

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.497 of 2015

*(Against judgment dated 18.11.2015 passed by the
Lahore High Court at Rawalpindi Bench in Crl. Appeal
No.602 of 2010)*

Mazhar Ellahi

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s):

Mr. Kashif Ali Malik, ASC
Syed Rafaqat Hussain Shah, AOR

For the State:

Mr. Ahmad Raza Gillani,
Additional Prosecutor General,
Punjab

Date of hearing:

20.2.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Jan Muhammad alias Jani, 18, was done to death on 22.5.2007 at 7:30 p.m. within the remit of Police Station City Hassan Abdal District Attock; from amongst the witnesses Sajid Mehmood (PW-10) was also repeatedly shot when he beseeched the assailants to spare the deceased. Statedly accompanied by his son Imran Khan, since acquitted, Mazhar Ilahi, petitioner herein, is blamed for successive shots, both upon the deceased as well as the witness. Motive for the crime is a suspected liaison allegedly carried by deceased's brother with petitioner's daughter. Incident was reported same day at 9:15 p.m. in the Civil Hospital where the injured was examined and autopsy conducted at 8:30 and 9:30 p.m. respectively. Recoveries include seizure of blood and casings from the spot and a .30 caliber pistol (P-7), pursuant to a disclosure. Assailants

claimed trial; while extending benefit of the doubt to Imran Khan co-accused, the petitioner was convicted for homicide as well as murderous assault; vide judgment dated 28.5.2009, on both the charges, he was sentenced to death and imprisonment for 10 years, with direction to pay compensation as well as fine; a learned Division Bench of Lahore High Court at Rawalpindi maintained the convictions albeit with alteration of death penalty into imprisonment for life; the High Court additionally convicted the petitioner under Section 337 L(ii) of the Pakistan Penal Code, 1860 and sentenced him to rigorous imprisonment for one year with concurrent commutation, under-trial period inclusive, vide impugned judgment dated 18.11.2015, *vires* whereof were assailed through a jail petition, argued by Mr. Kashif Ali Malik, ASC on a variety of grounds, absence of motive qua the deceased being most prominent. It is next argued that notwithstanding, absence of a specific role, acquittal of Imran Khan co-accused raised the prosecution case to the ground, as fall out thereof, according to the learned counsel, casts away testimony of the injured witness as well; suppression of forensic report destroyed the entire edifice, concluded the learned counsel.

2. With the assistance of the learned counsel for the petitioner as well as the learned Law Officer, we examined the record to find out a remarkable promptitude in registration of the case, examination of the injured and autopsy of the deceased soon thereafter. Occurrence took place within the bounds of the locality where presence of the witnesses, particularly one having extensive injuries cannot be viewed with suspicion. We have otherwise found their statements in a complete unison with details of the salient aspects of the occurrence as well as events collateral therewith; they have been confronted with cross-examination, devoid of direction and hopelessly inconsequential. Though the High Court discarded recovery of .30 caliber pistol (P-7), nonetheless, the injuries endured both by the deceased as well as the injured are consistent with the weapon, singularly used with awful lethality by the petitioner. Totality of circumstances does not admit any hypothesis other than petitioner's guilt. Non-assignment of effective shot to Imran Khan, acquitted co-accused, in the face of multiple fire shots and available wounds, in retrospect, lends

additional credence to the prosecution case, his acquittal notwithstanding. Benefit for absence of forensic report and a misdirected motive has already been extended to the petitioner despite shocking brutality inflicted by him upon the deceased, still a teenager, besides targeting Sajid Mehmood PW who unsuspectingly intervened to rescue the deceased in good faith. Scales are in balance. Petition fails; leave declined.

Judge

Judge

Islamabad, the
20th February, 2020
Not approved for reporting
Azmat/-