

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial

Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.317 of 2018

*(Against judgment dated 12.03.2018 passed by the
Lahore High Court Lahore in Crl. Appeal
No.1285/2013 along with M.R. No.260/2013)*

Fateh Sher

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Sarfraz Khan Gondal, ASC

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

Date of hearing: 29.04.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- From amongst a large array of accused, prosecuted through a private complaint after complainant's dissatisfaction with the investigative process, Fateh Sher, petitioner, alone was returned a guilty verdict in a case of homicide by a learned Additional Sessions Judge at Pindi Bhatian; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860 vide judgment dated 01.8.2013, he was sentenced to death, altered into imprisonment for life by the learned High Court vide impugned judgment dated 12.3.2018, *vires* whereof are being assailed on a variety of grounds, wholesale failure of prosecution case being most prominent.

The incident is a night affair on fringe of the village *Abadi* when according to the complainant he accompanied the deceased and the injured at 10:45 p.m, without any apparent purpose. Besides the petitioner, his brothers Ikram Ullah and Ihsan Ullah, each lethally armed, alongside three unknown, confronted them with fire shots. Abid Hussain and Asghar Ali PWs were statedly attracted to the scene at

that unearthly hour of the night to witness the occurrence, instigated by Javed co-accused. Through a supplementary statement purportedly recorded on 24.5.2010, unknown assailants were introduced by their names with specific roles. The co-accused were exonerated by the Investigating Officer and the complainant having found investigative conclusions inconsistent with the case set up in the crime report, preferred a private complaint which again resulted into failure barring the petitioner. Prosecution's failure qua majority of the accused, one of whom is indivisibly assigned identical role, question of identity of the assailants in a moonlit night as mentioned in the crime report, an unanticipated encounter between the deceased and the injured with the assailants and inconsequential forensic report, makes out a case for reappraisal of evidence to ensure safe administration of criminal justice. Leave granted.

Judge

Judge

Islamabad, the
29th April, 2020
Not approved for reporting
Azmat/-