

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Sayyed Mazahar Ali Akbar**Naqvi, JJ****MUHAMMAD SHABBIR and others---Appellants****Versus****The STATE---Respondent**

Criminal Appeal No. 66-L of 2020 in Criminal Petition No. 1189-L of 2014, decided on 23rd June, 2020.

(Against the judgment of the Lahore High Court, Lahore dated 23.10.2014 passed in Capital Sentence Reference No. 34-T of 2007 and Criminal Appeal No. 534 of 2007)

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

---Ss. 302(b), 324, 148, 149, 337-A(i), 337-A(ii), 337-F(i), 337-F(iii) & 337-F(vi)---Qatl-i-amd, attempt to commit qatl-i-amd, rioting armed with deadly weapons, unlawful assembly, shajjah-i-khafifah, shajjah-i-mudihah, ghayr-jaifah-damiyah, ghayr-jaifah-mutalahimah, ghayr-jaifah-munaqqillah, acts of terrorism---Reappraisal of evidence---During the occurrence three persons were done to death in a brutal manner and one person was seriously injured---As per post mortem reports, the first deceased received 28 injuries, the second as many as 34 injuries and the third deceased received 12 injuries on different parts of their bodies---Injured witness also received as many as nineteen injuries on different parts of his body---Occurrence had taken place in broad daylight and the presence of an eye-witness and injured witness at the scene of occurrence was quite natural and beyond any doubt---Statements of said prosecution witnesses were consistent, confidence inspiring and in consonance with the probability and circumstances of the case and were worthy of credence---Injured witness received firearms injuries in the occurrence while sitting in a jeep and saw the occurrence, hence, his presence at the relevant time could not be considered as unnatural and improbable and he had no enmity or malice against the accused persons and his testimony was duly supported by medical evidence having been found confidence inspiring, truthful and unimpeachable---Report of Forensic Science Agency showed that all empties except some were fired from the weapons recovered from the accused persons---Convictions and sentences recorded by the High Court were maintained---Appeal was dismissed.

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

---S. 302(b)---Qatl-i-amd---Discrepancies in statements of prosecution witnesses---Effect---Where such discrepancies shattered the prosecution story on salient features then there was substance to intervene on the subject (of conviction) otherwise it had no impact on the veracity of the prosecution story.

Muhammad Iqbal v. The State PLD 2001 SC 222 ref.

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

---S. 302(b)--- Qatl-i-amd--- Sentence, reduction in--- Mitigating factors---Revenge killing---Murders committed out of revenge depended human physiology---Human, being a creature of his environment was governed by the background of the society from where he hailed---Although such aspect did not cover the doctrine of provocation still the area from where a person belonged and other antecedent of such person were relevant factor while taking into account whether revenge killing could be regarded as a mitigating circumstance---Question of sentence in each criminal case definitely had direct nexus with the particular circumstances of the said case.

Ajun Shah v. The State PLD 1967 SC 185 ref.

Sher Afghan Asdi, Advocate Supreme Court for Appellants.

Imdad Hussain Hamdani Syed, Advocate Supreme Court for the Complainant.

M. Amjad Rafiq, Additional PG for the State.

Date of hearing: 23rd June, 2020.

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J---Criminal appeal, by leave of the Court, is directed against the impugned judgment of learned Division Bench of Lahore High Court, Lahore dated 23.10.2014 passed in Capital Sentence Reference No. 34-T/2007 and Criminal Appeal No. 534/2007 whereby the conviction of the appellants under section 302(b), P.P.C. awarded by the Special Judge, Anti-Terrorism Court, Sargodha vide judgment dated 29.03.2007 on three counts each was maintained but their sentences were converted from death each to imprisonment for life each. The compensation awarded by the learned trial court and sentence in default thereof was maintained. The benefit of section 382-B, Cr.P.C. was also given to the appellants. Convictions and sentences under sections 324, 337-A(i), 337-A(ii), 337-F(i), 337-F(iii), 337-F(vi), 148, 149, P.P.C. were also maintained.

2. As per prosecution story contained in the FIR No. 72/2005 dated 16.02.2005, offences under sections 302, 324, 148, 149, 395, P.P.C. read with section 7, Anti-Terrorism Act, 1997, registered with Police Station Jauharabad District Khushab (Exh.PBB) lodged at the instance of one Mazhar Anwaar (PW-20) is that he along with Gul Hayat son of Mian Muhammad, Gul Hayat son of Muhammad Feroze were going to Lorri Adda Hadali on feet and when they reached in the street near the house of Muhammad Mahboob, from opposite side Jeep No. B-4303/Swat came in which Naeemullah (his brother), Said Rasool (PW-21), Hafeezullah were coming and Naeemullah was sitting on front seat, Said Rasool on back seat whereas Hafeezullah was driving the jeep. It is further mentioned in the crime report that when the jeep reached near the shop of Muhammad Iqbal Lohar, due to speed breaker the jeep became slow and from the shop Muhammad Shabbir armed with GIII, Muhammad Ameer armed with Kalashnikov, Khuda Bakhsh (P.O.) armed with Kalashnikov, Imran son of Atta Muhammad armed with Kalashnikov, Imran Abbas son of Ghulam Rasool armed with Kalashnikov came in front of the jeep and appellant Muhammad Shabbir by raising lalkara made a fire shot of rifle G-III on Naeemullah which hit on his head. The crime report further reveals that appellant Muhammad Imran fired a shot with his Kalashnikov which landed on the chest of Naeemullah and thereafter Muhammad Ammer made fire with Kalashnikov which hit on front of the mouth of Hafeezullah who was driving the Jeep, thereafter Imran Abbas fired a shot with .12 bore repeater that hit on the left flank of Said Rasool; appellant Muhammad Munir made fire with Kalashnikov which hit on the mouth of Naeem Ullah; thereafter Khuda Bakhsh (P.O.) made fire with Kalashnikov which hit on the chest of Hafeezullah and then all the accused persons made indiscriminate firing which hit on their heads, chests and different parts of the bodies. It is further mentioned that the appellant Shabbir while escaping also took licensed rifle/Kalashnikov with magazine bag, ammunition and license which were lying in Jeep. At some distance, they found Hameedullah (deceased) and Fazal-e-Haq (PW), on this Khuda Bakhsh (P.O.), appellant Muhammad Shabbir and Muhammad Ameer made repeated fires on Hameedullah which hit on his chest, back, left hand and different parts of his body. The matter was reported to the police and as such instant crime report was registered with the local police.

3. After registration of the aforesaid case, it was found that the appellants Muhammad Shabbir etc. after committing the occurrence forcibly snatched a car No. LRZ-4949 Model 2004 2-OD on gun point within the view of Allah Bakhsh (PW-19) and fled away. The appellants were taken into custody and after the conclusion of the investigation; they were challaned while placing their names in column No.3 of the report under section 173, Cr.P.C. On receipt of challan, the learned Additional Sessions Judge, Khushab formally charge sheeted the appellants vide order dated 20.03.2007 to which they pleaded not guilty and claimed trial. The complainant moved application under section 12 of the Anti-Terrorism Act, 1997 which was dismissed vide order dated 14.11.2005 and complainant filed Writ Petition No.18694/2005 before learned High Court and vide order dated 26.02.2007 the learned High Court transferred this case from learned Additional Sessions Judge Khushab to the court of Special Judge, Anti-Terrorism, Sargodha and a fresh charge was framed against all the accused on 20.03.2007 to

which they pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced as many as 22 witnesses. The appellants were examined under section 342, Cr.P.C., however, they opted not to appear in their defence as their own witness in terms of section 340(2), Cr.P.C. to disprove the allegations levelled against them and they did not produce any defence evidence.

4. The learned trial court after conclusion of trial found that the prosecution succeeded to prove allegations against the petitioner, hence convicted the appellants under sections 302/149, P.P.C. and sentenced to death each on three counts for committing the murder of Naeemullah, Hafeezullah and Hameedullah along with compensation of Rs.1,00,000/- each under section 544-A of Cr.P.C. payable to each legal heirs of deceased and in default thereof further undergo six months each on three counts. They were also convicted under sections 324/149, P.P.C. and sentenced to ten years' R.I. each for attempting to commit the Qatl-i-amd of Said Rasool along with fine of Rs.50,000/- each and in default thereof further undergo three months' S.I. each. They were also convicted under sections 337-A(i)/149, P.P.C. and to pay Rs.25,000/- each as Daman for causing Shajjah-e-Khafifah to Said Rasool and in default thereof further undergo two years' R.I. They were also convicted under sections 337-A(ii)/149, P.P.C. and to pay Rs.15,000/- each for causing Shajjah-e-Mudiah to Said Rasool as five percent of Arsh and also undergo five years' R.I. as Tazir. They were also convicted under sections 337-F(i)/149, P.P.C. and to pay Rs.25,000/- each as Daman for causing Ghayr-Jaifah Damiyah to Said Rasool and also undergo one year's R.I. as Tazir. They were also convicted under sections 337-F(iii)/149, P.P.C. and to pay Rs.25,000/- each as Daman for causing Ghayr-Jaifah Mutalahimah to Said Rasool and also undergo three years' R.I. as Tazir. They were also convicted under sections 337-F(vi)/149, P.P.C. and to pay Rs.25,000/- as Daman for causing Ghayr-Jaifah Munaqqillah to Said Rasool and also undergo seven years' R.I. each as Tazir. They were also convicted under sections 148/149, P.P.C. and sentenced to undergo three years' R.I. each. The appellants were also convicted under section 7(a) of the Anti-Terrorism Act, 1997 and sentenced to death each along with fine of Rs.50,000/- each and in default thereof undergo three years' S.I. They were also convicted under section 7(c) of the Anti-Terrorism Act, 1997 read with section 149, P.P.C. and sentenced to imprisonment for life each along with fine Rs.50,000/- each and in default thereof further undergo three years' S.I.

5. The appellants being aggrieved by the judgment of the learned trial court dated 29.03.2007 filed Criminal Appeal No.534/2007 before the Lahore High Court, Lahore whereas the learned trial court forwarded Capital Sentence Reference No.34-T/2007 for confirmation of the sentence of death inflicted upon the appellants. The learned Division Bench of High Court vide judgment dated 23.10.2014 set aside the convictions and sentences recorded against the appellants under sections 7(a) and 7(c) of Anti-Terrorism Act, 1997, however, maintained their convictions under section 302(b), P.P.C. awarded by the learned trial court on three counts each but converted the sentence from death each to imprisonment for life each. The compensation awarded by the learned trial court and sentence in default thereof was maintained. The benefit of section 382-B, Cr.P.C. was also given to the appellants. Convictions and sentences under sections 324, 337-A(i), 337-A(ii), 337-F(i), 337-F(iii), 337-F(vi), 148, 149, P.P.C. were also maintained.

6. Leave to appeal was granted by this Court by means of order dated 20.02.2020 for reappraisal of entire evidence available on the record for safe administration of criminal justice.

7. At the very outset, it has been argued by learned counsel appearing on behalf of appellants that both the courts below have not taken the evidence available on the record in its true prospective and same has not been evaluated according to the established principles of law enunciated by superior courts from time to time. Contends that the prosecution has failed to prove its case against the present appellants as there are many major discrepancies in the statements of the PWs and there is conflict between ocular account and medical evidence. It has been further argued that firing is attributed to all the accused including Khuda Bakhsh (P.O.), hence, learned High Court has failed to appreciate the facts and law of the case in its true perspective and has drawn wrong conclusion due to which gross

miscarriage of justice has taken place in this case. Further contends that there are circumstances which created reasonable doubt in the prudent mind about the guilt of the appellants, then they would be entitled for the same not as a matter of grace and concession but as a matter of right. Further contends that besides causing specific injuries on the persons of deceased, they all resorted to indiscriminate firing and firearm injuries on the person of injured Said Rasool was specifically attributed to co-accused Muhammad Hussain who was acquitted by the learned High Court and when the injured eye-witness has not been believed qua his own injuries, his evidence cannot be used to convict the appellants when recoveries from the appellants were not relied by the learned High Court. Learned counsel further contends that the complainant in his statement as PW-20 has stated that no untoward incident had taken place after the acquittal of Naeem till the occurrence, hence, the motive setup by the prosecution remained far from being proved, therefore, it create a doubt in the genuineness of the prosecution version resulting into acquittal of the appellants.

8. On the other hand, learned Law Officer assisted by learned counsel appearing on behalf of complainant has argued that the prosecution has been succeeded to establish the case against the appellants. Further contends that three persons were done to death in brutal manner whereas one person was seriously injured which shows the highhandedness of the appellants which is spelled out from the facts and circumstance of this case. It is contended that the ocular account was furnished by the quite independent and trustworthy witnesses duly supported by the medical evidence. Lastly it was argued that the appellants by resorting to firing had taken the life of three innocent persons and the prosecution adduced its case through straight forward, reliable and confidence inspiring evidence, therefore, the learned High Court has rightly convicted and sentenced the appellants under the relevant provisions of law.

9. We have heard the learned counsel for the parties and gone through the record.

We have noticed that it is a case of highhandedness in which three persons were done to death in brutal manner and one person was seriously injured. It is noticed that as per post mortem reports, the deceased Naeemullah received 28 injuries, deceased Hafeezullah received as many as 34 injuries and deceased Hameedullah received 12 injures on different parts of their bodies. The injured PW Said Rasool also received as many as nineteen injures on different parts of his body. The occurrence initiated when both the deceased Naeem Ullah (sitting on front seat), Hafeezullah (driver) and injured Said Rasool (PW-21) (sitting on back seat) were passing on Jeep No.B-4303/Swat near the shop of Muhammad Iqbal Lohar, the appellants came from the shop and appellant Muhammad Shabbir made a fire shot of rifle G-III on Naeemullah which hit on his head; appellant Muhammad Imran made a fire shot with his Kalashnikov which hit on the chest of Naeemullah whereas appellant Muhammad Munir made fire with Kalashnikov which hit on the mouth of Naeem Ullah and all the accused persons made indiscriminate firing which hit on their heads, chests and different parts of the bodies. The injured Said Rasool (PW-21) also sustained serious injuries. It is further noticed that after committing the occurrence, when the appellants etc. were decamping, at some distance they found Hameedullah and one Fazal-e-Haq, the appellants etc. made repeated fires on Hameedullah which hit on his chest, back, left hand and different parts of his body. Subsequently, it was found that after committing the occurrence, the appellants etc. forcibly snatched a car No. LRZ-4949 (P-35) within the view of Allah Bakhsh (PW-19) on gun point and on 17.02.2005 the appellants were arrested near Jhelum River while travelling on the same car. The ocular account has been furnished by Mazhar Anwaar (PW-20) and Said Rasool injured (PW-21) and prosecution also rely on the statement of Allah Bakhsh (PW-19). So far as the contention of the learned counsel for the appellants that the firearm injuries of Said Rasool (PW-21) were specifically attributed to co-accused Muhammad Hussain who was acquitted by learned High Court, is concerned, careful perusal of the entire evidence produced by the prosecution reveals that since the occurrence had taken place in the broad daylight in the street near the shop of Muhammad Iqbal Lohar in the same village, therefore, the presence of Mazhar Anwaar (PW-20) and Said Rasool

injured (PW-21) at the scene of occurrence was quite natural and beyond any doubt and the statements of the prosecution witnesses are consistent, confidence inspiring and in consonance with the probability and circumstances of the case and being worthy of credence, which could not be brushed aside. Injured Said Rasool (PW-21) received firearms injuries in the occurrence while sitting in the jeep and saw the occurrence, hence, his presence at the relevant time cannot be considered as unnatural and improbable and he has no enmity or malice against the appellants and his testimony is duly supported by medical evidence having been found confidence inspiring, truthful and unimpeachable. Furthermore it is noticed that co-accused Muhammad Hussain has been acquitted by learned High Court on the basis that his name has been replaced with Imran Abbas son of Ghulam Rasool, caste Kharal resident of Chak No. 47 North, District Sargodha by complainant Mazhar Anwaar (PW-20) in his second supplementary statement dated 18.02.2005 and no identification parade was held for identification of the co-accused Muhammad Hussain and prosecution is not certain about the identity of Muhammad Hussain, benefit of which was given to him. It is further noticed that the report of Forensic Science Agency (Ex.PZ) shows that all empties except some were fired from the weapons recovered from the appellants. So far as the contention of the learned counsel that there are major discrepancies in the statement of PWs, it is established law that if the discrepancies are shattering the prosecution story on salient feature then it has substance to intervene on the subject otherwise it has no impact on the veracity of the prosecution story. Reliance in this regard is placed on case titled "Muhammad Iqbal v. The State" (PLD 2001 Supreme Court 222). We have observed during the course of proceedings that the father of appellant Muhammad Shabbir was murdered wherein Naeemullah deceased was one of the accused. There is no denial to this fact that he was finally acquitted of the charge, therefore, the revenge in the mind of appellant continued cultivation and ultimately instant occurrence has taken place. In such like cases where the murders are committed as revenge depends upon human physiology. The human being a creature of the environment; therefore, he is governed by the background of the society from where he hails. Although this aspect do not cover the doctrine of provocation still the area and other antecedent of persons are relevant factor while taking into account which might be suggesting for a moment where revenge can be regarded as mitigating circumstances, however, the question of sentence in each criminal case definitely has direct nexus with the particular circumstances of the said case. This principle was considered and relied upon by salutary judgment titled "Ajun Shah v. The State" (PLD 1967 Supreme Court 185). The learned High Court while handing down the judgment impugned before us has already taken care of all established principles of law and converted the sentences of each appellant from death to imprisonment for life which seems to us appropriate and in accordance with law. The contentions raised by learned counsel are without any force which are repelled. As a consequence, this appeal is dismissed.

MWA/M-33/SC Appeal dismissed.