

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

Criminal Appeal No.558 of 2019

[Against judgment dated 09.03.2016, passed by the Lahore High Court,
Lahore in Criminal Appeals No.52 and 176 of 2012 and Murder Reference No.12 of 2012]

Muhammad Shafique

...Appellant(s)

Versus

Muhammad Imran and another

...Respondent(s)

For the Appellant : Mr. Talat Mahmood Zaidi, ASC
Mr. Muhammad Sharif Janjua, AOR

For the : Mr. Altaf Hussain, ASC
complainant/respondent

For the State : Mr. Irfan Zia, DPG, Punjab

Date of Hearing : 18.03.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J:- Through this appeal, by leave of the Court, the appellant has impugned the judgment dated 09.03.2016 passed by the Lahore High Court, Rawalpindi Bench, whereby criminal appeal was dismissed confirming his death sentence and answering Murder Reference in the affirmative. Leave was granted *vide* order dated 21.11.2019 in the following terms:-

“Learned counsel for the petitioner, inter alia, contends that according to prosecution own case Noor Muhammad fired a shot hitting Kamran whereas Muhammad Akram and Muhammad Rafique caused firearm injuries to Muhammad Imran and Muhammad Rehman, PWs respectively and a solitary fire is attributed to the petitioner hitting Ata Muhammad deceased; that Noor Muhammad, Muhammad Akram and Muhammad Rafique were acquitted by the trial

court. Although their acquittal was challenged before the High Court through Criminal Appeal No.176 of 2012 but the impugned judgment is silent regarding the fate of the said appeal whereas an interim order indicates that earlier the said appeal was admitted for regular hearing and the said accused were summoned through bailable warrants; that although petitioner did not cause any injury to Muhammad Kamran deceased or the injured witnesses but surprisingly he was also convicted for the murder of Muhammad Kamran and for causing injuries to Muhammad Imran and Muhammad Rehman; that the same set of evidence has been disbelieved qua three co-accused and the conviction of the petitioner is not sustainable on the same set of evidence. Although, the vires of conviction was not challenged before the High Court while arguing this appeal but now learned counsel contends that he wants to argue the case on merits. Due to the above mentioned facts, leave to appeal is granted to re-appraise the entire evidence."

2. Tried by the learned Additional Sessions Judge, Fatehjang in case FIR No.363 dated 22.10.2008, offence under Sections 302/324/34, PPC registered at Police Station Fatehjang, District Attock, the appellant was convicted and sentenced *vide* judgment dated 06.02.2012 as under:-

"The accused Muhammad Shafique is convicted under Section 302(B) PPC for committing Qatl-e-Amad of Atta Muhammad deceased and sentenced to death. He is also directed to pay a sum of Rs.2,00,000/- (two lacs) as compensation u/s 544-A Cr.P.C. to the legal heirs of deceased Atta Muhammad . The accused Muhammad Shafique is also convicted u/s 302(B) for committing the Qatl-e-Amad of Muhammad Kamran deceased and sentenced to death. He is also directed to pay a sum of Rs.2,00,000/- (two lacs) as compensation u/s 544-A Cr.P.C. to the legal heirs of deceased Muhammad Kamran. The accused Muhammad Shafique is also convicted u/s 324 PPC for attempt to commit Qatl-e-Amad of Muhammad Imran and sentenced to 10 years R.I and is also liable to pay fine to Rs.10,000/-. In default thereof, he shall have to further undergo one month S.I. He is also convicted u/s 337-F-I PPC for causing injury on the person of Muhammad Imran and is liable to pay Rs.10,000/- as Daman. The accused Muhammad Shafique is also convicted u/s 324 PPC for attempt to commit

Qatl-e-Amad f Muhammad Rehman and sentenced to 10 years R.I and is liable to pay fine to Rs. 10,000/-. In default thereof, he shall have to further undergo one month S.I. He is also convicted u/s 337-F-I PPC for causing injury on the person of Muhammad Rehman and is liable to pay Rs.10,000/- as Daman. Benefit of Section 382-B Cr.P.C. is extended to the convict. All the sentences shall run concurrently."

3. Being aggrieved, the appellant filed a criminal appeal before the High Court challenging his conviction and sentence; the complainant filed criminal appeal assailing the acquittal of the co-accused, whereas the trial Court transmitted murder reference. All these matters were taken up together by a Division Bench of the High Court and through the impugned judgment, the appeal filed by the appellant was dismissed while maintaining his death sentence, the appeal of the complainant was also dismissed and the Murder Reference was answered in the affirmative; hence this appeal.

4. Succinctly, facts of the case as per the First Information Report, are that: on 22.10.2008 at 8:30 a.m. within the area of Kot Bala, which is situated at a distance of 18 *kilometers* from the police station, Atta Muhammad and his son, namely, Muhammad Kamran were murdered. During the occurrence, Muhammad Imran (*complainant*) and Muhammad Rehman also sustained injuries. The incident was reported by the complainant while recording his statement to Naseer Ahmed, Sub-Inspector at 11:00 p.m. in Civil Hospital Fatehjang alleging that on the fateful day he was present along with Atta Muhammad and Muhammad Kamran inside the house when the appellant along with Noor Muhammad, Muhammad Akram and Muhammad Rafique, armed with .30 bore pistols, arrived in the lane and raised a *lalkara* to Atta Muhammad to come out of the house so as to be taught a lesson for installing a door in the *Haveli* to use the passage. It appears that Noor Muhammad and

Muhammad Akram are the real brothers of Atta Muhammad whereas Muhammad Shafique, appellant herein, and Muhammad Rafique are his real paternal nephews. Atta Muhammad and Muhammad Kamran as well as the injured saw the assailants in the lane when Muhammad Shafique hit Atta Muhammad with his pistol on the left side of his body below armpit followed by Noor Muhammad with two consecutive fire shots on Muhammad Kamran hitting him on the left side of chest as well as left shoulder. Muhammad Rafique hit Muhammad Imran on the left side of his arm followed by Muhammad Akram landing on the left leg of Muhammad Rehman. Atta Muhammad succumbed to the injury at the spot and Muhammad Kamran also succumbed to the injury while on the way to hospital. The motive behind the occurrence was that the houses of complainant as well as accused were adjacent to each other and the door of the house of the complainant has been installed on an approved path, whereas the claim of the accused persons was that the same was in their land.

5. Learned counsel for the appellant contends that he has falsely been roped in the case; that the medical evidence is contradictory to the ocular account; that the judgments passed by the Courts below are perverse, arbitrary and speculative; that the evidence of the eye witnesses was disbelieved by the trial Court to the extent of co-accused and they were acquitted of the charges, hence the appellant is also entitled for the same benefit; according to prosecution own case, Noor Muhammad fired a shot hitting Kamran, whereas Muhammad Akram and Muhammad Rafique caused firearm injuries to Muhammad Imran and Muhammad Rehman, PWs respectively and a solitary fire is attributed to the appellant hitting Atta Muhammad deceased; that Noor Muhammad, Muhammad

Akram and Muhammad Rafique were acquitted by the trial Court; although their acquittal was challenged before the High Court through Criminal Appeal No.176 of 2012 but the impugned judgment is silent regarding the fate of the said appeal, whereas an interim order indicates that earlier the said appeal was admitted for regular hearing and the said accused were summoned through bailable warrants; although the appellant did not cause any injury to Muhammad Kamran deceased or the injured witnesses but surprisingly he was also convicted for the murder of Muhammad Kamran and for causing injuries to Muhammad Imran and Muhammad Rehman; that the same set of evidence has been disbelieved *qua* three co-accused and that the conviction and sentence of the appellant is not sustainable on the same set of evidence.

6. Conversely, learned counsel for the complainant/respondent assisted by the learned Law Officer has faithfully defended the impugned judgment by stating that the appellant was attributed with specific injuries *qua* the deceased as well as the PWs and the High Court while taking into consideration all aspects of the matter has rightly awarded death sentence which will meet the ends of justice.

7. Heard the learned counsel for the parties as well as the learned Law Officer at a considerable length and scanned the material available on the record with their able assistance.

8. It reflects from the record that while rendering the judgment, the trial Court disbelieved the evidence of eye witnesses to the extent of co-accused, who were acquitted of the charges levelled against them, whereas the appellant was deprived from the said benefit. The parties are close relatives and known to each other, therefore there is no possibility of misidentification or substitution.

The prosecution has been able to prove its case against the appellant beyond any shadow of doubt through convincing evidence duly supported by medical evidence. However, as far as the quantum of punishment is concerned, it is prosecution's own case that the appellant hit Ata Muhammad deceased with his pistol (P-9) on the left side of his body below armpit. He is also not attributed any injury to the injured witnesses. Noor Muhammad, co-accused, who was attributed fatal injuries to Muhammad Kamran deceased was, however, acquitted by the trial court. Despite having ample opportunity to cause more injuries to the deceased, the appellant fired only once causing single injury to the deceased. The medical officer (PW-5), who conducted post-mortem examination, observed a solitary firearm injury with its corresponding exit on the dead body of the deceased. Certainly, this fact serves as a mitigating circumstance where penalty of death was unjustified rather a legal sentence i.e. life imprisonment was apt, which aspect of the matter was overlooked by the High Court. Therefore, the death sentence awarded to the appellant by the trial Court and upheld by the High Court, in our candid view, is not sustainable in the eyes of law.

As far as the conviction and sentences of the appellant *qua* other deceased, namely, Muhammad Kamran and injured witnesses are concerned, as highlighted above, the appellant having ample opportunity to repeat the fire on the deceased Atta Muhammad and also to fire on the other persons but he refrain from doing so, therefore, cannot be convicted for the murder/injuries to those persons, especially when the co-accused who were alleged to have caused the death/injuries to them have been acquitted by the courts below.

9. For what has been discussed above, this appeal is partly allowed. The conviction awarded to the appellant under Section 302(b) PPC is maintained, however, sentence of death on two counts is altered to life imprisonment on single count, with a benefit of Section 382-B Cr.P.C. The amount of fine of Rs.200,000/- imposed upon the appellant by the Trial Court shall remain intact. Rest of the sentences are set aside and the appellant is acquitted of the charge to the extent of all remaining offences. Above are the detailed reasons of our short order announced on even date.

JUDGE

JUDGE

Islamabad, the
18th March, 2024
Approved for reporting
*Ghulam Raza/**

JUDGE