

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.210 of 2018

*(Against the judgment dated 19.12.2017 passed by the
Peshawar High Court, Abbottabad Bench in Crl. Appeal
No.67-A of 2014)*

Abdul Khaliq

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s):

Qazi Adil Aziz, ASC

Mr. Mehmood A. Sheikh, AOR

For the State:

Mr. Arshad Hussain Yousafzai, ASC

Date of hearing:

04.09.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Amraiz, 25, along with the witnesses was on way to attend a marriage ceremony on 13.3.2011 at 1:00 p.m. when the petitioner accompanied by his brother Javed repeatedly shot him in the chest; he initially survived the assault and himself laid information with the police in the hospital, however, succumbed to the injuries shortly thereafter. No motive is cited in the crime report, however, subsequently disclosed as a previous brawl between deceased's cousin and the assailants. The deceased was examined in injured condition at 2:15 p.m; the medical officer noted two entry wounds surrounded by blackened margins with corresponding exits on the chest, confirmed in the autopsy report as cause of death; the petitioner was arrested on the following day with a .30 caliber pistol (P-3), forensically found wedged with the casings, eight in number, secured from the spot. Both the accused were indicted before the learned Sessions Judge Haripur; the trial culminated into petitioner's conviction under clause (b) of Section 302

of the Pakistan Penal Code, 1860; he was sentenced to death vide judgment dated 14.06.2014, however, the co-accused was acquitted from the charge. The High Court upheld petitioner's conviction albeit with alteration of death penalty into imprisonment for life vide judgment dated 19.12.2017, *vires* whereof are being assailed through a jail petition, taken up by Qazi Adil Aziz, ASC. It is argued that evidence disbelieved qua the co-accused cannot be relied upon for petitioner's conviction in the absence of independent corroboration, hopelessly lacking in view of exclusion of motive from consideration by the High Court; it is next argued that none was present at the scene and the petitioner was arrayed as an accused after deliberations and consultations on the basis of a misplaced and ill-conceived suspicion. The learned counsel has also assailed dying declaration, relied upon by the courts below, as according to him, the deceased in view of nature of his injuries was physically not in a position to make any statement. It is next argued that statement of Sher Afzal (DW-1) being truthful and confidence inspiring merited preference over the prosecution evidence, a unanimous error committed by the courts below. It would be unsafe to rely upon the solitary statement of an eye witness supported by an inherently flawed dying declaration, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment.

2. Heard. Record perused.

3. Shortly after the incident, the deceased was rushed to D.H.Q. Hospital Haripur; Dr. Dildar Khan (PW-3) attended him and according to his deposition, he endorsed/attested statement (Ex.PW-4/1), subsequently treated as dying declaration; subjected to extensive cross-examination at an inordinate length, he was unambiguously categorical about deceased's capacity to communicate at the time when he examined him in injured condition; he further confirmed that the statement was recorded in his presence; he has vehemently denied connivance with the police; his evidence has been found by us straightforward and confidence inspiring throughout without any taint. Mere presence of relatives who brought the deceased in injured condition to the hospital would not by itself impair the evidentiary value of statement made by the declarant face to face with God. In his last agonizing moments, he confined his case to the petitioner instead of attributing second shot to the co-accused, a

circumstance that by itself goes a long way to vindicate his position. Dying declaration is further corroborated by the weapon recovered from the accused at the time of his arrest, found wedded with the casings secured from the spot and consistent with the injuries that cost the deceased his life. Statement of Phul Nawaz (PW-7), a resident of the same locality, is in line with the details of events given in the dying declaration; mere relationship of a witness with the deceased does not undermine the value of his testimony, if otherwise found with a ring of truth. Prosecution's failure on motive and acquittal of co-accused, with the role vastly distinguishable, do not tremor its case vis-à-vis the petitioner, firmly structured on pieces of evidence more than one. Recovery of pistol (P-3) and forensic report (Ex.PW-8/1) provide ample independent corroboration to sustain charge against the petitioner. Even otherwise, given the inconsequential role to the co-accused, his acquittal, seemingly out of abundant caution, does not adversely impact prosecution case qua the petitioner. Evidence of Sher Afzal (DW-1) is entirely beside the mark; he has not uttered a single word regarding the occurrence or to contradict prosecution case against the petitioner and instead attempted to merely blur date of his arrest; his partisan alliance with the petitioner cannot override positive evidence, found by us sufficient to constitute "*proof beyond doubt*". View taken by the High Court, being well within the remit of law, calls for no interference. Petition fails. Leave declined.

Judge

Judge

Islamabad, the
4th September, 2020
Not approved for reporting
Azmat/-