

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE SARDAR TARIQ MASOOD

AFR

Jail Petition No. 201 of 2015 &
Crl. Petition No. 322-L of 2015

*(Against the judgment of the Lahore High Court,
Lahore dated 05.03.2015 passed in Crl. Appeal
No. 2787 of 2010 & M. R. No. 04 of 2011)*

Sufyan Nawaz
Muhammad Arshad

J.P. 201
Crl. P. 322

...Petitioner(s)

VERSUS

The State etc
Sufyan Nawaz etc

J.P. 201
Crl. P. 322

...Respondent(s)

For the Petitioner(s):

Miss Nighat Saeed Mughal, ASC
(in JP 201)
Syed Karamat Ali Naqvi, ASC
(in Crl. P. 322)

For the State:

Ch. M. Sarwar Sidhu, Addl. PG Punjab

Date of Hearing:

21.10.2019

...

ORDER

Manzoor Ahmad Malik, J.-

Initially, this incident wherein Kabeer Ahmad lost his life was reported to the police by Ghulam Mustafa through a written application (Ex.PE), on the basis whereof FIR No. 399 dated 24.10.2005, under sections 302, 109, 34 PPC was registered at P.S. Gakhar Mandi, Wazirabad. Thereafter, being dissatisfied with the investigation of case, Muhammad Arshad (uncle of deceased Muhammad Kabeer and Ghulam Mustafa,

complainant of FIR) instituted a private complaint against the petitioner and his co-accused Arsalan, Shahzad @ Dadu, Ashfaq, Bahadur, Laal and Sohail Akhtar as the complainant of FIR Ghulam Mustafa was abroad. The petitioner along with his co-accused Ashfaq, Bahadur, Laal and Sohail Akhtar faced trial in the private complaint. On conclusion of trial, the petitioner was convicted by the trial court under section 302(b)/34 PPC and sentenced to death. He was also directed to pay compensation of Rs.200,000/- to the legal heirs of deceased Kabeer Ahmad in terms of section 544-A, Code of Criminal Procedure, in default whereof to undergo SI for six months. Through the same judgment, the learned trial court acquitted co-accused Ashfaq, Bahadur, Laal and Sohail by giving them benefit of doubt, whereas co-accused Arslan remained a proclaimed absconder. Aggrieved of his conviction and sentence, the convict-petitioner Sufyan Nawaz filed a criminal appeal before the Lahore High Court, Lahore. A murder reference was sent by the trial court for confirmation or otherwise of sentence of death of petitioner. Through the impugned judgment, the learned appellate court while maintaining conviction of petitioner, converted his sentence of death into imprisonment for life. Murder reference was accordingly answered in the negative. The learned High Court also extended benefit of section 382-B, Code of Criminal Procedure to the petitioner. Hence, the instant jail petition for leave to appeal.

2. Precisely, prosecution case as divulged from the contents of FIR as well as private complaint is that in the aftermath of a land dispute and on account of previous altercation between the parties, the petitioner and his co-accused while armed with their respective

weapons mounted an assault on the complainant side, as a result whereof Kabeer Ahmad lost his life.

3. We have heard learned counsel for the convict-petitioner, learned counsel for the complainant (petitioner in connected petition) as well as learned Additional Prosecutor General, Punjab at length and have perused the available record with their assistance.

4. The occurrence in this case, as per prosecution, has taken place on 24.10.2005 at 12.00 (noon), formal FIR whereof was registered on the same day at 2.10 p.m., through a written application of Ghulam Mustafa. As per postmortem examination report, autopsy on the dead body of Kabeer Ahmad was conducted on 24.10.2005 at 10.00 p.m. The unexplained delay of about ten hours in autopsy of Kabeer Ahmad (deceased) alone creates dent in the prosecution story so far as presence of eyewitnesses at the place of occurrence is concerned.

5. It is the case of prosecution in the FIR, which was got registered through a written application of Ghulam Mustafa (brother of deceased Kabeer Ahmad) that the fire so shot by petitioner with his pistol hit Kabeer Ahmad on front of his chest, whereas the fire made by co-accused Arslan hit Kabeer Ahmad on his back. In the private complaint and while appearing before the trial court, complainant Muhammad Arshad (PW7), who was also cited as an eyewitness in the FIR, made material improvement by stating that the fire so shot by co-accused Arslan hit Kabeer Ahmad on front of his chest. In his cross examination, he was duly confronted with this improvement. It has further been observed by us that complainant Muhammad Arshad (PW7) while appearing before the trial court stated that he

was a cultivator; that he used to remain at his fields round the clock and would come to village as and when needed. He admitted that in his statement before police, he had not assigned any reason for coming to village on the day of occurrence. In these circumstances, complainant Muhammad Arshad (PW7) is, by all means, a chance witness and his presence at the spot at the relevant time is not free from doubt.

6. Both the eyewitnesses in their statements recorded before the trial court fully implicated co-accused Shahzad @ Dadu with the role that he inflicted *Sota* blows on the person of Kabeer Ahmad, which landed on his nose and back. Dr. Muhammad Safdar (PW3), who conducted autopsy on the person of Kabeer Ahmad (deceased) observed injured No.4 as a lacerated wound on his nose, with further observation that nasal bone was fractured. During the course of arguments, learned counsel for the petitioner as well as learned counsel for complainant (petitioner in connected petition) stated that Shahzad @ Dadu was tried separately for being a juvenile and learned trial court, on conclusion of trial, by giving him benefit of doubt, acquitted him of the charge. It is recorded in Para 14 of the impugned judgment that Crl. Misc. No. 682-M of 2011 filed against the acquittal of co-accused of the petitioner was dismissed by the learned High Court vide order dated 17.01.2012. No further petition or appeal has been filed by the complainant against said acquittal.

7. The motive alleged by the prosecution has already been disbelieved by the learned courts below. So far as recovery of pistol from the petitioner is concerned, the learned High Court has discarded the same on the ground that the investigating agency was

not able to collect any empty from the spot and the report of FSL is confined only to working condition of that pistol. In these circumstances, we have no manner of doubt in our mind that prosecution has failed to prove its case against the petitioner beyond reasonable doubt.

8. For what has been discussed above, Jail Petition No. 201 of 2015 is converted into an appeal and the same is hereby allowed. The conviction and sentence of appellant Sufyan Nawaz are set aside. He is acquitted of the charge framed against him. He is behind the bars and is ordered to be released forthwith, if not required to be detained in any other case.

9. It is made clear that the observations given in this judgment shall not be relevant during trial of absconding co-accused and his case shall be decided on the basis of the evidence adduced by the parties (prosecution & defence), strictly in accordance with law.

Crl. Petition No. 322-L of 2015

10. Since we have acquitted respondent No.1 Sufyan Nawaz of the charge in the preceding paragraphs, therefore, instant criminal petition for enhancement of his sentence has lost its relevance, which is dismissed accordingly.

8d/ _____ J
8d/ _____ J
8d/ _____ J

Bench VI
Islamabad, the
21.10.2019
Approved For Reporting
K.Anees/-

and
24/10/19