

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mrs. Justice Ayesha A. Malik
Mr. Justice Syed Hasan Azhar Rizvi

Jail Petition No.345/2017 and Cr. Petition No. 465/2017

[Against the judgment dated 01.11.2016 of the Lahore High Court, Multan
Bench passed in Cr. A. No.716/2012 and M.R. No.53/2011]

Sohail Akhtar

(In J.P. No.345/2017)

...Petitioner(s)

Rahul Naazir

(In Cr. P. No.465/2017)

Versus

The State

(In J.P. No.345/2017)

...Respondent(s)

Sohail Akhtar etc.

(In Cr. P. No.465/2017)

For the Petitioner(s)

: Mian Liaquat Ali, ASC
(In J.P. No.345/2017)
Syed Iqbal Hussain Shah Gillani, ASC
(In Cr. P. No.465/2017)

For the State

: Mirza Abid Majeed, D.P.G.

Date of Hearing

: 25.9.2023.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- The petitioner, Sohail Akhtar alias Pappu, was tried by the learned Additional Sessions Judge, Lahore in case FIR No.205 of 2009 dated 07.03.2009, offence under Sections 302/34, PPC, registered with Police Station Baghbanpura, Lahore; he was convicted and sentenced *vide* judgment dated 05.04.2012 as under:-

“Under Section 302(b), PPC sentenced to death as Ta’zir with direction to pay Rs.500,000/- as compensation to the legal heirs of the deceased in terms of Section 544-A, Cr. P.C. and

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in case of default in payment thereof to undergo S.I. for six months.

Under Section 324, PPC, sentenced to undergo R.I. for seven years.

Under Section 337-D, PPC, sentenced to undergo R.I. for five years with direction to pay 1/3 of diyat amount prevailing at the time of occurrence."

2. Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal before the High Court, whereas the trial Court transmitted murder reference. Both these matters were taken up together by a division bench of the High Court and through the impugned judgment dated 11.04.2017, the appeal filed by the petitioner was dismissed with modification in his sentence from death to imprisonment for life, keeping the compensation intact; the convictions/sentences recorded under Sections 324/337-D, PPC were, however, maintained. All the sentences were ordered to run concurrently with benefit of Section 382-B, Cr. P.C. Murder Reference was answered in the negative.

3. Being aggrieved of the above decision, the petitioner has filed Jail Petition No.345 of 2017 against his conviction, whereas Rahul Naazir, the complainant, has moved Cr. Petition No.465 of 2017 for enhancement of sentence.

4. Precisely, facts of the case, as narrated in the FIR, are that on 07.03.2009 at about 10.30 a.m. Adil Javed, brother of the complainant while holding his son in lap was going to take a vehicle. When he reached in front of shop of *Butt Khradiya*, accused Sohail Akhtar, ex-driver of brother of the complainant, started making fires upon Adil Javed and his son, Dawood Javed. The complainant along

with his brother Asif Naazir were also following Adil Javed. On hearing the fire shots, they rushed towards the place of occurrence and saw Pappu while firing with his pistol was running away. The complainant and his brother Asif Naazir witnessed the occurrence. They attracted towards their brother and *bhateja* and saw that they were smeared with blood. They evacuated them in a cabin vehicle. At that time, brother of the complainant was in his senses who told that Pappu had made firing upon him and his son.

5. Having received information *qua* occurrence, Muhammad Yousaf, ASI (PW-8) reached emergency ward of Services Hospital where the complainant handed over a written application which was transmitted to the police station for registration of a formal FIR. The investigating officer moved an application before the Medical Officer seeking permission for recording of the statement of Adil Javed, the injured, which was refused. On 07.03.2009, investigation of the case was entrusted to Muhammad Abbas, SI (PW-12), who visited the place of occurrence and secured blood; took into possession three crime empties as well as blood stained cloths. On 09.03.2009, Adil Javed succumbed to the injuries and the investigating officer added Section 302, PPC.

The petitioner was arrested on 18.03.2009. During investigation, on 22.03.2009 the petitioner led to the recovery of .30 bore pistol with seven live bullets which were taken into possession. Having found the petitioner guilty, the investigating officer prepared report under Section 173, Cr. P.C. while placing his name in column No.3 which was sent to the Court of Sessions en-routed through the Illaqa Magistrate under Section 190(2), Cr.P.C.

6. On 05.09.2009, the trial Court formally charge sheeted the petitioner to which he pleaded not guilty and claimed trial. The petitioner was examined under Section 342, Cr.P.C. wherein he opted neither to appear as his own witness in terms of Section 340(2), Cr.P.C. in disproof of allegations levelled against him nor to adduce evidence in his defence. The prosecution in order to substantiate its version produced as many as 13 prosecution witnesses.

7. After evaluating the evidence available on the record and having found the version of the prosecution proved beyond any shadow of doubt against the petitioner, trial Court convicted and sentenced the petitioner as mentioned above.

8. Learned counsel for the petitioner contends that one Pitras Sodagar whose name has been shown in the medical certificate to accompany the injured but he was not produced as a prosecution witness during trial; that presence of prosecution witnesses at the place of occurrence at the relevant time is highly doubtful; with regard to the mode and manner of occurrence, there are glaring contradictions in the statements of the prosecution witnesses; regarding recovery of pistol and crime empties from the petitioner and positive report of Forensic Science Laboratory, it has been argued that the same were sent to quarter concerned after arrest of the petitioner, thus of no legal value; that the prosecution witnesses being the step brothers of the deceased are interested witnesses and thus their statements cannot be believed and that the impugned judgment has not taking into consideration the true facts and circumstances of the case.

9. On the other hand, learned Deputy Prosecutor General for the State, assisted by the learned counsel for the complainant, while opposing the contentions raised by the learned counsel for the petitioner states that the incident was promptly reported; that the petitioner was named in the FIR with specific role of firing upon the deceased and his son; it was a day light occurrence and there is no chance of mis-identity; the prosecution witnesses fully established the case against the petitioner; after arrest of the petitioner recovery of weapon of offence was made on the pointation of the petitioner and the same was sent to the Forensic Science Laboratory which matched with the crime empties collected from the place of occurrence. Thus, he strongly supports the impugned judgment.

10. We have heard the learned counsel for the petitioner, complainant as well as learned Deputy Prosecutor General for the State and with their able assistance have scanned the material available on the record.

11. It is well established from the evidence of the prosecution witnesses that the petitioner had committed the murder of Adil Javed, brother of the complainant and caused injuries to his son. The ocular account of the occurrence is in line with the medical evidence brought on the record. The prosecution witnesses have not been shattered during cross examination and their evidence is confidence inspiring. The judgment passed by the High Court is well reasoned and based on proper appreciation of evidence available on the record. The High Court through the impugned judgment has rightly termed the recovery as inconsequential keeping in view the fact that crime empties secured from the place of occurrence were

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dispatched to the Forensic Science Laboratory after arrest of the petitioner and altered the penalty of death into imprisonment for life, a sentence justified in the circumstances of the case. Learned counsel for the petitioner has not been able to point out any infirmity or illegality in the impugned judgment calling for the interference by this Court.

12. In the circumstances, we hold that the prosecution has successfully brought home guilt against the petitioner beyond any shadow of doubt. Therefore, Jail Petition No.345 of 2017 lacking merit is dismissed and leave refused.

13. As a natural corollary, Cr. Petition No.465 of 2017 filed by the complainant for enhancement of sentence is also dismissed and leave refused.

Judge

Judge

Judge

Islamabad, the

25th September, 2023

Not approved for reporting

*Ghulam Raza/**