IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:
Justice Jamal Khan Mandokhail
Justice Syed Hasan Azhar Rizvi
Justice Naeem Akhtar Afghan

CRIMINAL APPEAL NO.144-L OF 2020 AND
CIVIL PETITION NO.282-L OF 2024

(On appeal against the judgment dated 02.10.2019 passed by the Lahore High Court, Lahore, in Crl. Appeal No.102232-J/2017 and Capital Sentence Reference No.18-T/2017)

Muhammad Riaz	(Crl.P.282-L/24)	...	Petitioner
Muhammad Yahya etc.	(Crl.A.144-L/20)	...	Appellants
	Versus		
The State and others	(in both cases)	...	Respondents

For the petitioner (C.P.282-L/24) : Ch. Zulfiqar Ali Dhudi, ASC
(via video link from Lahore)

For the appellants: (Crl.A.144-L/20) Mr. Hammad Akbar Wallana, ASC
(via video link from Lahore)

For the State (in both cases) : Mr. Irfan Zia, Addl. Prosecutor General Punjab

Date of hearing : 22.05.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J. Muhammad Yahya and Muhammad Riaz ("**the appellants**") faced trial before an Anti-Terrorism Court in Lahore ("**trial court**") in case F.I.R No. 157/2008 dated 11.06.2008 for the offences under sections 302/324/148/149 of the Pakistan Penal Code, 1860 ("**P.P.C.**") and section 7 of the Anti-Terrorism Act, 1997 ("**A.T.A.**") registered at the Police Station Raja Jang, Kasur. After a regular trial, both appellants were convicted under sections 302(b)/149, P.P.C., and sentenced to death as *tazir* on four counts. They were also directed to pay an amount of Rs. 200,000 (two hundred thousand) each on four counts as compensation under section 544-A of the Code of Criminal Procedure, 1898 ("**Cr.P.C.**") to the legal heirs of the deceased persons, and in default, they had to further undergo simple imprisonment for six months. They were also convicted under sections 324/149, P.P.C., and sentenced to rigorous

imprisonment of ten years each on three counts, with a fine of Rs. 100,000 (one lakh) each. In default of payment, they had to further undergo simple imprisonment for two years on three counts. Additionally, they were directed to pay Daman of Rs. 50,000 each on three counts for causing injuries to the injured persons. In default of payment, they were to be kept in jail until the Daman was paid. They were also convicted under section 7(a), A.T.A. and sentenced to death. Additionally, they were convicted under section 21-L, A.T.A. and sentenced to imprisonment for five years with a fine of Rs. 20,000 each, and in default, they had to further undergo simple imprisonment for one month.

2. Feeling aggrieved by their conviction and sentence by the trial court vide judgment dated 27.09.2017, the appellants jointly filed the Criminal Appeal No.102232-J of 2017 before the learned Lahore High Court ("**appellate court**") while the trial court transmitted the Capital Sentence Reference No.18-T of 2017 for confirmation or otherwise of the sentence of death awarded to the appellants. A Division Bench of the appellate court took up both these matters together and through the judgment dated 02.10.2019 ("**impugned judgment**"), partially allowed their appeal to the extent that their conviction and sentence under section 7, A.T.A. were set aside and they were acquitted of the said charge. Their conviction and sentence under the rest of the charges were maintained; however, their sentence of death under section 302(b)/34, P.P.C. was converted into imprisonment for life on four counts while extending the benefit of section 382-B,Cr.P.C. Resultantly, the Capital Sentence Reference was answered in negative. Feeling dissatisfied with the impugned judgment, the appellants have:

a) filed the Jail Petition for leave to Appeal No.632 of 2019 wherein the leave was granted by this Court vide order dated 17.03.2020 for the decision on the merits of the case. (**Thereafter, registered as Crl. Appeal No.144-L of 2020**)

AND

b) filed the Civil Petition for Leave to Appeal No. 282-L of 2024 against the judgment dated 16.01.2024 of the Lahore High Court, Lahore, whereby their Constitution Petition No. 80446 of 2023 for suspension of sentence during the pendency of their appeal before this Court was dismissed.

This judgment will dispose of the above two matters jointly, which are the outcome of the same case.

3. The facts necessary for adjudication of this matter, briefly, are that the complainant lodged an F.I.R. with the allegations that on 11.06.2008 at about 04.00 p.m. he along with Riaz, Muhammad Arif (injured/PW-10), Sana Ullah (deceased), Farmaish Ali (deceased) and Yasin (PW-12) left Kasur for his village at Raja Jang in two cars, one being driven by Salamt (deceased) and the other by Muhammad Arshad (deceased).When they crossed the bridge Jaboo Mall, accused Muhammad Rafique, Mashkoor alias Bhoni, Muhammad Yaqoob, Muhammad Sarwar, Muhammad Yahya, Hubaib, Muhammad Ashraf alias Achar, Muhammad Riaz, Javed, Muhammad Asif along with four unknown accused persons, while armed with firearm weapons, emerged there on a white Toyota car bearing registration No.LEF/9376 and three motorcycles without number plates and asked them (the complainant party) to stop but they kept on moving their cars. When they reached bridge Rohi Nala, Rao Khanwala, all the accused started making indiscriminate firing upon them resulting in the spontaneous death of Sanaullah, Salamat, Farmaish Ali and Muhammad Arshad. The complainant, Muhammad Arif and Riaz Ahmad received firearm injuries at the spot. This occurrence resulted in a traffic jam for about one hour and also created a sense of terror and insecurity amongst the general public. One of the companions of the assailants having engraved 'Azam' on his right arm also died due to the firing of his companions. All the assailants succeeded in fleeing away on motorcycles while leaving their car on the spot; hence, this case.

4. Previously, in this case, the co-accused Muhammad Rafique and Muhammad Asif were arrested, tried, and ultimately convicted and sentenced to death whereas accused Muhammad Ashraf was acquitted of the charge by an Anti-Terrorism Court, Lahore vide judgment dated 08.03.2010. The Capital Sentence Reference for confirmation or otherwise of the death sentence of the above convicts, Criminal Appeal preferred by Muhammad Rafique and Muhammad Asif, appeal against the acquittal of Muhammad Ashraf preferred by the complainant, and Criminal Appeal preferred by the State, were jointly decided by the Lahore

High Court vide consolidated judgment dated 02.10.2019. Through this judgment, the High Court, while maintaining the conviction and sentence of the convicts as recorded by the trial court under section 302(b)/34, P.P.C., altered the sentence of death to imprisonment for life on four counts. Their conviction and sentence under section 324/34, P.P.C. were also maintained, but the fine was reduced to Rs. 50,000. However, their conviction under section 7, A.T.A. was set aside. The appeal against acquittal filed by the complainant was partly allowed. The acquittal of Muhammad Ashraf by the trial court for the offence under section 7, A.T.A. was maintained; however, he was convicted under section 302/34, P.P.C. and sentenced to imprisonment for life on four counts. He was also directed to pay an amount of Rs. 200,000 (two hundred thousand) on four counts as compensation under section 544-A, Cr.P.C., to the legal heirs of the deceased persons, and in default, he had to further undergo simple imprisonment for six months. Being aggrieved, the convicts, namely Muhammad Ashraf, Muhammad Asif, and Muhammad Rafique approached this Court and were finally acquitted by this Court on the basis of a compromise with the legal heirs as well as the injured of the case, vide order dated 28.04.2022.

5. Learned counsel for the appellants emphatically contended that the evidence brought on record is full of contradictions and inconsistencies and is not sufficient to connect the appellants with the commission of the offence. The appellants are quite innocent and had nothing to do with the alleged occurrence. The mode and manner of the occurrence are not compatible with the real facts of the case. It was a joint role without any specification of injuries on the person of any of the deceased or the injured person. The case was registered against ten nominated and four unknown accused, which creates an impression that the complainant entangled the maximum number of male members of his opponent group by widening the net. The ocular account is not in line with the medical evidence. Two co-accused with identical roles have already been acquitted of the charge by the learned trial court in the earlier trial. One Muhammad Azam was murdered at the spot, belonging to the accused, but neither was any cross-version registered nor was the

same considered by the trial court at the time of final adjudication. The motive behind the occurrence, i.e., blood feud enmity, could be considered a double-edged weapon. The prosecution has failed to bring home the guilt of the appellants beyond a shadow of reasonable doubt. Therefore, he has prayed for the acquittal of the appellants.

6. As against that, the learned Additional Prosecutor General, Punjab, appearing on behalf of the State, controverted the arguments of the learned counsel for the appellants and supported the impugned judgment. He submitted that there were unfortunate and brutal murders committed by the appellants in broad daylight, which were promptly reported to the police, naming the appellants and their companions. These individuals launched a murderous assault upon the complainant party, being equipped with firearms, resulting in the deaths of four innocent persons along with one Muhammad Azam, and causing firearm injuries to the witnesses. The ocular account furnished by the injured witnesses is confidence inspiring and trustworthy, fully supported by the medical evidence. The motive set up by the prosecution has not only been proved but also admitted by the other side in so many words during cross-examination. The recovery of firearms, coupled with the positive report of the Ballistic Expert, provides further corroboration to the ocular account. There was no occasion for the prosecution to falsely implicate the appellants; and finally, prayed for the dismissal of the appeal.

7. We have heard the arguments of learned counsel for the appellants as well as learned Additional Prosecutor General for the State assisted by learned counsel for the complainant and have also gone through the available record.

As per the contents of the crime report, the allegation against the appellants is that they, along with the co-accused, launched an attack on the complainant party and resorted to indiscriminate firing, resulting in the deaths of four persons and injuries to three others. To bring home the guilt of the appellants, the prosecution produced the complainant, Munir Ahmad as PW-9, Muhammad Arif as PW-10 and Muhammad Yasin as PW-12 who claimed to be the injured eye-witnesses of the occurrence. We have

carefully examined the evidence of both these witnesses and found material inconsistencies and contradictions in their statements. For instance, the complainant in his application (Exh.PD) on which the F.I.R (Exh.D/1) was registered stated that on 11.06.2008 at about 04.00 p.m. he along with Riaz, Muhammad Arif (PW-10), Sana Ullah (deceased), Farmaish Ali (deceased) and Muhammad Yasin (PW-12) left Kasur for his village at Raja Jang in two cars, one being driven by Salamt (deceased) and the other by Muhammad Arshad (deceased).When they crossed the bridge JabooMall, accused Muhammad Rafique, Mashkoor alias Bhoni, Muhammad Yaqoob, Muhammad Sarwar, Muhammad Yahya, Hubaib, Muhammad Ashraf alias Achar, Muhammad Riaz, Javed, Muhammad Asif along with four unknown accused, while armed with firearm weapons, emerged there on a white Toyota car bearing registration No.LEF/9376 and three motorcycles without number plates and asked them to stop but they kept on moving their cars. When they reached bridge Rohi Nala, Rao Khanwala, all the accused started making indiscriminate firing upon them resulting in the spontaneous death of Sanaullah, Salamat, Farmaish Ali and Muhammad Arshad. He (PW-9), Muhammad Arif (PW-10) and Riaz Ahmad received firearm injuries on the spot. While appearing as PW-9, he improved his previous statement and categorically described the type of firearm each accused person allegedly carried at the time of occurrence. However, he did not explain how he came to know what type of firearm each accused person, including the appellants, was carrying when, according to his own account, he was sitting in the rear seat of the car, from where it would have been impossible for him to see the whole occurrence.

8. Furthermore, the complainant (PW-9), during cross-examination, asserted that the application (Exh.PD) for the registration of the F.I.R. was drafted 10 to 20 minutes after the incident, and the police arrived at the scene within 10 to 15 minutes. However, he (PW-9) expressed ignorance about the person who drafted the said application (Exh.PD).He (PW-9) further disclosed that he remained at the scene for 10 minutes before being taken to the hospital for medical treatment. In contrast, Muhammad Arif (PW-10), the other injured eye-witness, made an entirely different statement, contradicting the complainant by

stating that the police arrived at the scene 45 to 50 minutes after the incident. He (PW-10)further mentioned that the District Police Officer, Kasur also arrived at the scene, a fact not disclosed or alleged by the complainant. The above-noted contradictions between eye-witness statements can cast doubt on whether both witnesses were actually present at the scene. This doubt arises because if they had both witnessed the same event, their accounts should reasonably align on key details. Moreover, it is an admitted fact that the prosecution witnesses (PWs) did not attribute the shots that hit the deceased or injured to any specific accused persons, including the appellants; rather, a general role of indiscriminate firing was attributed to all the accused persons. They also did not describe the exact seating arrangement of the accused persons on the motorbikes while fleeing from the scene. This omission of important details further casts doubt on their presence at the place of occurrence.

9. According to the record, the prosecution has shown the recovery of the alleged weapons of offence, i.e., rifles of 44 bores (P.26) and 222 bores (P.27), from the appellants Muhammad Yahya and Muhammad Riaz, vide the recovery memos Exh.PZZ and Exh.PBBB, respectively. These recovery memos, available in the record, have been carefully examined, and it has been found that the alleged recoveries were made from the house of one Muhammad Javed s/o Ghulam Rasool, who is the son-in-law of appellant Muhammad Riaz and the brother-in-law of appellant Muhammad Yahya, on the same date. Both recovery memos were attested by Asghar Ali (PW-14) and Khadim Hussain (PW-17), who, in their examination-in-chief, uniformly stated that on 11.03.2016, the appellants disclosed to the police in their presence that they would facilitate the recovery of the weapons used in the offence. Further, only Khadim Hussain (PW-17) deposed that in furtherance of this disclosure, they, along with the police and the appellants, went to the pointed place for the recovery purpose and ultimately got effected the purported recovery. The witness Asghar Ali (PW-14), in his examination-in-chief, made like statement to the extent of the appellant Muhammad Yahya but he did not testify regarding the alleged recovery from the appellant Muhammad Riaz. This fact alone is sufficient to discard the evidence of recovery

against the appellant Muhammad Riaz. Additionally, the investigating officer, Sardar Muhammad Jafar Hussain Dogar, Inspector (PW-18), acknowledged during cross-examination that both recoveries were made from the same place and on the same date. Even otherwise, it is not the stance of the investigating officer (PW-18) that he conducted the recovery proceedings independently and separately for each appellant. Besides, the recovery memos are also silent on which appellant first led to the recovery or pointed out the place of recovery. As the police took both appellants together in the same vehicle for the recovery and recovered the weapons from the same place and at the same date and time, it is to be considered a joint recovery for all purposes, irrespective of the fact that the investigating officer (PW-18) prepared two separate recovery memos. A joint recovery is of no evidentiary value and is inadmissible in evidence. Reference in this regard may be made to the case of *Muhammad Mushtaq versus Mustansar Hussain and others* (**2016 SCMR 2123**) and *Muneer Malik and others versus the State through P.G. Sindh* (**2022 SCMR 1494**).Furthermore, the record shows that the above-mentioned weapons, as per the report of the Punjab Forensic Science Laboratory, Lahore PFSL report Exh.PCCC did not match the crime cartridges allegedly recovered from the scene of the occurrence, even though both weapons were found to be in mechanical operating condition with working safety features. As such, the above recoveries of the weapons of offence do not support and advance the case of the prosecution. The trial court, as well as the appellate court, overlooked this important aspect of the matter and erroneously held that the above circumstances did not adversely affect the case of the prosecution.

10. As far as the motive is concerned, the prosecution alleged that the motive behind the occurrence was a longstanding blood feud enmity between the parties. The record shows that the defense has not denied the existence of such enmity. It would not be out of place to mention here that when there are open hostilities between two groups, the motive factor may propel one side to commit a crime, and the same factor may possibly induce the other group to implicate their rivals. Even otherwise, the motive is a double-edged weapon, which can be used either way and by

either side i.e. for real or false involvement. Reference in this regard may be made to the cases of *Noor Elah v. ZafarulHaque* (**PLD 1976 SC 557**);*Allah Bakhsh Vs. The state* (**PLD 1978 SC 171**); *Khadim Hussain Vs. The State* (**2010 SCMR 1090**); *Tahir Khan Vs. the State* (**2011 SCMR 646**); *Tariq versus the State* (**2017 SCMR 1672**); and *Muhammad Ashraf alias Acchu versus the state*(**2019 SCMR 652**).As such merely because of motive, the appellant cannot be held responsible for the alleged offence.

11. Now, regarding the applicability of Section 7 of the A.T.A., we must ascertain whether the peculiar facts and circumstances of this case constitute 'terrorism' as defined in Section 6 of the A.T.A. Before proceeding further, it is relevant to mention that this Court's opinion has remained divided since 2020 on what constitutes terrorism in the context of Section 6 *supra*. Therefore, a larger bench comprising seven Hon'ble Judges of this Court, in *Ghulam Hussain and others versus the State and others* (**PLD 2020 Supreme Court 61**), examined and scrutinized all precedent cases on either side of the divide and concluded that for an action or threat of action to be accepted as terrorism within the meaning of Section 6 of the A.T.A., the action must fall under subsection (2) of Section 6 of the A.T.A., and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) or to achieve any of the purposes mentioned in clause (c) of subsection (1). The relevant paragraph of the judgment is reproduced below for ease of reference:

> "*16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes*

mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta."

Underlining is for emphasis.

12. It is a matter of record that the alleged occurrence took place at the RohiNala Bridge, Rao Khanwala, which is not in a populated area and was committed due to longstanding personal enmity between the parties. The prosecution has not produced any material or evidence before the Investigating Officer or the court indicating that a sense of fear, panic, terror, or insecurity spread in the area at the time of the occurrence. We are mindful of the fact that any action constituting an offence, however grave, shocking, brutal, gruesome, or horrifying, does not qualify as 'terrorism' if it is not committed with the intent or purpose specified in clauses (b) or (c) of subsection (1) of Section 6 of the A.T.A. Furthermore, the actions specified in subsection (2) of Section 6 of the A.T.A. do not qualify as terrorism if they are committed in furtherance of personal enmity or private vendetta, as held by the larger bench of this Court in *Ghulam Hussain* supra. The cumulative effect of the evidence on record, along with other material produced by the prosecution, indicates that the alleged occurrence was not committed with the intent or purpose specified in clauses (b) or (c) of subsection (1) of Section 6 of the A.T.A. This is a simple case of murder due to previous enmity; therefore, it does not fall within the purview of any provisions of the A.T.A. Similarly, the appellate court rightly observed that the provisions of the A.T.A. did not apply to the facts and circumstances of the case and set aside the

conviction and sentence of the appellants recorded by the trial court under Section 7 of the A.T.A. We upheld the above finding of the appellate court in the impugned judgment.

13. From the above-stated facts and circumstances, it is abundantly clear that in this particular case, the prosecution version is burdened/loaded with major discrepancies, which create serious doubts about its authenticity. The prosecution version with regard to the manner of killing, the medical evidence and the recoveries, contradict each other on material points creating serious cracks in the prosecution version. The prosecution has failed to bring on record any convincing material to establish that it was the appellants who had committed the occurrence. It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons as held by this Court in *Daniel Boyd (Muslim Name Saifullah) and another versus the State* (**1992 SCMR 196**); *Gul Dast Khan versus the State* (**2009 SCMR 431**); *Muhammad Ashraf alias Acchu versus the* State (**2019 SCMR 652**); *Abdul Jabbar and another versus the State* (**2019 SCMR 129**); *Mst. Asia Bibi versus the State and others* (**PLD 2019 SC 64**); and *Muhammad Imran versus the State* (**2020 SCMR 857**). As the prosecution has failed to prove its case, we find there is no need to ponder the plea of alibi raised by the appellants in the defence.

14. Foregoing in view, the Criminal Appeal No.144-L of 2020 is allowed. The impugned judgment dated 02.10.2019 passed by the Lahore High Court and that of the Trial Court dated 27.09.2017 are set aside. Consequently, both the appellants, **Muhammad Yahya** and **Muhammad Riaz** are acquitted of the charge and be released from jail forthwith, if not required to be detained in any other case. Given the acceptance of the main appeal, the Petition for Leave to Appeal No. 282-L of 2024 for suspension of the sentence of the appellants is dismissed as being infructuous.

15. Above are the reasons for our short order dated 22.05.2024, which is reproduced hereunder for ease of reference:

> ***'Crl. Appeal No.144-L/2020***
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> *For reasons to be recorded later, this appeal is allowed. The judgments dated 27.09.2017 and02.10.2019 passed by the trial Court and the Lahore High Court, respectively, are set aside and both the appellants are acquitted of the charge in this case. They shall be released from Jail forthwith if not required in any other case.*
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> ***Civil Petition No.282-L/2024***
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> *In view of acceptance of main appeal, this petition for suspension of sentence of the convicts has become infructuous which is accordingly dismissed.'*

JUDGE

JUDGE

JUDGE

Islamabad, the
22nd May 2024
NOT APPROVED FOR REPORTING
*Ghulam Raza/ **