

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.40 of 2020

*(Against the judgment dated 13.06.2014 passed by
the Lahore High Court Lahore in Crl.A. No.693/2007
along with M.R. No.206/2007)*

Ghulam Mustafa

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s): Mr. Muhammad Siddique Khan
Baloch, ASC

For the State: Mirza Abid Majeed,
Addl. Prosecutor General Punjab

Date of hearing: 29.09.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Indicted alongside Sajjad alias Shada, Abdul Wahid, Fakhar Iqbal and Shoukat Ali, since acquitted, the appellant was returned a guilty verdict by a learned Additional Sessions Judge at Kamalia; convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860 for committing *Qatl-i-Amd* of Muhammad Imran, 22, at 7:00 p.m. on 22.11.2004 within the remit of Police Station City Kamalia, he was sentenced to death vide judgment dated 25.04.2007, maintained by the High Court albeit with alteration penalty of death into imprisonment for life vide judgment dated 13.06.2014, being impugned through leave of the Court.

2. On the fateful day, after spending Eid holidays in his home town, the deceased was scheduled to return to his workplace in Lahore alongside co-worker Yasin (PW-10); at about 7:00 p.m. the complainant went to see off him; as he reached Madani Chowk, he saw the appellant, armed with a *Churri*, accompanied by acquitted co-accused, each differently armed, mounting assault upon the deceased; the appellant dealt a *Churri* blow to the deceased on the left side of his abdomen; Irshad and Abdul Wahid dealt him with club blows on his head while Fakhar Iqbal and ShoukatAli, brandishing pistols kept the witnesses at bay; though omitted by the complainant in crime report (Ex.PB), Yasin (PW-10) statedly endured blunt weapon injuries, inflicted by the acquitted co-accused. Admonition by Yasin (PW-10) to the accused, blamed foreve-teasing, is cited as motive for the murder followed by an altercation of even date. Autopsy was conducted at 1:30 p.m. on 23.11.2004; though admitted by the medical officer during the cross-examination, Yasin (PW-10) was also examined by him during the same night.

3. Learned counsel for the appellant contends that evidence disbelieved qua majority of the accused, some of whom are assigned effective roles, vis-à-vis the injured cannot sustain appellant's conviction in the absence of independent corroboration, hopelessly lacking in view of exclusion of prosecution evidence on recovery and motive; that crime report is silent on injuries sustained by Yasin (PW-10), introduced by the complainant, for the first time in the witness box through an improvement, duly confronted during his cross-examination; he has also assailed the credentials of Yasin PW as an eye witness on the ground that he admittedly made no statement to the Investigating Officer despite claim of presence and as such his testimony carried no weight, particularly in view of rejection of his statement on his own

injuries. The learned Law Officer defended the impugned judgment.

4. Heard. Record perused.

5. The incident occurred in a residential neighbourhood, located at a distance of 2 ½ k.m. from Police Station City Kamalia, witnessed amongst others, by Yasin (PW-10) who claims to have himself sustained multiple club blows on different parts of his body i.e. head and nose, noted by medical officer who conducted the autopsy; surprisingly his medico legal certificate is not on the record; though the medical officer admitted in his cross-examination to have examined him at 7:45 p.m, presumably under a police docket. In this backdrop, report to the police at a place other than police station at 12:15 a.m. confirms a delay that clamors for explanation; admission by the medical officer suggests an intriguing interregnum that reflects a surreptitious silence, casting its shadow on the autopsy delayed by 18 ½ hours, despite availability of the medical officer; confounding prosecution's dilemma further, the witness has not even been believed against his own assailant and, thus, stranded from the scene. Complainant's case qua Yasin (PW-10) is not on a better footing either as he made no reference in the crime report to the injuries suffered by the said witness which is further contradicted by the autopsy report inasmuch as solitary stab wound on the abdomen is noted with no injuries on the head as attributed in the crime report to Irshad and Abdul Wahid co-accused, since acquitted. It is no less surprising that the accused despite armed with pistols preferred to target the deceased with a non-conventional weapon. With a manifestly flawed ocular account, prosecution's failure on motive and recovery of weapon as well as co-accused has grievously undermined its case vis-à-vis the appellant as well. Arguments that the occurrence did not take place in the manner as alleged in the crime report and

that incident was subsequently reported by the witnesses, stage-managed in circumstances, cannot be dismissed out of hand. Since the very genesis of the incident is far from being clear, it would be grievously unsafe to single out the appellant from the array. 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
29th September, 2020
Not approved for reporting
Azmat/-