

PLJ 2019 SC (Cr.C.) 578
[Appellate Jurisdiction]

Present: MANZOOR AHMAD MALIK, SYED MANSOOR ALI SHAH AND QAZI MUHAMMAD AMIN AHMED, JJ.

SAFDAR BALOCH *alias* ALI and another--Appellants

versus

STATE and others--Respondents

Crl. As. Nos. 67-L and 68-L of 2017, decided on 9.5.2018.

(On appeal from the judgment dated 28.11.2013 passed by the Lahore High Court, Lahore in Criminal Appeals Nos. 148 and 202 of 2010 and CSR No. 3-T of 2010)

Pakistan Penal Code, 1860 (XLV of 1860)--

---Ss. 365-A/324/34--Anti-Terrorism Act, (XXVII of 1997), S. 7--Statement of the child PW--Benefit of doubt--Acquittal of--The fate of the present appellants is not linked with the outcome of trial of, co-accused, for a variety of reasons--How complainant nominated the accused merely after having their momentary glimpses in a marriage ceremony few days before the occurrence--Statement of the child, statedly of 7/8 years of age at the relevant time, certainly requires a very cautious scrutiny--He is reticent on important details of the episode, relating to the present appellants--Crime report was recorded after arrest of co-accused and the appellants were named therein on the basis of information--A crowded ceremony would provide little space/opportunity to the complainant to remember the faces and names of the participants--Participation in the crime is found suspect it would be unsafe to rely upon the testimony of a vulnerable witness alone--Appeal is allowed.

[Pp. 579 & 580] A, B & C

Mr. Naseer-ud-Din Khan Nayyar, ASC for Appellants (in Criminal Appeal No. 67-L of 2017).

Miss Najma Parveen, ASC for Appellants (in Criminal Appeal No. 68-L of 2017).

Mr. Mazhar Sher Awan, Additional Prosecutor-General for State.

Date of hearing: 9.5.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.--Criminal Appeal No. 67-L/2017 by Safdar Baloch *alias* Ali and Criminal Appeal No. 68-L/2017 by Aziz Khan, through leave of the Court, arisen out of incident dated 15.12.2005 are bound by a common thread; these are being decided through this single judgment.

2. Prosecution case is structured upon statement of Iftikhar Khan, PW-1; on the eventful day at about 7.30 a.m. he was about to leave home to drop his son namely Shaharyar Khan at the school when the appellants along with Nazir Ahmed, co-accused, differently armed, confronted him. Safdar Baloch *alias* Ali and Nazir Ahmad shot him with .12 caliber guns on his left leg; as he felled on the ground Aziz Khan, appellant took Shaharyar, aged 7/8, and whisked away in a car while demanding a sum of Rs.500,000/- as ransom. The complainant was rushed to Jinnah Hospital, Lahore; examined at 8.35 a.m., he was noted with two entry wounds on left leg with corresponding exits. Incident was reported to the police at 11:40 a.m. In hot pursuit of the culprits, Sardar Ali, ASI, intercepted car Bearing No. LZV-9611 on a police picket; the person on wheel decamped from the scene by scaling over an adjoining wall, while Nazir Ahmad co-accused was subdued alongside the child. The appellants stayed away from law; they were arrested on 8.7.2008 and 18.3.2009 respectively; Nazir Ahmad, co-accused had already faced trial with failures of his appeals throughout. It is in this backdrop that the appellants were convicted under Section 365-A of Pakistan Penal Code, 1860, Section 7(e) of Anti-Terrorism Act, 1997 and Section 324 read with Section 34 of the Code *ibid*; they are sentenced to death alongside collateral sentences for murderous assault. Their appeals met with no better fate with capital sentence reference, returned in affirmative.

3. First glance cannot escape preponderance of prosecution's evidence; Iftikhar Khan, PW undoubtedly endured the assault; he was medially examined, noted to have injuries extensive in nature and consistent with the weapons allegedly used in the crime. First Information Report was recorded with a remarkable promptitude with accused prominently named therein; vehicle mentioned in the crime report was intercepted same day at police picket alongside Nazir Ahmed, co-accused with the child; later appeared as a witness to point out his finger upon the appellants. However, certain intriguing aspects of the case warrant an independent and careful scrutiny of evidence. The fate of the present appellants is not linked with the outcome of trial of Nazir Ahmad, co-accused, for a variety of reasons. The foremost question is as to how the complainant nominated the accused merely after having their momentary glimpses in a marriage ceremony few days before the occurrence. They were not with the child when the vehicle was intercepted, nor can it be held with certainty that the one who took to heels was one of them and this leaves Nazir Ahmad, co-

accused alone in the field. Statement of the child, statedly of 7/8 years of age at the relevant time, certainly requires a very cautious scrutiny; he is reticent on important details of the episode, relating to the present appellants; being of an impressionable age, having experienced the nightmare his susceptibility to tuition cannot be ruled out. Argument that crime report was recorded after arrest of

Nazir Ahmed, co-accused and the appellants were named therein on the basis of information other than purportedly laid by the complainant is not entirely beside the mark. While the occurrence cannot possibly be denied, nonetheless, nomination of the appellants on complainant's knowledge is a circumstance fraught with doubts. A crowded ceremony would provide little space/opportunity to the complainant to remember the faces and names of the participants and thus once the source of information about appellants' participation in the crime is found suspect it would be unsafe to rely upon the testimony of a vulnerable witness alone, particularly when the appellants were not arrested alongside the co-accused. Criminal liability is to be essentially settled on evidentiary certainty and not on moral satisfaction or factualities incompatible with evidence based upon truth. Prosecution's case against the appellants cannot be viewed as beyond reasonable doubt and thus conviction cannot be maintained without potential risk of error. Resultantly, criminal appeals are allowed, impugned judgment is set aside. The appellants shall be released forthwith, if not required in any other case.

(K.Q.B.) Appeal allowed