

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.52-L & 53-L/2013

*(Against the judgment dated 26.10.2010 passed by the
Lahore High Court, Multan Bench in Criminal Appeal
No.50/2006 and M.R. No.11/2006)*

Syed Anwar Ali Shah

(in Criminal Appeal No.52-L/2013)

The State through P.G. Punjab, Lahore

(in Criminal Appeal No.53-L/2013)

...Appellant(s)

VERSUS

Irfan Ali and another

(in Criminal Appeal No.52-L/2013)

Irfan Ali

(in Criminal Appeal No.53-L/2013)

...Respondent(s)

For the Appellant(s):

Nemo.

(in Criminal Appeal No.52-L/2013)

Ch. Muhammad Mustafa, DPG

(in Criminal Appeal No.53-L/2013)

For respondent-Irfan Ali:

N.R.

(in both cases)

Date of Hearing:

25.6.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Rasheedabad, a neighborhood within the remit of Police Station Lohari Gate, Multan was rocked with a massive blast at 4.25 a.m. on 7.10.2004, shortly after conclusion of a congregation; trapped in the gravity of explosion, 40 persons perished with scores of injured. An improvised device, planted in a vehicle, parked at the scene was ignited seemingly through remote control. The crime scene was littered with pieces of human bodies and the vehicle used in the blast; the attack was directed against a group with a particular persuasion conceivably by the opponents and this is so alleged in the crime report. A joint investigation team commenced the probe. The vehicle was identified as a Suzuki Mehran bearing registration No.MNV-

928; it was owned by Zeeshan Khalid, PW-34; according to his testimony, it was snatched on gunpoint on 6.10.2004 by three unknown persons; of them, he identified the respondent during test identification parade on 26.10.2004; next in line is Arif Saeed, PW-36; he was amongst the participants and had seen the vehicle being parked near the congregation at 12/12.30 midnight with four persons alighting therefrom; he too participated in the identification parade to point out the respondent as being one in the lot; Amjad Abbas, co-accused stayed away from law; from amongst the injured, 29 persons appeared before the Court without pointing out their fingers on the respondent. As per evidence furnished by Muhammad Iqbal, PW-74, owner of the guest house along with his clerk, Obaidullah, PW-80, the respondent had stayed during the night in the guest house; the latter failed to identify him and was declared hostile by the prosecution; former testified about the entries in the guests' register. It was primarily on the basis of aforesaid evidence that the respondent was indicted before an Anti-Terrorism Court, Multan; he was returned a guilty verdict on multiple counts accompanied by penalty of death on each *vide* judgment dated 1.9.2006 appeal wherefrom was allowed *vide* impugned judgment dated 26.10.2010 *vires* whereof are being assailed both by the complainant as well as the State.

Counsel for the complainant is not in attendance and in the wake of multiple adjournments on his behalf, the case has been argued at length by the learned Law Officer. After grant of leave, despite issuance of process and repeated attempts in consequence thereof, the respondent is not in attendance and in this backdrop, we find it expedient to decide both the appeals, bound by a common thread, directed against the same judgment, with the assistance of the learned Law Officer, on the basis of available record.

2. The incident is a most unfortunate reminder of ubiquitous violence raging in an intolerant environment, threatening the very fabric of our society. It has to be countered and remedied with iron hands by exercising State authority at all

levels. The fundamental imperative, magnitude of violence and colossal loss of lives consequent thereupon, notwithstanding, respondent's culpability has to be dispassionately adjudged on the touchstone of evidence presented by the prosecution during the trial. The High Court has viewed prosecution's evidence as being flawed and insufficient to drive home the charge beyond reasonable doubt and found it failing on as many as twelve points formulated in the impugned judgment. We independently, on our own, went through the record with the assistance of the learned Law Officer to re-examine/ re-evaluate each piece of evidence. Statement of Arif Saeed, PW-36 constitutes prosecution's mainstay; he claims to have seen the vehicle at 12/12.30 a.m. parked at the corner of the street; the respondent was amongst the passengers who alighted therefrom. It cannot be perceived that a white Mehran car would have been the only vehicle available at the scene, conspicuously noticed by the witness, that too, without being alarmed, given the perceived threat. It was a large gathering and not each participant attended it on foot. Though most fortunate, nonetheless, surprisingly the witness despite his being in close vicinity with the epicenter, survived unscathed; it is most intriguing that he withheld this vital information at the time of registration of case. Case of Zeeshan Khalid, PW-34 is not on much better footing either; according to him, his vehicle was snatched on 6.10.2004 at 7.00 p.m. whereas crime is reported on the following day at 1.20 a.m. Though, at first sight, ingeniously conceived, nonetheless, the script is poor. Such a massive blast could not be carried out in a short span of time, in a slipshod manner, naively being suggested; it required an elaborate logistical support, a time intensive exercise, to be carried out with discretion. Evidence of the owner of guest house, Muhammad Iqbal, PW-74 when juxtaposed with Zeeshan Khalid, PW-34 turns out as mutually destructive; seemingly, there was no occasion for the respondent to stay overnight at the guest house when according to the prosecution, during the same night, he was busy with his colleagues in snatching a vehicle; an attendant in the guest house was declared hostile upon his failure to oblige the prosecution; they did not participate in the identification parade as well. In this backdrop, we cannot accuse

the High Court for perversity of reasons; on the contrary, we find the impugned view as prudently wise and possible. Appalled by inhuman brutality inflicted upon innocent citizens, nonetheless, we have not been able to find out any sustainable circumstance or factor to interfere with the conclusions drawn by the High Court so as to take a contra view. Criminal Appeals fail. *Dismissed.*

JUDGE

JUDGE

JUDGE

Lahore, the
25th of June, 2019
Not approved for reporting
Azmat Ali/*