

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.662 of 2023

[Confirmation Case No.07 of 2023]

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Appellant	Taj Muhammad @ Tajoo son of Imamdino through Mr. Qamar Abbas Abbasi, Advocate.
Complainant	Abdul Ghafoor son of Muhammad Hassan through Mr. Raham Ali Rind, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General [Sindh].
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Dates of hearing	<u>28.09.2026</u>
Date of Judgment	<u>01.10.2026</u>

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JUDGMENT

Shamsuddin Abbasi, J.- Muhammad Anwar son of Muhammad Hassan (deceased), aged about 45/46 years, was shot and killed by Taj Muhammad @ Tajoo, who accompanied by his companions Imam Dino and Ghulam Hussain arrived at the place of occurrence, armed with a shot gun and fired a shot at Muhammad Anwar, which struck him on the left side of his chest causing a fatal firearm injury to which he succumbed at spot.

2. FIR in this case has been lodged on 20.10.2011 at about 3:00 pm whereas the incident is shown to have taken place on the same day at about 8:30 am. Complainant Abdul Ghafoor son of Muhammad Hassan has stated that on the fateful day he along with his brother Muhammad Anwar went to Murtaza Jamali Hotel situated at Goongani More where Ali Nawaz son of Muhammad Umer and Ahmed son of Sain Bux were also present and sitting with them. It was about 8:30 am Taj Muhammad @ Tajoo, armed with a gun and accompanied by Imam Dino son of Muhammad Siddique and Ghulam Hussain alias Minu son of Muhammad Usman, who was allegedly armed with a hatchet, arrived at the hotel. Taj Muhammad @ Tajoo extended threat

that the complainant party would not be spared that day. Upon this Muhammad Anwar, elder brother of complainant, questioned him as to why they would not be spared. In response, Taj Muhammad @ Tajoo fired a shot at Muhammad Anwar with intention to commit his murder. The shot struck Muhammad Anwar on left side of his chest as a result of which he sustained a fatal firearm injury, fell to the ground and started bleeding. Thereafter, the accused persons fled from the place of occurrence and soon thereafter Muhammad Anwar succumbed to the injury and died at the spot. The complainant leaving Ali Nawaz and Ahmed with the deceased personally proceeded to P.S. on his motorcycle and informed the police about the occurrence. The police accompanied him to the place of occurrence and shifted the dead body of Muhammad Anwar to RHC Chuhar Jamali, where post-mortem examination and other necessary legal formalities were carried out and upon completion thereof the dead body was handed over to the complainant and after performing funeral rites he returned to P.S. and lodged FIR. The reason behind the occurrence as disclosed by complainant was a dispute over agricultural land being cultivated by complainant, Karim Bux and the deceased due to which Taj Muhammad @ Tajoo and Imam Dino were inimical to them and previously quarreled with the complainant party over the said dispute resulting in registration of a criminal case and owing to such prior hostility the accused persons committed murder of Muhammad Anwar.

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 and co-accused were sent up to face trial. Worth to mention here that vide judgment dated 22.05.2019 co-accused Ghulam Hussain son of Muhammad Usman was acquitted while the case of absconding accused Imam Dino was placed on dormant file, however, during pendency of the proceedings, Taj Muhammad @ Tajoo developed mental illness and was admitted to psychiatric hospital and on Court's direction Medical Board examined him on 18.11.2014 and opined that he was suffering from chronic psychosis and incapable of understanding the proceedings and required further indoor psychiatric treatment and based on such report proceedings against him were kept in abeyance and on 09.09.2023 the learned trial Court received intimation from the Medical Superintendent, Sir C.J. Institute of Psychiatry & Behavioral Sciences, Hyderabad that the appellant has been shifted from the hospital back to prison whereupon the proceedings against him were commenced.

4. Upon his indictment, Taj Muhammad @ Tajoo pleaded not guilty and claimed trial. In support of its case, the prosecution has examined as many as eight witnesses namely, complainant Abdul Ghafoor as PW.1 at Ex.21, Ali Nawaz as PW.2 at Ex.22, Ameer Bux as PW.3 at Ex.23, Dr. Abdul Hussain Aalmani as PW.4 at Ex.24, Hazar Khan (Tapedar) as PW.5 at Ex.25, SIP Abdul Qadir as PW.6 at Ex.26, Inspector Abdul Jabbar Bhutto as PW.7 at Ex.27 and Ghulam Mustafa as PW.8 at Ex.28. 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.29. In his statement under Section 342, Cr.P.C. recorded at Ex.30, Taj Muhammad @ Tajoo has denied the allegations imputed upon him by the prosecution, professed his innocence and claimed that he has been falsely implicated due to enmity between his maternal uncle Ghulam Hussain and the complainant party and the witnesses being inimical to him have falsely deposed against him and specifically denied alleged recovery of crime weapon on his pointation and stated that he was mentally ill during the relevant period. He, however, neither opted to appear on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence.

5. The learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta vide judgment dated 29.11.2023 convicted Taj Muhammad @ Tajoo under Section 302(b), PPC for the murder of Muhammad Anwar and sentenced him to death as Tazir directing that he be hanged by his neck until dead subject to confirmation by this Court. The learned trial Court further directed him to pay a sum of Rs.500,000/- as compensation to the legal heirs of the deceased under Section 544-A, Cr.P.C. recoverable as arrears of land revenue and in default thereof to undergo simple imprisonment for a further period of six months. The said judgment of conviction and sentence has been assailed through the present appeal.

6. It is contended on behalf of the appellant that he is innocent and has been falsely implicated due to previous enmity over agricultural land and that the prosecution has failed to prove the charge against him beyond reasonable doubt. It is next submitted that the ocular account of complainant Abdul Ghafoor being the real brother of the deceased and admittedly inimical towards the appellant required cautious scrutiny particularly in view of the unexplained delay of more than six hours in lodging the FIR and non-examination of any independent witness from Murtaza Jamali Hotel. It is also

submitted that the alleged recovery of crime weapon and FSL report are merely corroborative in nature and could not independently establish the appellant's participation in the commission of offence. It is next contended that co-accused Ghulam Hussain has already been acquitted by the learned trial Court and neither the complainant nor the State has preferred any appeal against his acquittal. According to learned counsel, the weapon in question was foisted upon the appellant and co-accused Ghulam Hussain, who was admittedly its licensed holder, yet he was found innocent and acquitted by the learned trial Court. Learned counsel has also relied upon the acquittal of the said co-accused as a circumstance creating further doubt in the prosecution case. Alternatively, the learned counsel has submitted that even if the conviction is maintained, the appellant's chronic psychosis and other mitigating circumstances warrant conversion of the death sentence into imprisonment for life.

7. Conversely, learned Additional Prosecutor General, assisted by the learned counsel for the complainant, has supported the impugned judgment contending that the ocular account has been duly corroborated by medical and forensic evidence and the delay in lodging the FIR stood satisfactorily explained and the recovery of crime weapon coupled with the FSL report further connected the appellant with the offence. As to sentence, he has submitted that the deliberate nature of the act and the gravity of the offence did not warrant any reduction and prayed for dismissal of appeal.

8. We have heard the learned counsel for the appellant as well as the learned Additional Prosecutor General, assisted by the learned counsel for the complainant, and have gone through the entire material available on record with their able assistance.

9. As regards the merits of the case, the prosecution has attributed a specific and direct role to the appellant. The complainant Abdul Ghafoor, who appeared as PW.1 has categorically stated that the appellant armed with a gun arrived at Murtaza Jamali Hotel along with his associates and after extending a threat to the complainant party fired at Muhammad Anwar when he questioned the appellant about such threat. The shot struck the deceased on left side of his chest resulting in fatal injury. The account furnished by the complainant is consistent with the medical evidence regarding the nature and location of the firearm injury.

10. We have carefully examined the testimony of complainant in the light of objections raised by learned counsel for the appellant and find no substance therein. No material contradiction, omission or discrepancy has been brought on record which could strike at the root of the prosecution case or render the complainant's testimony unworthy of reliance. Mere fact that the complainant happens to be the brother of the deceased or that there existed previous enmity between the parties by itself furnishes no lawful basis to discard his evidence particularly when his presence at the place of occurrence is natural and his account contains a specific and consistent attribution of the fatal shot to the appellant. Significantly, his account has not remained in isolation rather it finds material corroboration from the testimony of Ali Nawaz (PW.3), an eye-witness of the occurrence, who has deposed substantially on the same lines as the complainant and has likewise attributed the fatal act to the present appellant. Both complainant and eye-witness have remained consistent on the material particulars of the occurrence including the presence of the appellant and his specific role in causing the fatal injury to Muhammad Anwar. Their evidence when read as a whole is mutually corroborative and materially consistent and no significant discrepancy has been extracted through cross-examination which could create a reasonable doubt regarding their presence or the manner in which the occurrence took place. Thus, the relationship of the complainant with the deceased or the alleged prior enmity cannot in the absence of any material infirmity in the ocular account constitute a valid ground for rejecting otherwise confidence inspiring testimony. The evidence of both ocular witnesses, therefore, inspires confidence and provides a consistent and coherent account of the occurrence, which remains substantially unshaken despite searching cross-examination.

11. The plea regarding delay in registration of FIR also does not create a reasonable doubt in the circumstances of the present case. The occurrence allegedly took place at about 8:30 am whereas the FIR has been lodged on the same day at about 3:00 pm. The complainant has explained that immediately after the occurrence he proceeded to P.S., informed the police, returned with them to the place of occurrence and accompanied the deceased to the hospital for post-mortem examination. Thereafter, the dead body was handed over to him, he performed the funeral rites and returned to P.S. where the FIR was lodged. This sequence of events furnishes a reasonable explanation for the intervening period. The delay, therefore,

cannot be treated as sufficient to discard an otherwise confidence inspiring ocular account.

12. The ocular account furnished by the prosecution is further corroborated by the medical evidence. PW.4 Dr. Abdul Hussain Aalmani has conducted the post-mortem examination and confirmed the firearm injury sustained by the deceased. The medical evidence thus lends assurance to the prosecution version regarding the factum and manner of death. There is no medical circumstance on record which contradicts the ocular account. Likewise, the recovery of crime weapon also constitutes a relevant corroborative circumstance. The prosecution produced evidence regarding recovery of the 12-bore DBBL shotgun on the pointation of the appellant. More importantly, the FSL report at Ex.14/D records that the crime empty marked "C" had been fired from the recovered 12-bore DBBL shotgun bearing No. MAC-20616. Thus, the forensic evidence establishes a connection between the recovered weapon and the firearm cartridge recovered in connection with the occurrence. Although such recovery is corroborative in nature and cannot by itself constitute the sole basis of conviction, it materially strengthens the prosecution case when read alongside the direct ocular account and medical evidence.

13. We are conscious of the fact that the prosecution has alleged previous enmity between the parties. Such circumstance, however, cuts both ways. While it may furnish a motive for the occurrence, it is equally necessary to examine whether the allegation of false implication is supported by any material. In the case in hand, the defence has not been able to demonstrate any plausible reason for the complainant to substitute the real culprit with the appellant particularly when the appellant's presence, specific attribution of firing and subsequent recovery of the crime weapon stand supported by the prosecution evidence. The plea of false implication, therefore, remains a mere assertion.

14. The acquittal of co-accused Ghulam Hussain, in our considered view, does not, by itself, furnish any lawful basis for extending the same benefit to the present appellant. It is a settled principle that the culpability of each accused is to be determined on the basis of the evidence available against him and the specific role attributed to him. The evidence against one accused cannot be mechanically applied to another merely because they

were tried in the same case. In the case in hand, the role attributed to the appellant is specific, direct and distinguishable from that of acquitted co-accused who was neither alleged to be armed with any firearm nor assigned any role of firing upon the deceased. The prosecution has claimed that the appellant while armed with a shotgun fired at the deceased and that the said fire proved fatal. Thus, the appellant has been assigned the direct role of making the firearm attack which resulted in the death of the deceased. The acquittal of Ghulam Hussain, therefore, cannot be treated as a circumstance creating an automatic or corresponding right in favour of the appellant particularly where the nature and degree of incriminating evidence against him stand on a different footing. Each accused must stand or fall on the strength of the evidence led against him and an acquittal founded upon the particular circumstances or evidentiary position of co-accused cannot be invoked mechanically to dilute the specific incriminating material available against the present appellant. We have also considered the appellant's statement under Section 342, Cr.P.C. He has denied the prosecution allegations and alleged false implication on account of enmity but no material in support of such plea has been brought on record. He did not opt to appear on oath under Section 340(2), Cr.P.C. and did not produce any witness in his defence. Although the burden throughout remains upon the prosecution, the appellant's bare denial cannot displace the positive and corroborated evidence produced by the prosecution.

15. Upon an overall appraisal of the evidence, we find that the prosecution has established through reliable ocular testimony duly corroborated by medical and forensic evidence that it was the appellant who fired the fatal shot at Muhammad Anwar. The evidence is sufficient to establish his guilt beyond reasonable doubt. The learned trial Court has, therefore, correctly appreciated the evidence and committed no illegality or material irregularity in recording the appellant's conviction under Section 302(b), PPC. The conviction is accordingly maintained.

16. The question of sentence, however, requires separate and independent consideration. Section 302(b), PPC provides two alternative punishments viz death or imprisonment for life. While determining the appropriate sentence, the Court is required to consider not only the gravity of the offence but also the circumstances peculiar to the offender and the mitigating circumstances emerging from the record. In the case in hand, the

appellant's chronic psychosis and prolonged psychiatric illness constitute a significant mitigating circumstance which cannot be overlooked. Record demonstrates that during the pendency of the trial, the appellant's mental condition deteriorated to such an extent that he remained hospitalized in a psychiatric institution for about nine years and pursuant to the directions of the learned trial Court Medical Board examined him and found him suffering from chronic psychosis and incapable of understanding the proceedings at the relevant time, therefore, the proceedings against him remained in abeyance for a considerable period and were resumed only after he was shifted from the psychiatric hospital back to prison. This prolonged and medically documented history cannot by any stretch be treated as a subsequent or self-serving plea raised merely to evade the consequences of conviction. It is a genuine and chronic medical condition duly borne out from the record and constitutes a substantial mitigating circumstance having a direct bearing upon the question of sentence.

17. We are conscious that the record does not establish that at the time of commission of offence the appellant was suffering from such mental disorder as would attract the legal defence of insanity. His subsequently established chronic psychosis, however, remains a highly relevant and substantial mitigating circumstance for the purpose of determining the appropriate sentence. Having regard to his medically established chronic mental illness, prolonged psychiatric hospitalization, inability at one stage to comprehend the proceedings and the considerable period during which the trial remained in abeyance on account of his condition, we are of the considered view that the extreme penalty of death is not warranted in the peculiar circumstances of the case. Accordingly, while maintaining the conviction under Section 302(b), PPC, the sentence of death awarded to the appellant is converted into imprisonment for life. It is, however, directed that during his incarceration the appellant shall be provided regular psychiatric assessment, appropriate treatment and all necessary medical care by the competent prison and health authorities and upon completion of his lawful sentence, he shall be referred to Sir C.J. Institute of Psychiatry & Behavioral Sciences, Hyderabad, or any other appropriate Government psychiatric institution for comprehensive psychiatric evaluation and necessary treatment in accordance with law. The Jail Superintendent is further directed that upon the appellant having served his sentence in accordance with law including remission lawfully available to him, his mental condition shall be assessed by the Director/Medical

Superintendent, Sir C.J. Institute of Psychiatry & Behavioral Sciences, Hyderabad, or any other appropriate Government psychiatric institution and if upon such assessment he is found to require continued psychiatric treatment or hospitalization, the competent authority shall take appropriate steps in accordance with law for his admission to a suitable Government psychiatric facility and continuation of necessary treatment until such time as his condition permits his discharge subject to the applicable law and medical advice.

18. For the foregoing reasons, the appeal is dismissed on merits to the extent of conviction and partly allowed to the extent of sentence. The conviction of the appellant under Section 302(b), PPC is maintained, however, the sentence of death awarded to the appellant is converted and reduced to imprisonment for life. The appellant shall be entitled to the benefit of Section 382-B, Cr.P.C. The remaining terms and conditions of the impugned judgment shall remain intact.

19. Subject to above modification of conversion of death penalty into life imprisonment, this Criminal Appeal No.662 of 2023 stands disposed while Confirmation Case No.07 of 2023 is answered accordingly.

JUDGE

JUDGE