

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.262/2015,
Criminal Petition Nos.402-L/2015 & 412-L/2015

*(Against the judgment dated 13.03.2015 passed by
the Lahore High Court Lahore in Criminal Appeal
No.2628/2010 with M.R. No.33/2012)*

Muhammad Sharif

(in J.P. No.262 of 2015)

Muhammad Ajmal

(in Cr.P. No.402-L of 2015)

Asif Ali

(in Cr.P. No.412-L of 2015)

...Petitioner(s)

Versus

The State & another

(in J.P. No.262 of 2015)

The State

(in Cr. P. No.402-L of 2015)

The State & another

(in Cr.P. No.412-L of 2015)

...Respondent(s)

For the Petitioner(s):

Mr. M. Yar Khan Daha, ASC

(in J.P. No.262 of 2015)

Mr. Zubair Afzal Rana, ASC

(in Cr.P. No.402-L of 2015)

Rai Sajid Ali Kharal, Adv. HC

(with permission of the Court

in Cr.P. No.412-L of 2015)

For the State:

Mr. Khurram Khan,

Addl. Prosecutor General Punjab

Date of hearing:

16.07.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Ahmad Ali, deceased, 45, was statedly shot dead at 3:00 p.m. on 30.6.2009 within the remit of Police Station Chak Baidi, District Pakpattan; incident was reported by his brother Asif Ali (PW-1) at 8:30 p.m. in the Rural Health Center Bonga Hayat; it is alleged that the deceased along with the complainant, Umar Fareed (PW-2), their father Rehmat Ali (given up) were on way to visit Allah Ditta, a relative convalescing some disease; they were on two motorbikes when the petitioners along with co-accused, differently armed, confronted

the entourage; after subduing them, the deceased was separated and repeatedly shot by Ajmal petitioner followed by Manzoor Ahmed (P.O.) and Muhammad Sharif petitioner within witnesses' view, kept at bay on gunpoint; they took away a .30 caliber pistol held by the deceased. A previous brawl between the deceased and Ajmal petitioner is cited as motive for the incident. Crime report suggests that gunshots attracted the nearby patrolling police that shifted the casualty to the Rural Health Center Bonga Hayat where he was provided assistance at 3:20 p.m. and referred to Jinah Hospital Lahore, however, succumbed to the injuries on way near Pattoki, at 6:00 p.m.

Dissatisfied with the police investigation, the complainant instituted a private complaint, wherein pursuant to issuance of process, petitioners along with Ghulam Rasool were indicted by a learned Additional Sessions Judge at Pakpattan; the trial culminated into acquittal of Ghulam Rasool, however, vide the same judgment dated 28.10.2010, Muhammad Ajmal and Muhammad Sharif, petitioners, were convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860 and sentenced to death and imprisonment for life, respectively; the High Court maintained the convictions albeit with alteration of death penalty into imprisonment for life vide impugned judgment dated 13.03.2015, *vires* whereof, are being separately assailed by both the convicts through Jail Petition No.262 of 2015 and Criminal Petition No.402-L of 2015; complainant seeks through Criminal Petition No.412-L of 2015 enhancement of sentences awarded to the convicts; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the petitioners contend that the deceased was done to death in an un-witnessed occurrence under mysterious circumstances and that the witnesses were taken on board much late in the day to set up a false case after deliberations and consultations, a hypothesis that according to the learned counsel is confirmed by the investigative conclusions; that despite seizure of casings of different calibers from the spot and recovery shown by one of the petitioners, namely, Muhammad Ajmal, the weapon was not dispatched for forensic comparison; that the complainant massively improved upon his previous statement on fundamental aspects of the case and as such was not worthy of reliance; that the case was fraught with irreconcilable contradictions and inconsistencies and as such it would be unsafe to maintain the convictions, concluded the learned counsel. Contrarily, the learned Law Officer defended the impugned judgment on the ground that the view

taken by the High Court being factually sound as well as realistically balanced called for no interference. Learned counsel for the complainant citing magnitude of brutality inflicted upon the deceased urged enhancement of sentence to death being a conscionable wage in circumstances.

3. Heard. Record perused.

4. According to the crime report, the assailants distinctively targeted the deceased with multiple shots, as a consequence whereof, he received five fire shots on different parts of the body; examined in injured condition under a police docket at 3:20 p.m. he was noted with five entry wounds of various dimensions with corresponding exits. We are mindful of the fact that in a sudden crisis situation, it would be callously unrealistic to expect from a terror stricken witness to furnish immaculate details with precision, nonetheless, the complainant by his own choice took specific positions wherefrom he deviated in the private complaint and was duly confronted therewith, as under:

"I had stated to the police in Ex.PA that Ajmal accused has inflicted four firearm injuries on the person of Ahmad Ali deceased. Confronted with Ex.PA wherein three injuries are mentioned. I had also stated in my private complaint Ex.PC that Ajmal accused had made four fires which hit the deceased Ahmad Ali. Confronted with Ex.PC wherein two fires are mentioned. I had also stated in my cursory statement Ex.DA that Ajmal accused had inflicted four fire shots on the person of the deceased Ahmad Ali. Confronted with Ex.DA wherein two fires have been mentioned and receipt of injury of second shot is not mentioned."

Since there are three accused assigned fire shots, shift in complainant's position cannot be viewed as trivial or inconsequential as it realigns his entire case and in retrospect admit possibilities that reflect upon the factual details set out in the crime report. This deviation is not the only factor that puts us on caution as we are more profoundly intrigued by discrepancies evident in the police note wherein according to Muhammad Ashraf ASI (CW-3), upon receipt of information, he along with Ghulam Murtaz 647/C, Muhammad Ejaz 95/C and Noushair Ali 137/C met the complainant at RHC Bonga Hayat 8:30 p.m. when he recorded complaint Ex.PA and arranged papers for autopsy, whereas as per MLR No.1659 Ex.PH/1, the deceased in injured condition was examined under a police docket carried by the above named Ghulam Murtaz 667/C who appeared as CW-7 and remained silent about his having escorted the deceased for medical examination while he was alive; it was most opportune occasion to record the crime report; on the contrary, he stated to have escorted the

dead body from RHC Bonga Hayat to DHQ Hospital Pakpattan, a position that went unchallenged, both by the complainant as well as the defence, however, in retrospect confirms beyond doubt that police were available with the deceased at 3:20 p.m. and, thus, recording of complaint Ex.PA as late as at 8:30 p.m. is mindboggling. Argument that crime report Ex.PA is outcome of consultations and deliberations cannot be dismissed out of hand and as such shadows upon the possibility of witnesses' presence who otherwise surprisingly survived a devastating assault unscathed.

Presence of a .30 caliber pistol with the deceased and his failure to use it in a situation when it was most warranted is also part of an incomplete tale; despite an elaborate investigative process, it was never recovered.

Exoneration of Muhammad Sharif and Ghulam Rasool during the investigation is yet another dilemma confronting the prosecution; it requires a serious consideration as seemingly there was no reason for three assailants to jointly take on the deceased, lying at their mercy when every single of them could individually accomplish the premeditated purpose without incurring corporal consequences for the entire clan; plea of a wider net cannot be thrown to the wind.

5. In the absence of proof beyond doubt, it would be unsafe to maintain the convictions. Criminal Petition No.402-L of 2015 and Jail Petition No.262 of 2015 are converted into appeals and allowed; impugned judgment dated 13.03.2015 is set aside; petitioners/appellants are acquitted of the charge and shall be released forthwith, if not required to be detained in any other case.

As a natural corollary, Criminal Petition No.412-L of 2015 stands dismissed.

Judge

Judge

Judge

Lahore, the
16th July, 2020
Not approved for reporting
Azmat/-