

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Yahya Afridi

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos.9-Q & 12 of 2021

(Against the judgment dated 21.12.2020 passed by the High Court of Balochistan in Cr. A. No5 & 80 of 2017)

Ghulam Abbas

(in Cr.P. 9-Q/2021)

Naqeebullah

(in Cr.P. 12/2021)

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Ewaz Zehri, ASC

Ch. Akhtar Ali, AOR

Mr. M. Riaz Akhtar Tareen, ASC

(in Cr.P. 12-Q/2021)

Mr. Tahir Hussain Khan, ASC

(in Cr.P. 9-Q/2021)

For the State:

Mr. Walayat Hussain,

Additional Prosecutor General Balochistan

For the Complainant:

Mr. Kamran Murtaza, Sr.ASC

(in both cases)

Date of hearing:

06.04.2021.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Ghulam Abbas

petitioner was tried by a learned Additional Sessions Judge at Quetta for committing *Qatl-i-Amd* of Ameer Muhammad, 35/40, a supervisor employed in a restaurant at 6:15 p.m. on 10.8.2013; Naqeebullah petitioner, one of the owners of the outlet, was also in the dock for having screened off incriminatory evidence; they were returned a guilty verdict vide judgment dated 17.03.2017; the former convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860 was sentenced to imprisonment for life with a direction to pay compensation whereas the latter was convicted under section 201 of the Code *ibid*; he was sentenced to 5-years R.I. The incident occurred all of a sudden in the wake of an altercation that started over a demand of drink by the principal accused.

The High Court of Balochistan maintained convictions as well as sentences recorded thereunder vide impugned judgment 21.12.2020, being assailed through separate petitions. Bound by a common thread, these are being decided through this single judgment.

2. According to the prosecution, the deceased served at the food outlet while Ghulam Abbas associated as a guard with Naqeebullah petitioner. On the fateful day, Ghulam Abbas asked the deceased for a drink who demanded a *chit* to oblige; former, however, got infuriated and shot him in the abdomen; he was subdued by the witnesses at the spot with the weapon, latter taken by Naqeebullah petitioner, who withheld it throughout. Ocular account furnished by Muhammad Awais (PW-1) and Muhammad Afzal (PW-2), with an inspiring unanimity, narrated the graphic details of the episode; they faced embarrassingly lengthy cross-examination without any setback. Red-handed arrest at the spot foreclosed all avenues to entertain any hypothesis other than assassin's guilt. Naqeebullah, however, attempted hard to wriggle out of the charge by taking plea of having extended assistance to the deceased in his gasping moments; according to him, he not only laid information with the police but also shifted the deceased to the hospital in a bid to save his life; he pleaded ignorance about the disappearance of weapon, held by the co-accused. Both the accused appeared as witnesses in disproof of the charge, an attempt that failed to disturb preponderance of prosecution.

3. Appraisal of evidence by the courts below, upon our own independent analysis, has been found by us inconsonance with the principles of safe administration of criminal justice. It is a broad daylight affair wherein Ghulam Abbas was apprehended at the spot; he was employed by Naqeebullah as a guard, who had obviously provided him the weapon that he used most unwisely, without provocation upon a hapless worker, earning livelihood for his family; he has already been dealt with leniency. Criminal Petition No.9-Q of 2021 fails. Leave declined.

Assistance provided to the deceased in his injured condition by Naqeebullah petitioner does not absolve him from his responsibility to assist the law, however, at the most can be viewed as a mitigation to settle quantum of the sentence which having regard to the totality of circumstances is reduced from 5-years to 3-years R.I, pre-trial period inclusive. Fine imposed by the Courts below in the sum of Rs.50,000/- is converted into compensation, to be paid to the legal heirs of the deceased; default shall follow simple imprisonment for six months. With the above

modification, Criminal Petition No.12 of 2021 is converted into appeal and partly allowed in the above terms.

Judge

Judge

Judge

Islamabad, the
6th April, 2021
Not approved for reporting
Azmat/-