

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,

JJ

MUHAMMAD BILAL---Appellant

Versus

The STATE and others---Respondents

Criminal Appeal No. 104-L of 2017, decided on 15th May, 2019.

(On appeal from the judgment dated 12.01.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No. 1119 of 2012 and Capital Sentence Reference No. 30-T of 2012)

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

---S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Murder in a court premises---Deceased was alleged to have killed the accused's brother---During the trial of deceased, at one of the court hearings he was shot and killed by the accused while being escorted from court---Admitted facts were that there was previous bad blood between the parties in the aftermaths of murder of accused's brother at deceased's hands and that case was fixed before the Court on the fateful day are common grounds---Presence of eye-witnesses at the spot, including police officials and a co-accused of the case against the deceased, could not be doubted---All said witnesses were in unison on all the details of the occurrence, salient as well as collateral---Accused's arrest at the crime scene shortly after the occurrence with a .30 caliber pistol subsequently found wedged with two out of three casings secured from the spot went a long way to exclude hypothesis of his innocence---Cautious analysis of evidence on record irresistibly lead to the conclusion of accused's guilt---Conviction of accused under S. 302(b), P.P.C. and award of death sentence consequent thereupon was upheld---Appeal was dismissed in circumstances.

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

---S. 302(b)---Anti-Terrorism Act (XXVII of 1997), S. 7(a)---Qatl-i-amd, act of terrorism---Reappraisal of evidence---Murder in a court premises---Question as to whether conviction and sentence under S. 7(a) of Anti-Terrorism Act, 1997 was justified---Deceased was alleged to have killed the accused's brother---During the trial of deceased, at one of the court hearings he was shot and killed by the accused while being escorted from court---Held, that conduct of the accused was certainly far from being benign; he choose a venue most guarded by law to settle his score, nonetheless, he was undoubtedly actuated to quench a personal vendetta---Every act of violence triggered fear and panic with collateral impact on the surroundings; but this by itself would not bring even the most violent act to fall within the mischief of "terrorism" as contemplated by the Anti-Terrorism Act, 1997---Accused's conviction and sentence under S. 7(a) of the Anti-Terrorism Act, 1997, was set aside, however his conviction under S. 302(b), P.P.C and award of death sentence consequent thereupon was upheld---Appeal was dismissed accordingly.

Amjad Ali and others v. The State PLD 2017 SC 661 and Farooq Ahmed v. State and another PLJ 2017 SC 408 ref.

Rai Bashir Ahmad, Advocate Supreme Court for Appellant.

Muhammad Irfan Malik, Advocate Supreme Court for Respondent No.2.

Mazhar Sher Awan, Additional Prosecutor-General, Punjab for the State.

Date of hearing: 15th May, 2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Adnan Aslam, deceased was being tried for committing qatl-i-amd of one Mehtab; on fateful day i.e. 11.03.2011 at about 09:30 a.m. he alongside

co-accused appeared before a learned Additional Sessions Judge at Gujranwala; after hearing he was being escorted back when Muhammad Bilal, appellant, brother of Mehtab deceased, armed with .30 caliber pistol, confronted him to avenge the earlier incident; he targeted three fire shots on different parts of his body as a result whereof, he succumbed to the injuries at the spot. Present in the precincts, Mukhtar Ahmad, S.I. PW-13, with assistance of his colleagues subdued the appellant at the spot. Incident was reported on the complaint of the deceased's father Muhammad Aslam, PW-9 wherein he arrayed, besides the appellant, Manzoor Ahmad and Shahzad Ahmad, alongside two unknown companions as accused for the crime; they were indicted before an Anti-Terrorism Court at Gujranwala; learned trial Judge while extending benefit of the doubt to Manzoor Ahmad and Shahzad Ahmad, co-accused, convicted the appellant under clause (b) of section 302 of the Pakistan Penal Code, 1860 read with clause (a) of section 7 of the Anti-Terrorism Act, 1997 and sentenced him to death on both counts along with compensation and fine in the sum of Rs.100,000/- respectively vide judgment dated 12.06.2012; his appeal met with no better fate; a learned Division Bench of the Lahore High Court affirmed the Capital Sentence Reference vide impugned judgment dated 12.01.2015 vires whereof are being disputed through leave of the Court.

2. Previous bad blood in the aftermaths of murder of appellant's brother at deceased's hands and fixation of case before the Court on the fateful day are common grounds. However, according to the defence the deceased was shot while attempting to flee by a police contingent. In this backdrop, prosecution has primarily relied upon the statements of Ghanafar Khalid, PW-8, Muhammad Aslam, PW-9, Muhammad Zaman, PW-10 and Mukhtar Ahmad, SI, PW-13; of them Ghanafar Khalid, PW-8, escorted the deceased in custody after court hearing. Muhammad Aslam, PW was a co-accused required to appear in the same case; Mukhtar Ahmad, SI, was also present in the premises. Presence of these witnesses cannot be doubted at the spot; they are in a comfortable unison on all the details of the occurrence, salient as well as collateral. Embarrassingly lengthy cross-examination remained inconsequential throughout. Defence's edifice is structured upon bald suggestions alone, denied by the witnesses with vehemence. Appellant's arrest at the crime scene shortly after the occurrence with a .30 caliber pistol subsequently found wedded with two out of three casings secured from the spot goes a long way to exclude hypothesis of his innocence. Acquittal of co-accused, tried for being in the community of intention, out of abundant caution, does not adversely impact upon prosecution's case. Responsibility for the crime, unambiguously, revolves around the appellant alone. A most stringent and cautious analysis irresistibly leads to the conclusion of appellant's guilt; he has been rightly returned a guilty verdict, however in so far as his conviction under clause (a) of section 7 of the Act *ibid* is concerned, it is found by us as inconsistent with the law declared by this Court in the cases of *Amjad Ali and others v. The State* (PLD 2017 SC 661) and *Farooq Ahmed v. State and another* (PLJ 2017 SC 408). Clause (iii) of Section 4 of the Third Schedule to the Act *ibid* provides an Anti-Terrorism Court as a forum for trial of offences involving, *inter alia*, "firing or use of explosives by any device, including bomb blast in the Court premises". Therefore the learned Special Judge was well within remit of law to try the appellant, however his conviction under section 7(a) of the Act *ibid* has to be essentially consequent upon a nexus between his act and situations provided in section 6 thereof. Aftermaths of appellant's conduct were certainly far from being benign; he choose a venue most guarded by law to settle the score, nonetheless, he was undoubtedly actuated to quench a personal vendetta. Every act of violence triggers fear and panic with collateral impact on the surroundings; this by itself would not bring even a most violent act to fall within the mischief of terrorism as contemplated by law. Therefore, appellant's conviction and sentence under section 7(a) of the Act *ibid* is set aside, however his conviction under clause (b) of section 302 of the Code *ibid* and sentence consequent thereupon is upheld. With the above modification, Criminal Appeal 104-L/2017 is dismissed. MWA/M-27/SC Order accordingly.