

P L D 2001 Supreme Court 94

Present: Sh. Riaz Ahmed, Munir A. Sheikh and Rashid Aziz Khan, JJ

MUHAMMAD SHARIF and another---Petitioners

versus

THE STATE---Respondent

Criminal Petition No. 150 of 2000, decided on 6th October, 2000.

(On appeal from the judgment of Lahore High Court, Multan Bench, dated 29-9-2000 passed in Criminal Appeal No.246/97 and M.R. No.171/97).

Penal Code (XLV of 1860)---

----S. 302(b)---Constitution of Pakistan (1973), Art.185(3)---Sentence---Age of accused---Private revenge---Not mitigating circumstances---Death sentence, propriety of---Delay in petition for leave to appeal which was barred by 214 days, was condoned in view of the sentence of death awarded to the accused---Ages of 22 years and 27 years of the accused hardly constituted a mitigating circumstance in their favour---Accused in taking revenge of murder had killed two persons and injured two others and private revenge also was not a mitigating circumstance---Leave to appeal was declined to accused accordingly.

Abdul Aziz Khan Niazi, Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for Petitioners.

Nemo for the State.

Date of hearing: 6th October, 2000.

JUDGMENT

SH. RIAZ AHMED, J.---This petition is directed against the judgment and order dated 29-9-1999, delivered by Lahore High Court, Multan Bench, whereby the appeal preferred by the petitioners, assailing their conviction of death and the sentences awarded by learned trial Judge, was dismissed.

2 Prosecution case in brief as unfolded in the statement of Ghulam Abbas made in the F.I.R: is that on the fateful day at 8-00 a.m., the deceased Muhammad Yousaf and Muhammad Arif, both real brothers, along with Muhammad Hayat, another real brother, their maternal uncle Imam Bakhsh and paternal uncle Noor Muhammad had proceeded to the Court of Additional Sessions Judge, Khanewal, to attend the proceedings of the case in connection with murder of Muhammad Yousaf in which the deceased and others were accused. According to prosecution case, the complainant side sat on the Odor in front of the Court. Soon thereafter, Raza Hussain, Muhammad Sharif, petitioners and Nasir Hussain, absconder, also reached there and sat near the complainant side. After a few minutes, Raza Hussain brought out Carbine and fired at Muhammad Yousaf hitting his neck. Muhammad Sharif also brought out pistol and fired hitting Muhammad Yousaf at his chest. Nasir Hussain, absconder, allegedly inflicted dagger blow on right side of chest. of Muhammad Arif. Meanwhile, Raza Hussain, by another shot, hit Muhammad Arif. Petitioner Muhammad Sharif fired 3rd shot hitting Muhammad Hayat. Nasir Hussain inflicted dagger blow on the waist of Imam Bakhsh. Raza Hussain fired another shot hitting Imam Bakhsh. As a result of this attack, two persons Muhammad Arif and Muhammad Yousaf, died while

Muhammad Hayat and Imam Bakhsh were seriously injured., Learned trial Judge found the petitioners guilty of the charge of murders and sentenced them to death under section 302(b), P.P.C. Under section 324, P.P.C. Muhammad Sharif was also sentenced to five years' R.I. with fine of Rs.5,000 or in default thereof to suffer simple imprisonment for six months. Similarly, Raza Hussain was sentenced to three years' R.I. with fine of Rs.2,000 or in default to further undergo simple imprisonment for two months.

2. On appeal preferred by the petitioners and the Reference made by the trial Court, learned High Court dismissed the appeal and answered the Reference in the affirmative, and death sentence was confirmed.

3. This petition is barred by 214 days but considering the sentence of death, we have condoned the delay.

4. In support of the petition, the main ground urged by the learned counsel for the petitioners is the quantum of sentence. According to the learned counsel for the petitioner, Raza Hussain is aged 22 and Muhammad Sharif 27, and it is urged that being young the extreme penalty of death should not have been imposed on them. It is further contended that the deceased had killed father of the complainant. We have considered the contentions but do not find any force in them. The age of 22 and 27 hardly constitutes a mitigating circumstance and furthermore this Court on number of occasions has held that private revenge is not a mitigating circumstance. It is absolutely a private revenge inasmuch as the revenge of murder in which two persons had died and two injured.

5. We do not find any reason which could justify interference by this Court: This petition fails which is dismissed.

N.H.Q./M-190/S Petition dismissed.

