

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.1149-L/2017 & Criminal Petition
NO.905-L of 2016**

*(Against the order dated 08.06.2016 of the Lahore High Court,
Lahore passed in Cr.A. No.579/2012 with M.R. No.177 of 2012)*

Nasir alias Nasiree

(in Cr.P.1149-L/2017)

Shahbaz Ahmed

(in Cr.P.905-L/2016)

...Petitioner(s)

Versus

The State

(in Cr.P.1149-L/2017)

The State & another

(in Cr.P.905-L/2016)

...Respondent(s)

For the Petitioner(s):

Mian Muhammad Ismail Thaheem, ASC

(in Cr.P.1149-L/2017)

Mr. M. Safdar Shaheen Pirzada, ASC

Syed Rifaqat Hussain Shah, AOR

(in Cr.P.905-L/2016)

For the State:

Mirza M. Usman,

Deputy Prosecutor General Punjab

Date of hearing:

29.01.2021.

ORDER

Qazi Muhammad Amin Ahmed, J.

Criminal Petition No.1149-L of 2017:

Rizwan Ahmed, deceased, 20, alongwith Shakil Masih, injured (PW-2), in the backdrop of an election rivalry, were waylaid within the precincts of Police Station Tatleyali, District Gujranwala at 9:30 p.m. on 11.2.2006; Shahbaz Ahmed (PW-1) lodged report with the police at 10:30 p.m. wherein the petitioner as well as Qaisar Mehmood and Parvez, supported by two companions, untraced till date were

arrayed as suspect. The petitioner, attributed a fatal shot to the deceased, stayed away from law whereas Qaisar Mehmood and Parvez Ahmed co-accused, assigned opening shots to the deceased and Shakil Masih (PW-2), respectively, were tried in his absence; convicted for homicide and murderous assault, they were sentenced to imprisonment for life and 10-years rigorous imprisonment; the former died during pendency of the case whereas the latter served out his sentence, reduced by the High Court. After arrest, the petitioner was convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, vide judgment dated 13.03.2012 by a learned Addl. Sessions Judge at Gujranwala; he was sentenced to death, altered into imprisonment for life vide impugned judgment dated 08.06.2016, *vires* whereof, are being assailed on the grounds that petitioner's absconsion notwithstanding, there was no occasion for visiting him with a guilty verdict in a night affair with identity issue, looming large on the scene, merely on the strength of a misconceived and misplaced suspicion, rooted into a past motive that had long withered away. It is next argued that inconsequential recovery without any forensic comparison was entirely beside the mark and, thus, in absence of any corroboration, it was unsafe to place implicit reliance on a flawed ocular account. Learned Law Officer, assisted by counsel for the complainant, has faithfully defended the judgment.

2. Heard. Record perused.

3. Survival of Shahbaz Ahmed (PW-1) unscathed during the assault, by itself, cannot imply his absence from the scene and as such does not undermine his status as a witness worthy of credence; a closely related resident of the locality, his encounter with the deceased and the injured in the neighbourhood, does not raise eyebrows; steps taken by him after the incident are in consonance with the investigative details and, thus, confirmatory to his presence. A somewhat lengthy cross-examination failed to tremor his testimony, substantially in line with the ocular account furnished by two other witnesses that included an injured as well; it squarely constitutes "*proof beyond doubt*", admitting no hypothesis other than petitioner's guilt whose absence from law for a period exceeding three years does not brilliantly reflect upon his unsupported plea of false implication; in retrospect, it also indemnifies the impact of inconsequential recovery

of a .30 caliber pistol (P-4), otherwise found consistent with the contours of the fatal shot. Available source of light vividly shown in the site plan, in the given proximity *inter se* the parties, the issue of identification, blown out of proportion, least compromises preponderance of overwhelming evidence, inescapably pointed on the culpability of the accused, each judicially taken to the task. Concurrent conclusions by the courts below, on our own independent analysis, have been found by us, well within the remit of safe administration of criminal justice and, thus, call for no interference. Petition fails. Leave declined.

Criminal Petition No.905-L of 2016

Learned counsel for the petitioner seeks withdrawal of this petition. Dismissed as withdrawn.

Judge

Judge

Islamabad, the
29th January, 2021
Azmat/-