

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE ATHAR MINALLAH

JAIL PETITION NOS. 255 & 272 OF 2018

(Against the judgment dated 08.03.2018 passed by the
Lahore High Court, Rawalpindi Bench in Capital
Sentence Reference No. 04-T/2014, Criminal Appeal
Nos. 31/2014 & 11-J/2014)

Ali Taj
Afzaar @ Afzaal

(In JP 255/2018)
(In JP 272/2018)
...Petitioner(s)

VERSUS

The State

(In both cases)
...Respondent(s)

For the Petitioner(s): Qari Abdul Rasheed, ASC

For the State: Mirza Muhammad Usman, DPG

Date of Hearing: 12.01.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioners Ali Taj and Afzaar @ Afzal were tried by the learned Anti Terrorism Court-II, Rawalpindi Division pursuant to a case registered vide FIR No. 269 dated 08.07.2012 under Sections 302/324/353/186/341/394/224/225/427/34 PPC read with Section 7 of the Anti Terrorism Act, 1997 at Police Station Saddar, Attock for committing murder of Najam ul Hassan and Mudassar Riaz and for causing injuries to Jamil Ahmed and Asfhaq Ahmed. The learned Trial Court vide its judgment dated 15.01.2014 convicted the petitioners as under:-

- i) **Under Section 302(b) PPC**
Sentenced to death on two counts.
- ii) **Under Section 7 of the Anti Terrorism Act, 1997**
Sentenced to death on two counts and to pay compensation of Rs.100,000/- each as compensation under Section 544-A Cr.P.C. and fine of Rs.100,000/- each under Section 7(a) of the ATA. The compensation and fine payable shall be recovered as

arrears of land revenue and in default whereof to undergo SI for six months each.

- iii) **Under Section 396 PPC**
Sentenced to death each and to pay fine of Rs.50,000/- each or in default whereof to undergo SI for six months.
- iv) **Under Section 324 PPC**
Sentenced to 10 years RI each on two counts along with fine of Rs.20,000/- each on two counts, in default whereof to undergo SI for six months each. They were further directed to pay compensation of Rs.50,000/- each to Jamil Ahmed and Azshfaq Ahmed PWs under Section 544-A Cr.P.C. The compensation and fine payable shall be recovered as arrears of land revenue and in default whereof to further undergo SI for six months each.
- v) **Under Section 353 PPC**
Sentenced to one year RI each.
- vi) **Under Section 186 PPC**
Sentenced to three months RI each.
- vii) **Under Section 412 PPC**
Sentenced to ten years RI each with fine of Rs.10,000/- each or in default whereof to further undergo SI for six months.
- viii) **Under Section 341 PPC**
Sentenced to one month RI each along with fine of Rs.1000/- each.
- ix) **Under Section 225 PPC**
Sentenced to two years RI each along with fine of Rs.10,000/- each or in default whereof to further undergo six months SI each.
- x) **Under Section 148 PPC**
Sentenced to three years RI each along with fine of Rs.5000/- each or in default whereof to further undergo SI for six months each.

All the sentences except under Section 302(b) PPC and 7 of the Anti Terrorism Act, 1997, were ordered to run concurrently. Benefit of Section 382-B Cr.P.C. was also extended to the petitioners.

2. In appeal the learned High Court maintained the convictions and sentences awarded to the petitioners by the learned Trial Court. The prosecution story as given in the impugned judgment reads as under:-

"The brief facts as narrated in the complaint (Ex.PCC) lodged by Jamil Ahmed, complainant (PW.16) are that on 08.07.2012, he along with Ashfaq Ahmed, Najam ul Hassan, on a yellow cab car No.RIW/993, being driven by Mudassar Riaz, were going to District Jail Attock to lodge accused Amjad Khan of case F.I.R No.203/2012 dated 26.06.2012, under Sections 381-A/411 PPC registered at Police Station City, Rawalpindi. At about 02:45 p.m. due to a speed breaker, Kamra Road, District Attock, when the speed of the car was reduced, they were surprised by four armed persons, who started firing with their pistols 30-bore from the sides which resulted into death of Najam-ul-Hassan, 8981/C and Mudassar Riaz (cab driver) and the others including complainant received injuries. The features of the accused persons were that they were young persons of middle height, wearing shalwar qamiz. After that, they took Amjad Khan accused in handcuffs along with them. The accused also snatched official SMG rifle, 30-bullets and magazine and fled away from the spot towards Teen Meela Haji Shah, on two motorcycles."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced 18 witnesses. In their statements recorded under Section 342 Cr.P.C, the petitioners pleaded their innocence and refuted all the allegations leveled against him. However, they did not appear as their own witness on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against them. They also did not produce any evidence in their defence.

4. At the very outset, learned counsel for the petitioners argued that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which have escaped the notice of the learned courts below. Contends that the prosecution case is based on whims and surmises and it has to prove its case without any shadow of doubt but it has miserably failed to do so. Contends that the medical evidence contradicts the ocular account. Contends that although the injured PWs and the deceased had sustained injuries on the different parts of the bodies but there is not even a single scratch on the car, which shows that the occurrence had not taken place in the manner as stated by the prosecution witnesses. Contends that the identification parade was conducted without observing the instructions/guidelines enunciated by the superior courts, as such, it has no value in the eye of law. Lastly contends that the reasons given by the

learned High Court to sustain conviction of the petitioners are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer submitted that to sustain conviction of an accused on a capital charge, un-rebutted ocular evidence alone is sufficient. Contends that the ocular account is supported by the medical evidence, therefore, the petitioners do 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 the record with their able assistance.

7. A bare perusal of the record reflects that the instant case is a case of promptly lodged FIR. The unfortunate incident wherein Najam-ul-Hassan, Police Constable and Mudassir Riaz, driver of the yellow cab were brutally murdered and two persons were grievously injured, took place at 02:45 PM on 08.07.2012 whereas the crime report was lodged at 04:20 PM i.e. just after two hours of the occurrence. The distance between the place of occurrence and the Police station was five kilometers. Thus, it can be said that FIR was lodged with promptitude. Promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation. There was hardly any time with the complainant or other witnesses to fabricate a false story. The ocular account in this case has been furnished by Jamil Ahmed, Sub-Inspector (PW-16) and Ashfaq Hussain, Constable (PW-17). Both these witnesses had sustained injuries during the occurrence, which have fully been supported by the medical evidence given by Dr. Muhammad Ali Bokhari, who appeared as PW-7. The testimonies of these injured PWs as well as the stamp of injuries on their person clearly proves their presence at the place of occurrence. They had no relationship with the deceased nor had any animosity against the petitioners, therefore, they are regarded as the most reliable and credible witnesses. These prosecution witnesses were subjected to lengthy cross-examination by the

defence but nothing favourable to the petitioners or adverse to the prosecution could be produced on record. These witnesses have given all necessary details of occurrence qua the date, time, place, name of witnesses, manner of occurrence, kind of weapon used in the occurrence and the locale of injuries. These PWs remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. This Court in a number of judgments has held that testimony of police officials is as good as any other private witness unless it is proved that they have animus against the accused. However, no such thing could be brought on record by the petitioners in this case. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimonies remain un-shattered during cross-examination. Learned counsel for the petitioners could not point out any reason as to why these injured PWs have involved the petitioners in the present case and let off the real culprits, who have committed murder of not only of their colleague but of an innocent taxi driver. Admittedly, these PWs had no animosity or ill-will against the present petitioners. If they had any reason to substitute the real culprits, they would have nominated the petitioners in the FIR on the very first day when the occurrence took place. As the petitioners were not known to the PWs, therefore, they were not nominated in the FIR but their features had been given by the injured PWs. After their arrest, the petitioners were identified by the PWs during identification parade, which was conducted under the supervision of Tahir Mehmood, Judicial Magistrate (PW-15). The said Judicial Magistrate categorically stated that the injured witness Jameel Ahmed had identified the accused in unambiguous terms and this process was repeated twice so that no ambiguity could be left and after completion of identification parade, he prepared the form and then issued the certificate. Both Tahir Mehmood,

Judicial Magistrate (PW-15) and Jameel Ahmed (PW-16) were subjected to lengthy cross-examination but they remained consistent on all material particulars of the prosecution case and their testimony could not be shattered despite lengthy cross-examination. Even otherwise, process of identification parade has to be essentially carried out having regard to the exigencies of each case in a fair and non-collusive manner and such exercise is not an immutable ritual, inconsequential non-performance whereof, may cause failure of prosecution case, which otherwise is structured upon clean and probable evidence. Reliance is placed on Tasar Mehmood Vs. The State (2020 SCMR 1013). During the course of arguments, learned counsel argued that although the injured PWs and the deceased had sustained injuries on the different parts of the bodies but there is not even a single scratch on the car. However, this argument of the learned counsel is misconceived. The learned Trial Court has very elaborately dealt with this issue and observed that the site plan prepared by the Investigating Officer and the scaled site plan reflect that the accused persons were very close to the car when they had fired on deceased and the injured PWs. The petitioners were armed with .30 bore pistols. The occurrence took place in the month of July when the summer is at its peak, therefore, it was obvious that the windows of the car were opened, therefore, it was natural that the bullets did not hit the car.

8. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of the deceased and the injured PWs is concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. Reliance is placed on Muhammad Iqbal Vs. The State (1996 SCMR 908), Naeem Akhtar Vs. The State (PLD 2003 SC 396), Faisal Mehmood Vs. The State (2010 SCMR 1025) and Muhammad Ilyas Vs. The State (2011 SCMR 460). It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain the conviction. Casual discrepancies and conflicts appearing in medical evidence

and the ocular version are quite possible for variety of reasons. During occurrence witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where accused caused injuries. It becomes highly improbable to correctly mention the number and location of the injuries with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query he could not point out any major contradiction, which could shatter the case of the prosecution. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The petitioners were arrested on 17.07.2012 and from their possession the weapons of offence i.e. pistols .30 bore were recovered. The Investigating Officer had already sent eight crime empties, which were collected from the place of occurrence, to the office of Forensic Science Laboratory on 16.07.2012 whereas the pistols were sent on 23.07.2012. According to the report of the FSL, the empties were found fired from the pistols recovered from the petitioners. After their arrest, the petitioners also got recovered snatched official SMG along with 25 live bullets and handcuffs, which also

provides corroboration to the prosecution story. To prove the motive part of the prosecution story, the witnesses of the ocular account appeared in the witness box and deposed against the petitioners. The perusal of the record reflects that neither the defence seriously disputed the motive part of the prosecution story nor the PWs were cross-examined on this aspect of the matter. Keeping in view the facts and circumstances of the present case, we are of the view that the prosecution has established each limb of its case by producing unimpeachable and trustworthy evidence. The learned High Court has evaluated the evidence in its true perspective and has come to the conclusion, which is neither arbitrary nor perverse. No exception can be taken to the findings arrived at by the learned High Court.

9. For what has been discussed above, we do not find any merit in these petitions, which are dismissed and leave to appeal is refused. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
12th of January, 2023
Approved For Reporting
Khurram