

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos.763-L and 746-L of 2016

*(Against the judgment dated 12.04.2016
passed by the Lahore High Court Lahore in
Crl. Appeal Nos.2608 and 2755 of 2010
with M.R. No.611/2010)*

Muhammad Ameer alias Kali & Riaz Ahmed

(in Crl. P. 763-L/2016)

Mst. Sabiran Bibi

(in Crl. P. 746-L/2016)

...Petitioner(s)

Versus

The State & another

(in Crl. P. 763-L/2016)

The State & 2 others

(in Crl. P. 746-L/2016)

...Respondent(s)

For the Petitioner(s):

Mian Bashir Ahmad Bhatti, ASC

(in Cr. P.763-L/2016)

Mr. Javed Imran Ranjha, ASC

(in Cr. P.746-L/2016)

For the State:

N.R.

Date of hearing:

14.10.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Zulfiqar, 40/41, was shot dead at 4:30 p.m. on 9.7.2006 within the remit of Police Station Arifwala District Pakpattan; according to the crime report, lodged by his father Ahmad Ali (PW-3), he was jointly targeted by the petitioners, both armed with .12 caliber shot guns; a stray pellet landing on the left deltoid of Allah Yar (PW-4). Besides the petitioners, Khizar Hayat and Muhammad Asif, since acquitted, were also arrayed to have ambushed the deceased for a motive that revolved around abduction of some females.

Ocular account supported by medical evidence as well as recoveries weighed with the learned trial Judge to return the petitioners a guilty verdict vide judgment dated 25.10.2010; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, they

were sentenced to death with additional imprisonment to Muhammad Ameer *alias* Kali on a coordinate charge; High Court while disbelieving the motive altered the death penalty to imprisonment for life vide judgment dated 12.04.2016, vires whereof, are being assailed both by the convicts as well as the complainant; latter to seek revival of death penalty as well as reversal of acquittal. With a common thread, these are being decided through this single judgment.

2. Learned counsel for the convicts contends that there is a diametrical conflict between ocular account and findings recorded by the medical officer in the autopsy report and, thus, there was no occasion for the courts below to record and maintain conviction on foundations, inherently flawed; while elaborating his plea, he has drawn our attention to the firearm entry wound on the back of skull, with projectiles exiting from the frontal part thereof; according to the crime report, fire shot by Muhammad Ameer caught the deceased on the front of his face after he had already received a fire shot on his chest, at the hands of Riaz Ahmed; the dichotomy, being suggestive of a wider net, casts away the entire case, concluded the learned counsel. Contrarily, according to the learned counsel for the complainant, trajectory of high velocity projectiles and the portion of human body, seldom static in line thereof, cannot be captured/observed with an unflinching exactitude even by the best of faculties and, thus, upon analysis of overall evidence, the learned trial Judge as well as the High Court, in the totality of circumstances, supported by various planks of the prosecution case, had rightly drawn the conclusion of guilt, however, he insisted for restoration of death penalty, a wage, viewed as conscionable in circumstances; he has also prayed for a guilty verdict qua the acquitted co-accused for being in the community of intention.

3. Heard. Record perused.

4. Cited motive, though disbelieved by the High Court, nonetheless, the state of affairs between the families of the complainant and the petitioners, somewhat related, as reflected in the cross examination, unmistakably points towards a troubled relationship. Illicit liaison and abduction of two females are succinct part of the record; this leaves hardly any space to entertain hypothesis of substitution. Exoneration during the investigation, ultimately resulting into acquittal on account of their inconsequential participation, departure of Khizar Hayat and Muhammad Asif from the scene does not tremor the mainstay of the case. Riaz Ahmed petitioner

opened the assault with first fire shot landing on the chest; it created five apertures all around the frontal part of deceased's body extending to the left iliac fossa; these injuries cumulatively caused massive damage; fall was an inevitable consequence that appears to have exposed the back of deceased's head for a second shot; location of the assailants in the site plan, though left unchallenged does not allow, suggested trajectory of second shot. Two .12 caliber casings secured from the spot, found wedged with shot gun (P-1), recovered on the disclosure of Riaz Ahmed, spells out a one-man show, therefore, to maintain the conviction of Muhammad Ameer *alias* Kali is fraught with risk of error but at the same time it does not dismantle prosecution's case qua Riaz Ahmed. Consequently, out of abundant caution and with a view to ensure safe administration of criminal justice, Criminal Petition No.763-L of 2016 to the extent of Muhammad Ameer alias Kali is converted into appeal and allowed; impugned judgment to his extent is set aside and he shall be released forthwith, if not required to be detained by law, however, it fails vis-à-vis Riaz Ahmed; his conviction and sentence is maintained. Criminal Petition No.746-L of 2016 also fails. Leave is declined.

Judge

Judge

Judge

Islamabad, the
14th October, 2020
Not approved for reporting
Azmat/-