

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.80-L of 2017

(On appeal from the judgment dated 19.02.2014 passed by the Lahore High Court, Bahawalpur Bench in Criminal Appeal No.142-J/2010/BWP and Murder Reference No. 14 of 2010).

Mansab Ali

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s)	: Mr. Shahzad Hassan Sheikh, ASC (State Counsel)
For the Complainant	: Mr. Nasib Masih, ASC
For the State	: Mr. Mazhar Sher Awan, Additional Prosecutor General
Date of Hearing	: 10.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Rustam Ali was shot dead at 4.00 p.m. on 14.9.2008 within the remit of Police Station Mecloed Gunj. Incident was reported by his father Muhammad Bilal. Besides Mansab Ali, appellant, Muhammad Ahmad, Muhammad Mazhar, Muhammad Wahid, Muhammad Saleem, Muhammad Ismail, Muhammad Ifrahim, Muhammad Yousaf and Muhammad Tahir, differently armed were arrayed as accused in the crime report. Fatal shot is attributed to the appellant, whereas Muhammad Yousaf accused is assigned a club blow to the complainant. Motive for the crime is dispute over distribution of water. The accused claimed trial which resulted into appellant's conviction under clause (b) of Section 302 of Pakistan Penal Code, 1860 with penalty of death by a learned Additional Sessions Judge *vide* judgment dated 17.3.2010; co-accused were acquitted from the charge. A learned division bench of Lahore High Court *vide* impugned judgment dated 19.2.2014 maintained the conviction, however altered the penalty of death into imprisonment for life.

2. Prosecution case is structured upon ocular account. According to Muhammad Bilal, PW-6, the appellant made two successive shots on the deceased, first landing on the right arm, while second hitting the back; Muhammad Mansha, PW-7 took the same position. Both of them are in a diametrical conflict with the position taken in the crime report wherein the appellant is assigned solitary shot landing on the deceased's chest. Confusion is further compounded by the statement of Dr. Javid Ahmed, PW-3, who noted an entry wound on the posterior aspect of left shoulder; the bullet exited from the chest valve; the second fire shot was on the right upper arm with its corresponding exit. This is not in line with the prosecution case that the appellant targeted the chest as the wound noted by the Medical Officer is an exit wound. Both the witnesses have been duly confronted with their deviation from previous statements. From amongst the acquitted accused, Muhammad Yousaf was assigned a club blow to Muhammad Munawar, PW-8, noted by the Medical Officer as a painful swelling; his acquittal went without challenge. The learned Law Officer has not been able either to justify witnesses' departure from previous statements or to explain conflict between ocular account and medical evidence. Though with roles somewhat trivial nonetheless, en bloc acquittal of co-accused on the same evidence is yet another predicament facing the State. The prosecution case is fraught with doubts, thus it would be unsafe to maintain the conviction. Resultantly, the appeal is allowed, the impugned judgment is set aside. The appellant shall be set at liberty forthwith, if not required in any other case.

JUDGE

JUDGE

JUDGE

