

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE SHAHID WAHEED

CRIMINAL PETITION NOS. 614 & 618 OF 2017

(On appeal against the judgment dated 31.03.2017 passed by the Lahore High Court, Rawalpindi Bench in Criminal Appeal Nos. 228 & 284/2012 and Murder Reference No. 43/2012)

(1) Muhammad Iqbal, (2) Maqsood Ahmed,
(3) Mehram Khan, (4) Muhammad Jaffar,
(5) Muhammad Shoaib, (6) Lal Khan and
(7) Mumtaz
Shafqat Hussain (complainant)

(In Cr.P. 614/2017)

(In Cr.P. 618/2017)

... Petitioners

VERSUS

The State and another
Muhammad Iqbal and others

(In Cr.P. 614/2017)

(In Cr.P. 618/2017)

... Respondents

For the Petitioners:

Mr. Basharatullah Khan, ASC
(In Cr.P. 614/2017)

Mr. Ansar Nawaz Mirza, ASC
(In Cr.P. 618/2017)

For the State:

Mirza Muhammad Usman, DPG

For the State:

Mr. Muhammad Jaffer, Addl. P.G.

Date of Hearing:

30.11.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioners along with two co-accused were tried by the learned Sessions Judge, Chakwal, pursuant to a case registered vide FIR No. 196 dated 29.07.2009 under Sections 302/324/148/149 PPC at Police Station Saddar, Talagang, District Chakwal for committing murder of Muhammad Aslam and Altaf Hussain and for causing injuries to Iftikhar Ahmed, Ulfat Haider and Sher Ahmed.

2. After completion of investigation, a report under Section 173 Cr.P.C. was submitted before the Trial Court. The learned Trial Court seized of

the matter framed charge against nine accused under Sections 302/324/148/149 PPC. The learned Trial Court while framing the charge specifically mentioned that all the accused while forming an unlawful assembly in furtherance of their common object have committed the crime wherein two persons lost their lives while three sustained injuries and, as such, committed an offence falling under Section 149 PPC. In order to prove its case, the prosecution produced as many as sixteen witnesses. On the conclusion of the prosecution case, the accused persons got recorded their statements under Section 342 Cr.P.C. wherein they denied the allegations leveled against them. They did not opt to appear as witness under Section 340(2) Cr.P.C to disprove the allegations. However, they produced some documents in their defence. On conclusion of the trial, the learned Trial Court vide its judgment dated 15.05.2012, while acquitting two co-accused Nawab Khan and Mumtaz, convicted the petitioners as under:-

1) **Muhammad Iqbal and Maqsood Ahmed**

U/S 302(b) PPC Sentenced to death along with compensation of Rs.300,000/- payable to legal heirs of Haji Muhammad Aslam and Altaf Hussain, deceased, recoverable as arrears of land revenue. In default whereof, they shall suffer six months SI.

U/S 148 PPC Sentenced to suffer 2 years RI each.

2) **Mehram Khan and Muhammad Jaffar**

U/s 324 PPC Sentenced to suffer three years RI.

U/s 148 PPC Sentenced to suffer 2 years RI each.
Both sentences were ordered to run concurrently with benefit of Section 382-B Cr.P.C

3) **Muhammad Shoaib, Lal Khan and Mumtaz**

U/s 148 PPC Sentenced to suffer 2 years RI.
They were also held entitled to the benefit of Section 382-B Cr.PC.

3. The petitioners challenged their conviction by filing Criminal Appeal No. 228/2012 before the learned Lahore High Court. The complainant also filed Criminal Appeal No. 284/2012 challenging the acquittal of the two co-

accused and seeking enhancement of the sentence awarded to five co-accused. The learned Trial Court also sent Murder Reference No. 43/2012 under Section 374 Cr.P.C. In appeal, the learned High Court while maintaining the conviction of the petitioners Muhammad Iqbal and Maqsood Ahmed under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The remaining sentences to the extent of compensation awarded to them by the learned Trial Court was maintained. All the sentences were ordered to run concurrently with benefit of Section 382-B Cr.P.C. So far as the remaining petitioners namely Mehram Khan, Ghulam Jaffar (Muhammad Jaffar), Muhammad Shoaib, Lal Khan and Mumtaz are concerned, their sentence was modified to the extent of the sentence which they had already undergone subject to payment of fine of Rs.50,000/- payable by each accused to the injured. Hence, these petitions seeking leave to appeal.

4. During the course of proceedings before this Court, a query was made to the learned counsel for the petitioners/convicts qua the legality of the judgments rendered by the Trial Court as well as the High Court wherein the Trial Court while taking into consideration all the facts and circumstances found the accusation against the petitioners established through confidence inspiring evidence and as such convicted them under Sections 302/324/148 PPC on the basis of individual liability ascribed to them. It is astonishing aspect of the case that despite of the fact that all the accused including the petitioners before us were charged under Section 148/149 PPC but while deciding *lis* the aspect of 'common object' was squarely ignored and the conviction and sentence was recorded quite surprisingly on the basis of individual role. Similarly the Appellate Court while deciding the appeal of the petitioners did not bother to pay attention to the illegality committed by the Trial Court and dealt each accused on the basis of individual liability.

5. This Court in a recent judgment reported as Bashir Ahmed Vs. The State (2022 SCMR 1187) while elaborately discussing the penal provisions has held as under:-

"13. A careful analysis of the aforesaid categories falling under the provision of Section 302 PPC abundantly makes it clear that the provision of Section 302(a) PPC is a distinct provision having different mode and manner of application with different

considerations exclusively derived from the Islamic judicial system. The proceeding under the aforesaid provision is a rare phenomenon whereas the majority of the cases dealt with by the courts below fall under Section 302(b) PPC. As stated above, provision of Section 302(b) PPC provides two sentences i.e. death, (ii) imprisonment for life. Murder cases exclusively falling within the ambit of Section 302(b) PPC would be dealt with in a manner exclusively depending upon the number of assailants. Undeniably a single assailant can commit the aforesaid offence but if the number of assailants is more than one and the offence is committed in furtherance of common intention then the provision of Section 34 PPC would certainly attract. Similar to that if the tally of the accused is five or more and the offence is committed in furtherance of common object then the provision of Sections 148/149 PPC would be applicable. The learned Trial Court seized of the matter depending upon the number of accused has to render a definite finding qua the applicability of Section 34 PPC (common intention) or Sections 148/149 PPC (common object). These two legal aspects are to be addressed with the application of the aforesaid provision of Section 302(b) PPC depending upon the number of assailants. It is bounden duty of the courts below to ascertain the aspect of common intention or common object primarily at the time of framing of the charge on the basis of contents of FIR, statements under Sections 161 & 164 Cr.P.C, if any, final report under Section 173 Cr.P.C and other attending documents collected by the Investigating Officer during investigation. The Trial Court is equally responsible to give a definite finding qua the applicability of Section 34 PPC or Sections 148/149 PPC at the time of conclusion of the trial while handing down the judgment. Now adverting to the moot point which was raised during the proceedings that if anybody is found guilty of commission of offence attracting the provision of Section 302(b) PPC, the co-accused can be saddled with the responsibility on the basis of individual liability or the whole occurrence has to be decided keeping in view that the offence was committed in furtherance of their common intention and the provision of Section 302(b) PPC would be applied conjointly against the persons joining hands falling under either of the categories i.e. common intention or common object falling under Section 34 or 148/149 PPC depending upon the number of persons facing charge. We may observe that any judgment which concludes the commission of offence falling under Section 302(b) PPC in furtherance of common intention or common object but decides the lis on the basis of individual liability would be squarely in defiance of the intent and spirit of law on the subject."

6. The above view was upheld by this Court in Muhammad Nawaz vs. The State (PLD 2022 SC 523) and Jail Petition No. 344/2018 titled 'Muhammad Waheed Vs. The State'. A bare perusal of the afore-referred judgment of this Court makes it abundantly clear that while dealing with cases of qatl-i-amd as embodied under Section 300 PPC in Chapter XVI of Pakistan

Penal Code, the Trial Court has to evaluate as to whether the act is committed in furtherance of common intention/object or on the basis of individual liability to press in the provision of Section 302(a)(b) or 302(c) PPC and it has to give a definite finding qua the same. Any judgment which concludes that the offence of qatl-i-amd under Section 302(b) PPC was committed in furtherance of common intention or common object but the sentence is inflicted on the basis of individual liability, the same would be squarely in defiance of the intent and spirit of law on the subject. However, if the Court comes to the conclusion that the elements of common intention and common object have not been established, then each accused would be dealt with according to their individual role and severity of allegations and would be sentenced accordingly by the Court exercising its discretionary powers.

7. Keeping in view the facts and circumstances narrated above, we convert these petitions into appeals, allow the same and set aside the judgments of both the courts below. The matter is remanded back to the Trial Court to re-write the judgment on the basis of available evidence after providing an opportunity of hearing to both the parties within a period of one month from the date of receipt of certified copy of this judgment. During the pendency of the *lis* before the Trial Court, petitioners would be treated as under trial prisoners.

Islamabad, the
30th of November, 2022
Approved For Reporting
Khurram