

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No.112 of 2017

*(Against judgment dated 30.1.2017 passed by the
Lahore High Court Lahore in Criminal Appeal No.8 of
2012 along with M.R. No.7 of 2012)*

Javed Ishfaq

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Mr. Safdar Hussain Tarrar, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: N.R.

Date of hearing: 06.07.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Indicted for homicide, Javed Ashfaq, petitioner herein, claimed trial along with six others before a learned Additional Sessions Judge at Wazirabad; they were arrayed in the backdrop of shifting of an electric transformer in the village that disrupted power supply to the annoyance of co-villagers, lined up into two groups that clashed at the site, 6:00 p.m. on 2.7.2010; both suffered injuries, opined to have been caused with blunt weapons with the exception of Noor Muhammad, deceased, 70, fatally trapped by petitioner's solitary shot in the abdomen with a corresponding exit. Receipt of injuries suffered by the accused failed to weigh with the police to set up a counter-version and the accused faced trial without recourse to a private complaint. The petitioner was alone to receive a guilty verdict with death sentence, altered into imprisonment for life by the High Court vide impugned judgment dated 30.1.2017.

2. Learned counsel for the petitioner contends that evidence disbelieved qua majority of the accused cannot haul up the petitioner without independent corroboration, according to him, hopelessly lacking; that the crime report is completely silent on the injuries suffered by no less than five accused, a suppression spelling out an incident incompatible with the details mentioned in the crime report;

that there exists a clear conflict between ocular account and medical evidence as presence of blackening around the wound belies the *inter se* distance mentioned in the crime report as well as site plan; it is next argued that the deceased, in his late seventies, was done to death by his own clan to hush up the mischief.

3. Heard.

4. With no previous bad blood, shifting of an electric transformer, with power breakdown, rocked an otherwise peaceful neighbourhood in the sizzling heat of the season and in this backdrop initial receipt of injuries, established during the course of investigation to have been caused by clubs, etc. has to be viewed in the peculiar background of the incident. This appears to be a reason for absence of the injured from the witness box; worst casualty was the deceased, hit by petitioner's shot as the clash graduated more violent and, thus, in the given circumstances acquittal of the co-accused by the trial Court in the absence of the injured from both sides has been an option wisely preferred by the learned trial Judge; acquittals do not extenuate petitioner's culpability for additional reasons as well; the police declined to entertain the counter version and the accused by their own choice considered institution of private complaint as a futile exercise. A bipartisan suppression appears to be the predominant cause behind the acquittal of co-accused with roles trivially different, thus, by itself does not pave way for the petitioner to escape consequences of his individual criminal act, otherwise established beyond doubt. In the circumstances, plea of indivisibility of evidence is not available to the petitioner. It was held by this Court in the case of Syed Ali Bepari v. Nibaran Mollah and others (PLD 1962 SC 502)“.....the Court must not be deterred by the incompleteness of the tale from drawing the inferences that properly flow from the evidence and circumstances”, a view re-affirmed in the case of Ali Raza alias Peter and others Vs. The State and others (2019 SCMR 1982).

Hypothesis of conflict between ocular account and medical evidence, inordinately agitated to highlight presence of burning around the entry aperture is without foundation as well. According to site plan (Ex.PU), the petitioner fired fatal shot from point 'B' standing in a window that hit the deceased at point 'A'. According to Masood Ahmed Bhatti (PW-12), the *inter se* distance between two points is four feet and, thus, presence of blackening around the entry wound is not surprising; the relevant portion of the cross-examination is reproduced below:

“It is incorrect to suggest that according to the scaled map the distance between point ‘A’ and point ‘B’ is 12 feet. Volunteered that it is four feet.”

Burning/blackening, though a predominant factor to determine distance *inter se* the assailant and the victim, nonetheless, is not the conclusive indicator; it depends upon factors more than one i.e. quality of munition and process of combustion that may possibly vary the impact of combusted gun powder; a smudging shot may cause deceptive appearance as well, therefore, in the absence of other qualifying evidence, hypothesis of *inter se* distance cannot be constructed with empirical exactitude on the presence of burning alone (*Parikh’s Text Book of Medical Jurisprudence and Toxicology, 1989 Edition, Pages 280/282*). Even otherwise, site plan has never been considered as a substantive piece of evidence nor any benefit may be extracted therefrom unless the witnesses are duly confronted with the purported anomaly or discrepancy therein; no such attempt has been undertaken by the defence.

Ocular account has been furnished by Zafar Ullah (PW-7) and Fazal Ahmed (PW-8); they are in tune with each other on all the salient features of the case as well as details collateral therewith; they have no axe to grind to point their fingers on the petitioner alone, in a situation that cropped up with no past strings. Defence version that apprehending death of the injured, the deceased, in his late seventies, related in first degree with the complainant, was executed by his own kith and kin to fabricate a counter version is a story that being most preposterous would hardly find a buyer.

Despite strenuous efforts, learned counsel for the petitioner has not been able to point out any flaw, discrepancy, legal or factual, calling for interference with the conclusions concurrently drawn by the Courts below. Petition fails. Leave declined.

Judge

Judge

Islamabad, the

6th July, 2020

Not approved for reporting

Azmat/-