

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.80 of 2025
[Confirmation Case No.03 of 2025]

Appellant Ali Hassan son of Baboo through Mr. Dur Muhammad Mallah, Advocate.

Respondent The State through Mr. Ali Anwar Kandhro, Additional Prosecutor General (Sindh).

Date of hearing **16.09.2026**

Date of Judgment **18.09.2026**

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JUDGMENT

Shamsuddin Abbasi.- J. Ali Hassan son of Baboo, appellant, was tried by the learned Additional Sessions Judge-I/Model Criminal Trial Court (MCTC), Thatta, in Sessions Case No.315 of 2017 (FIR No.76 of 2017) registered at Police Station Mirpur Sakro, District Thatta, for offences under Sections 302, 427 and 504, PPC. By a judgment dated 23.01.2025 he was convicted under Section 302, PPC and sentenced to death, with the direction that he be hanged by the neck until dead, for brutal murder of deceased Moula Bux.

2. Complainant Ramzan son of Muhammad Soomar is the brother of deceased Moula Bux, aged about 32 years, who is said to be murdered by Ali Hassan by inflicting hatchet blows upon his neck, head and right arm as a result of which he succumbed to his injuries at the spot. The motive alleged by the complainant is that the appellant had brought his buffaloes into their cotton crop, where they started grazing and damaging the crop and when the deceased drove the buffaloes away, the appellant became annoyed and in furtherance of such grievance attacked and murdered him. Hence, this FIR.

3. After registration of the FIR, the investigation was followed and upon its completion a challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

4. Upon indictment, the appellant pleaded not guilty to the charged offence and claimed trial. In support of its case, the prosecution has

examined complainant Ramzan as PW.1 at Ex.4, Abdul Majeed, an eye-witness of the incident, as PW.2 at Ex.5, Ghulam Nabi, another eye-witness, as PW.3 at Ex.6, Rajab as PW.4 at Ex.7, Dr. Mohan Lal as PW.5 at Ex.8, Abdul Ghafoor (Tapedar) as PW.6 at Ex.9 and Abdul Hameed (LNK) as PW.7 at Ex.10. They have produced and exhibited relevant documents in their respective evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement at Ex.11. The appellant was subsequently examined under Section 342, Cr.P.C., at Ex.12. He has denied the allegations levelled against him, professed his innocence and pleaded his false implication. He neither opted to appear on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence.

5. Worth to mention here that the learned trial Court, after appreciating the evidence available on record, found the appellant guilty of the offence punishable under Section 302, PPC and thus convicted and sentenced and sentenced him to imprisonment for life vide judgment dated 28.01.2020. Aggrieved by the said conviction and sentence, the appellant preferred Criminal Appeal No.204 of 2020 before this Court and vide judgment dated 19.03.2024, this Court remanded the case to the learned trial Court with directions to re-record the evidence of complainant Ramzan and eye-witnesses Abdul Majeed and Ghulam Nabi in presence of well experienced and competent counsel well conversant with the cases involving capital punishment and to ensure that he is afforded an opportunity to cross-examine each of the aforesaid witnesses. In compliance with the aforesaid directions, the learned trial Court re-recorded the evidence of all three witnesses in the presence of the newly engaged counsel, thereafter recorded the statement of appellant afresh under Section 342, Cr.P.C. and proceeded to decide the case. Upon conclusion of the proceedings, the learned trial Court passed the impugned judgment, whereby the appellant was awarded death penalty. It is this subsequent judgment, whereby the appellant has been convicted to death that has given rise to the instant appeal.

6. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case due to mala fide intentions and ulterior motives as otherwise he has nothing to do with the alleged offence and has been made victim of circumstances. It is next submitted that the occurrence was the result of sudden provocation and that the prosecution has failed to

establish the requisite intention to commit murder. On these premises, learned counsel submits that he would not press the instant appeal on merits, provided that the conviction under Section 302(b), PPC is altered to one under Section 302(c), PPC. Alternatively, the learned counsel prays that the sentence of death awarded to the appellant may be converted into imprisonment for life principally on the ground that the prosecution has failed to establish any motive for the occurrence. According to learned counsel, such failure coupled with the fact that the appellant is not a previous convict and sole bread earner of his family constitutes a relevant mitigating circumstance which when considered in conjunction with the other circumstances of the case warrants the reduction of the capital sentence of death to imprisonment for life.

7. Conversely, the learned Additional Prosecutor General has opposed the submissions advanced on behalf of the appellant and contended that the plea of sudden provocation is wholly misconceived and finds no support from the evidence available on record. Mere assertion of sudden provocation in the absence of any cogent, reliable and affirmative evidence cannot be made the basis for altering the conviction under Section 302(b), PPC to Section 302(c), PPC. It is also submitted that the prosecution evidence when read as a whole demonstrates that the appellant committed the fatal assault with the requisite intention and knowledge and that the manner in which the occurrence has taken place is inconsistent with a case of unpremeditated act committed under the immediate influence of sudden provocation. Thus, the essential factual foundation necessary to attract the plea of sudden provocation is conspicuously absent. As regards the alternative prayer for conversion of the death sentence into imprisonment for life, he submits that mere non-establishment of motive by itself does not constitute a mitigating circumstance of such weight as to warrant reduction of a capital sentence where the prosecution case is otherwise proved through trustworthy and confidence inspiring evidence. He, therefore, prays for dismissal of appeal and maintaining conviction and sentence awarded by the learned trial Court.

8. We have heard the learned counsel for the parties and have minutely examined the record including the impugned judgment and the evidence available on record.

9. Having carefully examined and reappraised the entire evidence available on record with due care and caution, we are of the considered view that the prosecution has succeeded in establishing the guilt of the appellant under Section 302, PPC beyond reasonable doubt. The occurrence took place on 27.08.2017 at about 8:30 am whereas the FIR has been lodged at 9:30 am within one hour of the occurrence despite the place of occurrence being situated at a distance of about 7/8 kilometers from the police station. Such prompt reporting carries considerable evidentiary weight and substantially excludes the possibility of deliberation, consultation or subsequent fabrication. Furthermore, the appellant is nominated in the FIR with specific allegation that he inflicted three hatchet blows upon the neck, head and right arm of deceased Moula Bux. This attribution remained consistent throughout the prosecution evidence. The ocular account furnished by complainant Ramzan, brother of the deceased, finds material corroboration from the eye-witnesses Abdul Majeed and Ghulam Nabi and is further reinforced by the medical evidence, which confirms the nature and location of the injuries sustained by the deceased. Record also demonstrates that the appellant was arrested on the very day of occurrence at about 4:00 pm and the crime weapon viz hatchet was recovered from his possession and was reported to be stained with human blood. Nothing substantial has been brought on record which could render the testimony of the prosecution witnesses inherently unreliable or create a reasonable doubt regarding the appellant's participation in the occurrence. The defence has also failed to furnish any plausible explanation capable of dislodging the prosecution case. We, therefore, find no justification to interfere with the conviction recorded by the learned trial Court under Section 302(b), PPC.

10. The plea of sudden provocation advanced on behalf of the appellant is devoid of substance. The record does not disclose any immediate act or conduct on the part of the deceased, which could reasonably be regarded as sufficient to deprive the appellant of his self-control and thereby bring the occurrence within the ambit of grave and sudden provocation. Mere assertion of provocation unsupported by any reliable evidence or attending circumstance cannot furnish a lawful basis for altering the nature of the offence. Nothing has been brought on record to establish that the appellant acted under the immediate influence of any such provocation. We, therefore, find no justification to alter and modify the conviction under Section 302(b),

PPC, which is accordingly maintained. However, the question of sentence requires an independent consideration. The prosecution alleged a motive for the occurrence but has failed to establish the same through any cogent, reliable or confidence inspiring evidence. The alleged motive has consequently remained shrouded in mystery. It is well settled that failure to prove motive by itself does not demolish an otherwise trustworthy prosecution case nor does it furnish a ground for acquittal. Nevertheless, where the Court is called upon to determine whether the extreme penalty of death is warranted, the absence of an established motive assumes considerable significance. In the present case, the prosecution has failed to place on record Court any convincing explanation regarding the circumstances leading to the occurrence. Such failure constitutes a relevant mitigating circumstance which cannot be altogether disregarded while determining the appropriate sentence.

11. We are conscious of the fact that the question of sentence is distinct from that of conviction. Once guilt has been established beyond reasonable doubt, the Court is nevertheless required to undertake a separate and careful assessment of the aggravating and mitigating circumstances before determining the appropriate punishment. The death penalty being the severest punishment prescribed by law cannot be imposed mechanically merely because a conviction under Section 302(b), PPC has been recorded. Section 302(b), PPC itself preserves the judicial discretion to award either of the two prescribed punishments depending upon the facts and circumstances of the particular case. The Hon'ble Supreme Court has repeatedly emphasized that where the prosecution asserts a motive but fails to prove it, such failure may legitimately weigh against the imposition of the extreme penalty. In *Ghulam Mohy-ud-din alias Haji Babu and others v. The State* (2014 SCMR 1034), the Hon'ble Supreme Court recognized that the alternative sentence of imprisonment for life provided under Section 302(b), PPC cannot be treated as merely illusory and that the circumstances of each case must be examined before determining whether the extreme penalty is warranted. Likewise, in *Ahmad Nawaz and others v. The State* (2011 SCMR 593), the conviction under Section 302(b), PPC was maintained while the death sentence was reduced to imprisonment for life upon consideration of the circumstances of the case. Similarly, the principle that the failure to establish the asserted motive may react upon a sentence of death has been

recognized in *Qaddan and others v. The State* (2017 SCMR 148). The same approach is consistent with *Muhammad Riaz and another v. The State and another* (2007 SCMR 1413), wherein the Hon'ble Supreme Court observed that although death is a prescribed punishment for qatl-i-amd, imprisonment for life is also a lawful sentence and must be kept in view wherever the facts and circumstances warrant mitigation. In the present case, the prosecution evidence is sufficient to sustain the conviction, however, the motive alleged by the prosecution has neither been proved nor satisfactorily explained. The cause which allegedly impelled the appellant to commit the offence has thus remained unexplained. This aspect assumes particular significance at the sentencing stage because while it does not create any doubt regarding the appellant's guilt, it does create a circumstance requiring caution before subjecting him to the ultimate penalty. The absence of a proved motive, therefore, does not operate in favour of the appellant as a ground for acquittal, but it does constitute a relevant mitigating circumstance in determining whether the extreme penalty of death is warranted. The appellant is also stated to be a first offender having no previous criminal record and to be the sole breadwinner of his family. These circumstances, considered cumulatively with the failure of the prosecution to establish the motive and the fact that the cause leading to the occurrence has remained shrouded in mystery persuade us that the extreme penalty of death is not indispensable in the peculiar circumstances of the present case. Such mitigating circumstances do not in any manner dilute the gravity of the offence nor do they detract from the prosecution evidence which has otherwise established the appellant's guilt beyond reasonable doubt. They bear only upon the limited question of the quantum of punishment.

12. For the foregoing reasons while maintaining the conviction of the appellant under Section 302(b), PPC, we are of the considered view that the ends of justice would be adequately met by substituting the sentence of death with imprisonment for life. The sentence of death awarded by the learned trial Court is, therefore, converted into imprisonment for life. The appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C.

13. Subject to the above modification in the quantum of sentence, this Criminal Appeal No.80 of 2025 is dismissed on merits to the extent of

conviction and is partly allowed to the extent of sentence. The Confirmation Case No.03 of 2025 is answered accordingly.

JUDGE

JUDGE

Naeem /PA