over. It is in this backdrop that on the fateful day the petitioner armed with a rifle accompanied by Niaz Ali and Muhammad Saleem, differently armed, confronted the deceased with the fatal shot while she was busy in fetching water at

the spot; she was rushed to the hospital and it is prosecution's case that the acquitted co-accused, variously armed, intercepted the PWs on way to the hospital and dealt them injuries, however, after intervention by the locals, they succeeded to reach the hospital. Gasping for life, Sakina Bibi was examined by Dr. Gul Nisa (PW-2) at 8:15 p.m. with a semi circular entry wound in the right hypochondrial region with a corresponding exit, confirmed in autopsy, held on 4.7.2008, as cause of death. Muhammad Ashraf (given up) and Khalid Mehmood (PW-15) were also medically examined on 2.7.2008; they were noted with multiple injuries comprising mostly of swellings and lacerations. The accused claimed trial. The learned trial Judge vide judgment dated 30.04.2010 returned a guilty verdict to the petitioner; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, he was sentenced to death; remainders were acquitted from the charge. Appeals filed, both by the convict as well as the complainant, were dismissed by the High Court; penalty of death awarded to the petitioner was altered into imprisonment for life vide impugned judgment dated 27.10.2015. Shoukat Ali, petitioner, has assailed his conviction through J.P. No.14 of 2016 whereas the complainant, dissatisfied with consecutive failures qua the acquitted accused as well as alteration of death penalty, seeks conviction as well as enhancement through CrI. P. No.180 of 2016; bound by a common thread, these are being decided through this single judgment.

2. Mr. Basharat Ullah Khan, ASC, has argued for the convict; he contends that after wholesale acquittal of co-accused there was no occasion for the learned trial Judge as well as the High Court to condemn the petitioner on the strength of evidence massively disbelieved vis-à-vis the co-accused; adds that in the absence of any forensic comparison recovery of gun P-4 cannot be viewed as independent corroboration against the convict, particularly after prosecution's failure on the motive set up in the crime report and, thus, the only juridical course available to the courts below was his acquittal. Contrarily, learned counsel for the complainant submits that the learned trial Judge acquitted the respondents without citing any cogent or plausible reason by extending benefit of doubt, on grounds vague, non-specific and illusory, an error that escaped High Court's notice as well and, thus, intervention by this Court is called for in circumstances to avoid miscarriage of justice.

3. Heard. Record perused.

4. The incident is split into two episodes, though in quick succession; the petitioner, in the first place, effectively shot Sakina Bibi while Niaz Ali and Muhammad Saleem, co-accused accompanied him, though armed with a club and an hatchet, they were assigned no harm the deceased. It was after receipt of solitary shot assigned to Shoukat Ali petitioner that on way to the hospital the witnesses were allegedly intercepted where another brawl took place. Insofar as first part of the occurrence is concerned, we do not find any error of approach by the trial Court to hold the petitioner guilty for the crime; the injury assigned to him is confirmed by medico legal examination of Sakina Bibi conducted shortly after the assault; it proved fatal as was confirmed by the medical officer who conducted the autopsy. Occurrence taking place at 7:00 p.m. in the month of July in a small rural neighborhood does not allow to admit hypothesis of mistaken identity or substitution. Absence of empty from the spot in the face of single shot without repetition cannot be viewed as a circumstance intriguing upon the prosecution case; similarly, failure, in the wake of defection by Adil PW to testify in support of the motive, does not tremor the foundational structure of the prosecution case, otherwise firmly founded on ocular account furnished by the witnesses of the locality, having no axe to grind. Culpability in the first part of the occurrence revolves around the petitioner alone with no escape route seemingly available to him nor prosecution's failure in the second part of the occurrence cast any shadow thereon. Scales are in balance with a wage settled conscionably. No interference is called for. Insofar as acquittal of co-accused entangling the witnesses on way to hospital is concerned, much water has flown under the bridge and in view of the period, the respondents endured tribulation of trial for causing injuries to the witnesses one of whom abstained from the witness box, their acquittal cannot be viewed as perverse or resulting into miscarriage of justice. Petitions fail. Leave declined.

Judge

Judge

Islamabad, the
18th September, 2020
Not approved for reporting
Azmat/-