

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-
Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

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Criminal Jail Appeal No.133 of 2025
[Confirmation Case No.05 of 2025]
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Appellant	Noor Ahmed son of Faqeer Muhammad through Mr. Nadeem Ahmed Azar, Advocate.
Complainant	Ali Ahmed son of Faqeer Muhammad present in person.
Respondent	The State through Mr. Ali Anwar Khandhro, Additional Prosecutor General [Sindh].

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Dates of hearing	<u>01.10.2026</u>
Date of Judgment	<u>05.10.2026</u>

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JUDGMENT

Shamsuddin Abbasi, J.- Noor Ahmed son of Faqeer Muhammad, appellant, has called in question the validity of the judgment dated 13.02.2025, penned down by the learned Sessions Judge, Sujawal, in Sessions Case No.155 of 2023 (FIR No.07 of 2023) registered at Police Station Ladiun, District Sujawal, for offence under Section 302, PPC through which he was convicted under Section 302(b), PPC and sentenced to death by hanging till he is dead with direction to pay Rs.200,000/- as compensation to the legal heirs of the deceased under Section 544-A, Cr.P.C. and in default of payment thereof to suffer simple imprisonment for a further period of six months.

2. FIR in this case has been lodged on 16.06.2023 at 3:30 pm whereas the incident is shown to have taken place on 11.06.2023 at about 11:30 pm., Complainant Ali Ahmed son of Faqeer Muhammad has stated that on the night of occurrence he and his brothers Deedar, Muhammad Hassan and Noor Ahmed (appellant), their cousin Hashim son of Ismail and other inmates of the house had gone to sleep. It was about 11:30 pm he and other inmates awakened by cries and saw in solar light Noor Ahmed armed with a spade and inflicting blows upon Muhammad Hassan, who sustained injuries on his neck, left side of his face near the mouth, near his left ear and left eye as well as on the thumb of his left hand. The complainant with the help of other

inmates attempted to apprehend Noor Ahmed, who brandished the spade, extended threats and succeeded in fleeing from the place of occurrence. After his departure, the complainant and others noticed profuse bleeding from the injuries sustained by Muhammad Hassan, who succumbed to the injuries at spot. The complainant made efforts to arrange transportation for shifting the dead body to hospital and for initiating legal proceedings, but due to non-availability of mobile network no such arrangement could be made and on the following morning i.e. 12.06.2023 Deen Muhammad approached Police Station Ladiun and brought police to the place of occurrence. The police shifted the dead body to the hospital where post-mortem examination was conducted and thereafter handed over the dead body for burial. According to the complainant, after performing the funeral rites, he proceeded to Police Station Ladiun and lodged FIR under Section 302, PPC.

3. Pursuant to registration of the 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 trial.

4. Upon his indictment, Noor Ahmed pleaded not guilty and claimed trial. At trial the prosecution has examined as many as seven witnesses namely, Ali Ahmed (complainant) as PW.1 at Ex.7, Deedar Hussain (eye-witness) as PW.2 at Ex.8, Deen Muhammad as PW.3 at Ex.9, Dr. Abid Hassan as PW.4 at Ex.11. I.O. Inspector Ghulam Mustafa as PW.5 at Ex.12, WHC Muhammad Ashraf as PW.6 at Ex.13 and Noor Ahmed (Supervising Tapedar) as PW.7 at Ex.14. All of them have exhibited relevant documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement at Ex.15.

5. In his statement under Section 342, Cr.P.C. recorded at Ex.16 Noor Ahmed has denied the allegations imputed upon him by the prosecution, professed his innocence and claimed that he has been falsely implicated in this case and also denied recovery of the spade from his possession. He, however, 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 found the appellant guilty of the offence charged with and thus convicted and sentenced him as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

7. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case with malafide intention and ulterior motive as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. It is next submitted that the prosecution has failed to prove it's against the appellant beyond reasonable doubt. The occurrence alleged to be took place on 11.06.2023 whereas the FIR has been lodged after five days of the occurrence on 16.06.2023. The explanation furnished for this substantial delay is not convincing particularly when the police had already reached the place of occurrence on 12.06.2023 and inspected the dead body. It is also submitted that the eye-witnesses are closely related to the deceased and no independent witness has been produced despite the presence of other inmates at the time of occurrence. According to learned counsel, the alleged recovery of the spade is inconclusive and the serological report merely establishes the presence of human blood on the clothes and the spade, it does not establish that the blood on the weapon belonged to the deceased or otherwise connect the appellant with the offence. The medical evidence only confirms the nature and cause of death and does not identify the assailant. Learned counsel submits that the prosecution has failed to establish any convincing motive for the appellant to murder his own brother. The cumulative effect of the unexplained delay, related ocular account, absence of independent corroboration and inconclusive recovery creates reasonable doubt, the benefit whereof must go to the appellant. Alternatively, he submits that even if the conviction is maintained, the death sentence calls for reconsideration. The appellant is suffering from a medically established mental ailment, which constitutes a significant mitigating circumstance. Coupled with the absence of a proved motive and other mitigating circumstances, it warrants conversion of the death sentence into imprisonment for life under Section 302(b), PPC. Learned counsel, therefore, prays that the appellant may be acquitted by extending him the benefit of reasonable doubt, in the alternative, the sentence of death may kindly be converted into imprisonment for life.

8. In contra, the learned Additional Prosecutor General has supported the impugned judgment and submitted that the prosecution has proved its case through consistent and confidence inspiring ocular evidence furnished by PW.1 Ali Ahmed and PW.2 Deedar Hussain, who witnessed the appellant inflicting spade blows upon the deceased and their presence at the place of occurrence is natural and their evidence finds corroboration from the medical evidence. It is next submitted that the delay in registration of the FIR has

been satisfactorily explained by the complainant. The occurrence took place at night and the deceased had to be taken to hospital and there was no mobile network available. The subsequent recovery of the spade from the appellant's possession coupled with the serological report showing human blood on the weapon and the deceased's clothes provides further corroboration to the ocular account. The relationship of the eye-witnesses with the deceased is likewise not a ground to discard their otherwise consistent testimony. It is argued that the prosecution has established the appellant's guilt beyond reasonable doubt and that the learned trial Court has correctly appreciated the evidence and convicted the appellant in accordance with law. He, therefore, prays for dismissal of appeal and maintaining conviction and sentence awarded to the appellant. As regards the alternative plea concerning mental ailment, he submits that unless the appellant establishes that his mental condition falls within the parameters of the relevant legal defence or constitutes a legally sufficient mitigating circumstance, the conviction and sentence need not be interfered with.

9. Complainant present in person states that he has no objection if the sentence of death awarded to the appellant is converted into imprisonment for life. He further submits that the appellant being a mentally sick person may be provided medical facility during his incarceration.

10. We have heard the learned counsel for the appellant and the learned Additional Prosecutor General, assisted by the complainant, who is present in person, and have carefully examined the entire evidence and other material available on record with their able assistance.

11. The ocular account furnished by PW.1 Ali Ahmed and PW.2 Deedar Hussain is consistent and confidence inspiring on all material particulars. Both witnesses have categorically attributed the fatal assault to the appellant and have specifically stated that he inflicted spade blows upon the deceased Muhammad Hassan. Their presence at the place of occurrence is entirely natural and stands explained as they were admittedly inmates of the same house where the occurrence took place. Their presence, therefore, cannot be termed as artificial or procured merely to support the prosecution case. Mere fact that the witnesses are brothers of the deceased does not by itself furnish any lawful basis for discarding their testimony. Relationship is not a ground for treating an otherwise reliable witness as interested or for rejecting his evidence without examining its essential worth. On the contrary, being close

relatives and brothers of the deceased they would have no reason to allow the real culprit to go unpunished and falsely substitute an innocent person in his place. Their relationship with the deceased, therefore, rather explains their natural presence at the scene and their interest in bringing the actual perpetrator to justice. Their evidence cannot be discarded merely on account of their relationship unless some material contradiction, inherent improbability or other circumstance is shown which renders their account unworthy of reliance. Both witnesses were subjected to cross-examination at length, yet nothing material has been extracted to shake their credibility or to create any reasonable doubt regarding the appellant's identity or his participation in the occurrence. Their testimony remains consistent on the essential features of the incident particularly the presence of appellant, the manner of assault, the weapon used and the fatal injuries caused to the deceased. Minor discrepancies, if any, concerning minor details are not sufficient to dislodge an otherwise coherent and trustworthy ocular account. Thus, their evidence being natural, consistent and unshaken on material particulars provides a reliable basis for sustaining the prosecution case against the appellant.

12. The ocular account receives substantial corroboration from the medical evidence adduced by PW.4 Dr. Abid Hussain who found multiple sharp-cutting injuries including a serious injury on the neck with bone exposed and opined that the deceased died due to shock and hemorrhage resulting from the injuries inflicted by a sharp-cutting weapon, which injury was sufficient to cause death in the ordinary course of nature. The nature and seat of the injuries are fully consistent with the prosecution version regarding the manner of assault. Likewise, the recovery of the spade from the appellant's possession as deposed to by the recovery witnesses further lends corroboration to the prosecution case. The forensic report establishes the presence of human blood on the recovered spade as well as on the clothes of the deceased. Though such evidence by itself may not establish the identity of the assailant, it constitutes a relevant corroborative circumstance when considered alongside the direct ocular account and medical evidence.

13. The delay in registration of the FIR in the circumstances of the present case does not create a reasonable doubt. The occurrence admittedly took place on 11.06.2023 at 11:30 pm, the deceased had suffered fatal injuries at the spot, the complainant stated that mobile network was unavailable and on the following morning the police were brought to the place of occurrence

where the dead body was inspected and shifted to hospital for post-mortem examination of the deceased. The subsequent delay until completion of the funeral rites and registration of the FIR has been explained by the prosecution. Such delay, therefore, cannot by itself outweigh otherwise reliable and corroborated evidence. We are, therefore, of the considered view that the prosecution has successfully established through reliable ocular evidence duly corroborated by medical and circumstantial evidence that the appellant committed the murder of Muhammad Hassan.

14. Upon careful reappraisal of the entire evidence available on record, we find that the learned trial Court has correctly appreciated and properly assessed the prosecution evidence in its entirety. The findings recorded by the learned trial Court are based on a sound appreciation of the material on record and are supported by cogent and legally admissible evidence. No material contradiction, omission or discrepancy has been pointed out which could adversely affect the core of the prosecution case or render the testimony of the material witnesses unreliable. The learned trial Court has assigned valid and plausible reasons for arriving at the conclusion of guilt and its findings are neither arbitrary nor based on conjectures or surmises. It is a settled principle that an appellate Court would not interfere with a finding of conviction merely because another view of evidence is conceivable, interference is warranted only where the appreciation of evidence is shown to be perverse, arbitrary or founded upon misreading or non-reading of material evidence. In the case in hand, no such infirmity has been demonstrated. On independent scrutiny, we find that the prosecution evidence when read as a whole and in its proper perspective establishes the charge against the appellant beyond reasonable doubt. The defence has failed to bring on record any circumstance creating a reasonable doubt in the prosecution case nor has it been able to dislodge the incriminating evidence relied upon by the learned trial Court. Consequently, the impugned judgment does not suffer from any illegality, perversity, misreading or non-reading of material evidence warranting interference by this Court. The conviction of the appellant under Section 302(b), PPC is, therefore, fully justified and is hereby maintained.

15. The quantum of sentence, however, requires separate consideration. During the pendency of the appeal, keeping in view the plea raised on behalf of the appellant regarding his mental condition, this Court directed the Civil Surgeon, Services Hospital, Hyderabad, to constitute a Special Medical Board for his comprehensive medical and psychiatric assessment. Pursuant

thereto, the report of the Special Medical Board has been furnished before this Court and has been taken into consideration. The report records the appellant's existing mental condition and confirms that he is suffering from a serious mental illness requiring psychiatric care and treatment, however, the material presently available on record does not establish that at the time of commission of offence, the appellant was suffering from a mental disorder of such nature or degree as would bring his case within the ambit of a complete legal exemption from criminal responsibility. The finding of guilt, therefore, remains unaffected. Nevertheless, the mental illness medically established by the Special Medical Board is a significant mitigating circumstance which cannot be overlooked while determining the appropriate sentence particularly when the Court is required to choose between the punishments prescribed under Section 302(b), PPC. Mental illness, even where it does not constitute a complete defence to criminal liability, is a relevant circumstance in the determination of sentence. In making that determination, the Court is required to consider the individual circumstances of the convict including his medically established mental condition alongside the nature and gravity of the offence and the other circumstances appearing on the record. In the present case, the opinion of the Special Medical Board provides objective medical material demonstrating that the appellant is suffering from a serious mental illness and requires psychiatric treatment and care. Having regard to this significant mitigating circumstance and upon an overall assessment of the circumstances of the case, we are of the view that the extreme penalty of death is not warranted. The appellant's medically established mental illness requiring continued psychiatric care constitutes a substantial mitigating circumstance favouring the lesser punishment prescribed by law. Accordingly, while maintaining the conviction of the appellant under Section 302(b), PPC, the sentence of death is altered and converted into imprisonment for life. The remaining part of the sentence including the compensation awarded under Section 544-A, Cr.P.C. and the sentence awarded in default thereof shall remain intact. The appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C. The appeal is, therefore, dismissed to the extent of conviction but is partly allowed to the extent of sentence in the above terms.

16. Subject to foregoing modification whereby the sentence of death has been converted into imprisonment for life, this Criminal Appeal No.133 of 2025 stands disposed of and Confirmation Case No.05 of 2025 is answered accordingly.

17. Before parting with the judgment, having regard to the opinion of the Special Medical Board regarding the appellant's established mental illness and his need for continued psychiatric care and treatment, we deem it necessary to issue appropriate directions to safeguard his health and to ensure continuity of the treatment medically required by him. The Jail Superintendent concerned shall ensure that throughout the period of appellant's incarceration, he is subjected to regular psychiatric assessment and is provided such psychiatric treatment, medication and other necessary medical care as may be prescribed by the competent psychiatric physician. His mental condition shall be periodically reviewed by a qualified psychiatric physician and the treatment so prescribed shall be duly administered, documented and monitored by the prison authorities in coordination with the concerned health authorities. Any deterioration in his mental condition shall immediately be brought to the notice of the competent medical authority for appropriate intervention. It is further directed that upon completion of the appellant's lawful sentence including any remission lawfully available to him the Jail Superintendent concerned shall ensure before his release that he is referred to the Sir C.J. Institute of Psychiatry & Behavioral Sciences, Hyderabad or any other appropriate Government psychiatric institution for comprehensive assessment of his prevailing mental condition and for determination of the further treatment, supervision or care required by him and if upon such assessment, the competent psychiatric opines that the appellant continues to require psychiatric treatment, supervision or hospitalization, the competent authority shall take all necessary steps strictly in accordance with law for his admission in an appropriate Government hospital and for continuation of the treatment medically indicated. The competent authorities shall ensure that the appellant is not deprived of necessary psychiatric care merely by reason of completion of his sentence and that any further treatment, supervision or hospitalization is continued strictly in accordance with the applicable law and the advice of the competent psychiatric authorities.

JUDGE

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