

THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Jail Appeal No.835 of 2024

[Conf. Case No.01 of 2025]

Criminal Jail Appeal No.834 of 2024

[Ayaz Ali son of Noor Uddin Magsi v The State]

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M/s Manzoor Hussain Khoso and Qamar Abbas Abbasi, Advocates for the Appellant.

Mr. Fazal ur Rehman, Advocate for the Complainant.

Mr. Ali Haider Saleem, Additional Prosecutor General [Sindh].

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Date of hearing

14.09.2026

Date of Judgment

17.09.2026

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JUDGMENT

SHAMSUDDIN ABBASI, J.- Through the captioned Jail Appeals, Ayaz Ali son of Noor Uddin Magsi, the appellant has called into question the validity of two separate judgments both dated 10.12.2024, penned down by the learned Additional Sessions Judge, Sujawal, in Sessions Case No.23 of 2023 (Old Sessions Case No.467 of 2021), arising out of FIR No.27 of 2021 registered at Police Station Bannu for an offence under Section 302, PPC, and Sessions Case No.14 of 2023 (Old Sessions Case No.450 of 2021), arising out of FIR No.28 of 2021 registered at the same police station for offences under Sections 23-A(i)/25 of the Sindh Arms Act, 2013, through which the appellant was convicted under Section 302(b), PPC, and sentenced to death as Tazir, to be hanged by the neck until dead. He was further directed to pay a sum of Rs.500,000/- to the legal heirs of deceased Irshad Ali as compensation under Section 544-A, Cr.P.C. and in default thereof, to undergo simple imprisonment for a further period of six months. In the connected arms case, the appellant was convicted under Sections 23-A(i)/25 of the Sindh Arms Act, 2013, and sentenced to undergo five years' imprisonment with fine of Rs.50,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of three months. The benefit of Section 382-B, Cr.P.C. was extended to the appellant in both cases. The learned trial Court also made a separate reference to this Court under Section 374, Cr.P.C. for confirmation of death sentence awarded to the appellant.

2. FIR in this case has been lodged on 17.10.2021 at 1:10 pm whereas the incident is shown to have taken place on 16.07.2021 at 7:20 pm. Complainant Muhammad Sharif has stated that he had three brothers including Irshad Ali, aged about 28 years. According to him, Irshad Ali had sold a buffalo to Ayaz Ali for Rs.70,000/- against which Ayaz Ali had paid Rs.20,000/- and a balance of Rs.50,000/- remained outstanding. On the fateful day, the complainant along with his cousins Abdul Sattar and Irfan Gul was present at Mawali Mori when Irshad Ali arrived there. In the meantime, Ayaz Ali also reached the spot whereupon Irshad Ali demanded payment of the remaining amount stating that he required the money to purchase clothes for Eid whereupon Ayaz Ali became annoyed and there was exchange of hot words between them and during altercation Ayaz Ali took out a pistol from the fold of his shalwar and fired shots at Irshad Ali, who sustained firearm injuries and fell on the ground and on seeing this Ayaz Ali fled towards his house. The complainant observed two bullet injuries on the person of Irshad Ali, who succumbed to his injuries at the spot. He immediately informed the police whereupon the police arrived at the place of occurrence, completed the relevant proceedings under Section 174, Cr.P.C. and thereafter shifted the dead body to Darro Hospital for post-mortem examination and after completion thereof handed over the dead body to complainant, who transported it to his village and following the funeral rites went to Police Station Bannu and lodged FIR.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

4. At trial, the prosecution has examined complainant Muhammad Sharif as PW.1 at Ex.10, Irfan Gul (eye-witness) as PW.2 at Ex.11, Jan Muhammad (Tapedar) as PW.3 at Ex.13, PC Mubarak Ali as PW.4 at Ex.14, Dr. Abdul Khaliq as PW.5 at Ex.15, HC Ghulam Shabbir as PW.6 at Ex.16, Umer Din as PW.7 at Ex.17 and HC Muhammad Ramzan as PW.8 at Ex.18. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.19. In the connected case of recovery of unlicensed arms, the prosecution has examined HC Ghulam Shabbir as PW.1 at Ex.6, Umer

Din as PW.2 at Ex.7, Muhammad Sharif as PW.3 at Ex.8 and HC Muhammad Ramzan as PW.4 at Ex.9.

5. The appellant was examined under Section 342, Cr.P.C. in each case. He has denied the allegations levelled against him, pleaded innocence and stated that he has been falsely implicated in the cases. He neither opted to appear on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence.

6. Upon culmination of the trial, the learned trial Court, after appraisal of the evidence brought on record, found the appellant guilty of the offences charged with and, thus, convicted and sentenced him in both cases as detailed in para-1 (supra), which necessitated the filing of the listed appeals, which are being decided together through this common judgment.

7. Both the learned counsel appearing on behalf of the appellant have contended that the prosecution case is seriously weakened by the unexplained delay of about 18 hours in lodgment of FIR. It is next submitted that as per prosecution case the complainant was present at the place of occurrence and had witnessed the incident, hence there was no plausible explanation for withholding the report until after the funeral rites. The delay, therefore, furnished sufficient opportunity for deliberation, consultation and fabrication of a version designed to falsely implicate the appellant. It is also submitted that the learned trial Court has failed to attach due significance to this material circumstance while evaluating the credibility of the prosecution witnesses. Per learned counsel the appellant was not arrested from the place of occurrence or immediately thereafter rather he is shown to be arrested on 23.07.2021 i.e. after seven days the occurrence. It is argued that the recovery of the crime weapon from the appellant after such seven days of the incident is, therefore, incapable of furnishing independent corroboration of the ocular account particularly when the prosecution has failed to establish the circumstances in which the appellant remained at large during the intervening period. It is further argued that the prosecution has failed to exhibit the ballistic report in the main murder case although the investigating agency allegedly sent the pistol and empties to the Forensic Division and a report was referred to in the evidence, but such report has not been brought on record in the main murder case and mere deposition of police witnesses

regarding dispatch of the case property or the production of a ballistic report in the connected arms case could not substitute the formal proof and exhibition of the report in the murder trial. The prosecution, therefore, failed to establish through admissible forensic evidence that the empties secured from the place of occurrence had been fired from the pistol recovered from the possession of appellant. The learned counsels have maintained that the alleged recovery of the pistol standing alone did not establish that the appellant had used it in the commission of the murder. The prosecution was required to establish a reliable nexus between the recovered weapon, the empties found at the spot and the firearm injuries sustained by the deceased and in absence of a duly exhibited ballistic report in the murder case, the forensic connection remained unproved. The recovery, therefore, could not be treated as an independent and incriminating circumstance capable of corroborating the otherwise doubtful ocular account. On these grounds, the learned counsels have argued that the prosecution evidence when examined cumulatively did not inspire confidence. Lastly submitted that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and that the appellant is entitled to the benefit of doubt and acquittal.

8. Conversely, the learned Additional Prosecutor General, assisted by the learned counsel for the complainant, has submitted that the prosecution has established the charges against the appellant through consistent ocular and medical evidence. The complainant and eye-witness have furnished a straightforward account of the occurrence including the motive arising from the outstanding sale consideration of the buffalo and their presence at the scene of offence is natural and no material contradiction to their testimony has been brought on record. It is next submitted that the delay of about 18 hours in lodging the FIR has been satisfactorily explained by the complainant's account that after informing the police and completion of the necessary proceedings including post-mortem, he took the dead body to his village and performed the funeral rites before lodging the report. The delay, in the circumstances, is not sufficient to discard the otherwise confidence inspiring ocular account particularly when the occurrence was reported on the following day and the appellant was specifically nominated therein. It is also submitted that the arrest of the appellant and recovery of the crime weapon from his possession constituted material corroborative circumstances. The arrest and recovery has been supported by the evidence

of the mashir. With regard to the ballistic report, it is submitted that the prosecution has produced evidence regarding the dispatch of the pistol and empties to the Forensic Division and has led evidence connecting the recovered weapon with the investigation. It is submitted that non-exhibition of the ballistic report in the murder case did not by itself demolish the prosecution case as the conviction has been awarded upon direct ocular evidence corroborated by the medical examination and other incriminating circumstances. The absence of a particular piece of corroborative evidence could not discredit the otherwise reliable testimony of the complainant and eye-witness. It is argued that the learned trial Court has examined the evidence in its entirety and has recorded a well-reasoned finding of guilt and the defence has failed to demonstrate any material contradiction or any other circumstance sufficient to displace the concurrent account of the prosecution witnesses. He, therefore, prayed for dismissal of appeals.

9. We have heard the learned counsel for the respective sides and have carefully examined the entire evidence and other material available on record with their able assistance.

10. The principal contention of learned counsel for the appellant is that the delay of about 18 hours in lodgment of FIR, the arrest and recovery of the crime weapon after seven days of the occurrence and the alleged non-production of the ballistic report in the main murder case render the prosecution case doubtful. We are unable to agree with the contention that these circumstances either individually or cumulatively are sufficient to discard the otherwise reliable prosecution evidence.

11. The occurrence took place at about 7:20 pm at Mawali Mori. The complainant and eye-witness Irfan Gul have consistently and unequivocally attributed the fatal firing to the appellant. Their presence at the place of occurrence is wholly natural and free from any element of doubt. They have specifically identified and fully implicated the appellant in the commission of offence and their account has remained consistent on all material particulars. Nothing has been brought on record to suggest any previous enmity, motive or circumstance which could reasonably furnish them with a reason to falsely substitute or implicate the appellant in a case involving capital punishment. Their testimony, therefore, cannot be discarded on the basis of mere

conjecture or minor discrepancies rather it derives substantial corroboration from the medical evidence furnished by PW.5 Dr. Abdul Khaliq, who conducted the post-mortem examination and confirmed that the deceased had sustained two firearm injuries and that the cause of death was cardiopulmonary failure due to shock and hemorrhage. The medical evidence thus materially corroborates the ocular account with regard to the nature of injuries as well as the cause of death, thereby lending further assurance to the prosecution case.

12. The ocular account receives further corroboration from the report of the Sindh Forensic DNA and Serology Laboratory, available at Ex.15/D, which relates to the clothes of the deceased, the soil collected from the place of occurrence and the bullet recovered from the body of the deceased. This scientific evidence read with the medical evidence lends assurance to the prosecution version regarding the occurrence and the firearm injuries sustained by the deceased. The defence has not been able to demonstrate any material contradiction in the testimony of the complainant and eye-witness sufficient to dislodge their account.

13. As regards the delay in lodgment of FIR, the record shows that the occurrence took place on 16.07.2021 at about 7:20 pm whereas the FIR has been lodged on 17.07.2021 at 1:10 pm. The complainant while appearing before the learned trial Court has explained that he informed the police immediately after the occurrence and on his information the police reached the place of incident, completed the necessary proceedings under Section 174, Cr.P.C., shifted the dead body to the hospital for post-mortem examination and after completion of the post-mortem handed over the dead body to him and he took it to his village and performed the funeral rites and thereafter upon being free from the funeral obligations went to Police Station and lodged FIR. This explanation is consistent with the circumstances of the occurrence and the subsequent conduct of the complainant. The fact that the police was informed immediately and reached the place of incident before registration of FIR is a material circumstance which distinguishes the present case from one where the prosecution remains silent as to the delay in setting the law into motion. The delay in the present case has, therefore, been satisfactorily explained and cannot be treated as a circumstance suggesting consultation or fabrication of the prosecution version. The fact

that the appellant is nominated in the FIR further supports the continuity of the prosecution account.

14. Insofar as the arrest of appellant on 23.07.2021 i.e. seven days after the occurrence and the recovery of the crime weapon from his possession also do not create a reasonable doubt in the prosecution case. The occurrence had already been reported nominating the appellant in the FIR and the police were conducting the investigation. Mere lapse of seven days between the occurrence and the arrest does not render the recovery inadmissible or incapable of corroborating the prosecution case. The recovery is supported by the evidence of the mashir and has to be appreciated in conjunction with the ocular and medical evidence rather than in isolation. Record reflects that the recovered pistol from the possession of appellant and the empties secured from the place of occurrence were sent to the office of Forensic Division and that the FSL report recorded that two empties had been fired from the same 7.63 mm 30-bore pistol, which was found to be in working condition. The said report was exhibited in the connected arms case. Although the ballistic report has not been produced as an exhibited document in the main murder case, such non-production does not in the facts of the present case furnish a sufficient ground to set-aside the conviction. The prosecution case does not rest solely upon the alleged recovery or the ballistic report rather the direct ocular account is supported by the medical evidence and the DNA and serology report. The non-production of a corroborative document in the murder case cannot destroy the substantive evidence otherwise available on record. The contention that the recovery of weapon after seven days is of no evidentiary value is equally without merit. The recovery is not being treated as the sole basis of conviction. It is an additional circumstance which read with the positive FSL report exhibited in the connected arms case and the direct ocular account lends further support to the prosecution version. The fact that the appellant was found in possession of the alleged crime weapon after seven days does not negate the occurrence or the consistent attribution of the fatal firing to him.

15. The motive alleged by the prosecution is also not without substance. The evidence brought on record shows that the deceased had sold his buffalo to the appellant for Rs.70,000/- against which the appellant had paid

Rs.20,000/- and a balance of Rs.50,000/- remained outstanding. The deceased had demanded payment of the remaining amount stating that he required money for Eid shopping. This demand resulted in an exchange of hot words during which the appellant took out his pistol and fired two shots at the deceased. The existence of this financial dispute provides a plausible motive for the occurrence. Although motive is not a substitute for proof of the charge, it assumes significance where it is consistent with the ocular account and the surrounding circumstances.

16. The fact that the appellant fired not one but two shots at the deceased is a highly material and incriminating circumstance, which assumes particular significance in the context of the preceding altercation and the demand for payment of the outstanding amount. The repeated firing cannot reasonably be characterized as an accidental discharge or an act devoid of intention. Having fired the first shot, the appellant did not desist rather he repeated the firing at the deceased, thereby demonstrating a conscious and deliberate course of conduct directed against the deceased. The consistent ocular account establishes that the appellant intentionally fired upon the deceased as a consequence of which he sustained firearm injuries and subsequently succumbed to the injuries. The use of a firearm, the repeated firing, the targeting of the deceased and the fatal nature of the injuries when considered cumulatively constitute compelling circumstances from which the requisite intention to cause death is clearly visible. The manner in which the appellant persisted in firing leaves no room that the occurrence was accidental or unintentional rather it manifests a deliberate design to cause murder of the deceased. The subsequent death of the deceased, therefore, was the direct and natural consequence of the appellant's deliberate act attracting the ingredients of intentional murder.

17. Having examined and reappraised the entire evidence on record with due care and caution, we are satisfied that the prosecution has proved the appellant's guilt beyond reasonable doubt. The ocular account furnished by the complainant and eye-witness is consistent, confidence inspiring and materially corroborated by the medical evidence and the report of the DNA and Serology Laboratory. The medical evidence supports the manner of occurrence narrated by the complainant and eye-witness while the scientific evidence further connects the appellant with the commission of the offence.

The evidence when assessed as a whole forms a coherent and confidence inspiring chain pointing towards the appellant's guilt. No material contradiction, omission or infirmity has been pointed out which could render the prosecution evidence unreliable or create a reasonable doubt in favour of the appellant. Accordingly, we find no legal or factual justification to interfere with the conviction of the appellant under Section 302(b), PPC, which is hereby maintained. Likewise, his conviction in the connected arms case is also maintained because the prosecution having established his conscious possession of the weapon and no circumstance having been brought on record warranting interference with the finding of guilt recorded therein.

18. As regards the quantum of sentence, it is observed that the appellant was about 24 years of age at the time of recording his statement under Section 342, Cr.P.C. It is also an admitted position that although the ballistic report was exhibited in the connected arms case, it was not produced in the main murder case. These circumstances do not detract from the otherwise reliable prosecution evidence and, therefore, have no bearing upon the finding of guilt, however, they are relevant to the question of quantum of sentence. The death penalty being the ultimate and irreversible punishment warrants a careful consideration of the circumstances attending the offence as well as those relating to the offender. Having regard to the appellant's young age and the aforesaid evidentiary circumstance, we are of the considered view that the extreme penalty of death is not warranted in the peculiar facts and circumstances of the case. Consequently, while maintaining the conviction under Section 302(b), PPC, the sentence of death awarded to the appellant is converted into imprisonment for life. The conviction and sentence recorded in the connected case relating to recovery of unlicensed arm shall remain intact. The remaining terms of sentence including the compensation awarded under Section 544-A, Cr.P.C. shall remain unaltered whereas the connected Murder Reference under Section 374, Cr.P.C. is answered accordingly. The sentences awarded in both cases shall run concurrently and the appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C. Both appeals stand disposed of in the above terms.

JUDGE

JUDGE