

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.291 of 2020

(Against the judgment dated 24.02.2016 passed by the Lahore High Court Lahore in Criminal Appeal No.613 of 2011 along with CSR No.16-T of 2011)

Muhammad Farhan alias Irfan

...Appellant(s)

Versus

The State

...Respondent(s)

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

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

Date of hearing: 27.10.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Haji Muhammad Nadir, 50/55, and his son Muhammad Mohsin, 24/25, were gunned down while resisting robbery at 4/5:00 p.m. on 29.12.2009 in their shop located within the precincts of Police Station City Jarranwala; Muhammad Babar (PW-13) and Muhammad Usman (given up) survived the assault. The appellant was one of the four assailants, nominated in the crime report; of them, Malik Irfan and Arshad alias Pehlwan were killed in a police encounter whereas Asif Manzoor is still away from law. The appellant alone contested indictment on multiple charges before the learned Judge Anti Terrorism Court-I, Faisalabad; vide judgment dated 6.4.2011, he was convicted and sentenced as under:-

- i. U/s 302(b)/34 PPC for committing Qatl-i-Amd of Haji Muhammad Nadar (deceased) to suffer death penalty with payment of compensation to the tune of Rs.500,000/- or six months SI in the event of default*
- ii. U/s 7(a) of Anti-Terrorism Act, 1997 for committing Qatl-i-Amd of Haji Muhammad Nadar (deceased) to suffer death penalty with payment of compensation to the tune of Rs.500,000/- or six months SI in the event of default*

- iii. *U/s 302(b)/34 PPC for committing Qatl-i-Amd of Muhammad Mohsin (deceased) to suffer death penalty with payment of compensation to the tune of Rs.500,000/- or six months SI in the event of default*
- iv. *U/s 7(a) of Anti-Terrorism Act, 1997 for committing Qatl-i-Amd of Haji Muhammad Nadar (deceased) to suffer death penalty with payment of compensation to the tune of Rs.500,000/- or six months SI in the event of default*
- v. *U/s 324/34 PPC to suffer 10-years RI with payment of fine to the tune of Rs.50,000/- or six months SI in the event of default*
- vi. *U/s 392 PPC to suffer 10-years RI with payment of fine to the tune of Rs.50,000/- or six months SI in the event of default*
- vii. *U/s 411 PPC to suffer 3-years RI with payment of fine to the tune of Rs.50,000/- or six months SI in the event of default."*

The High Court upheld the convictions, however, altered penalty of death into imprisonment for life on each count, vide judgment dated 24.02.2016, vires whereof, are being assailed through leave of the Court.

2. The deceased privately dealt in prize bonds business; on the fateful day, four masked gunmen intruded into the shop and robbed prize bonds of various denominations, valuing rupees two million; PWs resisted them when they resorted to firing in consequence whereof two from amongst the witnesses were fatally shot while Muhammad Babar and Muhammad Usman received injuries; one of the assailants, namely, Irfan was also hit by an accidental shot; during the scuffle masks worn by the assailants fell from their faces; they were identified as Muhammad Farhan alias Irfan, Asif Manzoor, Malik Irfan and Arshad alias Pehlwan. With their injured companion, the accused took to the heels. The appellant was in custody in Noshehro Feroz prison when on a tip off he was formally arrested in the present case on 23.7.2010. As the investigation progressed, the appellant pursuant to disclosures led to the recovery of a .30 caliber pistol (P-6) and prize bonds valuing Rs.35,000/-. Prosecution produced as many as 19 witnesses to drive home the charge; of them, ocular account has been

furnished by Rana Dilawar Hussain (PW-12), Muhammad Babar (PW-13) and Muhammad Waleed (PW-14). The appellant confronted prosecution evidence with denial while blaming Malik Irfan and Arshad alias Pehlwan as the possible culprits already done away during a police encounter.

3. Learned counsel for the appellant contends that question of identity of the assailants is looming large on the scene inasmuch as according to the complainant himself, the robbers had concealed their faces with masks and as they indiscriminately fired upon the deceased and the PWs, there was hardly an occasion that the masks would drop from their faces in the absence of only physical resistance by Muhammad Mohsin PW vis-à-vis Malik Irfan co-accused since eliminated by the police; that Muhammad Babar (PW-13) and Muhammad Usman (give up) though shown in the crime report to have survived the fire shots, nonetheless, were not medically examined and, thus, their presence at the crime scene is far from being plausible; that no casing was secured from the spot and, thus, recovery of pistol (P-6) without forensic comparison does not advance prosecution case. The learned counsel has referred to improvements made by the witnesses in their statements with regard to the locale of injuries to argue that departure of the witnesses from their initially stated positions seriously undermine their credibility. The bottom line is that the actual culprits were done away by the police in the traditional way and that the appellant had been framed as an additional scapegoat, being hounded by the witnesses to oblige the local police. The learned Law Officer has faithfully defended the impugned judgment; according to him, the appellant has already been dealt with a leniency that he did not deserve given the enormity of crime and colossal loss of lives of a father and his son in consequence thereof.

4. Heard. Record perused.

5. The witnesses are closely related; the complainant lost his brother and a nephew related in no less degree with Muhammad Babar (PW-13) and Muhammad Waleed (PW-14) being father and brother, callously done to death in the midst of city during broad daylight, leaving no space to admit any hypothesis of substitution by the witnesses. Death of Malik Irfan and Arshad alias Pehlwan, nominated in the crime report alongside the appellant on the day one, while resisting a police encounter goes a long way to implicate the appellant as being a comrade in the crime. Prosecution's failure to bring on record medico

legal certificates of the injured though a deplorable inaptitude in prosecution of the case, nonetheless, does not adversely impact upon the totality of circumstances that clearly suggests examination of Muhammad Babar (PW-13) by the Investigating Officer while he was admitted in the Allied Hospital Faisalabad. Alleged improvements in the statements of witnesses, highlighted by the learned counsel to discredit their credibility, being inconsequential narrative variations, mostly explanatory in nature, without altering the integrity of prosecution's case, merit condonation. Nomination of the accused in the crime report without any loss of time, soon after the incident, lends credence to the story of droppage of masks, a circumstance by itself to strengthen complainant's truthfulness in faithfully relating events of the fateful day. View taken by the Courts below being well within the remit of law calls for no interference. However, appellant's conviction under section 7(a) of the Anti Terrorism Act, 1997, is not sustainable in view of the law declared by this Court in the case of Ghulam Hussain & others Vs. The State (PLD 2020 SC 61), therefore, his conviction to that extent is set aside. Remainder of the convictions and sentences consequent thereupon including amounts of compensation and fine are kept intact. Appeal partly allowed.

Judge

Judge

Judge

Islamabad, the
27th October, 2020
Not approved for reporting
Azmat/-