IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Mushir Alam, Chairman
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed
Dr. Muhammad Al-Ghazali, Ad-hoc Member-I
Dr. Muhammad Khalid Masud, Ad-hoc Member-II

Criminal Shariat Appeal No.12 of 2017
(On appeal against the judgment dated 22.11.2014 passed by the Federal Shariat Court, Islamabad, in Criminal Appeal No. 8-Q of 2013 and Criminal Murder Reference No.1/1 of 2013)

Muhammad Hayat
Wakeel *and*
Ghous Bakhsh @ Shshdad @ Ahsan

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s):	Mr. Saghir Ahmed Qadri, ASC
For the Complainant:	Nemo
For the State:	Syed Baqir Shah, ASC/State Counsel
Date of hearing:	01.12.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Through leave of the Court impugned herein is Federal Shariat Court's judgment dated 22.11.2014, whereby appellants' conviction and sentences awarded by the learned trial Court vide judgment dated 10.02.2013 were upheld; they were tried for committing *Qatl-i-Amd* of Muhammad Siddique, Liaqat Ali and Abdul Jabbar during a robbery on 23.11.2010 at 8:30 p.m. within the precincts of Police Station Bhag District Kachhi, Balochistan. First Information Report was recorded at 8:45 p.m. on the application of Muhammad Salah-ud-Din (PW-1). According to the complainant, his son Muhammad Siddique and grandson Liaqat Ali, employed respectively in Levies and Police, accompanied by Abdul Jabbar Jaboja, riding on a motorbike, were on way to *Goth*, followed on

another motorbike by Asad Khan and Abdul Razzaq PWs, were fired upon by three unknown armed assailants who decamped the scene latter along with the official weapons and the motorbike. Liaqat Ali and Abdul Jabbar Jaboja breathed their last at the spot whereas Muhammad Siddique succumbed to the injuries later. Witnesses viewed the occurrence in motorbikes' headlamps light. Abdul Jabbar deceased was noted with three entry wounds whereas Muhammad Siddique and Liaqat Ali with two entry wounds each alongwith corresponding exits. As the investigation progressed, the appellants were arrested on 28.12.2010; they were later put to a test identification parade wherein Abdul Razzq (PW-3) and Ahad Khan (PW-4) correctly identified them as the culprits. Pursuant to disclosures, the appellants led to the recovery of Kalashnikovs respectively used by them during the occurrence; these were forensically found wedded with the casings secured from the spot. Snatched official gun was recovered as well. The appellants claimed trial, pursuant whereto, prosecution produced as many as nine witnesses; of them Abdul Razzaq (PW-3) and Ahad Khan (PW-4) furnished ocular account, prosecution's mainstay. The trial concluded in appellants' conviction under clause (b) of section 302 as well as section 392 of the Pakistan Penal Code, 1860; they were sentenced to death with a direction to pay compensation in the sum of Rs.200,000/- on each count though erroneously mentioned as fine; on the charge of robbery, the appellants were sentenced to 10-years RI with fine of Rs.50,000/- each.

2. Mr. Saghir Ahmed Qadri, ASC, contends that the assailants, admittedly strangers to the witnesses, were not named in the crime report and as such appellants' induction in the array on the basis of a momentary glimpse/observation by the witnesses in the darkness of night with a source of light manifestly deficient, the possibility of mistaken identity is looming large on the horizon; he also highlighted witnesses' inability to assign specific roles with vehemence to argue that prosecution's failure on the said count drastically diminished evidentiary value of the exercise, otherwise carried out in the police station. To visit the appellants with ultimate and irreversible corporeal punishment on the basis of evidence inherently deficient and flawed would be potentially unsafe, concluded the learned counsel; he has alternately prayed for alteration of death penalty into imprisonment for life on the ground that in the face of joint

indiscriminate firing, the appellants could not be individually saddled with specific shots, sustained by the each deceased, an ambiguity that can be viewed as extenuating in circumstances. The learned Law Officer has faithfully defended the impugned judgment.

3. Heard. Record perused.

4. There was no previous bad blood; the deceased on way were unsuspectingly surprised in a sudden encounter at 8:30 p.m. in the month of November; complainant presented written application, converted into First Information Report at 8:45 p.m. at the Police Station located at a distance of 3/4 kilometers from the venue. Muhammad Siddique, in injured condition, was medically examined under a police docket at 9:30 p.m, soon whereafter autopsies commenced. There is a remarkable promptitude with none blamed by name. This circumstance by itself conclusively established prosecution's *bona fides* in recourse to law. The appellants were put to test identification parade under magisterial supervision on the same day, shortly after their arrest, wherein the witnesses correctly identified them as the ones who targeted the deceased during the robbery. During the process, each witness distinctly pointed each appellant for having targeted the deceased; their identification by the witnesses, without loss of time, rules out possibility of manipulation. Argument that police station was not an appropriate place for the holding test identification parade is entirely beside the mark inasmuch as the law does not designate any specific place to undertake the exercise; on the contrary, Rule 26.32 of the Police Rules, 1934, *inter alia*, provides as under:

> *(a) "The proceedings shall be conducted in the presence of a magistrate or gazetted police officer, or, if the case is of great urgency and no such officer is available, in the presence of two or more respectable witnesses not interested in the case, who should be asked to satisfy themselves that the identification has been conducted under conditions precluding collusion.*
>
> *(b) Arrangement shall be made, whether the proceedings are being held inside jail or elsewhere, to ensure that the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification and shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called up to make their identification."*
>
> *(c) …..."*

A combined reading of above Rules with Article 22 of the Qanun-i-Shahdat Order, 1984, does not restrict the prosecution to necessarily undertake the exercise of test identification parade within the jail precincts. Prosecution of offences and administration of justice are not dogmatic rituals to be followed relentlessly in disregard to the exigencies of situations, seldom identical or ideal. All that '*due process of law'* requires is a transparent investigation and fair trial, in accord with statutory safeguards, available to an accused to effectively conduct his defence without being handicapped or embarrassed. In the absence of any statutory restriction to the contrary, the objection does not hold water. On factual plane, learned counsel has not been able to point out even obliquely any collusion, conspiracy or consideration impelling the witnesses to hurriedly swap innocent proxies to the dismay of devastated families, enduring abiding trauma. Reference to omission of assailants' features in the crime report as a ground to discard the test identification parade is equally inconsequential; Part C of the Lahore High Court Rules and Orders Volume-III (*adopted by the High Court of Balochistan*) does not stipulate any such condition. In the natural course of events, in an extreme crisis situation, encountered all of a sudden, even by a prudent onlooker with average nerves, it would be rather unrealistic to expect meticulously comprehensive recollection of minute details of the episode or photographic description of awe-inspiring events or the assailants. The pleaded requirement is callously artificial and, thus, broad identification of the assailants, in the absence of any apparent malice or motive to substitute them with the actual offenders, is sufficient to qualify the requirement of Article 22 of the Order *ibid*. Darkness possibly impeding identity of the assailants, argued at length, fails to impress us as headlamps of three motorbikes, recovered during investigation, generated sufficient light to enable the witnesses to capture broad facial features of the assailants, encountered at close blank. Three Kalashnikovs, recovered upon appellants' disclosure, were forensically found wedded with the casings secured from the spot barring six with points of dissimilarity, a minor discrepancy insufficient to tremor the structure of the case resting upon sound foundations of ocular account through sources unimpeachable and free from taints. On an overall analysis of prosecution evidence, the only possible hypothesis is that of appellants' guilt.

Alternate plea of commutation of death penalty into imprisonment for life on the ground that simultaneous multiple fire shots by the assailants left no space to possibly determine fatalities distinctly, a circumstance according to the learned counsel, by itself calling for alternate punishment of imprisonment for life, fails to commend approval inasmuch as the totality of circumstances does not admit any space to divisibly draw any such benign distinction within the realm of human wisdom when all the three assailants in a petty criminal pursuit ruthlessly targeted the deceased in cold blood. Scales are in balance and the wage settled by the courts below being conscionable in circumstances merits no interference. Criminal Shariat Appeal fails. Dismissed.

Chairman

Member **Member**

Member **Member**

Islamabad, the
1st December, 2020
Not approved for reporting
Azmat/-