

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.700 OF 2006

SHABIR AHMED TELI

... APPELLANT

VERSUS

STATE OF JAMMU & KASHMIR

... RESPONDENT

JUDGMENT**Aftab Alam,J.**

1. This appeal by special leave is directed against the judgment and order dated October 16, 2003 passed by the Jammu & Kashmir High Court in Criminal Appeal No.4 of 2002 with criminal reference No.27 of 2002. By the impugned judgment, the High Court dismissed the appellant's appeal and affirmed the judgment and

order passed by the trial court by which the appellant was convicted under section 302 of the Ranbir Penal Code and sentenced to undergo life imprisonment.

2. According to the prosecution case, on August 6, 1997, at about 8:30 P.M. one Gani Shah (the deceased) was returning to his house after offering the '*Isha*' (late evening) prayers at the local mosque in *village* Magray-pora of *tehsil* Anantnag. The appellant intercepted him in the lane, at a spot just outside the kitchen of the house of the deceased and taking aim at him fired several shots from the gun, which he was carrying. Gani Shah, hit by the gunshots fell down dead on the spot. His wife and son and some neighbours who gathered at the place of occurrence lifted him physically and took him inside the house. It is further the case of the prosecution that the appellant wanted to marry the younger daughter of Gani Shah, namely, Lovely. But the proposal for marriage sent by him was rejected both by Gani Shah and Lovely and it was in retribution of the rejection of his marriage proposal that he killed Gani Shah.

3. Apparently, no one from the victim's family went to the police to report the matter. On the following morning, i.e., on August 7, 1997, the village *Chowkidar*, Ghulam Rasool Shah learnt that Gani Shah had been killed. Then, he along with the village *Numberdar*, Mohd. Ahsan Dar went to the police station at Achabal and reported the matter there at 8:15 A.M. In the report, he simply stated that on

August 6, 1997, at 8:30 P.M. one Gani Shah, son of Gh. Mohd. Shah, while he was coming to his house from the mosque after offering the '*Isha namaz*', was attacked with gunfire by unknown gunmen outside his own kitchen and he died on the spot. He also made it clear that neither he nor the *Numberdar* had witnessed the occurrence; that they had only heard that one Gani Shah was killed by unidentified gunmen by gunshots fired from an automatic weapon, the previous evening after the '*Isha Namaz*'. The information given by the Chowkidar was reduced to writing by the SHO and was registered as FIR No.21/1997 of Police Station Achabal.

4. The police after investigation submitted charge-sheet against the appellant following which the case was committed to the court of sessions where the appellant was charged for commission of offences under sections 302/341/201 RPC read with sections 7/25 of the Arms Act. The appellant pleaded not guilty and the case was set for prosecution evidence. At that stage, the public prosecutor filed an application for further investigation of the case under section 170(8) of the Code of Criminal Procedure. The court allowed the prayer and on further investigation the police submitted a supplementary report, this time naming three others Mansoor Ahmad Wagey, Nasir Ahmad Hajam and Shabir Ahmad Hajam, also as accused. The newly added accused were charged for commission of offences under sections 302/341/201/109 RPC and 7/25 of the Arms Act.

5. At the conclusion of the trial, however, the trial court acquitted the three other accused who were named in the supplementary charge-sheet but held and found the appellant guilty of committing murder of Gani Shah. It, accordingly, convicted and sentenced the accused, as noted above, by judgment and order dated August 23, 2002/September 21, 2002. As the sentence awarded to the appellant was life imprisonment, the trial court made a reference to the High Court for confirmation under section 374 of the Code of Criminal Procedure, which was registered as Reference No.27 of 2002. The appellant in turn preferred an appeal against the judgment and order passed by the trial court which was registered in the High Court as Criminal Appeal No.4 of 2002. The High Court upheld the criminal reference and dismissed the appeal filed by the appellant by the judgment and order dated October 16, 2003.

6. The appellant has now come to this Court in appeal by special leave.

7. There are certain features of this case that stand out and that need to be dealt with at the outset.

(I). According to the prosecution, the occurrence took place on August 6, 1997 at 8:30 P.M. Achabal Police Station is at a distance of 3 kilometers from village Magray-pora where the occurrence took place. Nonetheless, no one from the victim's family went to

report the matter to the police. It was only the following morning that the *Chowkidar* and the *Numberdar* of the village went to the police station and there they reported that Gani Shah was killed by “unknown gunmen”. They also made it clear that they were not the witnesses of the occurrence and they had only heard that Gani Shah was killed by “unidentified gunmen”.

(II). On getting information about the occurrence, the police came to the place of occurrence at Magrey-Pora at about 8:30 or 8:45 a.m. and went back after about half an hour, leaving behind the body of the deceased with the family members for burial.

(III). On that date (August 7, 1997) the police recorded the statements only of the informant Rasool Shah and Dr. Shabbir Ahmad, Medical Officer, PHC, Achabal, whom they had brought with them to examine the deceased. The informant Rasool Shah stated that he was a chowkidar of village Kanganhal and resided there. On August 6, 1997 at about 8:30 in the evening he heard a gunshot but fearing terrorist fire he did not come out from his house. On the next morning he came to village Magrey-Pora and came to learn that Abdul Gani Shah, while he was returning to his house after offering Isha prayer in the mosque, was killed by an unknown gunman. He once again made it clear that he was not a witness to the occurrence nor did he have any information as to who

killed Abdul Gani Shah, the previous night. Dr. Shabir Ahmad in his statement recorded under section 161 Cr.P.C. said that on medical examination it was apparent that the death (of Gani Shah) was caused due to bullet shots and loss of blood; further, that the cause of death being apparent, there was no need for any post-mortem.

(IV). No post-mortem was held on the body of the deceased Gani Shah. Dr. Basheer Ahmad Paddar, Assistant Surgeon, Achabal, who was examined as one of the prosecution witness stated that on August 7, 1997 the police had taken him to Magrey-pora where he was shown the dead body of Gani Shah. On examination he found three gunshot injuries on the body of the deceased. He identified the death certificate dated August 7, 1997 given by him which was marked as Ex.PWM1. He further said that no detailed post-mortem was conducted because the cause of death was apparent. He added that the cause of death was due to multiple gunshot wounds resulting in hemorrhage and shock with cardio-respiratory arrest. He also said that he could not tell the time of death as it was not recorded in certificate given by him. He was also unable to state the distance from which the shots might have been fired.

(V). Zakir Hussain Shah and Abdul Rehman Shah who are the son and the son-in-law respectively of the deceased and who are among the six eye witnesses later

examined before the trial court, were first examined by the police on August 9, 1997. Fatah, the widow of the deceased and Zubaida, one of the daughters of the deceased who too are eye-witnesses of the occurrence were first examined by the police under Section 161 of the RPC and on August 13, 1997 and August 15, 1997 respectively. The remaining two eye-witnesses namely, Mohd. Aslam Shah and Ali Mohd. Lone, who are not the family members of the deceased, and who are also the eye witnesses of the occurrence were examined by the police on October 7, 1997. The statements of all these witnesses were also recorded before a Magistrate under section 164 of the RPC on May 5, 2000.

(VI). The appellant was arrested on May 15, 2000 that is to say after about three years of the occurrence.

(VII). No gun was recovered from the appellant or from any other accused in the case and it was for that reason that the trial court acquitted the appellant of the charge under section 7/25 of the Arms Act.

(VIII). The charge-sheet was finally submitted after almost three years of the occurrence.

8. Applying the normal standards for judging the soundness and correctness of a criminal charge, the aforesaid facts and circumstances would tend to considerably weaken the case of the prosecution. But the question is why the

police investigation was so painfully slow, reluctant and shoddy? We have seen the village *Chowkidar* saying that he heard the gun shot at 8.30 in the evening of August 6, 1997 but he did not venture out of his house for fear of terrorist fire. Next morning when he went to report the matter to the police he seems to be at pains to make it clear that he had not witnessed the occurrence and as far as he was concerned the killer was some unknown gunman. On getting the report, the police come to the village but do not stay for more than half an hour. There is no investigation at the site of the killing. No statement is taken of any witness. No need is felt to have the post-mortem of the body of the deceased. The empty cartridges fallen at the site of the killing that were collected by the witnesses are handed over to the police but those are either thrown away or put away somewhere as never again to see the light of the day. No attempt is made to look for the accused, much less to arrest him even though he lived in village Magray-pora itself. No attempt is made to search for or recover the weapon of crime which, according to the charge-sheet submitted by the police almost three years after the occurrence, was an AK-47 rifle.

9. In order to understand the highly unusual way in which the police investigation took place, it is necessary to probe further and to see the personality of the appellant. The appellant is described by the prosecution witnesses as a member of "*Ikhwan*". The "*Ikhwan*" is supposed to be a loose organization that

was made of surrendered militants in Kashmir who worked or purported to work as informers for the security forces and were also used for liquidating the secessionist militants. The members of the “*Ikhwan*¹” were mostly unruly, violent elements generally believed to enjoy the patronage and protection of the security forces. Common people feared them and as it would appear from this case even the state police was wary of laying a hand on them.

Zakir Husain Shah (PW.2) stated:

“Accused Shabbir Ahmad Teli had relationship with Ikhwan Tanjeem.”

He further said:

“I used to see the accused persons with army men, however, at the time of occurrence, army men were not with him.”

Abdul Rehman Shah (PW.3) stated before the court:

“Accused Shabbir Teli was concerned with Ikhwan and the said Tanjeem gave rifle to him.”

Zubaida Zakir Husain Shah (PW.4) stated before the court:

“Shabbir Ahmad Teli had gun and was working with Ikhwan. Other accused persons have no concern with Tanjeem. However, the above-named accused persons were friend of Shabbir Ahmad.”

¹ The full name of the group was “Ikhwan-ul-Muslemin” which literally means the Brotherhood of Muslims.

Mohammad Afzal Shah (PW.7) stated before the court:

“Accused Shabbir Tali was not wearing Maran but he was in police uniform and was having rifle in his hands.”

10. From the statements of the prosecution witnesses, it is also clear that the family members of the deceased were full of fears of the appellant. The appellant was a neighbour of the deceased; he would come to the house of the deceased as he wished and give to his family members open threats of dire consequences for not giving Lovely to him in marriage. The family members of the deceased had the apprehension that to give effect to his threats he might do something dreadful. Lovely was sent away to live with some relatives in some other place for fear that she might be kidnapped by the appellant.

11. Mohammad Afzal Shah who was examined as PW.7 stated before the court that he was a marriage broker and about three years ago he had fixed the marriage of Lovely, the daughter of the deceased in some family at Palipura. This greatly displeased the appellant who came to his house carrying a rifle and asked him to break the marriage fixed by him and giving the threat that otherwise he would kill him. He also said that the appellant was connected with *Ikhwan*.

12. In this background, we propose to test the truthfulness of the prosecution case on the intrinsic worth of the prosecution evidence leaving aside the failings of the police investigation.

13. In support of its case, the prosecution examined six eye witnesses. Four of the eye-witnesses are the family members of the deceased, being his son (Zakir Husain Shah), widow (Fatah), daughter (Zubaida) and son-in-law (Abdul Rehman Shah). The other two, namely Mohammad Aslam Shah and Ali Mohammad Lone are residents of the same village, unrelated both to the deceased and the appellant.

14. From the deposition of PW.2 Zakir Husain Shah, it appears that after doing the '*Isha Namaz*' on August 6, 1997, he returned to his house leaving behind his father in the mosque. As he came to the house, there was a gunshot outside in the lane. On hearing the shot, he and his mother Fatima came out of the house carrying a lantern. He saw the appellant standing in the lane carrying an automatic rifle. The appellant threatened them and asked them to go back inside the house. They came back to the house and watched from the open window. He saw his father coming out of the mosque and Manzoor Ahmad (one of the three accused acquitted by the trial court) who was standing near the mosque signaling to the appellant that his father was returning to the house. As his father came near the house, the appellant, taking aim at him, fired several shots from his gun, as a result of which his father fell down at the spot and died. He also stated that on hearing the first gunshot (that was perhaps meant to announce the arrival of the appellant at the spot or to scare away any people from there), his sister Zubaida too had come out of the house and she and her husband Abdul Rehman Shah were also present at the spot

when the appellant killed his father by firing at him from his gun. Zakir Husain Shah was subjected to long and searching cross-examination but there is nothing that can be said to create any doubt about the veracity of his narrative. His deposition is truthful, clear and definite.

15. The other three family members, namely, Fatah, the wife of the deceased, Abdul Rehman Shah, son-in-law of the deceased and Zubaida, the daughter of the deceased also narrated the same facts. Their evidences are quite consistent and fully corroborative of each other. Zubaida also said that as her father fell down hit by the shots fired by the appellant, she rushed to him and took her head in her lap and he took his last breath in her arms.

16. Apart from the four family members, the prosecution case is also supported by Mohammad Aslam Shah and Ali Mohammad Lone.

17. Mohammad Aslam Shah testified that he saw the appellant with the gun standing near the kitchen of the house of the deceased. As the deceased arrived there, on his way back from the mosque, the appellant fired four shots from his gun hitting the deceased in his chest and killing him on the spot. Mohammad Aslam Shah also stated that the occurrence was witnessed, besides him, by Zakir Husain, Zubaida, Fatah and Rehman Shah and some other witnesses including Ali Mohammad Lone.

18. Ali Mohammad Lone who was a neighbour of the deceased and the accused unequivocally stated that he saw the appellant carrying a gun and as the deceased arrived at the spot, he took aim at him and opened fire. Gani Shah, hit by the shots, fell down. He also stated that the motive behind the killing was the refusal by the deceased to give his daughter Lovely in marriage to the appellant.

19. We have carefully examined the testimonies of the eye-witnesses and we find that those are intrinsically sound and reliable. There is no reason for this Court not to accept the evidences of those ocular witnesses. The evidences of each of the six witnesses are sound internally and corroborate the testimonies of the other witnesses.

20. On a careful consideration of all the materials on record and on hearing counsel for the parties, we are of the view that both the trial court and the High Court rightly held the appellant guilty of the charge of murder. We see no merit in the appeal. It is, accordingly, dismissed.

21. The bail bonds of the appellant are cancelled. The appellant is directed to surrender within one month from today failing which the trial court should take coercive steps for taking him in custody to make him serve out the remaining period of his sentence.

.....J.
(Aftab Alam)

.....J.

.....
(R.M. Lodha)

New Delhi,
April 11, 2013.



JUDGMENT