

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmed Malik
Mr. Justice Sajjad Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition Nos.467, 613 & Criminal Petition No. 693 of 2017

(Against judgment dated 16.03.2017 passed by Lahore High Court
Multan Bench Multan in Criminal Appeal No.698 of 2015 as well
as Nos. 6, 9, 10 & 12 of 2016 & CrI. Revision No.98 of 2016)

Munir Ahmed

(in J.P. No.613 of 2017)

Sabir Hussain & another

(in J.P. No.467 of 2017)

Abid Hussain

(in Cr. P. No.693 of 2017)

...Petitioner(s)

Versus

The State

(in both Jail Petitions)

Nadir Hussain & others

(in Cr. P. No.693 of 2017)

...Respondent(s)

For the Petitioner(s):

Nemo

(in J.P. No.613 of 2017)

Mr. Dil Muhammad Khan Alizai, ASC

(in J.P. No.467 of 2017)

Mr. Shah Khawar, ASC

(in Cr. P. No.693 of 2017)

For the State:

Mirza Abid Majeed,

Deputy Prosecutor General Punjab

Date of hearing:

08.10.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J. Muhammad Ajmal and his brother-in-law Nadir Hussain were fatally shot on 22.1.2011 at 7:00 p.m. within the precincts of Police Station Ali Pur, District Muzaffargar; Muhammad Imran PW survived the

assault with gunshot; incident was reported at the spot by Abid Hussain, a real brother; he arrayed eighteen accused by name accompanied by eight unknown, each armed differently; the petitioners are amongst the accused assigned effective shots to the deceased as well as the injured.

According to the crime report, in the backdrop of an abortive exchange marriage, the accused, under the barrage of indiscriminate firing, trespassed into complainant's house; Nadir Hussain petitioner targeted Muhammad Ajmal deceased in his head followed by a fire shot by Munir Ahmed petitioner on left thigh of Muhammad Imran whereafter Muhammad Sabir petitioner fired upon Nadir Hussain deceased on his left shoulder; it is prosecution's case that all the accused kept on firing continuously and upon arrival of the neighbourhood, decamped from the scene, leaving behind 56 casings and blood at various spots, secured vide inventories. Sabir Hussain and Nadir Hussain petitioners stayed away from law for a period exceeding two years; Munir Ahmed petitioner was, however, arrested alongside other accused, except those exonerated during investigation, on conclusion whereof, besides the petitioners, 13 others were indicted by a learned Additional Sessions Judge at Muzaffargarh who vide judgment dated 19.12.2015, let off Wazir, Latif, Abdul Rasheed and Ghulam Qadir while returning a guilty verdict qua the remainder; for homicide and murderous assault, Sabir Hussain and Nadir Hussain were sentenced to death whereas Munir Ahmed to 10-years R.I. along with conviction and sentences on coordinate charges. The High Court maintained convictions of the present petitioners albeit with alteration of death penalty into imprisonment for life and reduction of 10-years imprisonment into five years R.I. while acquitting the others from the charge vide judgment dated 16.3.2017, *vires* whereof have been challenged on a variety of grounds ranging from improbability of prosecution story to nomination of hugely exaggerated assailants in the crime report; contested by the State on the strength of analysis and findings consequent thereupon by the lower tribunals.

2. Heard. Record perused.

3. Loss of precious lives, within a family fold, though on rocks, confirmed by the witnesses including the one with a stamp of injury, notwithstanding, there are certain intriguing aspects, haunting the prosecution, in the totality of circumstances, a hugely large number of assailants, including the unknown, being the most prominent. In the face of indiscriminate firing, a case unambiguously put forth by the prosecution, receipt of single shot by each deceased as well as the injured belies the hypothesis of massive indiscriminate firing by each member of unlawful assembly comprising no less than 26, the unknown included; from amongst the volley of assailants, precision attribution, in an extreme crisis situation, is a feat, beyond human capacity, it sans forensic support as well; quite a few from amongst the array were let off at investigative stage, on the basis of an affidavit sworn by no other than the injured himself; prosecution's dilemma is further compounded by acquittal of four accused, framed through the same set of evidence by the Trial Court; a severer blow came from the High Court that acquitted all others except the petitioners. The petitioners, though distinctly assigned single shot *qua* the deceased and the injured, nonetheless, are identically placed with those by now, off the hook. Inclusion of the unknown, eight in numbers, if factually correct was certainly not without a purpose; if at all, they were there, the petitioners and other known members of the family had no occasion to carry out the assault without being out of mind. Notwithstanding the magnitude of loss of lives, the totality of circumstances, unambiguously suggest that the occurrence did not place in the manner as is alleged in the crime report; argument that number of assailants has been hugely exaggerated, as confirmed by the acquittals of the co-accused with somewhat identical roles, though without specific attributions, is not entirely beside the mark and in retrospect calls for caution. It would be unsafe to maintain the convictions. Consequently, Jail Petitions are converted into appeals and allowed; impugned judgment is set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case.

As a natural corollary, Criminal Petition No.693 of 2017 stands dismissed.

Judge

Judge

Judge

Islamabad
9th October, 2019
Not Approved for reporting
Azmat/-