

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Amin-ud-Din Khan

Jail Petition No.684 of 2016

(Against the judgment dated 29.11.2016 passed by the Lahore High Court Lahore in Cr. A. No.168-J of 2013 with M.R. No.202 of 2013)

Ashfaq alias Shaka

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s):	Mian Liaqat Ali, ASC
For the State:	Mirza Muhammad Usman Deputy Prosecutor General
For the Complainant:	In person.
Date of Hearing:	04.01.2022.

ORDER

Qazi Muhammad Amin Ahmed, J.:- Indicted for homicide and murderous assault alongside co-accused, since acquitted, the petitioner was returned a guilty verdict by a learned Addl. Sessions Judge at Kasur; vide judgment dated 30.05.2013, convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, he was sentenced to death with a direction to pay compensation, altered into imprisonment for life by a Division Bench of the Lahore High Court Lahore vide impugned judgment dated 29.11.2016, *vires* whereof, are being assailed through jail petition, argued by Mian Liaqat Ali, ASC.

2. According to the prosecution, on the fateful day, i.e. 18.6.2010, at 5:30 p.m., the petitioner armed with a .12 caliber short-gun accompanied by acquitted co-accused, differently armed, fatally shot Khurshid Bibi, 50/55, in the backdrop of a minor altercation of even date; Ejaz co-accused, assigned a shot to Shahid Maseeh PW, was acquitted as the latter did not support the prosecution case. Incident

was reported at 7:00 p.m. same day; the injured were medically examined under a police docket 7:30 p.m; the deceased, after struggling for life, later succumbed to the injury; her autopsy was conducted following day at 3:00 p.m. Arrested on 11.7.2010, pursuant to a disclosure, the petitioner led to recovery of short gun (C-1), founded wedded with the casings, secured from the spot.

Dissatisfied with police investigation, the complainant preferred to prosecute his case through a private complaint with the assistance of eye witnesses, namely, Hanif Mashi (PW-1) and Shoukat Maseeh (PW-2); Shahzad alias Shahid Maseeh (CW-1), injured defected from the scene.

3. Learned counsel for the petitioner contends that desertion of Shahzad alias Shahid Maseeh (CW-1) raised the entire edifice of prosecution case to the ground, inasmuch as, being an injured and close relative, he furnished details diametrically different than the case set up in the crime report and as such there was no occasion for the trial Court to return a guilty verdict on the strength of evidence inherently flawed, a circumstance that escaped High Court's notice in concurrence of error. It is next argued that evidence disbelieved qua majority of the accused cannot be pressed into service to maintain petitioner's conviction without independent corroboration, lacking hopelessly. A delayed autopsy heavily reflected upon the prosecution case, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment.

4. Heard. Record perused.

5. Despite setbacks, usual more often than not, prosecution case vis-à-vis the petitioner is firmly structured on the foundations un-trembled by the defection of an injured witness; he was medically examined under a police docket even before the autopsy was conducted; in those agonizing moments, he supported the prosecution case in his statement recorded by the Investigating Officer; it was much late in the day that he opted to part ways with the prosecution for reasons best known to him and, thus, his mysterious departure, though embarrassing to the prosecution, nonetheless, by itself, does not cast away its case in the presence of witnesses named in the crime report faithfully supporting their case.

Learned counsel for the petitioner despite detailed survey of the evidence has not been able to point out any flaw or infirmity in the statements of the witnesses that may reflect upon their presence at the

spot having seen the solitary fatal shot singularly assigned to the petitioner costing the deceased her life in broad daylight. Investigation though somewhat controversial, nonetheless, is pointed towards petitioner's culpability, further supported by recovery of weapon matched with the casing. The autopsy cannot be viewed as delayed as after initially gasping for life, the deceased breathed her last later and it is for this reason, autopsy was conducted the following day. The Courts below having rightly assessed the evidence, no interference is called for. Petition fails. Leave declined.

Judge

Judge

Judge

Islamabad, the
4th January, 2022
Azmat/-