

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.7-P of 2013

*(Against the judgment dated 31.01.2007
passed by the Peshawar High Court,
Peshawar in Criminal Appeal No.530 of
2005).*

State thr. Advocate General, KP

...Appellant(s)

VERSUS

Muhammad Rafiq & others

...Respondent(s)

For the Appellant(s) : Syed Qaisar Ali Shah,
Additional Advocate General,
Khyber Pakhtunkhwa

For the Respondent(s) : N.R.

Date of Hearing : 29.04.2019

Judgment

Qazi Muhammad Amin Ahmed, J.- Through leave of the Court, respondents' acquittal from the charge of homicide by a learned division bench of the Peshawar High Court vide impugned judgment dated 31.1.2007 has been called into question; they were returned a guilty verdict by a learned Additional Sessions Judge, at Swabi for committing *qatl-e-amd* of Tariq Ahmed and Muhammad Rafiq on 11.10.1990 within the precincts of Police Station Swabi while they were being sent off by their mother Mst. Poshan, PW, on their way to Islamabad; convicted on two counts of homicide they were sentenced to imprisonment for life on each, to run concurrently with benefit of Section 382-B of the Code of Criminal Procedure, 1898.

2. Learned counsel for the appellant contends that there was no occasion for the learned High Court to acquit the respondents from the charge inasmuch as prosecution successfully proved its case beyond a shadow of doubt on the strength of confidence inspiring evidence leaving no space to entertain any

hypothesis other than their guilt. It is next argued that presence of Mst. Poshan, PW with her sons at the time of their departure for Islamabad cannot be viewed with suspicion; on the contrary her last detour with the deceased sons is most confidence inspiring and she certainly is not expected to swap the real offenders through substitution. The impugned acquittal has resulted into miscarriage of justice warranting interference by this Court, concludes the learned counsel.

2. Magnitude of calamity and concomitant trauma for the family, notwithstanding what weighed with the learned High Court nonetheless is improbability of complainant's presence at the crime scene during the fateful hours. Emotional attachments apart it is rather unusual for a woman more so in a *pashtoon* rural neighborhood to accompany her sons at a public thorough fare who had already spent preceding day in her company. Prosecution's dilemma has been further compounded by deviation of Inzar Gul from his previous statement; conflict between ocular account and medical evidence noticed by learned High Court is not unrealistic. Once presence of Mst. Poshan, PW is found suspect, the testimony of Inzar Gul is also cast away. In this backdrop, impugned acquittal is premised on a prudently possible view which cannot be reversed merely on contra contemplation. Appeal is dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the
29th of April, 2019
Ghulam Raza/*