

IN THE HIGH COURT OF SINDH AT KARACHI

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

<><><><>

Criminal Appeal No.722 of 2024
[Confirmation Case No.08 of 2025]

<><><>

Appellant	Babar Siraj son of Siraj Through Mr. Molvi Iqbal Haider, Advocate.
Complainant	Syed Talha Ashraf son of Syed Ashraf Ali Shah through Ms. Irum Rasheed, Advocate.
Respondent	The State Through Mr. Ali Haider Saleem, Additional Prosecutor General [Sindh].

<><><>

Dates of hearing	<u>05.08.2026 & 17.08.2026</u>
Date of Judgment	<u>19.08.2026</u>

<><><><>

JUDGMENT

Shamsuddin Abbasi, J.- Syed Ashraf Ali son of Syed Qasim Ali (deceased), aged about 55 years, was allegedly shot with a 30 bore pistol by Babar Siraj on 18.07.2019, who sustained a firearm injury on right side of his abdomen and was shifted to Liaquat National Hospital, Karachi, where he succumbed to his injuries on 19.07.2019.

2. The FIR was initially registered on 18.07.2019 at about 6:30 pm under Sections 324, 34 and 114, PPC, on the basis of statement under Section 154, Cr.P.C. of Syed Talha Ashraf, recorded earlier at ICU of Liaquat National Hospital. The FIR records the occurrence as having taken place on the same day. According to complainant, his deceased father was a retired employee of the Sindh Building Control Authority (SBCA) and was serving as General Secretary of the Functional Labour Union, SBCA. On the day of occurrence, the complainant and his father were present at Civic Centre near the SBCA canteen when Arif Mota, step brother of his father, accompanied by Babar Siraj, arrived there. An altercation and exchange of hot words took place between them and his father. Meanwhile, Babar Siraj went to the office of Ebrahim Kaka, Chairman of Peoples Unity Union, brought a 30 bore pistol,

first pointed it towards the complainant and then fired at Syed Ashraf Ali, hitting him on the right side of his abdomen. After firing upon the deceased, Babar Siraj again pointed pistol towards the complainant and at that stage Syed Ashraf Ali grappled with him, brought his armed hand down and thereafter became unconscious due to the firearm injury. He was immediately shifted to Liaquat National Hospital for medical treatment. The FIR further alleges that Babar Siraj attempted to flee from the place of occurrence, but was apprehended at the spot by the complainant with the assistance of Tanveer and other persons present there and was handed over along with the weapon to SIP Ghulam Akbar of P.S. New Town, who had reached the spot upon receiving information from ASI Ashraf Ali of Police Station SBKA. Whereas Arif Mota succeeded in escaping from the scene of offence. SIP Ghulam Akbar arrested Babar Siraj at the spot and recovered from his possession a 30 bore pistol, used in the commission of offence, containing four live rounds and also taken into custody one empty shell for which a separate case vide Crime No.202 of 2019 was registered against Babar Siraj pertaining to recovery of crime weapon.

3. During the course of treatment, Syed Ashraf Ali died on 19.07.2019 resultantly the offence under Section 302, PPC was subsequently incorporated in the challan. As to the motive, the prosecution case is that Arif Mota was the step brother of the deceased, who alongwith his associate had thrown cigarette and spat pan upon a picture of their Pir Sahib at the Civic Centre upon which the deceased admonished them and due to this reason Ebrahim Kaka, Chairman of Peoples Unity Union, also became annoyed. Thus, the prosecution case as reflected in the FIR is that the accused acting pursuant to the alleged previous grudge and motive, armed himself with a 30 bore pistol, fired at Syed Ashraf Ali causing a fatal firearm injury, attempted to further assault the complainant and was thereafter apprehended at the scene with the crime weapon while his accomplice Arif Mota escaped from the spot.

4. Upon submission of challan, Babar Siraj was formally charged on 14.10.2020 to which he pleaded not guilty and claimed trial. At trial, the prosecution has examined five witnesses namely, SIP Ghulam Akbar as PW.1 at Exh.6 (the police officer who recorded/ incorporated the contents of the complainant's statement in the FIR Book), Syed Talha Ashraf (the complainant and son of the deceased) as PW.2 at Exh.11, Inspector Abdul

Sattar (the Investigating Officer) as PW.3 at Exh.15, Tanveer Ahmed (eye-witness) as PW.4 at Exh.27 and Dr. Afzal Ahmed (who conducted the post-mortem examination and issued certificate of cause of death) as PW.5 Ex.28. In his statement under Section, 342, Cr.P.C. Babar Shafi has denied the allegations levelled against him by the prosecution, professed his innocence and stated his false implication in this case. In support of his defence, Babar Siraj also appeared on oath under Section 340(2), Cr.P.C. and also examined Maqsood Khan and Shazia Babar as defence witnesses.

5. The learned Additional Sessions Judge-I (Model Criminal Trial Court), Karachi (East) vide judgment dated 18.03.2021 convicted accused Babar Siraj under Section 302(b), PPC and sentenced him to death subject to confirmation by this Court. The learned trial Court further directed the accused to pay a sum of Rs.500,000/- as compensation to the legal heirs of the deceased under Section 544-A, Cr.P.C. and in default thereof to undergo simple imprisonment for a further period of six months. The said judgment was assailed and this Court vide order dated 07.09.2022 set aside the conviction and sentence and remanded the case to the learned trial Court with direction to frame a joint charge in respect of each offence and thereafter conduct and conclude the trial de novo within a period of three months. Pursuant to such directions, the learned trial Court undertook the exercise of a de novo trial and upon its conclusion rendered a fresh judgment on 17.10.2024. By the said judgment, the learned trial Court again convicted the accused Babar Siraj under Section 302(b), PPC and maintained the sentence of death subject to confirmation by this Court, however, the amount of compensation payable to the legal heirs of the deceased under Section 544-A, Cr.P.C. was enhanced from Rs.500,000/- to Rs.1,000,000/-. The benefit in terms of Section 382-B, Cr.P.C. was extended to the accused. Aggrieved by the aforesaid conviction and sentence, the appellant has preferred the instant appeal.

6. The learned counsel for the appellant has contended that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt and that the learned trial Court has committed misreading and non-reading of material evidence. It is next submitted that the ocular account is not free from doubt as PW.2 Syed Talha Ashraf is the son of the deceased and PW.4 Tanveer Ahmed though projected as an independent eye-witness has given an account which materially differs from that of the

complainant and such inconsistencies assume greater significance in a case where confirmation of the death sentence is sought. As regards the medical evidence, learned counsel contends that it merely establishes the factum, nature, seat and cause of the firearm injury and death and does not identify the assailant, therefore, the medical evidence cannot by itself establish that the appellant was the person who fired the fatal shot. With regard to recovery of weapon, learned counsel submits that mere recovery of a 30 bore pistol from the appellant is not sufficient to establish his involvement unless a reliable nexus between the recovered weapon and the crime is proved through legally admissible evidence and an unimpeachable chain of custody. According to learned counsel, recovery, therefore, cannot independently sustain the conviction. On motive, learned counsel argues that the prosecution has failed to establish a convincing motive connecting the appellant with the murder. The alleged hostility principally concerned Arif Mota, the step brother of the deceased, whereas the appellant has been attributed the actual firing, hence the precise reason for the appellant's alleged participation has thus remained unexplained. Lastly, learned counsel submits that the prosecution must stand on its own legs and cannot derive strength from any weakness in the defence. The appellant has consistently denied the allegation and claimed false implication. It is contended that where any circumstance emerging from the prosecution evidence creates a reasonable doubt in the prudent mind, the accused is entitled to its benefit. Learned counsel therefore prays for setting aside the impugned conviction and acquittal of the appellant from the charge.

7. Conversely, the learned Additional Prosecutor General, assisted by the learned counsel for the complainant, has supported the impugned judgment and submitted that the prosecution case is established through the consistent ocular account furnished by of PW.2 Syed Talha Ashraf and PW.4 Tanveer Ahmed, which is materially corroborated by the prompt FIR, medical evidence, recovery of the crime weapon and the positive FSL report. It is next submitted that PW.2 is a natural witness being present with his deceased father at place of occurrence and his relationship with the deceased does not render his testimony inadmissible or unreliable particularly when his account is independently corroborated by PW.4 Tanveer Ahmed, who is an independent eye-witness whose presence is supported by the surrounding circumstances including his participation in apprehending the appellant immediately after the firing. It is also submitted

that the discrepancies pointed out by the defence are minor and do not affect the core of the prosecution case. Both witnesses of ocular account have attributed the role of firing to the appellant and no material contradiction has been shown which would render their evidence unreliable. The FIR has been lodged promptly which exclude any reasonable inference of deliberation or fabrication. It is argued that the medical evidence materially corroborates the ocular account by confirming the firearm injury sustained by the deceased and the cause of his death. The recovery of the 30 bore pistol from the appellant immediately after the occurrence is also relied upon as an important corroborative circumstance. While emphasizing his submission, the learned Additional Prosecutor General has submitted that the use of deadly weapon and the manner of the occurrence constitute aggravating circumstances warranting the extreme penalty of death. He therefore prays for dismissal of appeal and maintaining conviction and sentence awarded to the appellant through impugned judgment.

8. We have given our anxious consideration to the submissions of both the sides and have reappraised the entire evidence available on record with their able assistance.

9. The principal question requiring determination is whether the prosecution has succeeded in establishing beyond reasonable doubt that it was the appellant Babar Siraj who fired upon Syed Ashraf Ali with a 30 bore pistol thereby causing the firearm injury which ultimately proved fatal and whether the evidence warrants interference with the findings recorded by the learned trial Court in the judgment, impugned herein.

10. The prosecution case is founded principally upon the ocular account furnished by PW.2 Syed Talha Ashraf (complainant) and PW.4 Tanveer Ahmed, an eyewitness of the incident. Their testimony is consistent, cogent, confidence inspiring and free from any material contradiction or infirmity. The ocular account receives substantial corroboration from the medical evidence, the recovery of the crime weapon and most significantly the positive FSL report establishing a direct nexus between the recovered weapon and the crime empty. When the evidence is examined cumulatively and in its entirety rather than piecemeal or in isolation the ocular account stands firmly reinforced by the independent and supporting evidence on record forming a coherent, consistent and mutually corroborative evidentiary chain. The

collective effect of such evidence leaves no reasonable doubt as to the appellant's presence, participation and active involvement in the commission of offence thereby conclusively connecting him with the crime.

11. The first and foremost circumstance which lends considerable assurance to the prosecution case is the promptitude with which the FIR came to be registered. The occurrence took place on 18.07.2019 and the statement of complainant Syed Talha Ashraf was recorded at Liaquat National Hospital while his father was under treatment in the ICU whereupon the FIR was registered on the same day at about 6:30 pm. The deceased subsequently succumbed to his firearm injury on 19.07.2019. Thus, the prosecution version nominating the appellant as assailant was brought on record at the earliest available opportunity and significantly before the subsequent death of the injured. The prompt lodging of the FIR in the peculiar circumstances of the case substantially excludes the possibility of deliberation, consultation or fabrication. The Hon'ble apex Court in like cases treated prompt nomination of the accused in FIR coupled with consistent ocular evidence and medical corroboration as a circumstance carrying substantial evidentiary weight.

12. The fact that the complainant is the son of the deceased does not by itself render his testimony liable to rejection. Relationship is a circumstance requiring careful scrutiny of the evidence, it is not a legal disqualification from giving evidence. What is required is to examine whether the witness had a natural presence at the scene, whether his account is consistent with the surrounding circumstances and whether there exists any plausible reason for his falsely substituting the appellant for the actual assailant. In the present case, complainant was accompanying his father at the Civic Centre at the relevant time and his presence is therefore wholly natural and is not an artificial introduction made merely for the purpose of supporting the prosecution case. More importantly, the testimony of complainant does not stand alone. PW.4 Tanveer Ahmed has also supported the prosecution version on the material aspects of the occurrence. He has described the firing upon the deceased and the subsequent apprehension of the appellant. His presence assumes particular significance because he is not shown to have any relationship with the deceased of such nature as could furnish him with a compelling motive to falsely implicate the appellant. The defence has also failed to place on record any convincing reason for falsely deposing

against the appellant particularly in a case carrying the extreme penalty. His evidence, therefore, provides independent assurance to the account furnished by the complainant.

13. It is true that testimony of an eyewitness particularly in a case carrying severe penal consequences must be subjected to careful, cautious and close judicial scrutiny, however, the law does not require an eyewitness to reproduce the occurrence with photographic accuracy or mathematical exactness. Human recollection is not expected to be mechanically flawless, minor discrepancies, variations or lapses relating to immaterial details, which do not go to the root of the prosecution case cannot by themselves render otherwise natural, consistent and confidence inspiring testimony unreliable. The true test is whether the evidence when examined as a whole and in the light of the surrounding circumstances inspires confidence and remains materially consistent on the core features of the occurrence. Human recollection is not expected to be mathematically exact particularly when the occurrence involves sudden firing and a violent confrontation. The discrepancies which do not affect the core of the prosecution case and which do not create an irreconcilable conflict between the ocular and medical evidence cannot be elevated to the status of contradictions sufficient to discard otherwise confidence inspiring testimony. The material question is whether the witnesses consistently attribute the fatal firing to the appellant. On this crucial aspect, the prosecution evidence remains intact.

14. The medical evidence adduced by the prosecution furnishes significant corroboration to the ocular account. PW.5 Dr. Afzal Ahmed, conducted the post-mortem examination and proved the certificate of cause of death. The deceased was found to have sustained a firearm injury on the right side of the abdomen and ultimately died as a consequence thereof. The medical evidence, therefore, confirms the occurrence, the seat and nature of the injury and its fatal consequence. It is well settled that medical evidence ordinarily serves as corroborative evidence and is not by itself expected to identify the assailant. In the present case, the incident has taken place in broad day light and the identity of the appellant emerges from the ocular account while the medical evidence independently confirms that the nature of injury described by the complainant and eye-witness was consistent with the firearm injury sustained by the deceased. Thus, there is no conflict between

the ocular and medical evidence which could render the prosecution case doubtful.

15. The argument that the medical evidence does not identify the appellant is misconceived. The prosecution does not rely upon the medical evidence as the sole source of identification rather the identity of the assailant is established through the direct testimony of PW.2 Syed Talha Ashraf (complainant) and PW.4 Tanveer Ahmed (eye-witness) whereas the medical evidence corroborates the occurrence and the manner in which the deceased sustained the fatal injury. Evidence is to be assessed cumulatively and not by requiring every individual piece of evidence to independently establish the entire prosecution case.

16. Another important and highly incriminating circumstance against the appellant is the recovery of 30 bore pistol from his possession immediately after the occurrence. According to the prosecution case, the appellant was apprehended at the spot shortly after the firing and the very weapon allegedly used in the commission of offence was recovered from him along with live rounds. The recovery, therefore, is not the product of an unexplained or belated investigation but forms part of the immediate and contemporaneous circumstances following the occurrence. The evidentiary significance of this recovery is substantially enhanced by the positive FSL report exhibited in evidence, which testified that the crime empty recovered from the place of occurrence was subjected to forensic examination and was found to have been fired from the very 30 bore pistol recovered from the appellant. The forensic evidence, thus, establishes a direct scientific nexus between the weapon recovered from the appellant and the firearm used in the commission of offence.

17. This is not a case of mere recovery of a firearm rather the recovered pistol has been scientifically connected with the specific crime empty collected from the scene of offence. The positive FSL finding assumes particular significance when examined in conjunction with the ocular account. PW.2 Syed Talha Ashraf (complainant) and PW.4 Tanveer Ahmed (eye-witness) have attributed the firing to the appellant while the medical evidence confirms that the deceased sustained the corresponding firearm injury which proved fatal. The subsequent forensic examination of the crime empty and the recovered pistol provides an objective and independent circumstance

corroborating the ocular version that the appellant was armed with pistol and fired at deceased during the occurrence.

18. The defence contention that the recovery of the weapon constitutes a mere neutral circumstance is wholly devoid of force and is, therefore, rejected. The recovery cannot be viewed in isolation or treated as an inconsequential circumstance particularly when the weapon recovered from the possession of the appellant has been subjected to scientific examination and positively matched with the crime empty recovered from the place of occurrence. This unimpeachable forensic linkage materially strengthens the prosecution case and establishes a direct evidentiary nexus between the appellant, the recovered weapon and the firearm used in the commission of offence. The defence has failed to furnish any plausible, credible or convincing explanation capable of dislodging or neutralizing this incriminating circumstance. In the absence of any material brought on record to rebut the recovery or impeach the positive forensic finding, the defence plea remains a bare assertion unsupported by evidence and consequently fails to create even a dent in the prosecution case.

19. Viewed cumulatively, the prompt apprehension of the appellant at the scene, recovery of 30 bore pistol from his possession, positive FSL report establishing that the crime empty had been fired from the recovered pistol and the consistent ocular account constitute mutually reinforcing circumstances. The forensic evidence thus furnishes strong independent corroboration to the direct testimony of the prosecution witnesses and materially strengthens the prosecution case against the appellant.

20. The defence has also questioned the motive alleged by the prosecution. In our view, even assuming that the prosecution has not established every detail of the suggested motive with independent evidence, such failure would not demolish the prosecution case where the commission of the offence is otherwise proved through reliable direct evidence. Motive is relevant as a circumstance explaining the background of an occurrence, but it is not an obligatory ingredient of the offence of qatl-i-amd where the identity of the assailant and the act of killing have otherwise been established through trustworthy evidence. The Hon'ble apex Court has reiterated that motive is a matter of the offender's state of mind and may be gathered from the overt acts and surrounding circumstances, it is not invariably necessary

that the alleged motive be established by direct evidence. In the case in hand, the alleged motive nevertheless furnishes a plausible background to the occurrence. The prosecution version regarding the dispute between the deceased and Arif Mota and the subsequent involvement of persons associated with the relevant union explains the circumstances in which the altercation took place, however, even if this aspect is kept aside, the direct and corroborated evidence against the appellant remains sufficiently strong. The prosecution case does not depend upon motive alone.

21. The defence has rightly invoked the settled principle that the prosecution must stand upon the strength of its own case and cannot derive any advantage merely from the weakness or deficiencies of the defence. There can be no cavil with this well established proposition of law, however, the said principle is of no assistance to the appellant in the present case as the conviction is founded neither upon any weakness in the defence nor upon any failure of the appellant to establish his plea, but upon the cogent, confidence inspiring and independently corroborated evidence produced by the prosecution. The prosecution has on its own footing furnished prompt and consistent ocular evidence, supported by an independent eyewitness, medical evidence, recovery of the crime weapon and positive forensic evidence establishing the requisite nexus with the crime empty. The plea of false implication though duly considered remains a bare assertion unsupported by any credible material or plausible explanation. The defence has failed to demonstrate any circumstance capable of discrediting the prosecution witnesses, undermining the corroborative evidence or creating a reasonable doubt in the prosecution case. Consequently, the defence plea does not dent the prosecution case in any manner and cannot furnish a basis for extending the benefit of doubt to the appellant.

22. The statement of the appellant recorded under Section 342, Cr.P.C., his appearance on oath under Section 340(2), Cr.P.C. and the evidence of the defence witnesses have been examined with due care. The appellant has taken the specific plea that on the day of occurrence, he was unwell, had not gone to his office and remained at home at the relevant time. This plea, however, does not withstand scrutiny when tested against the prosecution evidence as a whole. The mere assertion of being present at home, unsupported by any reliable, independent or convincing material establishing his physical presence there at the precise time of occurrence cannot displace

the direct and confidence inspiring ocular account produced by the prosecution. The defence witnesses, examined in support of this plea, have likewise failed to furnish any cogent or unimpeachable evidence sufficient to establish the appellant's presence at his residence at the relevant time. Their testimony does not satisfactorily account for the prosecution evidence regarding the appellant's presence at the place of occurrence, his apprehension immediately after the firing and the subsequent recovery of the weapon from his possession, which was forensically connected with the crime empty. The plea of illness, even if considered at its highest, does not by itself establish physical absence from the scene and cannot prevail over positive and independently corroborated prosecution evidence.

23. When the defence version is weighed against the prosecution evidence in its entirety, it emerges as a belated and unsupported denial rather than a credible account capable of dislodging the prosecution case. The appellant has consequently failed to establish any factual foundation for his plea of *alibi* or to bring on record any circumstance creating a reasonable probability of his innocence. The defence evidence, therefore, does not create a dent in the prosecution case much less a reasonable doubt warranting the appellant's acquittal.

24. We are mindful that in a criminal case the prosecution bears the burden of proving its case beyond reasonable doubt and that even a single circumstance creating a genuine and reasonable doubt is sufficient to extend its benefit to an accused, however, such doubt must be a real and reasonable doubt arising from the evidence and not a fanciful, speculative or artificial possibility. In the present case, after an independent appraisal of the record, we find no such circumstance which could reasonably discredit the prosecution case. The prosecution witnesses have consistently attributed the fatal firing to the appellant. Their account is supported by the prompt FIR, the natural presence of complainant, the independent corroboration furnished by PW.4 Tanveer Ahmed, the medical evidence establishing the firearm injury and cause of death and the recovery of the crime weapon which has received positive forensic corroboration. These circumstances are not isolated pieces of evidence rather they converge upon one conclusion that the appellant was the person who fired at Syed Ashraf Ali with pistol and caused the injury from which he subsequently died. It is also significant that the occurrence was reported without undue delay and the appellant was

nominated from the very beginning. The prosecution version was therefore not the product of an identification subsequently developed during investigation. The contemporaneous naming of the appellant, his alleged apprehension at the scene, recovery of the weapon and subsequent forensic linkage constitute a chain of circumstances which substantially diminishes the possibility of false substitution.

25. We have considered the alleged discrepancies pointed out by learned counsel for the appellant, but none of them affects the foundation of the prosecution case. No material contradiction has been demonstrated which would make it impossible to reconcile the ocular account with the medical or forensic evidence rather the broad features of the occurrence remain consistent, the confrontation at the place of occurrence, the appellant being armed with a 30 bore pistol, the firing at the deceased, the resulting abdominal firearm injury, his immediate shifting to hospital, the apprehension of the appellant and recovery of the weapon followed by the deceased's death during treatment. The fact that Arif Mota allegedly escaped from the scene does not by itself create a reasonable doubt regarding the appellant's role. The prosecution has attributed a specific overt act to the appellant firing the fatal shot that caused the death of the deceased. Criminal liability is to be determined on the basis of the proved role of each accused and not merely on the basis that another person was also present or allegedly involved in the background dispute. The escape of a co-participant cannot in the circumstances of the present case exonerate the person whose participation has independently been established through direct and corroborated evidence. The subsequent de novo trial conducted pursuant to the order of this Court dated 07.09.2022 has also been taken into consideration. The learned trial Court after recording and examining the evidence afresh again reached the conclusion that the prosecution had succeeded in proving the charge against the appellant. The mere fact that an earlier judgment was set aside and the matter was remanded for a fresh trial does not dilute the evidentiary value of the evidence properly recorded during the de novo proceedings. The present appeal is, therefore, to be determined on the basis of the evidence and findings emerging from the fresh trial.

26. Upon an overall assessment of the evidence, discussed herein above, we are satisfied that the prosecution has established a complete and confidence inspiring case against the appellant. The ocular account furnished

by PW.2 Syed Talha Ashraf (complainant) is natural and trustworthy, the same is independently supported by PW.4 Tanveer Ahmed (eye-witness), the medical evidence confirms the firearm injury and its fatal consequence, the recovery of a 30 bore pistol from the appellant constitutes an important incriminating circumstance and the positive FSL report provides scientific corroboration connecting the recovered weapon with the crime. The prompt registration of the FIR and nomination of the appellant further lend assurance to the prosecution version. We therefore find that the learned trial Court has correctly appreciated the evidence and has committed no illegality or misreading or non-reading of evidence warranting interference with the finding of guilt. The prosecution has discharged the burden resting upon it and proved the charge of qatl-i-amd against the appellant beyond reasonable doubt. The defence has failed to bring on record any circumstance of such nature as could reasonably suggest that the appellant has been falsely implicated or that the prosecution witnesses have substituted him for the actual culprit. Consequently, the appeal insofar as it impugns conviction, is dismissed on merits.

27. Having maintained the conviction of the appellant under Section 302(b), PPC, we now turn to the question of sentence. The learned trial Court has awarded the extreme penalty of death, which is subject to confirmation by this Court. It is settled that determination of sentence is a separate and distinct exercise from determination of guilt. Even where the prosecution succeeds in proving the charge of qatl-i-amd beyond reasonable doubt, the Court is required to examine whether the facts and circumstances of the particular case justify the ultimate penalty of death or whether the lesser sentence of imprisonment for life would meet the ends of justice. Section 302(b), PPC itself provides both alternatives and therefore the Court is required to exercise its discretion judicially having regard to the aggravating as well as mitigating circumstances emerging from the record. In the present case, the conviction of the appellant is being maintained on the strength of the ocular account, supported by medical and forensic evidence, however, while considering the quantum of sentence, the circumstances attending the commission of the offence cannot be ignored. The prosecution has suggested a motive arising out of an alleged dispute between the deceased and his step brother Arif Mota concerning an incident involving a picture of their Pir Sahib and the subsequent annoyance of Ebrahim Kaka, Chairman of Peoples Unity Union. The alleged motive, however, does not

emerge from the evidence in a manner sufficiently clear, definite and confidence inspiring so as to furnish a satisfactory explanation for the appellant's decision to commit the murder. The motive in fact remains shrouded in mystery against appellant. The prosecution has attributed the immediate background of hostility principally to Arif Mota, who was the step brother of the deceased, and who according to the prosecution itself was present at the place of occurrence but thereafter escaped. The appellant, on the other hand, is alleged to have been the person who actually fired the fatal shot. The precise reason which prompted the appellant to take the extreme step of firing upon the deceased has not been established with the degree of clarity that could reasonably be expected in a case where the extreme penalty of death is sought to be imposed. There is thus an evident distinction between the prosecution having proved the *actus reus* of the offence and having established a clear and compelling motive for the appellant's conduct.

28. We are conscious that failure to prove motive does not ordinarily demolish a prosecution case where the ocular evidence is otherwise trustworthy. We have, accordingly, not allowed the uncertainty regarding motive to affect our finding of guilt, however, the question before us at this stage is materially different. What may not be sufficient to create a reasonable doubt regarding guilt may nevertheless constitute a mitigating circumstance when the Court is required to decide whether the accused should be deprived of his life. The evidentiary threshold for maintaining conviction and the judicial assessment required for imposing the irreversible punishment of death cannot be treated as identical. The Hon'ble apex Court has consistently recognized that the lesser sentence prescribed under Section 302(b), PPC is available where the circumstances surrounding the murder or the manner in which the offence was committed contain features warranting a degree of sympathy or leniency. In determining sentence, the Court is required to balance the aggravating circumstances against the mitigating circumstances rather than treating the death penalty as an automatic consequence of every conviction under Section 302(b), PPC.

29. In the present case, the aggravating circumstances are undoubtedly serious. The deceased was fired upon with a firearm in a public place and subsequently succumbed to his injury. The appellant is further alleged to have attempted to extend threats to the complainant immediately after the firing, thereby aggravating the seriousness of his conduct. The gravity of the

offence coupled with the irreversible loss of a human life and the attendant consequences flowing therefrom cannot therefore be diluted or minimized. Nevertheless, the aggravating circumstances must be weighed against the mitigating features of the case. The most significant mitigating circumstance, in our assessment, is the absence of a satisfactorily established motive on the part of the appellant. The prosecution has placed before the Court a background of hostility, but the precise nexus between that alleged hostility and the appellant's decision to commit the murder remains uncertain. The alleged motive is principally connected with Arif Mota and Ebrahim Kaka while the appellant's own reason for participating in the fatal occurrence has not been established with sufficient clarity. This uncertainty assumes significance when the Court is considering an irreversible punishment. We may usefully observe that motive is essentially a matter relating to the state of mind of an accused and is ordinarily gathered from his conduct, overt acts and surrounding circumstances. It is well settled that the motive suggested in an FIR does not invariably capture the true intention behind an offence. Thus, while the absence or weakness of motive does not entitle the appellant to acquittal in the present case, the uncertainty surrounding the alleged motive remains relevant for the limited purpose of determining the appropriate sentence.

30. Another circumstance which persuades us against confirmation of the death sentence is that the prosecution case although sufficient to establish guilt does not disclose such exceptional features of brutality, depravity or premeditated cruelty as would necessarily place the case beyond the scope of the lesser penalty. The occurrence appears to have developed from a confrontation and exchange of hot words followed by the firing. The evidence does not establish, with the requisite clarity, an elaborate plan or a prolonged course of conduct demonstrating an exceptional degree of evil. The fact that the appellant fired a fatal shot undoubtedly constitutes a grave and punishable act, but the seriousness of the offence alone cannot be the sole criterion for determining whether the life of the convict should be taken by the State. The object of sentencing is not confined to retribution. The Court is required to maintain a proper balance between the demands of justice, deterrence, proportionality and the possibility of reformation. Death is the ultimate and irreversible penalty. Consequently, where the circumstances give rise to a reasonable basis for concluding that the case does not fall within the category warranting the extreme penalty, the lesser sentence

prescribed by law ought to be preferred. We are further mindful of the principle that where two legally permissible punishments are available, the Court must carefully examine whether the aggravating circumstances are of such compelling nature as to exclude the lesser punishment. The mere fact that the deceased lost his life as a result of the appellant's act though undoubtedly tragic and grave cannot by itself make the death penalty mandatory. Both death and imprisonment for life are contemplated by Section 302(b), PPC and the choice between them must depend upon the facts and circumstances of the particular case. Upon balancing the aggravating circumstances against the mitigating circumstances, we are of the considered view that the case does not meet the threshold for confirmation of the extreme penalty. The conviction is supported by reliable evidence and therefore remains undisturbed, however, the motive attributed to the appellant remains uncertain and shrouded in mystery particularly when the prosecution's own case places the principal background dispute between the deceased and Arif Mota. This circumstance coupled with the absence of any sufficiently established exceptional feature warranting the irreversible penalty persuades us to extend the benefit of the lesser punishment contemplated under Section 302(b), PPC. We are not unmindful of the agony suffered by the family of the deceased. Nothing stated herein shall be construed as diminishing the sanctity of human life, the gravity of the offence or the culpability of the appellant. The reduction in sentence is founded solely upon a judicial determination of the punishment commensurate with the peculiar circumstances established on the record. The sentence imposed must remain proportionate not only to the gravity and nature of the offence but also to the circumstances attending its commission and the mitigating factors duly available in favour of the convict.

31. For the foregoing reasons, while maintaining the conviction of the appellant Babar Siraj under Section 302(b), PPC, we find that the extreme penalty of death awarded by the learned trial Court is not warranted in the peculiar circumstances of the case. The death sentence is, accordingly, converted into imprisonment for life. The other consequential orders passed by the learned trial Court including the order regarding compensation under Section 544-A, Cr.P.C. and further sentence in lieu thereof as well as the benefit already extended under Section 382-B, Cr.P.C. shall remain intact. The Murder Reference is, therefore, answered in Negative to the extent of confirmation of death sentence whereas the conviction awarded under

Section 302(b), PPC is maintained but the sentence of death awarded to the appellant through impugned judgment dated 17.10.2024, passed by the learned Additional Sessions Judge /Model Criminal Trial Court, Karachi (East) in Sessions Case No.95 of 2020 (Sessions Case No.2511 of 2019) is altered and converted to imprisonment for life.

32. The Criminal Appeal No.722 of 2024 alongwith Confirmation Case No.08 of 2025 stands disposed of in the foregoing terms.

JUDGE

JUDGE