

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE SYED HASAN AZHAR RIZVI
MR. JUSTICE MUSARRAT HILALI
MR. JUSTICE NAEEM AKHTAR AFGHAN

Criminal Petition No.1390-L of 2013
(Against judgment dated 18.11.2013 passed by the
Lahore High Court, Lahore in Criminal Appeal No.
159/09)

Muhammad Iqbal	...	Petitioner
<i>versus</i>		
The State and Farhat Riaz	...	Respondents

For the Petitioner	:	Sh. Irfan Akram, ASC <i>(via video link Lahore)</i>
For Respondent No.2	:	Mr. S.M. Nazim, ASC <i>(via video link Lahore)</i>
For the State	:	Mr. Irfan Zia, Additional Prosecutor General, Punjab
Date of Hearing	:	18.4.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J. Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner/complainant has called in question the legality of the judgment dated 18.11.2013 passed by the learned Division Bench of the Lahore High Court, Lahore whereby appeal filed by respondent No.2, Farhat Riaz was allowed and death sentence awarded to him by the learned trial Court *vide* judgment dated 30.01.2009 was set aside; he was acquitted of the charge of murder and the Murder Reference was answered in the negative. It is deemed appropriate to mention here that co-accused

charged for the murder of Bashir Ahmad (deceased) were also acquitted by the learned trial Court.

2. We have heard the learned counsel for the parties as well as the learned Law Officer at length and have carefully scanned the material available on the record.

3. Precisely facts of case as disclosed by the complainant Muhammad Iqbal in private complaint are that on 22.11.2005 at about 11:00 am, his father Bashir Ahmad (deceased) was coming from his *Dera* to his house on a bicycle. When he reached Sikandar Gadhi, all of a sudden Farhat Riaz, respondent No.2, along with six others, ambushed in canal Shahpur Branch, came out and started ruthless beating his father with the respective weapons i.e. *sota*, *sarya*, hockey etc. This incident was witnessed by the complainant and his brother Muhammad Younis (PW-2). The motive behind the occurrence was the pending litigation *inter se* the parties.

4. The incident taken place on 22.11.2005 at 11:00 am which was reported to the police on the same day at about 1:30 pm. The case was lodged under Sections 324/148/149/109 PPC but *vide* case diary No.1, offence under Section 302 PPC was substituted to Section 324 PPC. After thorough investigation, the police declared respondent No.2, Farhat Riaz guilty of the charge, whereas remaining accused were found innocent.

Being dissatisfied with the police investigation, the complainant filed a private complaint against all the nominated accused persons and the learned trial Court summoned all the accused persons and formal charge was framed on 25.11.2006. The prosecution in its support produced as many as 11 witnesses and one court witness was also produced. The statements of the accused persons were also recorded under Section 342 Cr.P.C. At

the conclusion of the trial, the learned trial Court held respondent No.2 Farhat Riaz guilty of the charge of murder of Bashir Ahmad deceased and sentenced him to death with fine of Rs.3,00,000/-. However, the remaining accused persons were acquitted of the charge by the trial Court.

5. According to the prosecution story, seven persons had beaten up deceased Bashir Ahmad and this incident was seen by PW-1, Muhammad Iqbal and PW-2, Muhammad Younis, who are the sons of the deceased. No firearm was used in the scuffle, except *danda sotas* but strange enough, being sons they did not come forward to rescue their father and remained as spectators.

6. Five acquitted co-accused were implicated without any shred of evidence to commit the murder and it was for want of proof that they were acquitted by the trial Court thus, it appears that noose was thrown much wider, implicating falsely innocent persons. The motive was set up by the prosecution that there was a litigation pending *inter se* the parties and the deceased was pursuing the case, however no proof was brought on the record that the deceased was party to that litigation. Thus, the learned High Court has rightly disbelieved the motive.

7. The striking feature of the case is that in the FIR complete photographic narration of the entire tragedy has been given so much so acquitted accused and the respondent were attributed causing specific injuries with *danda sotas etc.* With such degree of accuracy each and every detail of the incident was given. This doubt of reasonable nature and substance would strongly suggest that the complainant and the other eye-witnesses were not present at the spot. Beside this, ocular testimony was not

in line with the documentary evidence, especially the medical evidence. According to the opinion of Dr. Noor-ul-Ameen (PW-6) the death was caused due to collective effect of all injuries, whereas respondent No.2, Farhat Riaz was attributed with *sota* blows. In his statement under Section 342 Cr.P.C, Farhat Riaz has taken a plea that the deceased was injured by unknown persons and while being shifted to hospital he fell down from *rikshaw* and got more injuries. The learned High Court has observed that the injury specifically attributed to the respondent No.2 as injury No.8 on the body of the deceased about which the medical officer has described as multiple abrasion in the area of 7 ½ cm X 7 ½ cm, this injury has not been declared by the doctor as fatal .

8. Whenever witnesses are found to have falsely deposed with regard to the involvement of one co-accused then, ordinarily, they cannot be relied upon *qua* the other co-accused unless their testimony is sufficiently corroborated through strong corroboratory evidence, coming from unimpeachable source, is a deeply entrenched and cardinal principle of justice. We do not find a single *iota* of corroboratory evidence to substantiate the tainted evidence of the same set of witnesses with regard to the involvement of the respondent in the crime, hence recording conviction of the respondent No.2 on the same evidence was absolutely unjustified. Hence, the learned High Court has rightly acquitted respondent No.2 and set aside the judgment of the Trial Court.

9. In the case reported as Ghulam Sikandar versus Mamaraz Khan (PLD 1985 SC 11), it was held that:-

"When witnesses are disbelieved qua the acquitted co-accused to whom same and similar role was attributed then they shall not be relied upon with regard to the other co-accused unless

they are strongly corroborated by evidence coming from independent source."

Similarly, in the case reported as Munawar Ali v. The State (PLD 1993 SC 251), it was ordained that:-

"When the eye witness compromises his integrity and makes a false statement by way of addition or improvement in his deposition and on that account one or the more accused in that case are acquitted, then in such situation great care and caution is to be exercised in dealing with the evidence of such witness for the purpose of its evaluation in respect of conviction of the other accused and is to be accepted only when it is supported by independent corroboratory evidence."

10. While rendering judgment the learned High Court has taken into consideration all aspects of the matter, factual as well as legal. Learned counsel for the petitioner has failed to point out any infirmity or illegality on the record which could persuade us to take a view other than the High Court. Consequently, this petition lacking in merit is dismissed. Leave is declined.

Judge

Judge

Judge

Islamabad, the

18th April, 2024

Approved for reporting

*Ghulam Raza/**