

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Appeal No.106-L of 2017 and
Criminal Petition No.981-L of 2017**

*(On appeal from the judgment dated
13.11.2014 passed by the Lahore High
Court, Lahore in Criminal Appeal No.2089 of
2010 and Murder Reference No.511 of 2010).*

Manzoor Hussain alias Babo

(In CrI.A.106-L/2017)

...Appellant(s)

Muhammad Aslam

(In CrI.P.981-L/2017)

...Petitioner(s)

VERSUS

The State

(In both cases)

...Respondent(s)

For the Appellant(s)
(In CrI.A.106-L/2017)

: Mr. Akhtar Hussain Bhatti, ASC

For the Petitioner(s)
(In CrI.P.981-L/2017)

: Mr. Salman Safdar, ASC

For the State

: Mr. Mazhar Sher Awan,
Additional Prosecutor General,
Punjab

Date of Hearing

: 17.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad Yar *alias* Bhatti, 20, was shot dead, in a marriage ceremony '*Barat*', on 10.4.2008 at 4.00 p.m. within remit of Police Station Cantt Okara. Manzoor Hussain, appellant was blamed for the crime. Bullet pierced the body 5 cm above right nipple, trapped in chest cavity, leaving behind blackened margins. Motive for the crime is acrimony raging over divorce of deceased's sister by the appellant as well as litigation over agricultural land. The appellant stayed away from law, finally arrested on 6.6.2008; pursuant to a disclosure, he led to the recovery of a .30 caliber pistol on 10.6.2008. The appellant was indicted on 22.8.2008; Saifullah and his father Allah Ditta were arrayed as conspirators. The appellant

blamed a stuck bullet going off accidentally during the aerial firing. Unimpressed by the plea, the learned trial Judge convicted the appellant under clause (b) of Pakistan Penal Code, 1860 and sentenced him to death with compensation *vide* judgment dated 30.8.2010. Allah Ditta and his son Saifullah were however acquitted from the charge. A learned division bench of learned Lahore High Court maintained the conviction, however, altered penalty of death into imprisonment for life with benefit under Section 382-B of the Code of Criminal Procedure, 1898. This brings both the appellant as well the complainant to us, former for acquittal while later for restoration of death penalty; Criminal Appeal 106-L/2017 and Criminal Petition 981-L/2017, bound by a common thread are being decided through this single judgment.

2. Event on the fateful day in the backdrop of bad blood is a common ground. Ceremonial firing is unfortunately a usual phenomenon. It is prosecution case that taking advantage of the event, the appellant, actuated by a motive deliberately targeted the bullet, whereas the accused while pleading innocence has simultaneously advanced the theory of a stray fire shot, stuck in the chamber, went off accidentally.

Death by a .30 caliber bullet is not in dispute; in this background, hypothesis of an accidental shot, as canvassed at the bar, is far from being impressive. Mechanics of .30 caliber pistol, a semi automatic weapon, rests upon a percussion cap with a primer, when detonated by the hammer of firing pin ignites explosive propelling the bullet in high velocity to leave the muzzle; in the process next bullet from the magazine automatically enters the chamber by the energy released by the preceding fire shot. A bullet would possibly stuck in the chamber if the hammer fails to ignite the explosive; *a defective primer makes the cartridge dead if all other components are in good condition.* A second strike by the hammer is not possible without manual intervention and that too would seldom ignite the charge as the fixed length of firing pin would not go farther than the first strike. Therefore, it is difficult to contemplate a situation where deceased would naively stand within the approximate distance of four feet to receive bullet above

the nipple, through an accidental shot. Bullet trajectory is yet another factor to contradict the story of accidental shot. If at all someone was attempting to retrieve the defective bullet he had no occasion to hold the gun in a straight position; from point of entry it traversed through right pleura and lung landing on left side of the chest beneath 4/5th intercostal back, is a course that suggests assailant and the deceased standing face to face. Appellant's plea, inherently flawed cannot dislodge preponderance of evidence furnished by the eye witnesses, found by us in a comfortable unison on all the details, salient as well as collateral therewith. Suggested scenario, otherwise too unrealistic to be received without being imprudent, merits outright rejection. Criminal Appeal 106-L/2017 is dismissed. Imprisonment for life, a conscionable wage in circumstances also does not call for interference. As a natural corollary Criminal Petition No.981-L/2017 is dismissed.

JUDGE

JUDGE

JUDGE

Lahore, the
17th of May, 2019
Ghulam Raza/*