

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial

Mr. Justice Qazi Muhammad Amin Ahmed

**Jail Petition No.324 of 2015**

*(Against judgment dated 09.04.2015 passed by the  
Lahore High Court Bahawalpur Bench Bahawalpur  
in Criminal Appeal No.14 of 2011 along with M.R.  
No.3 of 2011)*

***Munir Ahmad***

*...Petitioner(s)*

**Versus**

***The State***

*...Respondent(s)*

For the Petitioner(s): Mian M. Tayyab Wattoo, ASC

For the State: Mr. Ahmed Raza Gillani  
Addl. Prosecutor General Punjab

Date of hearing: 27.04.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Indicted by the learned Judge Anti-Terrorism Court, Bahawalpur, alongside 12 others, Munir Ahmed, petitioner, is the lone recipient of a guilty verdict vide judgment dated 07.02.2011, upheld vide impugned judgment dated 09.04.2015, albeit with alteration of death penalty into imprisonment for life on two counts with concurrent commutation, pre-trial period inclusive. Being a proclaimed offender in a case of murderous assault, the petitioner resisted a police contingent on 27.7.2008 at 8:05 p.m. within the remit of Police Station Kot Sabzal, District Rahim Yar Khan; his accomplices joined him in the quest; one of the fire shots caught Shafqat Ali 1083/C in the line of duty with his boots on; ensuing darkness facilitated the assailants to take on their heels; they were, however, subsequently taken to the task. Solitary fatal fire shot, attributed to the petitioner weighed with the learned trial Judge to let off the co-accused, a view juridically flawed in the totality of circumstances, nonetheless, countenanced by the State.

According to the prosecution, on a tip off, Abdul Hameed ASI (PW-4), surprised the petitioner, a proclaimed offender in his hideout; he along with the accomplices opened fire on the police contingent; taking shelter behind the official van, the complainant kept the

assailants at bay and continued to engage them till arrival of reinforcement headed by Junaid Ahmad, Assistant Superintendent of Police with whom the deceased was deputed as a guard, fatally hit soon after he alighted the official vehicle.

2. Petition filed by the convict through Superintendent Jail is barred by 72 days, condoned in the interest of justice; it has been taken up by Mian Muhammad Tayyab Wattoo, ASC, to argue that there was no occasion for the Courts below to return a guilty verdict after prosecution's wholesale failure qua the majority of the accused, no less than 12 in numbers; he has argued that the darkness had shielded the identity of the assailants and, thus, it was not humanly possible for the witnesses for having seen the petitioner while taking on the deceased; negative forensic report of gun P-3 squarely vindicated petitioner's position, leaving nothing in the field to sustain the impugned conviction without potential risk of error, shrouded in the haze, concluded the learned counsel. Syed Ahmed Raza Gillani, Additional Prosecutor General Punjab has faithfully defended the impugned judgment.

3. Heard. Record perused.

4. Prosecution case is structured upon ocular account furnished by Nisar Ahmed/C (PW-3), Abdul Hameed, ASI (PW-4) and Muhammad Riaz, Inspector (PW-6); they have furnished details of criminal case wherein petitioner's arrest along with others was required and, thus, successfully established the purpose behind the raid; petitioner being prominent amongst the accused was required by law. Deceased's detachment as a guard with an Assistant Superintendent of Police posted in the Sub-Division has not been disputed. The darkness had not yet engulfed the scene when the encounter commenced and it is so mentioned in the cross-examination itself *"As soon as, we reached at the place of occurrence, the accused made firing on us. Firing was started at about 7:30 pm. There was some daylight at that time. When firing started, I came out of my vehicle and made wireless calls to SHO Police Station Bhong SHO Police Station Kot Sabzal and SHO Police Station Ahmadpur Lamma for my help"*. Cross-examination is a continuation of examination-in-chief. Disclosures solicited by defence's own choice and election from the witness during the process, if found embarrassing or counterproductive, their adverse consequences cannot be skipped or hushed up to ward off cumulative impact of the exercise. It rules out the theory of complete darkness at

the fag-end of the month of July. The witnesses are in a comfortable corroborative unison on all the salient aspects of the prosecution case as well as details collateral therewith; they being functionaries of the Republic are second to none in status, having otherwise no axe to grind; a directionless cross-examination, couched in suggestions, each vehemently denied, reflects nothing but an exercise in futility. Position taken by the defence that no encounter took place on the fateful day nor at a place depicted in the site plan is a far cry in the face of formidable evidence comprising seizure of human blood and a large number of casings secured vide inventories of even date from the designated spot in the village. Petitioner's absence from law for a considerable span of time (*1 year 8 months*) and involvement in antedated criminal cases do not brilliantly reflect upon his credentials; his absconsion in retrospect withers away the impact of negative forensic report; similarly, he cannot claim benefit of *en bloc* acquittal of his co-accused as they had been acquitted by the trial Judge without any determinative finding excluding their participation in the combat; their acquittal merely on the premise that none fell prey to their retaliation is a conclusion, inherently incompatible with the well entrenched principle of community of intention for prosecution of a common object and mere absence of harm in consequence thereof by itself does not vitiate culpability of an unlawful assembly. A flawed acquittal without recourse cannot be viewed as a failure intriguing upon an indictment otherwise positively established. Even a most stringent analysis of prosecution evidence does not allow space to admit any hypothesis other than petitioner's guilt. Petition fails. Leave refused.

**Judge**

**Judge**

Islamabad, the  
27<sup>th</sup> April, 2020  
Not approved for reporting  
Azmat/-