

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Sajjad Ali Shah  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition Nos.534 & 513 of 2019**

*(Against the judgment dated 11.03.2019 passed by the Lahore High Court Rawalpindi Bench Rawalpindi in Crl. Appeal No.728-J/2016 with M.R. No.10/2017)*

***Khalid Naseer***

*(in Cr.P.534/2019)*

***Khurram Attaullah***

*(in Cr.P.513/2019)*

...Petitioner(s)

**Versus**

***The State***

*(in Cr.P.534/2019)*

***Khalid Naseer & another***

*(in Cr.P.513/2019)*

....Respondent(s)

For the Petitioner(s): Ch. Afrasiab Khan, ASC  
*(in Cr.P. No.534 of 2019)*

For the State: N.R.

For the Complainant: Raja Ikram Amin Minhas, ASC  
Syed Rifaqat Hussain Shah, AOR  
*(in Cr.P.513/2019)*

Date of hearing: 17.09.2020.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Raja Saifullah Khan, 60/65, hereinafter referred to as the deceased, accompanied by Khuram Attaullah (PW-13), Farrukh Atta and Hameed Ullah (PW-14) was returning home at about 7:25 p.m. on 24.06.2010; as he reached in front of the house of Khalid Naseer, petitioner herein, the latter emerged therefrom with a .30 caliber pistol and soon after exhortation repeatedly shot the deceased, targeting different parts of the body. Litigation, both criminal as well as civil, raging between the parties is cited as motive for the crime. Still gasping for life, the deceased was rushed to THQ Hospital Pind Dadan Khan where after a brief struggle he succumbed to the injuries. Khurram Attaullah, PW laid information with the police at 8:40 p.m. in the hospital. The Medical Officer noted three entry wounds on the locales mentioned in

the crime report. The petitioner stayed away from law, however, was finally arrested on 16.3.2014; indicted before a learned Additional Sessions Judge at Pind Dadan Khan, he claimed trial that resulted into his conviction under clause (b) of Section 302 of the Pakistan Penal Code, 1860; he was sentenced to death vide judgment dated 29.10.2016. The High Court upheld the conviction, however, altered penalty of death into imprisonment for life vide impugned judgment dated 11.03.2019, being assailed both by the petitioner as well as the complainant through the captioned petitions, being decided by this single judgment.

2. Learned counsel for the convict contends that the deceased was done to death in an un-witnessed occurrence and that the petitioner had been arrayed on account of a misconceived and misplaced suspicion due to past bad blood between the parties. In order to qualify the argument, the learned counsel has referred to the statement of Khuram Attaullah (PW-13) admitting that he managed a Computer & Commerce Institution at Mian Channu, a place situated at a considerable distance. According to the learned counsel, being architect of the case, absence of the complainant from the scene casts away the entire case. It is next argued that given the admitted animosity between the two sides, prosecution evidence required a more cautious and careful scrutiny, an exercise omitted by the Courts below. Failure of motive and inconsequential recovery have also been highlighted as flaws inherent in the prosecution structure. It would be unsafe to maintain the conviction, concluded the learned counsel. Learned counsel for the complainant while defending the impugned judgment has prayed for reversal of death penalty; he argued that given the magnitude of violence, callously unleashed upon the deceased without any provocation, there was hardly an occasion for the High Court to alter the penalty of death after affirming the conviction. According to him, the death penalty was the only conscionable wage in circumstances.

3. Heard. Record perused.

4. Crime scene is located at a distance of 15 kilometers from the police station; occurrence statedly took place at 7:25 p.m. during the last week of June. Despite gun shots, including on the back of chest with a corresponding exit, the petitioner was brought to the hospital in semi unconscious condition where he was attended by the medical officer at 9:00 p.m. under a police docket. Interregnum between the occurrence and deceased's initial medical examination excludes possibility of any

manipulation, consultation or deliberation in recording of complaint at 8:40 p.m, 20 minutes before the conclusion of medical examination. Petitioner's disappearance from the scene for about three years is a circumstance that cannot be viewed with favour. No serious challenge has been thrown to the motive, set up in the crime report, though disbelieved by the High Court for prosecution's failure to establish the rancor through independent evidence. Dissimilarity of casings secured from the spot with the weapon shown to have been belatedly recovered is not of much consequence inasmuch as the petitioner was not expected to retain the pistol during the long period of his absconsion as a trophy of his crime. The fate of the case essentially hinges upon the ocular account furnished by Khuram Attaullah (PW-13) and Hameed Ullah (PW-14). Attack on former's credentials as a chance witness, subsequently managed at the scene, is an argument structured on a half-cooked cross-examination and, thus, fails to inspire confidence; the witness candidly admitted that though resident of the village, he was running a Computer & Commerce Institution at Mianchannu; this inconclusive probe, by itself, does not exclude his presence from the scene at 7:25 p.m; in an otherwise inordinate cross-examination, his presence in Mianchannu, on the fateful day, is not even suggested to him and it was merely alleged that he was not present at the spot and that in connivance with the police he maneuvered the crime report, a position vehemently denied. Given the timeframe wherein the deceased was initially medically examined under a police docket and recording of complaint Ex.PJ shortly preceding therefrom do not support the hypothesis of complainant's absence from the scene; he has comfortably faced the cross-examination by sharing all the relevant details compatible with the salient features of the incident and events collateral therewith. The next witness is Hameed Ullah (PW-14); his statement is in a complete unison with Khurram Attaullah PW and the defence counsel opened cross-examination with a suicidal question, in response whereto, he stated as under:

*"My house is adjacent to the Baithak of Khalid  
Naseer accused towards its eastern side"*

Subsequent attempts by the defence through multiple bald suggestions, consistently denied, failed to neutralize the impact. A witness, resident next to the scene of occurrence, furnishing exhaustive details, found consistent with the testimony of other witness, in line with medical evidence is entitled to credence without demur. Despite three entry wounds, nomination of

single accused by the complainant in the backdrop of persisting bad blood reveals a truthful restraint from casting a wider net, confined to the actual offender alone, who could not have been possibly swapped through substitution in a small rural neighbourhood. Criminal Petition No.534 of 2019 fails. Leave declined.

5. In the peculiar facts and circumstances of the case, the learned High Court preferred the alternate penalty of imprisonment for life upon prosecution's failure to produce independent evidence to establish the motive though otherwise figuring as a common ground on the record, nonetheless, imprisonment for life, a legal sentence provided under the law, we do not feel persuaded to interfere with the quantum settled by the High Court. Criminal Petition No.513 of 2019 is dismissed. Leave declined.

**Judge**

**Judge**

Islamabad, the  
17<sup>th</sup> September, 2020  
Not approved for reporting  
Azmat/-