

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

Jail Shariat Petition No.03(s)/2020

(Against the judgment dated 08.02.2009 of the Federal
Shariat Court passed in Appeal No.7-I of 2018)

Muhammad Yaqoob

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Nemo.

For the Respondent(s): Mr. Salim Akhter Buriro, Additional
Prosecutor General.

Date of hearing: 02.12.2020.

ORDER

Qazi Muhammad Amin Ahmed:- Petitioner is amongst the accused in a crime that occurred way back on 20.3.1992 within the precincts of Police Station Ahmed Pur of District Khairpur, wherein two members of a police contingent, detached at *Jamea Mosque Mehaisar Wadda Taluka Kingri* to guard the *Taraviah* prayers, were martyred in the line of duty. According to the crime report, on the fateful night, 12 assailants, differently armed, were resisted by the contingent in their attempt to abduct some of the worshipers; two of them, namely, Ibrahim Sandelu and Laloo Sher, opened fire with automatic weapons, followed by the remainders; the contingent returned fire whereupon the assailants took to the heels into a nearby jungle. As the guns went silent, Mukhtar Hussain, PC/12586, aged 25 and Abdul Razzaq, PC/11302, aged 28, were found to have succumbed to multiple bullet injuries. The assailants took away official weapons with them and it is

in this backdrop that they were indicted on the coordinate charge of *Haraba* as well.

Specifically named in the crime report, the petitioner was arrested after almost quarter of a century to claim trial that culminated into his conviction on the charge of homicide; he was sentenced to imprisonment for life vide judgment dated 30.01.2017, upheld by the Federal Shariat Court vide impugned judgment dated 08.02.2019 under section 302 (b) of the Pakistan Penal Code, 1860, vires whereof are being assailed on a variety of grounds ranging from the question of identity during dark hours to the absence of evidence to connect the petitioner with any specific shot as well as prosecution's failure to effect recovery either of weapon of offence or official weapons snatched during the occurrence. The learned Law Officer has faithfully defended the judgment by referring to various parts of evidence produced by the prosecution that, according to him, successfully drove home the charge by excluding every hypothesis of petitioner's innocence; his absence from law for an exasperating length of time, heavily reflected upon his culpability, concluded the learned Law Officer.

3. Heard. Record perused.

4. We have gone through the evidence furnished, amongst others, by Abdul Hadi (PW-1), Ali Mardan (PW-2) and Iqbal Hussain (PW-3) with extra care and caution to explore any possibility of finding an exit for the petitioner, however, found the witnesses unanimously pointing their fingers for his having participated in the occurrence, being an active member of the unlawful assembly, constituted in prosecution of a common object, a pursuit that resulted into the death of two police constables in their prime youth; they laid their lives to protect unsuspecting worshipers. Despite flux of considerable time, the witnesses confidently recollected the incident and faced the cross-examination without embarrassment though Iqbal Hussain (PW-3) somehow omitted to name the petitioner in his examination-in-chief, however, the defence rectified the error through an indiscreet suggestion, vehemently denied by the faltering witness. Prosecution's failure to effect recovery after almost 25 years of the incident does not surprise us nor adversely reflects upon its case otherwise firmly structured on the statements of the witnesses whose presence at the crime scene cannot be suspected. Argument that it cannot be assumed with any degree of certainty that the shots allegedly fired by the

petitioner had trapped any of the deceased is entirely beside the mark; community of intention is a valid concept to entail corporeal consequences, if in the circumstances of a particular case, like one in hand, participation of an offender is reasonably established through credible evidence; the deceased certainly died of the bullets conjointly fired upon them as is evident from the seizure of as many as 90 casings from the spot and, thus, petitioner alongside the co-accused is equally culpable to share the cumulative impact of the assault. Presence of electric lights at the mosque presented ample opportunity for the identification of assailants, each named in the crime report. Darkness by itself does not provide immunity to an offender if the witnesses otherwise succeed to capture/ascertain his identity through available means, conspicuously mentioned in the crime report. On our independent analysis, the totality of circumstances does not space any hypothesis other than petitioner’s guilt and, thus, do not find ourselves in a position to take a view different than concurrently taken by the courts below. Petition fails. Leave declined.

Chairman

Member

Member

Member

Member

Islamabad, the
2nd December, 2020
Not approved for reporting
Azmat/-