

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,**JJ****SHEWAIZ RASOOL alias SHABI---Appellant****Versus****The STATE and others---Respondents**

Criminal Appeal No. 135-L of 2017, decided on 14th May, 2019.

(On appeal from the judgment dated 11.02.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No. 1130-J of 2010 and Capital Sentence Reference No. 39-T of 2010)

Penal Code (XLV of 1860)---

---S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence--- Rule of consistency---Accused and acquitted co-accused assigned similar roles during occurrence---Role assigned to the accused of firing at the deceased was similar to that of the two acquitted co-accused---In the absence of any specific motive no distinction could possibly be drawn so as to distinguish, even obliquely accused's case from his co-accused---One of the co-accused was acquitted by the Supreme Court for a variety of reasons; these included issue of identity of assailants during the night of occurrence; improbability of witnesses' detour preceding assault and arrival at the scene exactly at the time when firing commenced; human incapacity to capture minor details in an extreme crisis situation involving no less than eight persons and lack of motive etc.---All said reasons were squarely applicable to the case of accused as well--- Appeal was allowed and accused was acquitted of the charge.

Ms. Khalida Parveen, Advocate Supreme Court and Mian Ghulam Hussain, Advocate-on-Record for Appellant.

Respondent No.2 in person.

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

Date of hearing: 14th May, 2010.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Muhammad Akbar and his three sons, namely Qasim Ali, Mubashir Hussain and Nazeer Hussain were done to death at 9.30 p.m. on 20.6.2004 within the remit of Police Station Kunjha, District Gujrat. Incident was reported by Amjad Ali, PW who escaped assailant's wrath as according to him he alongside his mother and maternal uncles arrived at the scene just when the family was being given blood bath. It is prosecution's case that the complainant and his mother had visited Muhammad Anwar and Muhammad Akbar, later's real brothers to settle certain family differences and it was after reconciliation that the witnesses returned home together.

Shewaiz Rasool, the present appellant, alongside Shahid Afzaal and Muhammad Rafi co-accused, armed with automatic weapons, were blamed to have targeted the deceased with multiple shots. Khawar Ali, Qamar-uz-Zaman, Muhammad Luqman, Muhammad Boota and Asad Ullah, differently armed were also alleged to have resorted to firing. The witnesses viewed the occurrence in electric bulb light; motive is conspicuously absent in the crime report.

2. The appellant stayed away from law, while remainder were tried by an Anti-Terrorism Court. Convicted on multiple counts, Shahid Afzaal and Muhammad Rafi were sentenced to death, whereas Khawar Ali, Muhammad Boota, Qamar-uz-Zaman, Asad Ullah and Muhammad Luqman, to imprisonment for life. In the wake of remand for re-writing of the judgment, the case came up before the learned High Court when vide judgment dated 18.11.2008 it maintained convictions and sentences of Shahid Afzaal and Muhammad Rafi while acquitting the remainder from the charge; appeal filed by them was allowed by this Court. It was a posthumous success for Shahid Afzaal, died during the pendency of his appeal. The appellant has been subsequently tried in the above backdrop; he was convicted on multiple counts and sentenced to death by the learned trial Court vide judgment dated

22.4.2010, affirmed by the learned High Court vide impugned judgment dated 11.2.2015 vires whereof are being challenged through leave of the Court.

3. The appellant is identically placed, on all fours, with Muhammad Rafi and Shahid Afzaal, co-accused; they had been assigned joint firing on the deceased; in the absence of any specific motive no distinction can be possibly drawn so as to distinguish, even obliquely appellant's case from his co-accused. Though not assigned any harm to the deceased or the witnesses, acquittal of Khawar Ali, Muhammad Boota, Qamar-uz-Zaman, Asad Ullah and Muhammad Luqman stated to be in the company and community of intention with the appellant and acquitted co-accused, firing side by side, does cast a dark shadow upon prosecution's case. This Court for a variety of reasons, each valid, acquitted Muhammad Rafi, co-accused from the charge; these include issue of identity of assailants during the fateful night; improbability of witnesses' detour preceding assault and arrival exactly at a point of time when firing commenced; human incapacity to capture minor details in an extreme crises situation involving no less than eight persons and lack of motive etc.; these are squarely applicable to the case of present appellant as well and thus we have not been able either to draw any distinction or take a different view. Sauce for the goose is sauce for the gander. Resultantly, Criminal Appeal No.135-L/2017 is allowed, impugned judgment is set aside. The appellant shall be set at liberty, if not required in any other case.

MWA/S-28/SC Appeal allowed.