

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.9-L of 2016

(On appeal from the judgment dated 20.06.2013 passed by the Lahore High Court, Lahore in Criminal Appeal No.2012 of 2011).

Zulfiqar Ali

...Appellant(s)

VERSUS

Imtiaz, etc.

...Respondent(s)

For the Appellant(s) : Mr. Maqbool Hussain Sh, ASC

Mr. Imtaz A. Shaukat, AOR

For the Respondent(s) Mr. Khalid Masood Sandhu, ASC

For the State : Ch. Muhammad Mustafa,
Deputy Prosecutor General,
Punjab

Date of Hearing : 03.06.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.-Impugned herein is judgment dated 20-6-2013 of a learned Judge-in-Chamber of the Lahore High Court Lahore whereby he acquitted Imtiaz son of Mehr Ali and Jehangir son of Pehlwan, respondents from the charge; indicted by a learned Addl. Sessions Judge at Tandlianwala, they were returned a guilty verdict; convicted under section 302 read with section 34 of the Pakistan Penal Code, 1860, each was sentenced to imprisonment for life along with compensation of Rs.50,000/- for committing *Qatl-i-Amd* of Falak Sher deceased; they were additionally convicted under section 364 read with section 34 of the Code *ibid* and sentenced to 5-years Rigorous Imprisonment with fine of Rs.20,000/- each; sentences were ordered to run concurrently with benefit of section 382-B of the Code of Criminal Procedure, 1898. Iftikhar co-accused has been acquitted from the charge whereas Fayyaz is still away from the law.

On the fateful day i.e. 25-7-2009, at about 7:30 p.m. the respondents alongside the co-accused, confronted the deceased and fatally shot him after his abduction. Zulfiqar Ali (PW-6), Muhammad Yar (PW-7) and Nasir Ali (PW-8) furnished ocular account. According to the witnesses, the deceased was fatally shot within their view, whereupon they shifted him to the hospital in injured condition. Motive for the crime is a dispute raging over family honour.

2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses' presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a reference to M/s. Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view, structured in evidence available on the record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal **dismissed**.

JUDGE

JUDGE