

[Supreme Court of Pakistan]

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

Criminal Appeal No. 185-L of 2017, decided on 24th June, 2019.

(Against the judgment dated 17.2.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No. 72 of 2012 and CSR No. 4-T of 2012)

Penal Code (XLV of 1860)---

---Ss. 302(b) & 324---Qatl-i-amd, attempt to commit qatl-i-amd---Reappraisal of evidence---Benefit of doubt---Investigative conclusions reinforced the hypothesis of a wider net and once such a possibility was reasonably contemplated, participation of each nominee would inherently be fraught with suspicion---Seizure of two types of empties during spot inspection unmistakably suggested number of assailants much less than mentioned in the crime report---Acquitted co-accused persons were inexorably placed in an identical position with the present accused persons---Witnesses were found unworthy of reliance, and there was nothing to improve upon their credence---Once rejected, evidence of prosecution's witnesses could not be pressed into service to sustain the charge---Prosecution's case failed on investigative and forensic sides, therefore, it would be unsafe to maintain the convictions without potential risk of error---By extending benefit of doubt, appeal was allowed, and the accused persons were acquitted from the charge.

Munir Ahmad Bhatti, Advocate Supreme Court and Mrs. Tasnim Amin, Advocate-on-Record for Appellants.

Ch. Muhammad Mustafa, DPG for the State.

Naveed Ahmad Kh., Advocate Supreme Court for Respondent No.2.

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 17.2.2015 whereby appellants' convictions recorded by the trial Court have been affirmed, albeit with alternation of death penalties into imprisonment for life.

2. Appellants, namely, Tariq Shah, Makhdoom Hussain and Fayyaz Shah have been arrayed as accused alongside Saqib Shah, Husnain Shah, Abbas Shah, Aoun Shah, Ali Hassan, and Ali Hussain on the complaint of Syed Ahad Haider Shah for committing qatl-e-amd of Ghulam Abbas Lak, Sammar Ali Shah and Qamar Ali Shah besides murderous assault upon Muhammad Naveed, Muhammad Ashiq, Muhammad Adil and Shahzad, PWs at 8.45 a.m. on 12.10.2009 within the remit of Police Station Civil Lines, Faisalabad. According to the prosecution, on the fateful day, arrived at the scene in two vehicles, armed with Kalashnikovs, they confronted the deceased and the injured in front of Anti-Terrorism Court, Faisalabad; Saqib Shah accused is assigned a burst to Ghulam Abbas Lak deceased; Makhdoom Shah fired upon Sammar Ali Shah and Ghulam Abbas Lak whereas Husnain Shah and Tariq Shah targeted Qamar Ali Shah and Sammar Ali Shah deceased; Tariq Shah joined the co-accused while hitting Sammar Ali Shah; Abbass Shah once again targeted Ghulam Abbas Lak while Ali Hussain Shah shot Sammar Ali Shah; fire shots by Ali Hassan hit Qamar Ali Shah; Fayyaz Hussain Shah resorted to indiscriminate firing on Muhammad Naveed whereas Aoun Shah targeted Ashiq and Muhammad Adil. A police constable on duty, namely, Muhammad Shahzad, was also caught in the line of fire; motive for the crime is previous enmity.

During spot inspection, the Investigating Officer secured nine casings ejected from two types of weapons i.e. Kalashnikov and .222 caliber gun besides a .30 caliber pistol with six live bullets.

3. Before appellants' indictment, through separate trial, Saqib Shah, Husnain Raza, Ali Hassan and Ali Hussain, were acquitted from the charge. It is a common ground that Abbas Ali Shah and Aoun Shah, accused tried subsequently, were also issued a clean chit. Acquittal of the identically placed co-accused notwithstanding and despite exoneration, the appellants, however were convicted by the learned trial Court with ultimate penalty, altered into imprisonment for life vires whereof are being assailed before us.

4. An internecine feud is long raging between the two sides facing each other in and outside the courts and in this backdrop, appellants' culpability, warrants a cautious judicial scrutiny. Huge loss of lives and receipt of multiple injuries by the witnesses are confirmed by those who miraculously endured the assault; their presence at the crime scene cannot be doubted, nonetheless, whether they are telling the whole truth is an issue altogether different; while the assailants certainly desired to eliminate old adversaries, the former may not have qualms to utilize the incident to see that some heads roll. Seen from this angle, participation of a large number of accused, each armed with automatic weapon, to take the victims by surprise is really intriguing; with formidable lethality of the weapons used in first strike, every single of them could conveniently engage the intended targets; wholesale participation is an uncalled for imprudence, certainly avoidable; investigative conclusions and earlier adjudications reinforce the hypothesis of a wider net and once such a possibility is reasonably contemplated, participation of each nominee would inherently be fraught with suspicion. Seizure of two types of empties during spot inspection unmistakably suggests number of assailants much less than mentioned in the crime report. There is yet another predicament facing the prosecution in the totality of circumstances; those acquitted from the charge are inexorably placed in an identical position with the present appellants. The witnesses were found unworthy of reliance; there is nothing to improve upon their credence; injuries suffered by them are not passports into the realm of truth; once rejected, evidence of prosecution's witnesses cannot be pressed into service to sustain the charge, similar on all fours. Prosecution is also failing on investigative and forensic sides. It would be unsafe to maintain the convictions without potential risk of error, therefore, by extending benefit of doubt, Criminal Appeal is allowed; impugned judgment is set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case.

MWA/T-6/SC Appeal allowed.