

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

Criminal Petition No.46-P of 2015

Iftikhar Ali

...Petitioner

Versus

Gul Rehman and another

..Respondent

For the Petitioner(s): Mr. Altaf Khan, ASC

For the Respondent(s): Mr. Muhammad Nisar,
Addl. A.G. K.P.

Date of hearing: 12.7.2021

ORDER

Qazi Muhammad Amin Ahmed, J- Fazal Ilahi, 48, in the backdrop of a dispute over immovable property was shot dead at 8:00 p.m. on 1.1.2012 within the precincts of Police Station Zaida District Swabi; the incident was reported by his brother Iftikhar who singularly blamed Gul Rehman respondent for the crime; convicted by a learned Additional Sessions Judge at Swabi under clause (b) of Section 302 of the Pakistan Penal Code, 1860, he was sentenced to imprisonment for life vide judgment dated 16.7.2012, however, acquitted from the charge by a Division Bench of Peshawar High Court vide impugned judgment dated 18.02.2015, *vires* whereof, are being assailed on the ground that in the face of overwhelming evidence primarily comprising ocular account by natural witnesses, there was no occasion for the High Court on prosecution's alleged failure on peripheral issues, an error that, according to the learned counsel for the petitioner, results into miscarriage of justice.

2. We have gone through the impugned reasoning recorded by the High Court to overturn the conviction and found it to have been swayed primarily by a plea of alibi supported by the prayer leader of the village mosque who, however, opted to stay away from the witness-box alongside the respondent himself. Similarly, certain discrepancies in the site plan were viewed to prosecution's detriment without having been confronted to the witnesses during the trial. Unscathed survival of the witnesses was also

received with suspicion by the High Court. Generality of the above observations, notwithstanding, nonetheless, the High Court does not appear to have taken any exception to the ocular account furnished by the witnesses of locality in a small rural neighborhood, unanimously pointing their finger upon the respondent. We consider it expedient to grant leave to reappraise entire evidence with a view to secure the ends of justice. Send for Gul Rehman respondent throughailable warrant in the sum of Rs.200,000/- with one surety in the like amount, returnable to the Assistant Registrar of this Court at Peshawar, executable through Station House Officer concerned within a fortnight.

Judge

Judge

Peshawar,
12th July, 2021
Azmat/-
'Not approved for reporting'