

2019 S C M R 1368**[Supreme Court of Pakistan]****Present: Manzoor Ahmad Malik, Sardar Tariq Masood and Qazi Muhammad Amin Ahmed, JJ****MUHAMMAD SHARIF and others---Appellants****Versus****The STATE and others---Respondents**

Criminal Appeal No. 160-L of 2017 and Criminal Petition No. 641-L of 2016, decided on 1st July, 2019.

(Against the judgment dated 28.9.2015 of the Lahore High Court, Lahore passed in Criminal Appeal No. 1084 of 2013 and CSR No.16-T of 2013)

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

---S. 302(b)---Anti-Terrorism Act (XXVII of 1997), S. 7---Qatl-i-amd, acts of terrorism---Reappraisal of evidence---Accused and co-accused persons were convicted by an Anti-Terrorism Court for launching a murderous attack on a police party which resulted in the death of a police official---Held, that hot pursuit by the police contingent for the arrest of accused and co-accused persons in a case of homicide was a circumstance antedated in point of time, therefore, beyond doubt---Receipt of injuries by one of the accused, his arrest at the spot and admission in the hospital, under a police docket, were also circumstances hard to deny---In such backdrop, presence of police officials, for a purpose mandated by law, at the crime scene, stood fully established---Subsequent recoveries from accused and co-accused persons squarely corroborated the ocular account---Acquittal of one of the co-accused seemingly out of abundant caution, did not adversely reflect upon the case qua the other accused persons---Said co-accused was assigned a general role and in his case crime empties were dispatched subsequent to his arrest, which would not qualify to the required standard of proof so as to view presence of intention beyond reasonable doubt---Accused and co-accused persons had been rightly convicted by the Anti-Terrorism Court---Appeal was disposed of in circumstances.

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

---S. 302(b)---Anti-Terrorism Act (XXVII of 1997), S. 7---Qatl-i-amd, acts of terrorism---Reappraisal of evidence---Reduction in quantum of sentence---Death sentence altered to imprisonment for life---Casings found wedded with the recovered gun were dispatched subsequent to the arrest of accused, a factor viewed by the High Court as a mitigating circumstance qua the co-accused---Consequently, penalty of death awarded to accused was also altered into imprisonment for life---Appeal was disposed of in circumstances.

Malik Ejaz Hussain Gorchha, Advocate Supreme Court for Appellants (in Criminal Appeal No. 160-L of 2017).

Malik Matee Ullah, Advocate Supreme Court for Petitioners (in Criminal Petition No. 641-L of 2016).

Ch. Muhammad Mustafa, DPG for the State.

Date of hearing: 1st July, 2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.---The appellants alongside co-accused, armed with Kalashnikovs, confronted a contingent of Police Station Kalabagh District Mianwali, set out to arrest accused in a case of homicide, hiding themselves in an Afghan Refugee Camp on 11.4.2012; the camp was encircled at 11:45 a.m. when the appellants and co-accused opened fire, in consequence whereof, Ahmed Nawaz/C came in the line of fire; he was fatally shot and his official SMG was snatched by the accused; Muhammad Iqbal, appellant sustained injuries during the indiscriminate firing. Besides the appellants, Hazrat Gul, Ghulam Sarwar and Izat Ullah alongside three unknown were arrayed in the crime report; Hazrat Gul was extended benefit of doubt by the trial Court whereas Ghulam Sarwar and Izat Ullah stayed away from law. Prosecution is clueless about the unknown till date. Spot inspection includes seizure of blood and 17 casings of Kalashnikovs; Muhammad Iqbal, appellant, subdued in injured condition, was shifted to the hospital whereas Muhammad Sharif and Hazrat Gul were arrested on 22.4.2012; upon disclosure, Muhammad Sharif led to the recovery of Kalashnikov, P-9, as well as snatched SMG, P-8; Hazrat Gul got recovered Kalashnikov, P-11. The appellants were returned a guilty verdict on different counts with penalty of death by an Anti Terrorism Court at Sargodha vide judgment dated 13.8.2013; their appeal was dismissed in the High Court; maintaining Muhammad Sharif's sentence, however, death penalty awarded to Muhammad Iqbal was altered into imprisonment for life vide impugned judgment dated 28.9.2015 vires whereof are being assailed through leave of the Court; complainant seeks enhancement of sentence; both the issues, with a common thread, are being decided through this single judgment.

2. Hot pursuit by the police contingent for the arrest of accused in a case of homicide is a circumstance antedated in point of time, therefore, beyond doubt; pursuant to information, police officials came face-to-face with the appellants. It was during the search that one of the members of the police party, though clad in civvies, was fatally shot; receipt of injuries by Muhammad Iqbal appellant, his arrest at the spot and admission in the hospital, under a police docket, are also circumstances hard to deny. In this backdrop, presence of police officials, for a purpose mandated by law, at the crime scene, stands fully established. Subsequent recoveries squarely corroborate the ocular account. Examined in the above framework, the witnesses furnished accounts, confidence inspiring by all means, for being intrinsically sound in the face of inconsequential cross-examination, by and large, based upon denied suggestions. Acquittal of Hazrat Gul, seemingly out of abundant caution, does not adversely reflect upon the case qua the appellants; he is assigned a general role and a positive forensic report based upon empties, dispatched subsequent to arrest, would not qualify to the required standard of proof so as to view his presence in the community of intention beyond reasonable doubt;

the appellants assigned effective roles qua the deceased are placed in a vastly different position; they have been rightly convicted, however insofar as quantum of sentence to be exacted from Muhammad Sharif appellant is concerned, he is identically placed; as the casings found wedded with gun P/9 were also dispatched subsequent to his arrest, a factor received by the High Court as a mitigating circumstance qua Muhammad Iqbal, appellant, the same goes squarely for Muhammad Sharif. Consequently, penalty of death awarded to Muhammad Sharif is also altered into imprisonment for life; remainder of convictions as well as sentences consequent thereupon are kept intact; sentences shall run concurrently with benefit of section 382-B of the Code of Criminal Procedure, 1898. Resultantly, Criminal Appeal is dismissed.

As a natural corollary, Criminal Petition is also dismissed.

MWA/M-38/SC Order accordingly.

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