

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

JJ

MUHAMMAD YAQOOB---Appellant

Versus

The STATE---Respondent

Criminal Appeal No.154-L of 2017, decided on 30th May, 2019.

(On appeal from the judgment dated 10-2-2015 passed by the Lahore High Court, Lahore in Criminal Appeal No.463 of 2010 and CSR No26-T/2010).

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

----S. 302---Anti-Terrorism Act (XXVII of 1997), S. 7(a)---Murderous assault in court premises---Reappraisal of evidence---Conviction under Anti-Terrorism Act, 1997---Scope---Accused was present in court to record his statement as a witness when the murderous assault took place and accused allegedly fired at the complainant side---Anti-Terrorism Court sentenced the accused to death on two counts---Held, that admittedly there was enmity raging between both parties---Accused was arrested on the spot in the court room and he had not denied his presence during the episode albeit with the story of uncalled for provocation offered by the deceased persons---Three casings secured by the investigating officer though in commensurate with the number of alleged fire shots, nonetheless, were opined to have been fired from the weapon carried by the accused---Totality of circumstances pointed to the accused's guilt, and he had rightly been convicted on the charge of homicide, however his conviction under the Anti-Terrorism Act, 1997 was not in consonance with the law declared by the Supreme Court in the cases reported as Amjad Ali and others v. The State (PLD 2017 SC 661) and Farooq Ahmad v. The State and another (PLJ 2017 SC 408) and was, therefore, set aside---Appeal was dismissed with the said modification.

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

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

----S. 302---Murderous assault in court premises---Re-appraisal of evidence---Sentence, reduction in--Death sentence altered to imprisonment for life---Accused was present in court to record his statement as a witness when the murderous assault took place and accused allegedly fired at the complainant side---Trial Court sentenced the accused to death on two counts---Held, that the accused himself sustained injuries during the occurrence receipt whereof was denied by the prosecution witnesses---Such circumstance clouded moments immediately preceding the occurrence into mystery, particularly when in the given background, the accused was appearing only as a witness and had no exclusive motive, targeted upon the deceased persons---Alteration of death penalty awarded to accused into imprisonment for life would not be unconscionable in circumstances---Consequently, penalty of death awarded to accused on both counts was altered into imprisonment for life, with both sentences to run concurrently---Appeal was dismissed with the said modification.

Saqib Akram Gondal, Advocate Supreme Court for Appellant.

Ch. M. Mustafa, Deputy Prosecutor General for the State.

Date of hearing: 30th May, 2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Gohar Zaman, Muhammad Afzal, Muhammad Ashraf, Babar, Zulfiqar Ali, Shiraz Ahmed, Asad Abbas, Muhammad Suleman, Muhammad Bashir, Arshad Bhatti, Haji Mushtaq and Muhammad Amjad, accused in a case of homicide, appeared before a learned Additional Sessions Judge within the precincts of District Courts, Gujrawnwala on 11-7-2009; posted for recording of evidence, the case was, however, adjourned for 17-7-2009 and it was soon thereafter, inside the court-room, the appellant alongside Muhammad Mushtaq, Haji Muhammad

Siddique, Qaisar Munir with two unknown persons, differently armed, emerged at the scene; they resorted to firing; the appellant, cited as a witness in the said case, with a .30 caliber pistol, fired upon Gohar Zaman and Arshad Bhatti followed by Muhammad Siddique who targeted Muhammad Ashraf, PW-14 while Muhammad Mushtaq and Qaisar Munir fired upon Muhammad Bashir, given up PW, and Muhammad Afzal, PW-12, respectively; they were joined by the unknown assailants; according to the crime report, lodged by Zeeshan Ilyas, PW-13, one Gogi was also shot during the occurrence. The assailants took to the heels except the appellant, apprehended at the spot and handed over to the police with two .30 caliber pistols, one found forensically wedged with three casings, secured during spot inspection. As the investigation progressed, Qaiser Munir and Haji Muhammad Siddique were let off; Muhammad Mushtaq, co-accused is still away from law. Prosecution is clueless about the unknown accused till date. The appellant alone was indicted before an Anti Terrorism Court; he was returned a guilty verdict with penalty of death on two counts, upheld by a learned Division Bench of Lahore High Court vide impugned judgment dated 10.02.2015 vires whereof are being assailed through leave of the Court.

2. Prosecution case, predominantly, is founded on common grounds; these include, enmity long raging between the two factions, hearing of the case, appearance of the deceased and the appellant being amongst the witnesses, on the fateful day, at the venue, a court-room as well as appellant's arrest therefrom. Though with some reticence, nonetheless, the appellant has not denied his presence during the episode albeit with the story of a most uncalled for provocation offered by the deceased. Three casings secured by the Investigating Officer though incommensurate with the number of alleged fire shots, nonetheless, were opined to have been fired from the weapon carried by the appellant. Totality of circumstances does not space any hypothesis other than appellant's guilt; he has rightly been convicted on the charge of homicide, however, quantum of sentence, notwithstanding the venue, warrants reconsideration. It is prosecution's own case that the appellant attended the Court to record his statement as a witness; the case was adjourned without recording of evidence and it is subsequent thereto that as many as six accused started firing upon the deceased and the PWs; two from amongst them have since been exonerated, never tried even through private complaint; Muhammad Mushtaq along with two unknown accomplices is still away from law; appellant's acquittal from the charge of attempted homicide has not been challenged. Appellant himself sustained injuries receipt whereof is denied by the prosecution witnesses. These circumstances cloud moments immediately preceding the occurrence into mystery, particularly when in the given background, the appellant had no exclusive motive, targeted upon the deceased. In this backdrop, as a cumulative impact, alteration of death penalty into imprisonment for life would not be unconscionable in circumstances. Consequently, penalty of death on both counts is altered into imprisonment for life; sentences shall run concurrently with benefit of Section 382-B of the Code of Criminal Procedure, 1898. Though the aftermaths far from being benign, nonetheless, having no nexus with the situations and effects thereof, contemplated by Section 6 of the Anti Terrorism Act, 1997, appellant's conviction under section 7(a) thereof is not inconsonance with the law declared by this Court in the cases reported as Amjad Ali and others v. The State (PLD 2017 SC 661) and Farooq Ahmad v. The State and another (PLJ 2017 SC 408) and is, therefore, set aside. With the above modification, Criminal Appeal is dismissed.

MWA/M-34/S Appeal dismissed.