

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mr. Manzoor Ahmad Malik
Mr. Justice Mr. Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal Nos. 296-L & 297-L of 2020 AND
Criminal Petition No.373-L/2016

(Against the judgment dated 23.02.2016 passed by the Lahore High Court Lahore in CrI. Appeal Nos.2055/2010, 2142/2010 and CrI. Rev. No.1348/2010 with M.R. No.135/2011)

Akbar Ali

(in Cr. A. No.296-L/2020)

Muhammad Yousaf & 3 others

(in Cr. A. No.297-L/2020)

Muhammad Rashid

(in Cr. P. No.373-L/2016)

...Appellant(s)

Versus

The State & another

(in Cr. A. No.296-L & 297-L/2020)

Akbar Ali & 5 others

(in Cr. P. No.373-L/2016)

...Respondent(s)

For the Appellant(s):

Mr. Azam Nazir Tarar, ASC
Mr. Mudassir Chathha, ASC
(in Cr.A.296-L & 297-L/2020)

For the Petitioner(s):

Mr. M. Qamar-uz-Zaman, ASC
(in Cr.P.373-L/2016)

For the State:

Mr. Khurram Khan,
Addl. Prosecutor General Punjab

Date of hearing:

21.10.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- The appellants, being members of an unlawful assembly, were tried by a learned Additional Sessions Judge at Lahore; they were indicted for homicide as well as murderous assault committed on 12.10.2005 at 2:00 p.m. within the precincts of Police Station Hadyara Lahore. Akbar Ali, appellant is attributed fatal shot to Abdul Hameed deceased, 35/36; Muhammad Shafique (PW-1), Muhammad Siddique (PW-2), Muhammad Shahid (PW-3), Faqir Hussain (PW-4), Muhammad Parvez (PW-5) and Haji Lal Din (PW-9), assaulted with multiple weapons, survived the assault. A previous brawl is cited as motive in the crime

report lodged by deceased's father Haji Lal Din (PW-9). Accused claimed trial that resulted into their convictions on multiple counts vide judgment dated 30.09.2010; held guilty under clause (b) of section 302 of the Pakistan Penal Code, 1860, Akbar Ali appellant was sentenced to death with a direction to pay compensation. The co-accused were convicted and sentenced for murderous assault upon the witnesses as well as injuries endured by them in consequence thereof. Separate appeals filed by the convicts were dismissed by single judgment dated 23.02.2016 with alteration of Akbar Ali's death penalty into imprisonment for life; the co-convicts were let off from the charge of murderous assault, however, to the extent of injuries caused by them, direction for monetary compensation to the witnesses was kept intact. Still dissatisfied the convicts through leave of the Court have assailed the findings recorded by the High Court on the grounds that occurrence did not take place in the manner as alleged in the crime report and that after prosecution's failure on extensively arrayed, coordinate charge of murderous assault, the entire edifice of the case stood seriously jolted and, thus, it would be grievously unsafe to maintain the conviction. Alteration of death penalty into imprisonment for life as well as acquittal on coordinate charges, have been challenged by Muhammad Rashid, petitioner, on behalf of his deceased father; it is argued that in a case of massive violence, proved to the hilt through the testimony of injured witnesses, there was no occasion for the High Court, either to alter penalty of death into imprisonment for life or let off co-accused from the charge of murderous assault merely for investigating officer's failure to recover from the accused weapon used by them during the occurrence. A confidence inspiring ocular account free from all taints had constituted '*proof beyond doubt*' that conclusively clinched the case, concluded the learned counsel.

2. Heard. Record perused.

3. Guilty verdict returned to Akbar Ali appellant, even on a most strict reappraisal, does not admit space to any exception; witnesses are unanimous on his having targeted the solitary fatal shot that cost Abdul Hameed life in his prime youth. A negative forensic report, nonetheless, seriously diminished consequentiality of the weapon recovered, a circumstance accompanied by prosecution's failure to establish motive validly extenuated alteration of death penalty into imprisonment for life, a wage found by us, on our own independent analysis, as conscionable in circumstances.

Though except for Muhammad Anwar appellant/respondent, attributed a butt blow to Muhammad Shafique (PW-1), remainder of the accused are assigned solitary fire shot to the PWs on different parts of their bodies, nonetheless, given nature and locales of the injuries, the High Court viewed their lethality as being insufficient to attract the mischief of section 324 of the Code *ibid*, particularly in view of recovery of blunt weapons, preferred to saddle the assailants with monetary compensation, primarily provided for the violence endured by the injured, a view vehemently contested by the prosecution. Appellants/respondents were arrested way back in the year 2005 and appear to have remained incarcerated for considerable period of time; much water has flown under the bridge and it would be thus inexpedient to reexamine and revisit the question of their culpability within the framework of their indictment, as prayed for by the prosecution. Period of incarceration and tribulation of lengthy trial and procedures of appeal have adequately remedied the wrong in circumstances, calling for no further action. Criminal Appeal Nos.296-L and 297-L of 2020 fail. Dismissed.

4. As a natural corollary, Criminal Petition No.373-L of 2016 is dismissed and leave refused.

Judge

Judge

Judge

Lahore, the
21st October, 2020
Not approved for reporting
Azmat/-