

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mr. Manzoor Ahmad Malik
Mr. Justice Mr. Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.110 of 2020 and
Criminal Petition No.865-L of 2014

(Against the judgment dated 27.06.2014 passed by the Lahore High Court Lahore in Crl Appeal No.230-J/2010, Criminal Appeal No.1467/2010 along with M.R. No.343/2010)

Ishtiaq Hussain

(in Crl. Appeal No.110/2020)

Muhammad Sharif

(in Crl. Petition No.865-L/2020)

...Appellant/Petitioner(s)

Versus

The State, etc.

(in Crl. Appeal No.110/2020)

Muhammad Sharif

(in Crl. Petition No.865-L/2014)

...Respondent(s)

For the Appellant(s): Ms. Bushra Qamar, ASC

For the Complainant/
Petitioner: Mr. Imtiaz Khan Baloch, ASC

For the State: Mirza Abid Majeed,
Deputy Prosecutor General Punjab

Date of hearing: 23.10.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad Abid, 28, was done to death at 10:40 p.m. on 9.6.2009 within the precincts of Police Station Urban Area Sargodha; Muhammad Shoaib (PW-8), with a dagger blow survived the assault; Muhammad Sharif (PW-6) and Haji Muhammad Saeed (PW-11) witnessed the occurrence unharmed; casualties were shifted to the hospital where the former lodged report with the police at 11:50 p.m.

2. As per prosecution case, the deceased along with Haji Muhammad Saeed (PW-11) was on way to his home after offering *Isha* prayer, followed by his father Muhammad Sharif (PW-6), brother Babar

Sajjad (given up) and Muhammad Shoaib (PW-8) when Ishtiaq Hussain appellant accompanied by his sons Ali Raza, Hassan Raza, Hussain Raza and Bilawal Hussain, differently armed, already ambushed in the lane, confronted the entourage. Bilawal Hussain exhorted the deceased while Hassan Raza clutched him soon whereafter Ali Raza dealt him a butt blow after firing in the air, followed by a fatal shot by the appellant targeting the neck; Muhammad Shoaib (PW-8) tried to intervene when Hassan Raza stabbed him on his left thigh with a dagger; as the witnesses approached, the accused took to the heels while firing in the air. The accused avenged prosecution of criminal cases by the deceased, alleged the complainant. Muhammad Shoaib PW was medically examined at 10:55 p.m; he was noted with a firearm wound of entry on his left thigh accompanied by an abrasion on the nasal bridge along with lacerated wound 1.5 x ¼ cm on the left side of head without bone exposure; autopsy followed at 3:00 a.m; a firearm entry wound on the back of left side of chest with a corresponding exit on the front accompanied by an incised wound on the forehead. Spot inspection includes seizure of five casings of .30 caliber as well as blood, forensically confirmed as that of human origin. The appellant stayed away from law and was finally arrested on 11.12.2009 with co-accused already in custody since 04.07.2009; during custody, upon disclosures, they led to the recovery of weapons assigned to them in the crime report, however, with a negative forensic report. The trial culminated into appellant's conviction under clause (b) of section 302 of the Pakistan Penal Code, 1860; he was sentenced to death with a direction to pay compensation whereas the co-accused were acquitted from the charge vide judgment dated 29.04.2010; assailed both by the appellant as well as the complainant; it was upheld by the High Court through impugned judgment dated 27.06.2014 with alteration of death penalty into imprisonment for life; once again challenged by the convict through leave of the Court, clubbed with complainant's petition, seeking reversal of acquittal as well as death penalty awarded by the learned trial Court.

3. Learned counsel for the appellant contends that the complainant has cast a wider net to indiscriminately rope all the able bodied members of the family and evidence disbelieved qua them could not have been relied upon against the appellant in the absence of independent corroboration, hopelessly lacking in the case; that occurrence being a night affair, the question of identification of assailants is looming large on the scene, a circumstance ignored by the

courts below; that there is a stark conflict in ocular account and medical evidence, by itself clamouring for exclusion of the former from consideration; inconsequential recoveries with a discarded motive was a last straw, concluded the learned counsel. The learned Law Officer assisted by the learned counsel for the complainant has defended the impugned judgment. It is argued on behalf of the complainant that there was no occasion for the exclusion of co-accused from the array as overwhelming evidence that included testimony of an injured squarely implicated them with identical culpability being unmistakably in the community of intention that cost a youth his life in cold blood.

4. Heard. Record perused.

5. Given a firearm injury endured by Muhammad Shoaib (PW-8) with medical examination shortly after the incident under a police docket, it is hard to suspect his presence at the crime scene, nonetheless, discrepancy in the ocular account unanimously furnished by all the witnesses including the injured himself is most intriguing; with one voice they blamed Hassan Raza, acquitted co-accused, for a dagger blow on the left thigh whereas according to the medical examination, the witness sustained a firearm injury on the stated locale; the accused is shown to have led to the recovery of a dagger, a circumstance further compounding the confusion; a witness discredited and disbelieved qua his own tormentor is of little relevance to sustain the remaining structure of the case. A confirmed presence by itself is not equivalence of truth. Adverting to the prosecution case vis-à-vis the deceased, en bloc nomination of the appellant with his entire clan, each armed lethally, nonetheless, settling the score with a solitary fire shot accompanied by a trivial incised wound on the forehead, unlikely to be outcome of a butt blow, clearly indicates a reckless desire to see all the heads rolling down the street, unambiguously suggesting presence of innocent proxies. Accusation that Hassan Raza held the deceased in his arms in order to expose him to the fire shot targeted by the appellant, risking his own life, is a story that may not find a buyer particularly in view of an exit wound on frontal side of the chest. It is also manifestly inconsistent with the case initially set up in the crime report wherein the solitary shot is mentioned to have landed on the frontal side of the neck and not on the back as found in the autopsy report; to reconcile the dichotomy, the witness deviated from his earlier stance only to be confronted with the embarrassment of denial. An inherently flawed ocular account, reflecting an unquenchable desire to unconscionably

engage adversaries would cast away the entire case. Fraught with doubts, prosecution's failure is inescapable. Criminal Appeal is allowed; impugned judgment is set aside; the appellant is acquitted from the charge; he has already been ordered to be released if not required to be detained in any other case vide short order of even date.

As a natural corollary, Criminal Petition No.865-L of 2014 stands dismissed.

Judge

Judge

Judge

Islamabad, the
23rd October, 2020
Not approved for reporting
Azmat/-