

**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.75-L of 2017**

*(On appeal from the judgment dated 22.04.2014 passed by the Lahore High Court, Lahore in Criminal Appeals No.1098 & 1116 of 2009, Murder Reference No.291 of 2009 and Criminal Revision No.866 of 2009).*

***Tariq Mehmood***

...Appellant(s)

**VERSUS**

***The State, etc.***

...Respondent(s)

For the Appellant(s)	: Mr. Munir Ahmed Bhatti, ASC
For the Complainant(s)	: Mr. Azam Nazeer Tarar, ASC
For the State	: Mr. Mazhar Sher Awan, Additional Prosecutor General
Date of Hearing	: 09.05.2019

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J** Tariq Mehmood, appellant was tried alongside Waseem Sajjad, Amjad Sardar, Israr Ahmad, Ghulam Ali, Sikandar Hayat and Mst. Mehnaz Akhtar by a learned Additional Sessions Judge at Mandi Baha-ud-din for committing *qatl-e-amd* of Saif-ur-Rehman, deceased in addition to murderous assault on Farhan, PW and abduction of Mst. Tehmina Akram, PW; of them Ghulam Ali, Sikandar Hayat, Israr Ahmad and Mst. Mehnaz Akram were acquitted from the charge, whereas the appellant, Waseem Sajjad and Amjad Sardar were returned a guilty verdict. For homicide, the appellant was sentenced to death under clause (b) of Section 302 of the Pakistan Penal Code, 1860, whereas Waseem Sajjad and Amjad Sardar to imprisonment for life for being in the community of intention along with compensation of

Rs.100,000/- each; for murderous assault, the accused were sentenced to ten years R.I. each with fine of Rs.10,000/- and for abduction each was sentenced to seven years R.I. with fine of Rs.20,000/-; sentences were ordered to run concurrently with benefit of Section 382-B of the Code of Criminal Procedure, 1898. A learned Division Bench of Lahore High Court *vide* impugned judgment dated 22.04.2014 dismissed convicts' appeals; a revision for enhancement of sentences met the same fate. It would be pertinent to point out that during pendency of the appeal, Waseem Sajjad, convict was released on bail by way of execution of sentence on 30.11.2011; the release warrant was however inadvertently in favour of Amjad Sardar, convict as well, in pursuance whereof both of them were enlarged on bail; they are away from law ever since. The learned High Court dismissed their appeal, however without reference to their departure from the array.

2. Prosecution's case is structured upon statement of Muhammad Nauman, PW-4; according to him, during the fateful night at 8:15 p.m. the appellant along with co-accused, differently armed, trespassed into his home; they attempted to forcibly take away Samina Akram; upon family's resistance, Waseem Sajjad, co-accused made a fire shot on Muhammad Farhan, PW on his right flank; as complainant and Saif-ur-Rehman attempted to rescue the girl the appellant fired upon Saif-ur-Rehman, deceased followed by a fire shot by Amjad Sardar; former, twice hit by the both, one by one; accused decamped with Samina Akram within witnesses' view, recovered unscathed by the police after twenty days of the occurrence. The assailants avenged a suspected liaison between Muhammad Usman, PW with appellant's cousin. Dissatisfied with investigation, the complainant preferred to prosecute the case through a private complaint.

3. Ocular account furnished by Muhammad Nauman, Muhammad Farhan and Mst. Tehmina Akram, PWs constitutes prosecution's mainstay. Of them Muhammad Farhan sustained injury, substantially extensive in nature. Occurrence took place inside a residential premises. First sight cannot escape

preponderance of evidence, however on a closer view, emerges a picture incompatible with the events, narrated in the crime report. The accused mounted assault, as per prosecution's own case to settle score with Muhammad Usman, PW for his alleged affair with the lady related to the appellant; it is disgrace that brought the assailants, face to face, with Muhammad Usman, PW, well within their view and reach it is astonishing that while being merciless without restraint upon others they spared prime target of assault. There can be no other inference that either Muhammad Usman was not present at the scene or the occurrence took place in a backdrop other than asserted in the crime report. More intriguing is recovery of Mst. Tehmina Akram, PW; according to her, she remained in captivity for twenty days, the poor soul was taken away to settle score for what her brother had done to a lady of assailants, a conduct repugnant, by all means, nonetheless, no one laid a finger upon the girl despite being at their mercy; she returned unharmed. It is mind boggling that after having shed so much blood why the lady was kept under immunity. Such superior conduct is not expected from the accused when the entire exercise was calculated to disgrace the family. Statement of Mst. Tehmina Akram is contradicted by Rana Muhammad Aslam, Inspector, CW-1, the investigating officer; according to him, Mst. Tehmina Akram rejoined the family on her own without intervention of the police. In the witness box, she was confronted with her previous statement wherein she had blamed one Farooq *alias* Farooqi Thabal as primarily responsible for the crime though she denied, this fact was recorded by investigating officer in her previous statement. The investigating officer categorically stated in his examination-in-chief that the aforesaid Farooq *alias* Farooqi Thabal was principally responsible for the crime; a hired assassin, subsequently killed in a police encounter. Occurrence, statedly, took place on 20.1.2005 at 8.15 p.m. however autopsy was conducted following day at 11.45 a.m.; interregnum spaces the hypothesis of consultations/deliberations. What actually happened during the fateful night is left to our imagination. Even the learned trial Judge has not believed prosecution evidence *qua* majority of the accused. Once we have found the genesis of prosecution case

as inherently suspect, loss of life notwithstanding, we consider it grievously unsafe to maintain the convictions in a case fraught with improbabilities and positions, each self destructive. Criminal appeal is allowed, impugned judgment is set aside. The appellant shall be released forthwith, if not required in any other case.

JUDGE

JUDGE

JUDGE

Lahore, the  
09<sup>th</sup> of May, 2019  
Ghulam Raza/\*