

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,**JJ****MUHAMMAD YASIN and another---Petitioners****Versus****The STATE through P.G. Punjab and others---Respondents**

Criminal Petitions Nos. 1292-L and 1196-L of 2015, decided on 14th July, 2020.

(Against the judgment dated 08.10.2015 passed by the Lahore High Court, Lahore in Criminal Appeals Nos. 2-J-ATA/2013, 2127/2010 with C.S.R. No. 51-T/2010)

Penal Code (XLV of 1860)---

---S. 302(b)---Anti-Terrorism Act (XXVII of 1997), S. 7---Qatl-i-amd, act of terrorism---Reappraisal of evidence---Autopsy of deceased, held as late as at 9:30 a.m. the following day of occurrence, despite arrival of the injured and the dead body during the preceding night at 10:20 p.m. was quite intriguing--Further it was mind boggling that examination of the injured in the hospital and recording of complaint at the spot were steps taking place at the same time i.e. 10:20 p.m.---Such coincidence when taken in the totality of circumstances admitted a possibility that crime report was not recorded at a point of time mentioned therein---Delayed autopsy in a tertiary hospital reinforced the said hypothesis that in retrospect cast its shadow on the ostensible promptitude behind the crime report---Argument that the foundation of the case was laid after deliberations and consultations could not be dismissed out of hand---Desertion of two prosecution witnesses, statedly won over by the accused, though reflected a possible societal phenomena, nonetheless, being the best witnesses in circumstances, their absence from the scene certainly called for extra caution---Witnesses unanimously blamed an acquitted co-accused to have targeted one of the deceased---Autopsy of said deceased clearly established the injury attributed to the said acquitted co-accused---Prosecution's failure qua said acquitted co-accused before the Trial Court as well as in the High Court entailed repercussions as the set of witnesses disbelieved qua said co-accused would essentially require independent corroboration vis- -vis the accused---Witnesses disbelieved with regard to an identically placed co-accused could not join themselves to corroborate each other against the accused---Motive set up by the prosecution was non-specific and vague and there were no consequential recoveries from the accused and co-accused persons--- Acquittal of four other co-accused persons, who were assigned role of indiscriminate firing only, further dented the prosecution case---On the whole prosecution case was found fraught with doubts, thus, it would be unsafe to maintain the convictions of the accused---Petition for leave to appeal was converted into appeal and allowed and accused was acquitted of all charges against him.

Naveed Ahmed, Kh., Advocate Supreme Court for Petitioners (in Cr. P. 1292-L of 2015).

Khurram Khan, Additional Prosecutor-General Punjab for the State.

Ch. Ghulam Sarwar Nihung, Advocate Supreme Court for the Complainant (in Cr. P. 1196-L of 2015).

Date of hearing: 14th July, 2020.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---Muhammad Ashraf son of Nazeer Ahmed, 50, was shot dead at 9:30 p.m. on 4.6.2008 within the remit of Police Station Ghulam Muhammad Abad, Faisalabad; incident was reported by his nephew Muhammad Jameel (PW-10), 10:20 p.m. at the spot; prime target of the assault Rashid struggled with multiple injuries, breathed his last on 14.6.2008; from amongst the witnesses Muhammad Zaman and Qaisar survived the assault; they were medically noted with firearm injuries, however, opted to stay away from the witness-box.

According to the complainant, on the fateful night, he was at his grocery store along with Muhammad Ashraf son of Nazeer Ahmed, Muhammad Iqbal son of Muhammad Hussain and

Muhammad Ashraf son of Muhammad Rafique when Muhammad Yasin, Younas alias Kala, Shahid alias Mithu, Muhammad Azam, Imtiaz Butt and Ilyas accompanied by an unknown companion confronted Rashid deceased who alongside Zulfiqar Ali, on a motorbike had just arrived at the scene. Muhammad Yasin along with the co-accused subdued Rashid deceased and after hitting him with an iron rod forced him to board on a rickshaw; Muhammad Ashraf deceased, Qaisar Manzoor and Muhammad Zaman attempted to intervene when all the accused with their pistols resorted to firing; a fire shot by Muhammad Yasin, petitioner, trapped Muhammad Ashraf deceased on his left chest, a fire shot by Azam (P.O.) hit Rashid on his face followed by a fire shot by Ilyas landing on the backside of his shoulder. Unknown assailant targeted Muhammad Zaman on his left deltoid while Shahid alias Mithu fired on the left flank of Qaisar Manzoor whereafter all the accused resorted to indiscriminate firing and took to the heels within the view of terror stricken neighbourhood. It is alleged that the assailants dealt in narcotics and they suspected Rashid deceased to have intermediated information to the police.

Spot inspection includes seizure of blood as well as 22 casings; Muhammad Zaman and Qaisar Manzoor PWs were medically examined under a police docket at 10:20 p.m. followed by Rashid deceased at 10:40 p.m. however, autopsy on Ashraf deceased was conducted following day at 9:30 a.m. The accused, barring Azam and Shafqat, P.Os, unanimously claimed trial on 04.01.2010 that culminated into their acquittal except the petitioner vide judgment dated 21.07.2010; convicted on two counts of homicide as well as terrorism, he was sentenced to death on each, altered in appeal into imprisonment for life vide impugned judgment dated 8.10.2015.

2. Learned counsel for the petitioner contends that there was no occasion for the learned trial Court to return a guilty verdict qua the petitioner after it had disbelieved entire bulk of prosecution evidence qua majority of the accused that included Ilyas co-accused as well who was assigned a direct fire shot to Rashid deceased; an error repeated by the High Court in appeal; that prosecution's failure to bring forth Muhammad Zaman and Qaisar Manzoor, the injured witnesses of the episode, tremors the very foundation of the case; seizure of 22 casings notwithstanding, nonetheless, in the absence of recovery of weapons except for an iron rod, has been cited to argue that occurrence did not take place in the manner as alleged in the crime report. Learned Law Officer assisted by learned counsel for the complainant has faithfully defended the impugned judgment; the latter while referring to the magnitude of violence inflicted upon the deceased, including Rashid who laid his life for siding with the law, prayed for reversal of the alteration of sentence, contending death being a conscionable wage in circumstances.

3. Heard. Record perused.

4. Medical examination of Rashid deceased as well as given up witnesses unambiguously suggest that occurrence took place on or around the time mentioned in the crime report; venue being at a distance of 1- k.m. from the police station, arrival of the police and conclusion of complaint at 10:20 p.m. apparently reflect a remarkable promptitude, however, autopsy of Muhammad Ashraf deceased, held as late as at 9:30 a.m. following day, despite arrival of the injured and the dead body during the preceding night at 10:20 p.m. is quite intriguing. It is further mind boggling that examination of the injured in the hospital and recording of complaint at the spot are steps taking place at the same time i.e. 10:20 p.m. Coincidence even though without obliquity, nonetheless, when taken in the totality of circumstances admits a possibility that crime report was not recorded at a point of time purported therein. Delayed autopsy in a tertiary hospital i.e. Allied Hospital Faisalabad reinforces the above hypothesis that in retrospect cast its shadow on the ostensible promptitude behind the crime report and, thus, the argument that the foundation of the case was laid after deliberations and consultations cannot be dismissed out of hand.

Desertion of Muhammad Zaman and Qaisar Manzoor (given up PWs), statedly won over by the accused, though reflects a possible societal phenomena unfortunately not uncommon, nonetheless, being the best witnesses in circumstances, their absence from the scene certainly calls for extra caution.

The witnesses unanimously blamed Ilyas acquitted co-accused to have targeted Rashid deceased with a straight fire shot landing on the back of his left shoulder; while first Medical Officer i.e. Dr. Muhammad Yousaf (PW-1) who examined the deceased in injured condition remained somewhat reticent on the nature of injury, the autopsy conducted by Dr. Bashir Ahmed (PW-2) clearly established the injury attributed to Ilyas acquitted co-accused as an aftermath of entry wound, being exit of injury on the right cheek. Prosecution's failure qua Ilyas accused both before the trial Court as well as in the High Court entails inescapable repercussions as the set of witnesses disbelieved qua Ilyas would essentially require independent corroboration vis- -vis the remainder. With a non-specific and vaguely formulated motive, concurrently held out of consideration, in the absence of consequential recoveries, the witnesses, disbelieved with regard to an identically placed co-accused cannot join themselves to corroborate each other against the convicts; acquittal of Shahid alias Mithu, Imtiaz Butt, Muhammad Younas alias Kala and Saeed, though assigned roles that san harm to the deceased, nonetheless, further compound the prosecution predicament inasmuch as they were alleged to have resorted to indiscriminate firing; their departure cast away the entire case. On the whole prosecution case is found fraught with doubts, embedded in and deducible from the stated positions and, thus, it would be unsafe to maintain the convictions on the left over fragments. Criminal Petition No.1292-L of 2015 is converted into appeal and allowed; petitioner/appellant is acquitted of the charge and shall be released forthwith, if not required to be detained in any other case.

As a natural corollary, Criminal Petition No.1196-L of 2015 stands dismissed.
MWA/M-37/SC Order accordingly.