

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos.457-L and 400-L of 2016

(Against the judgment dated 16.02.2016 passed by the Lahore High Court, Lahore in CrI A. No.364-J/2011, CrI. Revision No.1211/2011 along with M.R. No.476/2011)

Amjad & another

(in CrI. P. No.457-L/2016)

Imtiaz Ahmed

(in CrI. P. No.400-L/2016)

Petitioner(s)

Versus

The State & another

(in CrI. P. No.457-L/2016)

Amjad & others

(in CrI. P. No.400-L/2016)

Respondent(s)

For the Petitioner(s):

Mr. M. Baleegh-uz-Zaman, ASC

(in Cr.P.457-L/2016)

Mr. Imran Raza Chadhar, ASC

(in Cr.P.400-L/2016)

For the State

Mr. Amjad Rafique,

Addl. Prosecutor General.

Date of hearing:

19.10.2020.

J U D G M E N T

Qazi Muhammad Amin Ahmed, J.- Muhammad Azam, 20, deceased, was shot dead at 11:00 p.m. on 3.3.2008 within the precincts of Police Station Barrana District Jhang, while irrigating his land alongside the witnesses; incident was reported by deceased's brother Imtiaz Ahmed (PW-1), same night 12:30 a.m. at *Adda Kalokay*. According to the complainant, they were simultaneously ploughing and irrigating the land when at about 11:00 p.m, the deceased went to turn off the electric switch, surprised by the petitioners, son and father *inter se*, accompanied by Imtiaz and Fayyaz with two unknown assailants, differently armed. In the

electric bulb light, Fayyaz accused exhorted to avenge the previous insult whereupon the witnesses rushed to rescue the deceased, who took refuge inside a small room and it was within their view that Amjad petitioner with a .30 caliber pistol targeted the deceased on the left side of his belly followed by another shot by his father while he had already fallen on cot; remainder of the accused threatened the witnesses to stay at bay. It is alleged that a short while later, the accused shot one of the females of their clan to colour the incident as a reaction over family honour. It is further alleged that a day before the fateful incident, the deceased had an altercation with the accused over use of electric motor without his permission and it is in this backdrop that the accused on the instigation of Nawaz son of Maali and Mahni son of Muhammad settled the score. Autopsy, conducted at 11:30 a.m, noted two entry wounds on left lower side of the abdomen. Dissatisfied with the outcome of investigation, the complainant preferred to prosecute the case through a private complaint; upon indictment on 4.11.2009, the accused claimed trial; they rallied themselves behind the position taken by Amjad petitioner. Unimpressed by the plea, the learned trial Judge proceeded to convict the petitioners under clause (b) of Section 302 of the Pakistan Penal Code, 1860 and sentenced them to death vide judgment dated 26.10.2011; remainder of the accused were acquitted from the charge; a learned Division Bench of Lahore High Court Lahore vide impugned judgment dated 16.2.2016 maintained the convictions, however, altered the penalty of death into imprisonment for life, vires whereof, are being assailed, both by the convicts as well as the complainant, latter seeking revival of the death penalty.

2. Learned counsel for the petitioners contends that facts manifestly evident on the record do not justify a guilty verdict as the prosecution miserably failed to establish "*proof beyond doubt*" to sustain the charge; while highlighting the improbability of the episode, the learned counsel has referred to firearm injury sustained by Muhammad Yousaf petitioner, completely suppressed in the crime report; he has also referred to medico legal examination, twice conducted on Shahida Bibi daughter of Yousaf petitioner on 4.3.2008 and 26.3.2008 to argue that position taken by the accused during the trial truthfully preponderates over the inherently flawed

ocular account furnished by the prosecution. Acquittal of majority of co-accused, though with roles inconsequential, has, nonetheless, been cited as an additional predicament confronting the prosecution. The learned Law Officer has faithfully defended the impugned judgment; according to him, the scales are in balance with a conscionable wage. The learned counsel for the complainant, however, prayed for enhancement of life imprisonment into penalty of death on the ground that once the Court had believed the prosecution evidence, coldblooded murder of the deceased, a youth in prime part of his age, petitioners ought to have been visited with the penalty aptly imposed by the learned trial Court. There was no judicially recognized mitigating circumstance to alter the penalty of death, a legal sentence, into imprisonment for life, concluded the learned counsel.

3. Heard. Record perused.

4. Prosecution case is founded on ocular account furnished by Imtiaz Ahmed, Amjad Ali and Wajid Ali, examined respectively as PW-1, PW-2 and PW-3; their testimonies have been unreservedly received by the Courts below with the exception of acquitted co-accused, assigned roles trivially different. Besides the complainant, Sajjad Ali (PW-6) testified to independently establish the motive, however, discarded by the High Court, nonetheless. Going by the graphic details of ocular account, both the petitioners are unambiguously shown being responsible for one shot each to the deceased, opined as cause of death, individually as well as collectively, in the ordinary course of nature. The deceased received both the fire shots inside a small room, improvised at the venue to house tube-well gears. According to the crime report as well as statements of the witnesses, the deceased received both the shots on a cot covered by a bedding, a position that runs counter to depiction of the dead body in column 24 of the inquest report. Unanimous acceptance of prosecution evidence both by the learned trial Judge as well as the High Court, nonetheless, escaped fundamental issues raised by the defence, in the following plea:

"I am innocent. The complainant party is big landlord of the Allaga. I am the poor man and labourer by profession. On the day of occurrence, Amjad, Imtiaz and Waris along with Muhammad Azam, since deceased, abducted my sister Mst. Shahida from my house for the purpose to commit forcible rape with her and took her at an abandoned place, confined her and locked the room and Muhammad Azam was busy in committing rape upon her. When I came to know, I went there, broke/open the door to rescue Mst. Shahida from the hands of

Muhammad Azam deceased. Muhammad Azam started firing from inside the room on me. I also made fire shot in self defence of my person and honour during this cross firing, Shahida my sister, Yousaf my father were injured at the hands of Muhammad Azam deceased and Muhammad Azam also sustained injury who later on died. The local police was under the influence of complainant party, he refused to get medically examined Mst. Shahida for rape as well as her injuries. My mother applied to the Area Magistrate in this respect but the I.O. only got medically examination of her injury. My mother again applied for medico legal of Mst. Shahida for rape and under the order of Area Magistrate, she was medically examined. I made firing to save the honour and person of my sister Mst. Shahida from Muhammad Azam and others. Shahida was not cited as PW in this case, nor she was made accused. The investigation was conducted by mala fide. My mother Sattan filed an application before Mr. Nazeer Ahmed Aqeel, learned ASJ u/s 22-A, 22-B Cr.P.C. for registration of case. The certified application is Ex.DB. The learned ASJ pleased to pass order dated 28.4.2008 which is Ex.DB/1. The act of accused is very desperate and palace. I am innocent."

These two diametrical positions essentially require a thorough examination as the latter in the event of being found near to reality, even if not found as the whole truth, would devastatingly undermine the entire prosecution case. Muhammad Yousaf petitioner was medically examined under a police docket shortly after the occurrence at 4:15 a.m. and the medical officer observed following injuries on his person:

1. *A lacerated wound $\frac{1}{2} \times \frac{1}{2}$ cm with inverted margins, on the palmer of the index finger of the left hand near base. Injury was kept under observation and X-Ray was advised.*
2. *A lacerated wound 2 cm x 1.5 cm with everted margins on dorsum of the index finger of the left hand, 3 cm above the base of the finger. KUO.*

Probable duration of the injuries is given as between 3 to 9 hours; medical examination conducted at 4:15 a.m; the time frame on the outer side suggests that Muhammad Yousaf had already received the bullet injury and was, thus, physically incapacitated to shoot the deceased at the stated point of time as alleged by all the witnesses with one voice. Prosecution's complete silence on the receipt of firearm injury by Muhammad Yousaf, intriguingly reflects upon its case. There is yet another part of the story that may not find a buyer; according to the witnesses, Amjad petitioner first shot the deceased who then felled on the cot inside the room and it was thereafter that Muhammad Yousaf petitioner targeted him with the second shot, landing on the same part of the body; there does not appear any earthly reason for Muhammad Yousaf to join the undertaking already being effectively carried out by his son. Presence of a cot with a bedding in a small room, otherwise designed to manage tube-well apparatus, nonetheless, in the backdrop of plea raised by the

petitioners appears to be a circumstance fraught with suspicion, reinforced by medico legal examination of Shahida Bibi at 9:45 a.m. under a police docket with following observations:

1. *A stitched wound of about 19 cm long having 13 stitches extending from xiphisternum to pubic area on the interior abdominal wall.*
2. *A wound of 1.5 cm x 1 cm on the right lateral aspect of abdominal wall about 16 cm below and lateral to injury No.1.*

She was once again examined through police on a magisterial direction for the determination of sexual assault albeit with findings inconclusive. Recovery of pistol from Amjad petitioner is inconsequential whereas hatchet attributed to Muhammad Yousaf runs counter to the prosecution case set up qua the accused. Massive suppression of injuries endured by some of the accused and screening of Shahida Bibi from the scene are circumstances that inevitably cast their shadows on the prosecution case. Even if the explanation offered by the accused is not viewed as the whole truth, in view of circumstances mentioned above, the occurrence does not appear to have taken place in the manner as alleged in the crime report with events faltering on the scales of probability. An innocent proxy lurking behind a twisted tale presents a real danger of error and, thus, it would be expedient as well as safe to extend benefit of doubt to both the petitioners to rule out the apprehended risk. Criminal Petition No.457-L of 2016 is converted into appeal and allowed. The petitioners/appellants are acquitted of the charge and shall be released forthwith if not required to be detained in any other case.

As a natural corollary, Criminal Petition No.400-L of 2016 stands dismissed.

Judge

Judge

Judge

Lahore, the
19th October, 2020
Not approved for reporting
Azmat*