

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeals No. 145-L and 146-L of 2017

(Against the judgment dated 07.12.2010 passed by the Lahore High Court, Lahore in Criminal Appeals No. 672 & 908 of 2005 Murder Reference No. 416 of 2005)

Ali Raza alias Peter, etc.

(in Cr. A. 145-L of 2017)

Muhammad Iqbal alias Balu, etc.

(in Cr. A. 146-L of 2017)

...Appellant(s)

Versus

The State, etc.

...Respondent(s)

For the appellants:

Syed Zahid Hussain Bokhari, ASC
Mr. Muhammad Ahsan Bhoon, ASC
Ms. Khalida Parveen, ASC

For the complainant:

Mr. Iftikhar-UI-Haq Khan Sherwani,
ASC

For the State:

Mr. Muhammad Amjad Rafiq,
Additional Prosecutor-General,
Punjab

Date of hearing:

18.09.2019.

JUDGMENT

Criminal Appeal No. 145-L of 2017

Qazi Muhammad Amin Ahmed, J. Ali Raza *alias* Peter,
Muhammad Shafique, Rashid, Muhammad Iqbal *alias* Ballu, Jamil
Jeela, Muhammad Amin, Muhammad Shafique *alias* Foji
Muhammad Waris, Ateeb *alias* Nosha, Hassan Raza, Asghar Ali,

Jamshaid *alias* Sheeda, and Sarfaraz Ahmad, appellants herein, are in receipt of a guilty verdict, returned by the learned Special Judge, Anti Terrorism Court-1, Gujranwala; they were indicted alongside fifteen others, since acquitted, for lynching Muneeb Sajjad and Mughees Sajjad, real brothers, on 15.8.2010 within the precincts of Police Station Saddar Sialkot. Of competing accounts, first in point of time is put forth by Shoukat Ali *vide* FIR No.437 of even date recorded at 7:05 a.m. wherein the deceased were portrayed as robbers who upon resistance, fatally shot Zeeshan and Bilal, with Muhammad Javed and Muhammad Imran, surviving the assault. It is alleged that, attracted to the scene, the neighborhood subdued the robbers who could not endure outrage of the mob. Police secured two .30 caliber pistols with ten live bullets alongside snatched articles, *vide* inventory. Forensic reports confirmed homicidal death of Zeeshan and Bilal as well as injuries to Muhammad Imran and Muhammad Javed, caused by fire shots and multiple blunt weapon injuries leading to the death of Muneeb Sajjad and Mughees Sajjad; their deaths foreclosed the case registered against them by Shoukat Ali, leaving cross version advanced by Zarar Butt, PW-25 recorded on 18.8.2010, in the field; upon cognizance by this Court, a new FIR i.e. No.449, was recorded on 20.8.2010; it was alleged that both the deceased used to play cricket in a ground located in village *Buttar* and had a brawl with the locals few days back and it is in this backdrop that on the fateful day while both of them left home for a walk after *fajjar* prayer on a motorbike, a mob comprising, amongst others, the appellants tortured them to death and attempted to hush up the crime by projecting them as robbers within the view of police officials who by that time arrived had at the scene; the second FIR conspicuously omits the details regarding first two deceased and the injured. As the investigation progressed, video streaming of the incident captured by a TV Reporter, Shahzad Ahmad, PW-15 as well as by onlookers in their cell phone cameras were secured by the investigating officer that generated stills through a DVD (*Digital Versatile Disc*) to identify the assailants. Hafiz Ibrahim, PW-23 and Muhammad Jamil Butt, PW-24 furnished the ocular account.

On the strength of aforementioned evidence, the learned Trial Judge, barring five amongst the array, convicted all the accused alongside police officials on account of their criminal failure to rescue the deceased from the mob. The High Court acquitted police officials from the charge, however, maintained appellants' convictions and sentences consequent thereupon *vide* the impugned judgment, being assailed by leave of the Court.

2. Arguments addressed for the appellants range from improbability of witnesses' presence, inadmissibility of video clips and stills generated therefrom in evidence, with deceased' antecedents and conduct, a primary factor behind public outrage. The learned Law Officer has faithfully defended the impugned judgment, highlighting brutality inflicted upon the deceased; he has prayed for confirmation of death penalty.

3. Appalling events of the fateful day comprised two episodes. According to Crime Report No.437, two unknown assailants, during the course of robbery targeted no less than four persons; of them, Bilal and Zeeshan, uncle and nephew on maternal side, succumbed to the injuries at different points of time, with bullets in the chest and neck respectively; Javed Iqbal and Muhammad Imran survived multiple fire shots, former joined the trial as a defense witness. It is under these circumstances that both the deceased of this case were overpowered by a mob including the appellants and mercilessly lynched; their bodies were shifted to the morgue with police papers that san their identity. Cross version of the incident was recorded on 18.8.2010 after three days of the occurrence, finally transformed into FIR No.449 on 20.8.2010. Divergent positions, notwithstanding, first part of the occurrence is precursor in continuity to the second and thus both are inseverably linked with each other, and therefore can be validly taken into consideration in view of the space provided under Article 20 of the Qanun-e-Shahadat Order, 1984. Such exercise unmistakably confirms that in the first part of the occurrence, Bilal died at the spot with a gunshot on his right shoulder; his autopsy is conducted at 6:50 a.m. same day, *vide* report Ex. DQ; he is not alone as three others namely Zeeshan, Muhammad Imran

and Javed Iqbal received multiple fire shots and it is so established by medico legal certificates, Ex. DR, DS and DT of even date respectively; Zeeshan injured succumbed to the injuries on 11.9.2010, a fact confirmed by autopsy report of even date, Ex. DP. Seizure of two .30 caliber pistols with live munitions is part of inventory prepared at the spot. What is established beyond doubt in the first crime report, is massive violence suffered by four individuals, though with a reticent reference to the robbers, two in number, without details/identities of those who lynched them shortly thereafter. Prosecution's complete silence on deaths and injuries as well as details collateral therewith occurring within same time and space, in the second First Information Report as well as during the trial, is most intriguing. Similarly, deceased' armed detour for a morning walk, on a motorbike, with undigested food in their stomachs, to be confronted by a mob, is a story that may not find a buyer. In the absence of whole truth, ". . . . the Court must not be deterred by the incompleteness of the tale from drawing the inferences that properly flow from the evidence and circumstances" **Syed Ali Bepari versus Nibaran Mollah and others (PLD 1962 SC 502)**. Available evidence on the record does not allow any hypothesis to substitute anyone else, being responsible for the first incident other than the deceased of the present case, subsequently fallen prey to the wrath of a mob with the appellants being at the helm. Defense objection on the admission of forensic evidence, establishing appellants' identity as well as participation in the crime does not hold much water. Technological innovations have opened up new avenues of proof to drive home charges. Article 164 of the Order *ibid* invests the Court with wide powers to make use of evidence generated by modern devices and techniques; Articles 46-A and 78-A of the Order *ibid* as well as provisions of Electronic Transactions Ordinance (LI of 2002) have smoothened the procedure to receive such evidence, subject to restrictions/limitations provided therein. This Court has undertaken an exhaustive survey of jurisprudence on the subject in the case of **Ishtiaq Ahmed Mirza and two others versus the Federation of Pakistan and others** rendered on 23.8.2019 in

Constitution Petitions No.10, 11 and 12 of 2019 and authoritatively settled parameters to receive forensic evidence through modern devices. Evidence produced against the appellants qualifies the standards laid down in the *supra* case. Shahzad Ahmed, PW-15 is a Journalist; attracted to the spot, he captured the footages of crime scene, subsequently transmitted in a compact disc secured *vide* memo, Ex. PK. Dilawar Hussain, PW-20 is a professional photographer; he generated stills from the compact disc exhibited as P-9/1-35; these stills provide graphic details of the whole incident and establish identity of the appellants beyond doubt while they were belabouring the deceased. In the totality of circumstances, given appellants' different backgrounds, in a limited time space, interpolation, substitution or editing of forensic material, seemingly immune from human interference, could not have been possibly manipulated and thus constitutes a piece of evidence too formidable to be shaken through a bald assertion alone, therefore we entertain no manner of doubt that the appellants are responsible for what befell upon the deceased and thus notwithstanding the enormity of their own conduct the appellants cannot be exonerated for their recourse to violence upon the deceased. Prosecution of offences, to the exclusion of all others, is a State prerogative and sentencing the offenders is a judicial province. Accused of most heinous or gruesome offence is entitled as of right, to a fair trial by a tribunal designated by law with a meaningful opportunity to vindicate and defend his position both before the prosecuting authority as well as the Court. Collective human wisdom, since times immemorial has not been able to evolve a better or more humane procedure to prosecute and convict offenders other than *due process of law*, with procedural safeguards under Constitutional guarantee of fair trial, to hand down sentences mandated thereunder on the preponderance of legal evidence, without compromising on the principle of inherent human dignity. Retributive torture, that too by mobs through street justice, would not only have most de-humanizing impact on our society but also triggers chaos and anarchy as is evident in the present case besides being violative of Constitutional mandate.

Vendetta cannot equate itself with justice. It is devoid of solemnity inherent in the *process of law*, leaving an offender as a victim, an object of sympathy at the end of the day, without judicial certainty about his guilt, therefore the appellants cannot be allowed to go scot free without a tag. However, convictions and sentences recorded by the Trial Court and upheld by the High Court, in the facts and circumstances of the case, require a serious reconsideration. Peculiarity of the situation wherein the incident occurred, reasonably suggests that first part of the occurrence triggered the outrage, instantaneously swaying upon the appellants' faculties, otherwise having no motive or axe to grind. It is this spontaneity whereunder the appellants resorted to violence seemingly without premeditation and choice weapons and thus consequences of their transgression, more aptly fall within the mischief of clause (c) of Section 302 of Pakistan Penal Code, 1860, a statutory substitute for erstwhile Section 304 of the Code *ibid* as held by this Court in the cases reported as Ali Muhammad versus Ali Muhammad and another (PLD 1996 SC 274), Muhammad Mumtaz Khan versus The State (1999 SCMR 837), Azmat Ullah versus The State (2014 SCMR 1178), Zahid Rehman versus The State (PLD 2015 SC 77), Muhammad Asif versus Muhammad Akhtar and others (2016 SCMR 2035) Abdul Nabi versus The State (2017 SCMR 335) and Muhammad Qasim versus The State (PLD 2018 SC 840). Consequently, appellants' conviction under Section 302(b) of the Code *ibid* is converted into clause (c) thereof on both counts and they are sentenced to ten years R.I.; the sentences shall run concurrently with benefit of Section 382-B of the Code of Criminal Procedure, 1898; remaining convictions and sentences consequent thereupon as well as direction for payment of compensation are set aside. The appeal stands disposed of in the above terms.

Criminal Appeal No. 146-L of 2017

This appeal is superfluous because the appellants in this case have already filed Criminal Appeal No. 145-L of 1017 before

this Court which is also fixed for hearing today. Dismissed accordingly.

Criminal Miscellaneous Applications No. 145-L & 149-L of 2015 in Criminal Appeal No. 145-L of 2017

2. These miscellaneous applications are allowed in the terms prayed for therein.

Criminal Miscellaneous Application No. 146-L of 2015 in Criminal Appeal No. 145-L of 2017

As the main appeal has been dismissed by this Court, therefore, this miscellaneous application seeking interim relief has lost its relevance. Disposed of.

Chief Justice

Judge

Judge

Islamabad/Video Link at Lahore
18th September, 2019
Approved for reporting
Ghulam Raza/-