

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

**Criminal Jail Appeal No. D-56 of 2021
Confirmation Case No. D- 10 of 2021**

Present

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro**

Date of hearing: **10-10-2023**
Date of decision: **10-10-2023**
Appellant: Muhammad Aslam Korai through Mr. Rukhsar Ahmed Junejo, Advocate.
Complainant: Muhammad Iqbal through Mr. Abdul Naeem Pirzada, Advocate.
The State: Through Mr. Aftab Ahmed Shar, Additional Prosecutor General.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Appellant Muhammad Aslam along with other accused Sobdar and Lal Bux (since acquitted) and absconding accused, namely, Saleem and Amanullah stood trial in a Sessions Case No.549 of 2019, arising out of Crime No.69/2019, P.S Sangi, District Sukkur u/s 302, 147, 148, 149 & 411 PPC for murdering Manthar Ali by causing him a firearm injury through and through with a pistol on his nose, at a link road near Abdul Rehman Mochi on 28.08.2019 at 4:00 p.m. He has been convicted u/s 302(b) PPC vide impugned judgment dated 10.09.2021 by learned Additional Sessions Judge-III/MCTC-II, Sukkur and sentenced to death and to pay compensation of Rs.500,000/- to legal heirs of deceased in terms of Section 544-A CrPC, and in case of default, to suffer S.I for six months more. The trial Court has also made a Reference to this Court for confirmation of death sentence under Section 374 CrPC.

2. Learned defence counsel after arguing the case at some length has submitted that he would not press this appeal 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 the appellant to the deceased without any repetition and further motive part of this story has not been established. In support of his submission, he has relied upon the case

law reported as *Fayyaz alias Fiazi v. The State* (**2017 SCMR 2024**). Learned APG and the counsel for the complainant have 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 as many as seven witnesses including complainant, the eyewitnesses, Investigating Officers, Mashirs and Medical Officer etc. and has produced through them all the relevant documents: FIR, Danishnama, memos of inspection of dead body, place of incident, collection of blood stained earth, recovery of empties and receiving blood stained cloths of deceased, arrest of accused & recovery of crime weapon, roznamcha entries, report of chemical examiner, inquest form and post-mortem report. 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 the deceased in his evidence (Ex.11) has described the whole incident as narrated by him in FIR that on 28.08.2019 at 4:00 p.m, over a previous matrimonial dispute, appellant Muhammad Aslam at link road near Abdul Rehman Mochi in presence of PWs made a direct fire from his pistol upon deceased Manthar Ali hitting his nose. He informed the police accordingly of the incident and shifted the injured to hospital where he succumbed to injury. After funeral ceremony, he appeared at Police Station on 29.08.2019 and registered FIR.

5. Rustam Ali, PW-2, (Ex.12), the eye witness, in his evidence has supported the complainant. He was with the deceased at the time of incident and has, in detail, described the story that appellant armed with a pistol fired upon Manthar Ali and ran away. In his cross-examination, lengthy albeit, nothing substantial favorable to appellant over main features of the incident has come on record. Investigating Officers, examined as PW-3 (Ex.13), has confirmed inspecting place of incident, recording statements of witnesses, sending blood stained clothes and earth to Chemical Examiner for a report, arresting the accused, recovering crime weapon from him on his pointation and sending it to the Ballistic Expert for a report. HC-Eidan, examined as PW-4 (Ex.15), has deposed about recovery of crime weapon and live bullets from appellant on his pointation on 18.09.2019. PW-5, PC-Muhammad Ali

(Ex.15) is the mashir of recovery of crime weapon along with magazine and two live bullets on the pointation of appellant. SIP-Hassan Ali (PW-6) is also Investigating Officer, who inspected dead body of the deceased and prepared such mashirnama. The record further shows positive report of chemical examiner (Ex.13/E) is available on record. All these pieces of evidence are part of the prosecution case. Medical Officer, PW-7 (Ex.17) has verified the injury on the person of deceased Manthar Ali and has opined that injury was caused by firearm, leading to his death.

6. From a perusal of aforesaid entire evidence, it becomes quite clear that prosecution has been able to prove the case against appellant beyond a reasonable doubt. Evidence of complainant, eye witness, Medico-Legal Officer, Mashirs and Investigating Officers support each other, and relevant features of the case that were performed by them in the course of investigation. They all have in fact complemented each other qua prosecution's version of incident and nothing is left out which may cloud the slightest part of the story. During cross-examination of witnesses, no material contradiction has come on record creating a doubt over veracity of the 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 his brother by substituting the real culprit for him. When the entire evidence was put to the appellant for his explanation, he has simply pleaded his innocence in his statement u/s 342 CrPC.

7. 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 there was previous enmity, 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 established. The law in this regard is very 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 i.e. death, and this appears to be the reason why learned Additional PG and the counsel for the complainant have not opposed alteration of sentence of the appellant from death to life imprisonment.

8. Consequently, in the light of above discussion and while following the 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 however directed to pay compensation of Rs.500,000/- to the legal heirs of the deceased under Section 544-A CrPC, and in default, to suffer RI for one year more, as ordered by learned trial Court. However, benefit of Section 382-B CrPC is extended to him. With such modification in the quantum of sentence of appellant Muhammad Aslam, the appeal is **dismissed**. Consequently, death reference is hereby replied in negative and is accordingly **disposed of**.

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