

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Yahya Afridi

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos.335 of 2020 and 678 of 2020

(Against the judgment dated 18.02.2020 passed by the Peshawar High Court Peshawar in Criminal Appeal No.1323.P/2019 and Crl. Rev. No.260-P of 2019)

Fareed & others

(in Cr. P.335/2020)

Usman Shah

(in Cr. P.678 /2020)

...Petitioner(s)

Versus

The State and another

(in Cr. P.335/2020)

Fareed & others

(in Cr. P.678 /2020)

...Respondent(s)

For the Petitioner(s):

Mr. Asadullah Khan Chamkani, ASC

(in Cr. P.335/2020)

Mr. Hussain Ali, ASC

(in Cr. P.678/2020)

For the State:

Mr. Arshad Hussain Yousafzqai, ASC/

State Counsel

(in both cases)

For Respondent(s):

Mr. Hussain Ali, ASC

(in Cr. P.335/2020)

Mr. Asadullah Khan Chamkani, ASC

(in Cr. P.678 /2020)

Date of hearing:

29.09.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Petitioners, real brothers *inter se*, were tried by a learned Additional Sessions Judge at Mardan for committing *Qatl-i-Amd* of Ghulam Muhammad, 56, and assaulting his son Usman Shah (PW-5) held under their restraint; they were returned a guilty verdict vide judgment dated 31.10.2019 whereby they stood convicted under section 316 of the Pakistan Penal Code, 1860 as well as on the coordinate charge; sentenced to 10-years and

1-year Rigorous Imprisonment, respectively, each they were directed to pay *Diyat* to the legal heirs of the deceased; the High Court maintained the convictions, however, reduced the sentence of imprisonment to a period of 5-years RI vide impugned judgment dated 18.02.2020, vires whereof, are being assailed by the petitioners through Criminal Petition No.335 of 2020 on a variety of grounds, casting of a larger net, being the most prominent. The complainant has also sought enhancement of the sentence through Criminal Petition No.678 of 2020.

2. On the fateful day, i.e. 24.6.2013, in the backdrop of a previous altercation, the petitioners accompanied by two unknown companions assaulted the complainant/PW-5 and his father Ghulam Muhammad with butt blows; former was thereafter detained in a *Hujra*; casualties were shifted to DHQ Hospital Mardan; medical officer confirmed receipt of multiple injuries caused by blunt weapon. Ghulam Muhammad succumbed to the injuries on 26.06.2013; Ikram and Zahir Shah, petitioners, were arrested on 14.11.2013 followed by Farid Khan and Muhammad Saeed on 08.05.2014; they were sent to face trial albeit with no recovery. Dying declaration by Ghulam Muhammad deceased and ocular account furnished by his injured son received acceptance both by the learned trial Court as well as the High Court to view the incident as *Qatl Shibhi-i-Amd* within the contemplation of section 316 of the Code *ibid*.

3. Learned counsel for the petitioners/convicts contends that entire clan comprising four real brothers has been implicated in a sudden affair; that the number of injuries do not correspond with the assailants and thus, there was no occasion for the courts below to settle en bloc culpability on the statement of a witness who despite alleging assault surprisingly remained unscathed, next argued the learned counsel to conclude that in the given background, reliance upon dying declaration was highly unsafe. The learned Law Officer assisted by the learned counsel for the complainant defended the impugned judgments. It is argued in Criminal Petition No.678 of 2020 that that death being the obvious consequence of the injuries inflicted by the convicts to the deceased, in his mid-sixties, their culpability most aptly fell within the mischief of clause (b) of section 302 of the *ibid* and, thus, interference by this Court is most called for; in any case, there was no occasion for the High Court to substantially reduce the sentence without any extenuating reason, concluded the learned counsel.

4. Heard. Record perused.
5. Deceased was medically examined shortly after the incident and the medical officer observed following injuries on his person:

1. *Blunt trauma lower abdomen*
2. *Blunt trauma nose with epistaxis*

Though apparently trivial, the deceased with the fragility of old age could not endure the injuries; the autopsy report noted multiple red colour bruises of various sizes starting from 2 x 3 cm to 7 x 10 cm on various parts of the body accompanied by laparotomy and surgical wound. According to the medical officer, the deceased died due to injuries in small intestine and abdominal blood vessels, seemingly insufficient to cause death in the ordinary course of nature, nonetheless, unmistakably suggesting infliction of violence that proportionates to the number of assailants, additionally confirmed by the investigative conclusions. Wholesale participation by the four brothers in a situation ignited on some trivial issue, in a rural neighbourhood of Khyber Pakhtunkhwa, without anticipating an homicidal death does not raise eyebrows.

Though the medical officer has blamed the above noted injuries as the cause behind the death, however, it cannot be held with any degree of certainty that the said injuries were essentially caused by blunt weapons to invoke the doctrine of *novus actus interveniens* so as to saddle the petitioners with the mischief of clause (b) of the section ibid as argued by the complainant's counsel. Prosecution's failure to effect recovery reflects upon the allegation of infliction of butt blows; violence appears to be result of modes other than conventional and, thus, view taken by the Courts below being, well within the remit of law, calls for no interference. Petitions fail. Leave declined.

Judge

Judge

Judge

Islamabad, the
29th September, 2020
Not approved for reporting
Azmat/-