

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,**JJ****TARIQ ALI SHAH and another---Appellants****Versus****The STATE and others---Respondents**

Criminal Appeals Nos. 298 and 299-L of 2017, decided on 24th June, 2019.

(Against the judgment dated 26.11.2014 passed by the Lahore High Court, Lahore in Criminal Appeals Nos. 1985 and 2098 of 2011 and C.S.R. No. 45-T/2011)

Penal Code (XLV of 1860)---

---S. 302(b)---Anti-Terrorism Act (XXVII of 1997), S. 7---Qatl-i-amd, acts of terrorism---Reappraisal of evidence---Accused was alleged to have murdered one of his rivals within the precincts of office of Superintendent of Police---Arch rivalry with string of criminal cases between the two sides was admitted---Arrest of accused from the office of Superintendent of Police did not find mention in the crime report---Prosecution's claim that a police official arrested the accused from first floor of the office had to be taken with a pinch of salt; according to his narrative, he first went to the hospital to draw up preliminary proceedings, a time intensive exercise, and thereafter upon his return apprehended the accused at the spot with a weapon---Question was as to why in a heavily guarded premises no one else attempted to arrest the accused---Acquittal of one of the co-accused by the High Court was yet another blow to the prosecution case; she was a lady constable, indicted for being privy to the crime and providing logistical support to the accused---Acquittal of said co-accused shook the very foundation of the prosecution case---Hypothesis of consultations and deliberations could not be ruled out due to the belated autopsy conducted a day after the incident---Injuries on the deceased mentioned in the autopsy report were incompatible/inconsistent with the weapon seized from the accused at the time of his arrest---Such fact cast away the hypothesis of accused's arrest soon after the occurrence alongside the weapon of offence---Witnesses did not appear to have come forward with the whole truth and given the past enmity between both sides, patent discrepancies could not be viewed as trivial, particularly after prosecution's failure qua three of the co-accused albeit with somewhat different roles--Accused was acquitted from the charge in circumstances.

Abid Saqi, Advocate Supreme Court for Appellants (in Criminal Appeal No. 298-L of 2017).

Naveed Ahmed Kh., Advocate Supreme Court for Appellants (in Criminal Appeal No. 299-L of 2017).

Ch. Muhammad Mustafa, DPG for the State.

Naveed Ahmed, Kh., Advocate Supreme Court for Respondent No.2 (in Criminal Appeal No. 298-L of 2017).

Date of hearing: 24th June, 2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Through leave of the Court, impugned herein is High Court's judgment dated 26.11.2014 whereby conviction of Ahad Shah, appellant, returned by the trial Court was upheld with modification of death penalty into imprisonment for life; he was indicted alongside Shahbaz Ali, Adal Shah, Sattar Shah and Mst. Kousar alias pathano for committing qatl-i-amd of Saqib Shah within the precincts of office of Superintendent of Police, Laylpur Town, Faisalabad at 3.45 p.m. on 2.5.2011. On the fateful day, investigation in a criminal case brought both the factions face-to-face at the venue; from amongst the array of accused, Adal Shah and Sattar Shah, blamed for abetment, were acquitted by the trial Court whereas Mst. Kousar alias Pathano has been let off by the High Court; Shahbaz Ali, co-accused slipped away before announcement of the judgment.

In the backdrop of a longstanding enmity, on the fateful day, the appellant, armed with a .30 caliber pistol, targeted the deceased with multiple fire shots; apprehended at the spot alongside the weapon, wedged with six casings secured from the spot, he was tried by an Anti-Terrorism Court, to receive a guilty verdict.

2. Arch rivalry with string of criminal cases between the two sides is a common ground; appellant's arrest with the weapon shortly after the occurrence statedly from the precincts of office of Superintendent of Police are circumstances, at first sight, pointed inexorably towards his culpability, however, on a closer scrutiny of prosecution's case, a number of factors san plausible explanations; his arrest from the office of Superintendent of Police does not find mention in the crime report; prosecution's claim that Nazakat Ali, SI, PW-9 arrested the appellant from first floor of the office has to be taken with a pinch of salt; according to his narrative, he first went to Allied Hospital, Faisalabad to draw up preliminary proceedings, a process essentially time intensive, and thereafter upon his return apprehended the appellant at the spot with weapon. It is mind boggling as to why in the heavily guarded premises no one else attempted to arrest the appellant; mute response in a heightened situation is somewhat intriguing; genesis of the script is inherently suspect. Acquittal of Mst. Kousar alias Pathano by the High Court is yet another devastating blow to the prosecution; she is a lady constable, indicted for being privy to the crime; it is alleged that clad in a sheet, she took aside the appellant shortly before the incident; logistical support is suggested though with reticence; her acquittal tremors down the very foundation of the case. No less intriguing is belated autopsy conducted the following day i.e. 3.5.2011 at 9.40 a.m. The deceased was shifted dead in the mortuary on 2.5.2011 where complaint was recorded at 4.20 p.m.; Allied Hospital, Faisalabad is a tertiary hospital; holding in abeyance of postmortem examination for such a long period is mind boggling to say the least; it reasonably spaces the hypothesis of consultations and deliberations. Findings recorded by the medial officer further add to the prosecution's predicament; use of a .30 caliber pistol is unequivocally alleged as the only weapon employed by the appellant, however, according to the autopsy report, the medical officer noted "A complex of 22 firearms wounds of entries of different shape and sizes (2 mm x 2 mm to 1 cm x 1 cm) in an area of 23 cm x 7 cm on lower chest and abdomen. Left part". The High Court itself viewed the above injury with suspicion for being incompatible/inconsistent with the weapon, seized with appellant's arrest. It casts away the hypothesis of appellant's arrest soon after the occurrence alongside the weapon of offence. Witnesses do not appear to have come forward with the whole truth and given the formidable past hounding both sides, patent discrepancies cannot be viewed as trivial, particularly after prosecution's failure qua three of the co-accused albeit with somewhat different roles. It would be unsafe to maintain the conviction. Criminal Appeal No. 299-L/2017 is allowed; impugned judgment is set aside; the appellant is acquitted from the charge and shall be released forthwith, if not required in any other case. As a natural corollary, Criminal Appeal No.298-L/2017 is dismissed. MWA/T-5/SC Order accordingly.