

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa, Sardar Tariq Masood and Syed Mansoor Ali Shah, JJ**LAL KHAN and others---Appellants****Versus****QADEER AHMED and others---Respondents**

Criminal Appeals Nos. 449 and 450 of 2017, decided on 1st June, 2018.

(Against the judgment dated 02.02.2016 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeal No. 108 of 2011 and Capital Sentence Reference No. 2-T of 2011)

(a) Penal Code (XLV of 1860)---

---Ss. 302(b), 353, 186 & 34---Anti-Terrorism Act (XXVII of 1997), Ss. 7(a), 7(b) & 7(h)---Qatl-i-amd, assault or criminal force to deter public servant from discharge of his duty, obstructing public servant in discharge of public function, common intention, acts of terrorism---Appeal against acquittal---Reappraisal of evidence---Accused and his co-accused allegedly exchanged fire with a police party, as a result of which the co-accused and a police official lost their lives---According to the prosecution the initial firing at the police had been resorted to by the accused and co-accused and through such firing one member of the police force had been critically injured at the spot, then the question was as to why the police in firing back chose co-accused as the only target---Site plan clearly showed that if the police party wanted to target the accused as well then there was nothing to stop it from causing injuries to him---Such circumstances indicated a real possibility that it was only the co-accused who had fired at the police party and in response the police party had fired back at him and that accused had not fired at all and surrendered before the police without causing any harm to anybody---Four crime-empties secured from the place of occurrence did match with the pistol statedly recovered from the custody of the accused at the time of his surrender but it could not be lost sight of the fact that the said pistol had been recovered at the spot and it was not difficult for the police party to manufacture as many crime-empties from the said recovered pistol as it wanted so as to strengthen its case against the accused---Circumstances of the case clearly indicated that after surrender of accused some engineering had been resorted to by the prosecution so as to cook up a story qua the accused's role and to bolster the same through contrived circumstances---No occasion was found to interfere with the judgment of acquittal passed by the High Court in favour of the accused---Appeal against acquittal was dismissed accordingly.

(b) Criminal trial---

---'Conjectures' and 'inferences'--- Scope and distinction---"Conjecture" had no place in criminal law whereas an inference played an important role because the same was based upon a logical deduction from circumstances available on the record.

Malik Matee Ullah, Advocate Supreme Court for Appellants (in Cr. A. 449 of 2017).

Ahmed Raza Gillani, Additional Prosecutor-General, Punjab for Appellants (in Cr. A. 450 of 2017).

Haider Mehmood Mirza, Advocate Supreme Court for Respondents (in both cases).

Date of hearing: 1st June, 2018.

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---Qadeer Ahmed respondent and his brother namely Ijaz were statedly present in their house at about 04.30 p.m. on 29.07.2009 in village Mian Rasheeda in the area of Police Station New Airport, Attock when a raiding police party entered their house and in the ensuing firing between the parties one member of the police party namely Muhammad Akram, S.I. and one from the

accused party namely Ijaz received bullet injuries leading to their death. In the said episode Qadeer Ahmed respondent had statedly surrendered before the police along with his pistol and upon such surrender the said respondent was arrested at the spot and his pistol was secured as the weapon of offence. With the said allegations the respondent and his deceased co-accused were booked in case FIR No. 74 registered at the above mentioned Police Station during the same evening and after a regular trial the respondent was convicted and sentenced by the trial court for offences under sections 302(b), 353 and 186, P.P.C. read with section 34, P.P.C. and sections 7(a), 7(b) and 7(h) of the Anti-Terrorism Act, 1997. For the offences of murder and terrorism the respondent was sentenced by the trial court to death. The respondent challenged his convictions and sentences before the High Court through an appeal which was allowed, his convictions and sentences recorded by the trial court were set aside and he was acquitted of the charge. Hence, the present appeals by leave of this Court granted on 11.01.2017.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. There are certain facts which are not disputed in this case and they include the facts that the place of occurrence was the house of Qadeer Ahmed respondent and his deceased brother Ijaz, it was the police party which had gone to that house to conduct a raid and the said party surprised the respondent and his deceased co-accused who were otherwise peacefully present in their own house, upon seeing the police party it were the respondent and his deceased co-accused who had started firing at the police party which fires had hit Muhammad Akram, S.I. leading to his death and in retaliation of such firing at the police party the police had fired back at Ijaz co-accused who after receipt of firearm injuries at the hands of the police died at the spot. There was a serious infirmity in this story of the prosecution and that was that if, according to the prosecution itself, the initial firing at the police had been resorted to by Qadeer Ahmed respondent and his deceased co-accused namely Ijaz and if through such firing one member of the police force had been critically injured at the spot then what was expected was that the police party would fire back at both the present respondent and his deceased co-accused rather than choosing the said co-accused as the only target of the police response. The places of presence of the accused party and the police party at the spot shown in the site-plan of the place of occurrence clearly established that if the police party wanted to target Qadeer Ahmed respondent as well then there was nothing to stop it from causing injuries to him. This shows that the police party had not fired at Qadeer Ahmed respondent which is a clear indication of a real possibility that it was only the respondent's co-accused namely Ijaz who had fired at the police party and in response the police party had fired back at him and that Qadeer Ahmed respondent had not fired at the deceased at all and that is why he was not hurt by the police party. It may be true that four crime-empties secured from the place of occurrence had matched with the pistol statedly recovered from the custody of Qadeer Ahmed respondent at the time of his surrender before the police party at the spot but it cannot be lost sight of that the said pistol had been recovered at the spot and it was not difficult for the police party to manufacture as many crime-empties from the said recovered pistol as it wanted so as to strengthen its case against Qadeer Ahmed respondent. These factors available on the record of this case cannot be treated as conjectures because they are not purely speculative. We find that such circumstances lead to inferences which can be drawn on the basis of the facts available on the record. It is trite that a conjecture has no place in criminal law whereas an inference plays an important role because the same is based upon a logical deduction from circumstances available on the record. The circumstances becoming clear to us upon a proper appreciation of the evidence available on the record go a long way in convincing us that Qadeer Ahmed respondent had not fired at the police party at all and that is why he was not harmed by the police

party at the spot and also that he had surrendered before the police without causing any harm to anybody and after his surrender some engineering had been resorted to by the prosecution so as to cook up a story qua the respondent's role and to bolster the same through contrived circumstances.

4. For what has been discussed above we have found no occasion for interference with the impugned judgment of acquittal of Qadeer Ahmed respondent passed by the High Court. These appeals are, therefore, dismissed. The bail bond and surety of Qadeer Ahmed respondent, if any, shall stand discharged.

MWA/L-2/SC Appeals dismissed.