

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.180 of 2020

(Against the judgment dated 05.11.2015 passed by the Lahore High Court Lahore in Criminal Appeal No.1033 of 2011 along with M.R. No.268 of 2011)

Tariq Mehmood

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s): Mr. Tariq Mehmood Butt, ASC

For the State: Mr. Muhammad Jaffar,
Addl. Prosecutor General Punjab

Date of hearing: 02.11.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Indicted for homicide as well as murderous assault, along with five others, subsequently acquitted, Tariq Mehmood, appellant is alone with a guilty verdict, returned by a learned Additional Sessions Judge at Khoshab vide judgment dated 31.05.2011, upheld by the High Court vide judgment dated 05.11.2015 albeit with alteration of death penalty into imprisonment for life, being impugned through leave of the Court.

2. Muhammad Shahbaz, 23, hereinafter referred to as the deceased, was fatally shot at 10:00 p.m. on 20.7.2009 within the precincts of Police Station Khoshab whereas Muhammad Ramzan (PW-9), attacked with an hatchet, survived the assault in the backdrop of a dispute over turn of irrigation water; incident was reported by deceased's brother Muhammad Riaz (PW-8); besides the appellant, he blamed the Sanwal, Muhammad Ahsan son of Muhammad Ramzan, Muhammad Ahsan son of Sanwal, Shahadat Hussain alias Mithu and Nazar Hussain, variously armed for mounting the assault on the deceased and the PWs, present at complainant's shop. Sanwal Khan accused opened the attack with an exhortation followed by a shot by the appellant on the left side of deceased's chest; Nazar Baloch dealt hatchet blow to Muhammad Ramzan (PW-9) on the left side of his head

followed by a club blow by Muhammad Ahsan on his left elbow. Complainant escaped a fire shot by Shahadat Hussain; Muhammad Ramzan (PW-9) also survived unscathed by a fire shot targeted by Sanwal Khan accused; Muhammad Ahsan accused lastly hit the complainant on his flank; commotion attracted Muhammad Mumtaz (PW-10) to the spot. Muhammad Ramzan (PW-9) with two incised wounds on left side of head and outer back of left elbow joint was medically examined under a police docket at 10:40 p.m; autopsy followed 11:30 p.m. with a solitary fire shot on the left side of chest, blamed as cause of death. As the investigation progressed, subsequent to their arrest, the appellant led to the recovery of .30 caliber pistol (P-7) whereas acquitted co-accused got recovered weapons assigned to them in the crime report. Forensic reports support to the prosecution.

3. Learned counsel for the appellant contends that evidence disbelieved both by the trial Court as well as the High Court qua majority of the accused, each assigned a distant and specific role, cannot sustain conviction without independent corroboration, conspicuously lacking inasmuch as neither the alleged motive nor recovery of pistol (P-7) advanced prosecution case vis-à-vis the appellant; that occurrence being a night affair with an electric bulb being the sole source of light question of identity of the assailants, surprising the witnesses at a small outlet is looming large on the scene; that evidence of Muhammad Ramzan (PW-9), disbelieved by the High Court qua his own assailant would hardly qualify for a credit as a witness on a capital charge; that complainant's presence at the crime scene, otherwise far from being plausible, is additionally confounded by his failure to undertake medical examination despite allegation of assault resulting into injuries on his person. It would be unsafe to maintain the conviction, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment.

4. Heard. Record perused.

5. Though certainly not a constituent of the crime, nonetheless, prosecution's failure on motive, given the number and diverse background of the assailants, cannot be viewed as entirely without implications for the prosecution inasmuch as the even dated situation, cited as a motive in the backdrop, projects the venue as somewhat intriguing and as such spells out, in retrospect, a scenario incompatible with the script, outlined in the crime report. Miraculous escape by the two eye witnesses, each targeted with handguns directly

by the assailants from a close blank is a story that may not find a buyer; absence of casings at the spot and investigating officer's failure to effect recovery of the weapons are additional blows to witnesses' credibility, concomitantly undermining status of the entire case, inasmuch as in the face of wholesale rejection of evidence, found inherently flawed. Fractional reliance to maintain appellant's solitary conviction on the statements of witnesses disbelieved qua their own assailants is an option fraught with potential risk of error and as such inconsistent with the principle of safe administration of criminal justice. Appeal is allowed; impugned judgment is set aside; the appellant is acquitted of the charge and has been ordered to be released forthwith if not required to be detained in any other case vide short order of even date.

Judge

Judge

Judge

Islamabad, the
2nd November, 2020
Not approved for reporting
Azmat/-