

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeals No.298 & 299-L/2017

(Against the judgment dated 26.11.2014 passed by the Lahore High Court, Lahore in Criminal Appeals No.1985/2011 & 2098/2011 and C.S.Rs. No45-T/2011)

Tariq Ali Shah

(in Criminal Appeal No.298-L/2017)

Ahad Shah

(in Criminal Appeal No.299-L/2017)

...Appellant(s)

VERSUS

The State etc.

(in Criminal Appeal No.298-L/2017)

The State through P.G. Punjab

(in Criminal Appeal No.299-L/2017)

...Respondent(s)

For the Appellant(s):

Mr. Abid Saqi, ASC
(in Criminal Appeal No.298-L/2017)

Mr. Naveed Ahmed Kh., ASC
(in Criminal Appeal No.299-L/2017)

For the State:

Ch. Muhammad Mustafa, DPG

For respondent No.2:

Mr. Naveed Ahmad Kh., ASC
(in Criminal Appeal No.298-L/2017)

Date of Hearing:

24.6.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Through leave of the Court, impugned herein is High Court's judgment dated 26.11.2014 whereby conviction of Ahad Shah, appellant, returned by the trial Court was upheld with modification of death penalty into imprisonment for life; he was indicted alongside Shahbaz Ali, Adal Shah, Sattar Shah and Mst. Kousar *alias* pathano for committing *qatl-e-amd* of Saqib Shah within the precincts of office of Superintendent of Police, Laylpur Town, Faisalabad at 3.45 p.m. on 2.5.2011. On the fateful day, investigation in a criminal case brought both the factions face-to-face at the venue; from amongst the array of accused, Adal Shah and Sattar Shah, blamed for abetment, were acquitted by the trial Court whereas Mst. Kousar

alias Pathano has been let off by the High Court; Shahbaz Ali, co-accused slipped away before announcement of the judgment.

In the backdrop of a longstanding enmity, on the fateful day, the appellant, armed with a .30 caliber pistol, targeted the deceased with multiple fire shots; apprehended at the spot alongside the weapon, wedded with six casings secured from the spot, he was tried by an Anti-Terrorism Court, to receive a guilty verdict.

2. Arch rivalry with string of criminal cases between the two sides is a common ground; appellant's arrest with the weapon shortly after the occurrence statedly from the precincts of office of Superintendent of Police are circumstances, at first sight, pointed inexorably towards his culpability, however, on a closer scrutiny of prosecution's case, a number of factors san plausible explanations; his arrest from the office of Superintendent of Police does not find mention in the crime report; prosecution's claim that Nazakat Ali, SI, PW-9 arrested the appellant from first floor of the office has to be taken with a pinch of salt; according to his narrative, he first went to Allied Hospital, Faisalabad to draw up preliminary proceedings, a process essentially time intensive, and thereafter upon his return apprehended the appellant at the spot with weapon. It is mind boggling as to why in the heavily guarded premises no one else attempted to arrest the appellant; mute response in a heightened situation is somewhat intriguing; genesis of the script is inherently suspect. Acquittal of Mst. Kousar *alias* Pathano by the High Court is yet another devastating blow to the prosecution; she is a lady constable, indicted for being privy to the crime; it is alleged that clad in a sheet, she took aside the appellant shortly before the incident; logistical support is suggested though with reticence; her acquittal tremors down the very foundation of the case. No less intriguing is belated autopsy conducted the following day i.e. 3.5.2011 at 9.40 a.m. The deceased was shifted dead in the mortuary on 2.5.2011 where complaint was recorded at 4.20 p.m.; Allied Hospital, Faisalabad is a tertiary hospital; holding in abeyance of postmortem examination for such a long period is mind boggling to say the least; it reasonably spaces the hypothesis of consultations and deliberations. Findings recorded by the medial officer further add to the prosecution's predicament; use of a .30 caliber pistol is

unequivocally alleged as the only weapon employed by the appellant, however, according to the autopsy report, the medical officer noted "*A complex of 22 firearms wounds of entries of different shape and sizes (2 mm x 2 mm to 1 cm x 1 cm) in an area of 23 cm x 7 cm on lower chest and abdomen. Left part*". The High Court itself viewed the above injury with suspicion for being incompatible/inconsistent with the weapon, seized with appellant's arrest. It casts away the hypothesis of appellant's arrest soon after the occurrence alongside the weapon of offence. Witnesses do not appear to have come forward with the whole truth and given the formidable past hounding both sides, patent discrepancies cannot be viewed as trivial, particularly after prosecution's failure *qua* three of the co-accused albeit with somewhat different roles. It would be unsafe to maintain the conviction. Criminal Appeal No. 299-L/2017 is allowed; impugned judgment is set aside; the appellant is acquitted from the charge and shall be released forthwith, if not required in any other case. As a natural corollary, Criminal Appeal No.298-L/2017 is dismissed.

JUDGE

JUDGE

JUDGE

Lahore, the24th of June, 2019

Not approved for reporting

Ghulam Raza/*