

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

**Criminal Appeal No.D-19 of 2019
Criminal Jail Appeal No.D-20 of 2019
Confirmation Case No.01 of 2019**

Present

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Saleem Jessar**

Date of hearing: 29.11.2022

Date of decision: 29.11.2022

Appellant: Ahmed Nawaz through Mian Taj Muhammad Keerio advocate.

Complainant: Nemo.

The State: Through Mr. Nazar Muhammad Memon
Additional Prosecutor General.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Appellant Ahmed Nawaz stood a trial in Sessions Case No.654 of 2017, arising out of Crime No.69/2008, PS A-Section, District Nawabshah u/s 302 PPC for murdering Nawaz Ali by making a straight fire with a country made pistol on his chest, near Taxi Stand Old Naka Nawabshah on 10.04.2008 at 07.00 pm, and has been convicted u/s 302(b) PPC vide impugned judgment dated 31.01.2019 by learned Additional Sessions Judge-V Hyderabad and sentenced to death.

2. Aggrieved by said judgment, he initially filed Criminal Jail Appeal No.20/2019 from jail and thereafter Criminal Appeal No.D-19 of 2019 through his counsel. Learned defence counsel after arguing the case at some length has submitted that he would not press these appeals on merits, if sentence of the appellant is altered from death penalty to imprisonment for life as this is a case of a single shot only by appellant to the deceased without any repetition. In support of his submission, he has relied upon the case law reported as 2017 SCMR 2024. Learned APG has not opposed his request in view of ratio laid down in the aforesaid case.

3. We have heard the parties and perused material available on record. In the trial, prosecution has examined nine witnesses including complainant, Medical Officer, Tapedar, Investigation Officer, Mashir etc. and has produced through them all the relevant documents: FIR, post-mortem report, relevant entries, etc. When such evidence was put to the appellant u/s 342 CrPC for his explanation, he has simply denied it without however examining himself on oath or leading any evidence in defence.

4. Complainant, who happens to be brother of deceased in his evidence (Ex.4) has described the whole incident as narrated by him in FIR that on 10.04.2008 at 07.00 p.m. over a previous family dispute, appellant Ahmed Nawaz near Taxi Stand Old Naka Nawabshah in presence of PWs made a direct fire from his country made pistol upon deceased Nawaz Ali hitting right side of his chest. He informed the police accordingly of the incident and shifted the injured to hospital where injured succumbed to injuries. After funeral ceremony, he appeared at Police Station on 12.04.2008 and registered FIR.

5. Hakim Ali, PW-2, (Ex.5) and Muhammad Ashraf, PW.5, (Ex.9), the eye witnesses, in their evidence have supported the complainant. They were with the deceased at the time of incident and have, in detail, described the story that appellant armed with a country made pistol fired upon Nawaz Ali and ran away. In their cross-examination, lengthy albeit, nothing substantial favorable to appellant over main features of the incident has come on record. Investigation Officer, examined as PW-3 (Ex.7), has confirmed inspecting place of incident, recording statements of witnesses and sending blood stained mud/earth to Chemical Examiner for report. SIP Muhammad Azam, examined as PW-4 (Ex.8), has deposed that on spy information he arrested appellant with a 12 bore unlicensed pistol and three live cartridges from link road towards Sarhari near "Bitta Water" on 26.11.2009. He resisted his arrest and made three fires from his pistol upon police party, which however did not hit the police. And as a result of such recovery, attack upon police party, he registered a separate FIR at PS Airport u/s 324, 353 PPC & 13-D Arms Ordinance against the appellant. The record further shows that in the investigation, blood stained earth was also collected by the I.O. regarding which positive

report of chemical examiner (Ex.7/C) is available on record. All these pieces of evidence are part of the prosecution case.

6. Medical Officer, PW-6 (Ex.10) has verified the injury on the person of deceased Nawaz Ali and has opined that injuries were caused by firearm resulting in damage of vital organs including lung and blood vessel resulting in bleeding, cardio respiratory failure, leading to his death. Tapedar PW-7 (Ex.11) had visited the site in presence of complainant and prepared its sketch which has also been produced in the trial. Farooque Ahmed, PW-8, (Ex.12), Mashir, in his evidence has deposed that on 12.04.2008 police inspected dead body of deceased at the place of incident and collected blood stained mud/earth in his presence and prepared such memos. Adnan Qamar, PW-9, (Ex.13), ASI/ Duty Officer, in his evidence has deposed that on 10.04.2008 at 07 pm he received information via telephone from complainant about the incident. On 12.04.2008 he registered FIR as per verbatim of complainant.

7. From a perusal of entire evidence available on record, it becomes quite clear that prosecution has been able to prove the case against appellant beyond a reasonable doubt. Evidence of eye witnesses, Medico-Legal Officer, Mashirs and Investigating Officer support each other, and relevant features of the case performed by them in the case in their official capacity. They all have infact complemented each other qua prosecution's version of incident and nothing is left out which may cloud the slightest part in the story. During cross-examination of witnesses, no material contradiction has come on record creating a doubt over veracity of prosecution story. A reading of the ocular account furnished by the eye-witnesses confirms involvement of the appellant in the offence he has been charged with. The defence has failed to bring on record any material which may be considered to have prompted the complainant to implicate the appellant falsely in the murder of brother by substituting the real culprit. When the entire evidence was put to the appellant for his explanation, he has simply pleaded his innocence.

8. We therefore, find no illegality in the impugned judgment as far as declaration of guilt/conviction of the appellant is concerned. Notwithstanding, the alleged motive that deceased married with sister of appellant, was restrained by the latter from visiting his house, has remained in mystery. The burden to prove the motive part of the story

was upon the prosecution but record of the case reveals that the same though alleged in FIR has not been proved. The law in this regard is much settled by now that absence of motive or absence of proof of the same would be a sufficient mitigating circumstance to determine the quantum of sentence. More so, this is a case of a single fire-shot upon the deceased by the appellant without any effort on his part to repeat it, although the deceased was at his mercy, nor it i.e. repeating the act of fire or any such attempt by the appellant has been alleged by the eye witnesses. We, therefore, are of the view that this is not a fit case of capital punishment, and this appears to be the reason why learned Additional PG has not opposed alteration of sentence of the appellant from death to life imprisonment.

9. Consequently, while following dictum laid down in the case of Fayyaz alias Fiazi versus the State (Supra), we maintain conviction of the appellant u/s 302(b) PPC, but alter his sentence of death and reduce it to imprisonment for life. He is further directed to pay compensation of Rs.500,000/- (five lac rupees) to the legal heirs of the deceased u/s 544-C CrPC, in default, to suffer RI for one year more. However, benefit of Section 382-B CrPC is extended to him. With such modification in the quantum of sentence of appellant Ahmed Nawaz s/o Fateh Muhammad, both the appeals are dismissed. Consequently, death reference is hereby replied in negative and is accordingly disposed of.

J U D G E

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Irfan Ali