

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

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

Criminal Petition Nos.17-L/2018 & 1338/2017

(Against the order dated 15.11.2017 of the Lahore High Court
Bahawalpur Bench passed in Cr. Appeal No.83/2014 and Cr. Appeal
No.88 of 2014 along with M.R. No.7/2014)

Muhammad Khan alias Kali

(in Cr.P. No.17-L/2018)

Laal Khan

(in Cr.P. No.1338/2017)

....Petitioner(s)

Versus

The State and another

(in Cr.P. No.17-L/2018)

The State and 03 others

(in Cr.P. No.1338/2017)

....Respondent(s)

For the Petitioner(s):

Mr. Muhammad Sharif Bhatti, ASC
Sardar Muhammad Shahzad Khan Dhukar, ASC
(in Cr.P. No.17-L/2018)
Syed Aasim Ali Bokhari, ASC
(in Cr.P. No.1338/2017)

For the Respondent(s):
(in both cases)

N.R.

Date of hearing:

06.08.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Muhammad Javed, 28/29, was clubbed to death at 2:00 p.m. on 10.12.2012 within the remit of Police Station Donga Bonga, District Bahawalnagar, in the backdrop of an early morning dispute over cattle grazing; Muhammad Khan alias Kali, petitioner along with Muhammad Din alias Pappu and Nadeem alias Ghona were jointly blamed for fatal injuries while Muhammad Nawaz, Shah Muhammad and Mahna, already present at the scene, were alleged to have exhorted the assailants. Autopsy suggested two injuries in the temporal region accompanied by a slant mark on the chest as collective cause of death mainly on account of fracture of skull. Upon conclusion of trial, the petitioner along with Nadeem alias Ghona was returned a guilty verdict; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, they were sentenced to death vide judgment dated 18.2.2014. Petitioner's conviction was maintained, albeit with alteration of death penalty into imprisonment for life while Nadeem alias Ghona was acquitted of the charge vide impugned judgment dated 15.11.2017; equally dissatisfied but for their own reasons, both sides, have assailed the judgment.

2. The accused are divided into two groups; first comprising Muhammad Din alias Pappu, Muhammad Khan alias Kali and Nadeem alias Ghona; they are blamed to have jointly beaten the deceased to death; in the second group, Muhammad Nawaz son of Muhammad Sadiq, Shah Muhammad son of Noor Din and Mahna son of Sharaf Din, allegedly, exhorting community of intention, joined the former a while later, however, without inflicting any harm to the deceased. The acquittal of non-participating second set of accused has not been challenged, however, Din Muhammad alias Pappu let off by the trial Court and the acquittal of Nadeem alias Ghona by the High Court have been disputed by the complainant throughout alongside the challenge thrown by the convict.

3. Learned counsel for the complainant contends that roles assigned to the Muhammad Khan alias Kali, Nadim alias Ghona and Din Muhammad alias Pappu are clearly borne out from medical evidence and once the learned trial Judge as well as the High Court had believed the ocular account qua Muhammad Khan alias Kali, there was no occasion to let off Nadim alias Ghona and Din Muhammad alias Pappu in view of their indivisibly inculpatory participation in the crime and as such the error cannot be countenanced without jeopardizing the fate of the entire case into peril, at the cost of miscarriage of justice, therefore, impugned conclusions being impossible, re-appraisal of evidence would be most called for in circumstances. Conversely, learned counsel for Muhammad Khan alias Kali contends that the courts below had rightly acquitted the co-accused, including those, assigned effective roles qua the deceased, therefore, in the absence of any independent corroboration, petitioner is also entitled for a clean chit.

3. In the peculiar facts and circumstances of the case, it would be expedient to re-examine the evidence in the interest of justice. Leave is granted in both the cases. Send for Nadeem alias Ghona and Muhammad Din alias Pappu, respondents, through bailable warrants in the sum of Rs.500,000/- with one surety each in the like amount, returnable to the Deputy Registrar (Judicial) of this Court.

Judge

Judge

Islamabad, the
6th August, 2020

Not approved for reporting

Azmat/-