

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos. 851-L and 827-L of 2016

(Against the judgment dated 26.05.2020 passed by the Lahore High Court Lahore in Cr. Appeal No.1003/2012 with M.R. No.196/2012)

Zeeshan alias Shani

(in Cr.P.851-L/2016)

Muhammad Ayub

(in Cr.P.827-L/2016)

...Petitioner(s)

Versus

Muhammad Ayub & another

(in Cr.P.851-L/2016)

The State & another

(in Cr.P.827-L/2016)

...Respondent(s)

For the Petitioner(s):

Mr. Azam Nazeer Tarar, ASC

(in Cr.P.851-L/2016)

Sardar Abdul Majeed Dogar, ASC

(in Cr.P.827-L/2016)

For the State:

N.R.

Date of hearing:

06.08.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Junaid Ayub, 20/21, was shot dead with a .30 caliber pistol on 22.03.2010 at 3:30 p.m. within the precincts of Police Station City Sumandri, Faisalabad; incident was reported by his father Muhammad Ayub (PW-2), who blamed Zishan alias Shani and Abid Ali accused for the crime; both let off by the police during investigation, tried subsequently by a learned Additional Sessions Judge in a private complaint, resulting into acquittal of the latter; convicted under clause (b) of Section 302 of the Pakistan Penal Code, 1860, the petitioner, however, was sentenced to death vide judgment dated 14.04.2012, altered into imprisonment for life by the High Court vide judgment dated 26.05.2016, being

impugned both by the convict as well as the complainant through the captioned petitions.

Prosecution case is primarily structured upon ocular account furnished by Asad Ayub and Abid Ali PWs. According to the witnesses, they were on way when the accused confronted them in the backdrop of a previous quarrel. Abid Ali, since acquitted, is attributed exhortation pursuant where to Zishan alias Shani targeted the deceased on his chest with solitary shot, confirmed during autopsy conducted on the same day.

2. Learned counsel for the complainant contends that there was no occasion for the courts below to acquit Abid Ali, firmly placed in the community of intention after both the courts below relied upon the ocular account through a source aboveboard; the bottom line is that section 34 of the Code *ibid* is not a dead letter and the courts are required to give effect to the legislative intent to bring each accomplice to the task found guilty in furtherance of common intention. Both the accused shared the motive and as such there was no space to draw distinction in their culpability except for the actual shot fatally fired in compliance with the command, issued by Abid Ali, concluded the learned counsel. Learned counsel for the convict, on the other hand, contends that the deceased was done to death in an un-witnessed occurrence as is evident from the tenor of First Information Report lodged by deceased's father who had admittedly not seen the occurrence; it is argued that Asad Ayub (PW-3), no other than deceased real brother, would have reported the matter to the police in a normal course and his induction as a witness heavily reflects upon the veracity of prosecution case. It is next argued that according to the investigation conducted by Asghar Ali SI, the murder was in fact committed by one Usman and it was so confirmed by Naseer and Nasir who had actually witnessed the occurrence; he has stressed upon the vagueness of the alleged motive to argue that there was no occasion for the convict-petitioner to take on the deceased; he has also referred to non-availability of any casing from the spot and an inconsequential recovery to conclude that it would be unsafe to maintain the conviction.

3. Given the role attributed to Abid Ali, co-accused, in the face of a non-specific motive and sudden unanticipated encounter, his acquittal by the learned trial Judge, upheld by the High Court does not appear to be based upon conclusions that can be viewed as

preposterous or impossible. It is by now well settled that reversal of acquittal requires strong grounds and cannot be interfered with merely on the possibility of a contra view. Leave is declined in Criminal Petition No.827 of 2016. However, in the totality of circumstances, we consider it expedient to re-appraise evidence qua Zishan alias Shani convict to ensure safe administration of criminal justice with a view to examine the investigative conclusions, diametrically incompatible with the case set up in the crime report. Leave is granted.

Judge

Judge

Islamabad, the
6th August, 2020
Not approved for reporting
Azmat/-