

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(D.J.) AFR

CRIMINAL PETITION NO. 1802-L OF 2017

(On appeal against the judgment dated 31.10.2017 passed by the Lahore High Court, Lahore in Murder Reference No. 406/2015 & Criminal Appeal No. 2129/2015)

Sajjad Hussain

... Petitioner

VERSUS

The State etc

... Respondents

For the Petitioner: Sardar Muhammad Latif Khan Khosa, Sr. ASC

For the State: Mirza Muhammad Usman, DPG

Date of Hearing: 21.04.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner Sajjad Hussain along with five co-accused was tried by the learned Additional Sessions Judge, Khushab pursuant to a private complaint under Sections 302/324/148/149/109 PPC in FIR No. 89 dated 21.05.2012 under Sections 302/324/148/149 PPC at Police Station Katha Saghrail, District Khushab for committing murder of Noor Hussain and Ghulam Abbas, brother and cousin of the complainant and for causing injuries to one Sabir Hussain. The learned Trial Court vide its judgment dated 29.10.2015 convicted the petitioner under Section 302(b) PPC and sentenced him to death on two counts. He was also directed to pay Rs.10,00,000/- as compensation to the legal heirs of each deceased or in default whereof to further undergo SI for six months. The co-accused Rab Nawaz was acquitted of the charge. However, the remaining co-accused were convicted under Section 302(b) PPC and were sentenced to imprisonment for life. In appeal, the learned High Court while acquitting the co-accused and while maintaining the

conviction of the petitioner under Section 302(b) PPC, altered the sentence of death into imprisonment for life on two counts. The amount of compensation and the sentence in default whereof was maintained. Both the sentences were ordered to run concurrently with benefit of Section 382-B Cr.P.C.

2. The prosecution story as narrated by the complainant in the private complaint and as given in the judgment of the learned Trial Court reads as under:-

"4. Being dis-satisfied from the Investigation, the complainant filed the instant private complaint Ex.PM on 17.06.2013, wherein he stated that he is resident of Katha Saghral. Ghulam Abbas deceased is his real brother and Noor Hussain deceased is his cousin/Khala Zad. The accused Imdad Hussain and Sajjad Hussain are real brothers inter se and are real nephew/Bhatija of accused Muhammad Ali who is also father-in-law of accused Imdad Hussain. The accused Muhammad Saleem and Muhammad Karim are real brothers inter se and are real uncles of accused Imdad Hussain and Sajjad Hussain. The accused Muhammad Munir, Saleem and Karim are uncles and cousins/Phophi zad inter se. Accused Muhammad Naeem is nephew/Bhanja of accused Karim and Saleem who is also cousin / Khala Zad of accused Imdad Hussain and Sajjad, in this way all the accused are close relatives inter se. On 22.5.2012 when the complainant alongwith his brother Khadim Hussain, Ghaus Muhammad s/o Mian Muhammad caste Jangla, Muhammad Sarfraz s/o Fateh Sher caste Chadhar resident of Katha Saghral were present on Katha Adda and at about 5.00 p.m his brother Noor Hussain, Ghulam Abbas s/o Allah Ditta cousin/Khala Zad came on car No. 1165/BDIK Model 1982 driven by Rab Nawaz s/o Dost Muhammad caste Dhool resident of Katha Saghral who was driver of the car came on Adda and remained stopped with them for some time. At 5.30 p.m. Noor Hussain and Ghulam Abbas took the vehicle and moved towards their house. When they reached a few paces ahead towards north in front of Hassan Iron Store, suddenly accused Imdad Hussain (since PO), Sajjad Hussain both sons of Wali Muhammad, Muhammad Ali s/o Sher Muhammad caste Snadha, Muhammad Naeem s/o Muhammad Munir caste Chadhar r/o Katha Saghral, all armed with Kalashnikovs came from left side of the vehicle. Imdad Hussain (since PO) discharged a burst of his Kalashnikov which shot hit on front side of neck, chest and face of Ghulam Abbas deceased. The second burst was discharged by Sajjad Hussain accused which shots hit Noor Hussain on front of his chest and both the arms. Muhammad Ali and Muhammad Naeem made indiscriminate firing which shots hit on left side door and pillar of vehicle. In the meanwhile accused Muhammad Karim, Muhammad Saleem sons of Malook Khan, Muhammad Munir son of Mureed Hussain caste Chadhar residents of Katha Saghral armed with Kalashnikovs came from right side of the vehicle. They also made straight firing on Noor Hussain and Ghulam Abbas which shots hit on different parts of the

deceased persons while passing through the body of the vehicle. Due to the firing of accused, one Sabir Hussain s/o Wali Muhammad caste Dhool resident of Katha Saghral had sustained injuries from the hands of the accused. The marks of fire shots are also present on the shutter of adjacent shop to that of "Hassan Iron Store". The driver Rab Nawaz remained safe luckily. Noor Hussain and Ghulam Abbas succumbed to the injuries in the vehicle.

5. Motive behind the occurrence is that about 02 years before, Ghulam Abbas deceased had committed murder of Wali Muhammad, the father of Imdad Hussain accused (since P.O) but subsequently a compromise was effected. The accused Imdad Hussain etc kept the grudge in their heart and due to that grudge, they committed Qatl-e-Amd of Noor Hussain and Ghulam Abbas and they also attempted on the life of Sabir Hussain, who sustained injuries in the occurrence."

3. After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced as many as 11 witnesses and 8 CWs. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. However, he did not make his statement on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against him. He also did not produce any evidence in his defence.

4. At the very outset, learned counsel for the petitioner argued that there are glaring contradictions and dishonest improvements in the statements of the prosecution witnesses of the ocular account, which have escaped notice of the courts below. Contends that the prosecution witnesses of ocular account are chance/related witnesses and they were also inimical towards the petitioner. Contends that on the same set of evidence, the co-accused of the petitioner, who were ascribed the similar role, have been acquitted of the charge whereas the petitioner has been convicted. Contends that the petitioner was declared innocent by the police in the report under Section 173 Cr.P.C to the extent of any overt act during occurrence, however, he was ascribed the role of abetment but the same has also not been proved. Contends that no recovery has been affected from the petitioner and there is no incriminating evidence against

the petitioner to distinguish his case from that of the acquitted co-accused. Contends that the prosecution has miserably failed to prove its case against the petitioner beyond reasonable doubt, therefore, there was no justification to convict the petitioner. Lastly contends that the impugned judgment is based upon contradictory and discrepant evidence and the same cannot be made basis to sustain conviction as per law and as such the same requires interference to set aside in the interest of justice.

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the evidence led by the prosecution in the shape of ocular version duly supported by medical evidence is sufficient to sustain the conviction of the petitioner, therefore, he does not deserve any leniency by this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on record.

As per the prosecution story, when both the deceased Ghulam Abbas and Noor Hussain were moving towards their house via car No. 1165-BDIK, suddenly petitioner along with co-accused Imdad Hussain, Muhammad Ali, Muhammad Naeem, all armed with Kalashnikovs came from left side of the vehicle. The petitioner fired a burst shot which hit Noor Hussain deceased on front of his chest and both the arms. Co-accused Imdad Hussain, who has reportedly been murdered in Police encounter, also fired a burst with Kalashnikov, which hit on front side of neck, chest and face of Ghulam Abbas deceased. In the meanwhile accused Muhammad Karim, Muhammad Saleem & Muhammad Munir armed with Kalashnikovs came from right side of the vehicle and made straight firing on Noor Hussain and Ghulam Abbas, which shots hit on different parts of the deceased persons while passing through the body of the vehicle. Although the petitioner has been assigned a specific role of firing at the chest and arms of the deceased Noor Hussain, however, the perusal of evidence suggests that the other co-accused namely Muhammad Karim, Muhammad Saleem and Muhammad Munir had also made straight fires on the deceased from right side of the car, which shots

hit on different parts of the body of deceased persons. However, the locale of the injuries sustained by the deceased due to the firing made by these three co-accused has not been described. We have noted that according to postmortem report, the deceased Noor Hussain sustained as many as 14 injuries on his body whereas 5 were on his chest. There is every possibility that the fire shots made by the above-named three co-accused would have also hit the chest of the deceased. However, these co-accused along with all other co-accused have been acquitted of the charge either by the learned Trial Court through a separate trial or by the High Court through the impugned judgment. There is also no denying the fact that the Police in the report under Section 173 Cr.P.C. had not found the petitioner involved in the occurrence and he was only found involved to the extent of communication with co-accused Imdad Hussain via mobile phone, who happens to be real brother of the petitioner. However, neither the mobile phone nor Call Data Record was placed on record. Furthermore, no memo of recovery of mobile phone was ever made. So far as the allegation of abetment against the petitioner is concerned, perusal of Section 107 PPC reveals that three ingredients are essential to establish/charge any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of said abetment. However, all these three ingredients of Section 107 PPC are squarely missing from the record. The weapon of offence i.e. Kalashnikove has also not been recovered from the petitioner. A bare perusal of the evidence available on record shows that there is no incriminating evidence against the petitioner to distinguish his case from that of the co-accused since acquitted. In these circumstances, a shadow of doubt in the prosecution case has been created, benefit of which must be given to the petitioner. It is settled law that a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the

accused. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.

7. For what has been discussed above, this petition is converted into appeal and allowed and the impugned judgment to the extent of the petitioner is set aside. The petitioner is ordered to be acquitted of the charge. He shall be released from jail forthwith unless detained in any other case. The above are the detailed reasons of our short order of even date.

Islamabad, the

21st of April, 2022

Approved For Reporting

Khurram