

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.541 of 2020

*(Against the judgment dated 20.02.2017 passed by the Lahore High Court
Lahore in Cr.A. No.356-J/2013 with M.R. No.376/2013)*

Rafaqat Ali

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s): Ms. Aisha Tasneem, ASC

For the State: Mirza Abid Majeed,
Deputy Prosecutor General Punjab

Date of Hearing: 14.02.2022.

ORDER

Qazi Muhammad Amin Ahmed, J.:- Mirza Mubashar Baig, 23, was assaulted at 12:00 hours on 17.11.2006 within the remit of Police Station Islam Pura Lahore; rushed to the hospital in injured condition, despite multiple attempts by the Investigating Officer, he was opined as incapable to make a statement and finally succumbed to the injuries on 23.11.2006. Initial medical examination as well as autopsy report confirmed two fire shot wounds, accompanied by corresponding exits.

Crime report lodged by deceased's brother Muhammad Shakeel (PW-7) blamed one Lakha, subsequently identified as the appellant, accompanied by three unknown as suspects for the assault, in the backdrop of a previous altercation. As the investigation progressed, the Investigating Officer took on board one Faisal, lying in injured condition in the hospital as an accused on 25.11.2006; remainder of the accused were identified as Shahbaz

and Latif alias Mitha, subsequently let off/acquitted without challenge. The appellant was alone to receive a guilty verdict under clause (b) of section 302 of the Pakistan Penal Code, 1860, he was sentenced to death with a direction to pay compensation vide judgment dated 28.9.2013, altered by the High Court into imprisonment for life, vide impugned judgment dated 20.2.2017, *vires* whereof, are being assailed by leave of the Court.

2. Learned counsel for the appellant contends that prosecution case set up during the trial is diametrically different than the one laid with the police; that evidence disbelieved qua the identically placed acquitted co-accused has been relied upon by the courts below in contravention of law declared by this Court inasmuch as neither a vaguely formulated motive nor inconsequential recovery of weapon provided the requisite independent support; that injuries sustained by Faisal co-accused were suppressed by the prosecution, a circumstance that in retrospect spelt out a scenario, still a mystery. According to her, best evidence was withheld and it would be unsafe to rely upon the testimony of the witnesses one of whom is even not named in the crime report. The learned Law Officer faithfully defended the impugned judgment.

3. Heard. Record perused.

4. Complainant prosecuted his case through supplementary statements, subsequently recorded on two different occasions. Though the First Information Report is not to be taken as prosecution's last word, nonetheless, a supplementary statement, essentially being a statement under section 161 of the Code of Criminal Procedure, 1898 cannot be read in continuation thereof and, thus, a heavy responsibility is cast upon the prosecution to satisfactorily explain its initial failure to nominate an accused in the crime report and the circumstances improving upon its knowledge so as to justify inclusion of the accused previously amiss. Similarly, prosecution's preference for Muhammad Imran whose name did not figure in the crime report as a witness in preference to Behram Khan, abandoned during the trial, is a circumstance that clamours for explanation. Suppression of multiple firearm punctured wound endured by Muhammad Faisal co-accused, examined on the day of occurrence i.e. 17.11.2006, under a police docket, is yet another

aspect, no less intriguing. Acquittal of identically placed co-accused without challenge is another predicament confronting the prosecution in addition to massive improvements in the statement of the complainant, duly confronted in the witness-box. Argument that occurrence having not taken place in the manner as alleged in the crime report and reality still in the shroud, it would be unsafe to maintain appellant's conviction on a speculative moral ground is an argument, found by us, as difficult to dismiss. There are doubts, more than one, each deducible from prosecution's own evidence, benefit whereof, cannot be withheld. Appeal is allowed; impugned judgment dated 20.02.2017 is set aside; the appellant is acquitted from the charge and shall be released forthwith if not required to be detained.

Judge

Judge

Judge

Islamabad, the
14th February, 2022
Azmat/-