

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

Jail Petition No.302 of 2017

*(Against the judgment dated 16.03.2017 passed by the Lahore High Court
Lahore in Crl. Appeal No.1294 of 2012 with M.R. No.313 of 2012)*

***Zia Ullah
Waheed Anwar***

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s):	Ms. Tehmina Mohibullah Kakakhel, ASC
For the State:	Mirza Abid Majeed, Deputy Prosecutor General Punjab
Date of hearing:	19.01.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.- Javed Iqbal, 40/41, was shot dead in front of his house located within the precincts of Police Station Sitara District Sialkot at 7:30 p.m. on 30.10.2009; the incident was reported by his son Aitzaz Ahsan (PW-8) 9:30 p.m. at Civil Hospital Daska; he blamed the petitioners for the crime in the backdrop of a dispute, raging over immovable property on the instigation of Nasrullah and Zulfiqar Hussain, since acquitted. Three unknown accomplices taking shelter in the dark, presumably aiding the crime, are off the scene till date.

According to the complainant, on the fateful evening, the deceased was watering the bricks when Ziaullah petitioner armed with a .12 caliber repeater shotgun accompanied by Waheed Anwar petitioner with a .44 caliber rifle surprised him within the view of the witnesses; the latter opened the assault with a burst followed by the former, landing on the different parts of his body; gasping for life, he was rushed to Civil Hospital; where after a brief struggle, he succumbed

to the injuries. The petitioners stayed away from law and were finally arrested on 4.2.2010 and 21.5.2010, respectively; the Investigating Officer recovered weapons of offence shortly thereafter, found wedded with the casings secured from the spot. Upon indictment, they claimed trial that resulted into their conviction under clause (b) of section 302 of the Pakistan Penal Code, 1860; they were sentenced to death vide judgment dated 20.07.2012; the abettors, however, were acquitted from the charge; the High Court while maintaining convictions altered the penalty of death into imprisonment of life vide impugned judgment dated 16.03.2017.

2. Learned counsel for the petitioners contends that the entire case is structured upon a conspiracy allegedly hatched by Zulfiqar and Nasrullah, co-accused; their acquittal casts away the entire case. Seizure of two casings during the spot inspection in the face of as many as nine entry apertures is a circumstance that does not synchronize with the theory of a burst made by Ziaullah petitioner and, thus, discrepancy by itself constitute conflict between ocular account and medical evidence, benefit whereof, has unduly been withheld. Finally, he has blamed the medical officer for being in connivance with the prosecution in setting up a false case against the petitioner. Mirza Abid Majeed, learned Deputy Prosecutor General Punjab has faithfully defended the impugned judgment. According to him, the ocular account furnished by the witnesses whose presence at the spot cannot be doubted successfully drove home the charge beyond a shadow of doubt. In the backdrop of an ongoing dispute, the petitioners had a strong motive to settle the score, concluded the learned Law Officer.

3. Heard. Record perused.

4. The prosecution case is primarily structured upon ocular account furnished by deceased's son Aitzaz Ahsan (PW-8) and Ishtiaq Ahmed (PW-9); former being resident of the house in front whereof the deceased was engaged by the assailants can be safely viewed as a natural witness. A subsisting dispute notwithstanding, Aitzaz Ahsan (PW-8) is not expected to swap the assassins of his father with the innocent; there does not appear any earthly reason for such a senseless indiscretion; both of them confidently furnished graphic details of the incident; the former was subjected to lengthy cross-examination, a directionless exercise, soliciting inconsequential details on peripheral matters, hardly relevant to the core issue; remainder comprises of bald

suggestions, vehemently denied. Ishtiaq Ahmed (PW-9) also firmly held the ground.

5. Inclusion of abettors and three unknown aids in the crime though a suspect circumstance with embarrassing failure, nonetheless, does not decisively reflect upon petitioners' culpability, independently established by confidence inspiring evidence, excluding, to their extent every hypothesis, other than their guilt; plea of false implication with the assistance of a medical officer being preposterous merits outright rejection. View concurrently taken by the Courts below, found by us on our own analysis being inconsonance with the principle of safe administration of criminal justice, calls for no interference. Petition fails. Leave refused.

Judge

Judge

Judge

Islamabad, the
19th January, 2021
Not approved for reporting
Azmat/-