

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.157-L of 2017

(On appeal from the judgment dated 27.11.2013 passed by the Lahore High Court, Rawalpindi Bench in Criminal Appeal No.164-J of 2008 and C.S.R. No.69-T of 2007).

Muhammad Faisal Abbas

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s)	: Mr. Tayyab Ramzan Ch., ASC Ms. Tasneem Amin, AoR
For the State	: Ch. Mustafa, Deputy Prosecutor General, Punjab along with Complainant M. Ashraf
Date of Hearing	: 21.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Through leave of the Court, Muhammad Faisal Abbas, appellant has assailed, confirmation of his conviction and sentence returned by an Anti Terrorism Court, by the Lahore High Court *vide* impugned judgment dated 27.11.2013. The appellant was tried alongside Muhammad Shahid, acquitted co-accused in the wake of incident dated 28.9.2006 within remit of Police Station Naseerabad, Lahore. It was alleged that the appellant and the co-accused, armed with pistols, committed robbery in a shop run by Muhammad Ashraf, PW; on gun point they snatched Rs.25,000/- with a cell phone hand set; upon resistance, one of them resorted to firing; complainant's brother, Arshad Ali, succumbed to the injury, however, his second brother, Asghar Ali survived the assault; they were arrested on 6.2.2007. The appellant was identified in test identification parade as the one who fired upon the deceased and

the injured; pistol recovered on his disclosure was found wedded with one of the casings secured from the spot. Upon conclusion of trial, the appellant confronted prosecution evidence; he blamed previous enmity as the factor behind his false implication, however without furnishing details or evidence in support thereof. The learned trial Judge acquitted Muhammad Shahid, co-accused, however proceeded to convict the appellant on six counts, ranging from murder, attempted murder, robbery and terrorism; on principal counts, he was sentenced to death; appeal met with no better fate and a learned division bench of Lahore High Court upheld the convictions and sentences consequent thereupon *vide* impugned judgment. For safe administration of criminal justice, we have re-apprised the entire evidence.

2. Homicidal death of Arshad Ali and firearm injuries endured by Asghar Ali, PW-7 constitute a common ground; occurrence took place inside the shop, a family business, is also not disputed. Appellant's plea that he has been implicated in the crime on account of previous enmity does not hold water; he has not been named in the report, an opportune course to engage him in the crime, if the complainant at all, had an axe to grind. Test identification parade, under magisterial supervision, is another formidable piece of evidence, exorably pointed upon appellant's culpability. Witnesses are in a comfortable unison. In this backdrop, we find no occasion to take any legitimate exception to the findings returned by the learned trial Judge, upheld by the High Court. We have also carefully examined the impact of acquittal of co-accused upon appellant's fate. Former has seemingly been acquitted on account of a different role assigned to him by the witnesses on the basis of a supplementary statement; he was blamed to have architected the crime; his acquittal out of abundant caution, a recognized juridical principle by now well entrenched in our jurisprudence does not adversely impact upon the prosecution case. Given dissimilarity of roles assigned to the appellant and the acquitted co-accused, prosecution's partial failure, in the facts and circumstances of the case, would not rescue the appellant, assigned shots to the deceased as well as the witness, independently corroborated by forensic evidence; the

prosecution case to his extent is structured upon independent foundations and would not cast away with co-accused's departure. In so far as appellant's conviction under Section 7(a) of Anti Terrorism Act, 1997, it warrants reconsideration. We have noted predominant purpose behind the crime as robbery, no doubt on gunpoint; a situation cropped up wherein the venture went violent, certainly un-condonable, nonetheless having no nexus with the situations enumerated in Section 6 of the Act *ibid*. Occurrence took place inside the shop impact whereof though grievously devastating for the witnesses, however cannot be said to have spilled over to the public at large. Therefore, in the peculiar facts and circumstances of the case, appellant's conviction under Section 7 of the Act *ibid* is not sustainable and set aside accordingly. Similarly, in our view, that in the totality of the circumstances, alternate penalty of imprisonment for life would meet the ends of justice. Consequently, penalty of death is altered into imprisonment for life; these shall run concurrently with benefit under Section 382-B of the Code of Criminal Procedure, 1898. With the above modification, Criminal Appeal is dismissed.

JUDGE

JUDGE

JUDGE

Lahore, the
21st of May, 2019
Ghulam Raza/*