

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.128 of 2020

(Against the judgment dated 3.6.2015 passed by the Lahore High Court Bahawalpur Bench Bahawalpur in Criminal Appeal No.515-J of 2011 and M.R. No.65 of 2011)

Muhammad Mehboob

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s):	Mr. Zulfiqar Ahmad Bhutta, ASC
For the State:	Mirza Abid Majeed, Deputy Prosecutor General Punjab
Date of hearing:	26.10.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Blamed for committing *Qatl-i-Amd* of Waris Ali, 24/25, the appellant accompanied by his sons, since acquitted, contested indictment before a learned Additional Sessions Judge at Bahawalnagar; convicted under clause (b) of Section 302 of the Pakistan Penal Code, 1860, he was sentenced to death vide judgment dated 16.12.2011, altered into imprisonment for life vide impugned judgment dated 3.6.2015, vires whereof, are being assailed through leave of the Court.

2. The appellant had leased out his agricultural land on annual rent of Rs.130,000/- to Barkat Ali complainant (PW-4); a sum of Rs.30,000/- for the year 2010 to be paid in the month of November was yet outstanding when on the fateful day i.e. 23.6.2010 at about 7:15 a.m. the accused restrained the complainant as well as the witnesses from cutting fodder; a brief altercation, however, shortly ended in a

truce albeit with a threat by Khalid Mehmood alias Bhola, acquitted co-accused; a short while later, the appellant with his two sons, armed with .12 caliber shotguns and an hatchet, confronted the complainant, his son Dilbar Hussain (PW-5), brother Muhammad Yousaf and Sabir Ali PWs once again. The appellant fired in the air from a distance of two acres, simultaneously commanding his sons Khalid Mehmood and Tariq to take on the witnesses. It is prosecution's case that Barkat Ali PW assisted by the witnesses snatched gun from Khalid Mehmood before he could fire upon them; it was at this point of time that the deceased apprehending a fire shot by the appellant attempted to take refuge behind a cart, however, was trapped by a shot and succumbed to the injury at the spot. Autopsy conducted at 4:30 p.m. confirmed four entry apertures with multiple pellets, each surrounded by burnt margin. Spot inspection includes seizure of blood without there being any casing. As the investigation progressed, appellant's sons were let off. The appellant, arrested on 27.6.2010, upon a disclosure led to the recovery of a .12 caliber shotgun (P-7). The family faced trial together, confronting prosecution evidence in a unison with the following plea:

"I am innocent and similarly my co-accused are also innocent as they were not present at the spot at the time of occurrence. They were rightly found and declared innocent by the police. In fact on the day of occurrence I peacefully went to my land to demand lease money from the complainant. At that time complainant himself was armed with gun and I was empty handed. When I demanded lease money from complainant and his son Waris Ali (deceased) they not only refused to pay the lease money but also abused and insulted me on which we grappled with each other and in this process the gun held by the complainant accidentally went off and the fire of that gun hit Waris Ali deceased. The gun P-5 produced before the police was that of the complainant. The police had reached the place of occurrence without recording evidence and fabricated this case after conducting local inquiry in connivance with the complainant party."

Qua the appellant, it failed to inspire the courts below.

3. Learned counsel for the appellant contends that the prosecution withheld the whole truth as is evident from investigative conclusions that favoured Khalid Mehmood and Muhammad Tariq; he contends that their unchallenged acquittal by itself confirmed the veracity of appellant's plea, otherwise supported by the attending circumstances that included the findings recorded by the Medical Officer. Prosecution failure on motive compounded by an inconsequential recovery had further vindicated the appellant's position and that acquittal of the co-accused, framed within the integrity of charge, though roles somewhat different, nonetheless, cast away the

entire case, concluded the learned counsel. Learned Law Officer has contrarily defended the judgment on the ground that assigned with the fatal shot, the petitioner was rightly convicted and sentenced in circumstances.

4. Heard. Record perused.

5. Prosecution's failure on motive notwithstanding, a default in payment of the rent, nonetheless, appears to have ignited a situation on the fateful day with no previous rancor. During the brawl, comprising two episodes, both sides confronted each other. Two .12 caliber shotguns, one produced by the complainant and the second, recovered pursuant to a disclosure, spell out a confrontation in close blank proximity; on the contrary, in scaled site plan (Ex.PE/2), inter se distance between the appellant and the deceased is shown as 9 ½ *Karam*, a scenario that does not accommodate autopsy findings of burning surrounding each wound. When confronted, during the cross-examination, with the distance between the appellant and the deceased, when the latter received the fatal shot, he complacently reaffirmed the disclosure. Locale of fatal shot on the back of the deceased in a configuration where both sides are confronting each other face to face is yet another circumstance intriguing upon the prosecution story. Though a cart noticed during spot inspection was secured by the Investigating Officer, nonetheless, pallet marks are conspicuously absent; it is no less surprising that the deceased, present on the driving seat of a tractor, statedly scrambling by the instinct of self preservation, would prefer a more vulnerable option to save his life; in retrospect, argument that the situation was acted out to write off the aftermaths of an obvious accidental shot does not appear to be unrealistic. Muhammad Bashir SI (PW-3) has investigated the case throughout and painted a picture altogether different by projecting the appellant being alone at the crime scene; his disclosure that *"It is correct that during investigation from three nominated accused of the complainant, two were found innocent because in my investigation they were not present at the time and place of occurrence."* clearly suggests that occurrence did not take place in the manner as alleged in the crime report. Dichotomy inherent in the script visibly casts its shadows and, thus, in the totality of circumstances, prosecution has failed to bring forth *"proof beyond doubt"*. Criminal Appeal is allowed; impugned judgment is set aside; the

appellant is acquitted of the charge and shall be released forthwith, if not required to be detained in any other case.

Judge

Judge

Judge

Islamabad, the
26th October, 2020
Not approved for reporting
Azmat/-