

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

**Criminal Appeal No.D-06 of 2020
Crl.Conf. Case No.D-07 of 2020**

Present:

Mr. Justice Amjad Ali Sahito

Mr. Justice Jan Ali Junejo

Appellant : Muhammad Ameen s/o Ali Hassan Waggan
Through Mr. Athar Abbas Solangi, Advocate

Complainant : Zulfiqar Ali s/o Muhammad Hanif Waggan
Through Mr. Razi Khan Nabi Bux R.Chandio,
Advocate

The State : Through Mr. Ali Anwar Kandhro, Addl.P.G

Date of hearing : 15-04-2025

Date of Judgment : 06-05-2025

JUDGMENT

Jan Ali Junejo, J:- This criminal appeal is preferred to challenge the judgment dated 27.01.2020, rendered by the learned 1st Additional Sessions Judge/MCTC, Kambar, in Sessions Case No.377 of 2019 (Re: The State vs. Muhammad Ameen Waggan), arising out of FIR No.105 of 2019, registered under Section 302 of the Pakistan Penal Code at Police Station Waggan. Through the impugned judgment, the appellant, Muhammad Ameen son of Ali Hassan Waggan, was convicted for the murder of his nephew, Muhammad Waseem, and sentenced to death under Section 302(b) PPC, as *Tazir*. Additionally, he was directed to pay compensation in the sum of Rs.2,000,000/- to the legal heirs of the deceased in accordance with Section 544-A of the Criminal Procedure Code, and in default of payment, to undergo six months' simple imprisonment. A reference for confirmation of the death sentence has also been submitted to this Court.

2. The genesis of facts, borne out from the FIR lodged by complainant Zulfiqar Ali Waggan is to the effect that on

09-11-2019, at around 12:00 noon, the present appellant, duly equipped with a repeater, fired at complainant's brother Muhammad Waseem on his head in presence of witnesses/deceased's brothers Saleem and Imdad, who succumbed injury on the way to hospital.

3. The police during investigation arrested the present appellant, recovered from him the licensed crime weapon along with cartridge, on his lead and then submitted the final report under section 173 Cr.PC (challan) against him before the competent Court of law.

4. The present appellant pleaded not guilty to the charge framed against him and claimed trial.

5. At trial, the prosecution in order to establish its' case, examined as many as seven witnesses i.e PW-1 complainant Zulfiqar Ali (Exh.05), PW-2 eye-witness Muhammad Saleem (Exh.06), PW-3 Mashir Sumair Ahmed (Exh.07), PW-4 Corpse bear/PC Imtiaz Ali (Exh.08), PW-5 Tapedar Gada Hussain (Exh.09), PW-6 Author of FIR/I.O/SIP Zulfiqar Ali Jatoi (Exh.10) and PW-7 Dr.Masood Ahmed (Exh.11). They produced all the relevant documents in support of their version and later the prosecution close its' side.

6. The appellant in his statement recorded in terms of Section 342 Cr.P.C, denied the prosecution's allegation by claiming his innocence, stating therein that he did not commit murder but his nephew implicated him to usurp his property as he has no male issue. However, he neither examined himself on oath in disproof of the charge, nor led any evidence in his defence.

7. The learned trial Court after hearing counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant, as detailed above, which the appellant has impugned before this Court by preferring the instant criminal appeal.

8. Learned counsel for the appellant submits that the judgment is against the law and facts of the case; that F.I.R is delayed for more than 06 hours and no plausible explanation has been furnished by the complainant, whereas the distance between P.S and place of incident is about 10/13 kilometers, which can easily be covered within an hour; the prosecution has relied on interested witnesses (the deceased's brothers), whose testimonies were inherently biased due to enmity over the landed property; that the recovery of the weapon was already effected but the remand reports show that the remand was sought on the ground of recovery, which creates doubt; that all the witnesses cited in the case being closely related inter-se are chance witnesses; that the medical evidence conflicts with the ocular evidence; that unnatural conduct of the witnesses appeared in the evidence as they were two in numbers but they did not try to save the deceased; that no independent witness has been cited by the prosecution; that same mashir has acted in all mashirnamas. Summing up his contentions, the learned Advocate submitted that the present accused was roped on account of enmity over the landed property which is discernible from the narration given in the FIR itself. He thus concluded that the case of prosecution was not free from doubt and the appellant deserved to be acquitted in the circumstances. In support of his contentions, he has relied upon the cases of ***Tazeem Akhtar vs. The State (2002 YLR 768)***, ***Muhammad Sharif and 2 others vs. The State and others (2020 SCMR 1818)***, ***Muhammad Imran vs. The State (2020 SCMR 857)***, and ***Khalid Mehmood and another vs. The State and others (2021 SCMR 810)***.

9. While refuting the above contentions, learned counsel for the complainant and learned Addl.P.G argued that present appellant is named in the FIR with specific role of firing at the deceased which proved fatal and that the recovery of crime weapon on chemical analysis, matched with the empty cartridge recovered from the venue of occurrence, has justified the involvement of present appellant with commission of the incident; the ocular account is

fully consistent with medical as well as circumstantial evidence; that the delay in FIR has properly been explained and that no any single infirmity or contradiction has been pointed out by learned defence counsel to show false implication of the appellant in this case, in that situation, the learned trial Court has rightly awarded the death penalty to the appellant, which needs no interference by this Court, therefore, the appeal filed by the appellant is liable to its dismissal.

10. We have heard the learned counsel for the respective parties and have gone through the evidence as well as the case law relied upon by the learned counsel for the appellant with their able assistance.

11. The meticulous assessment of the record is entailing that the prosecution has solely relied upon the ocular account adduced in shape of evidence of PW-01 Complainant Zulfiqar Ali and PW/02 eye-witness Muhammad Saleem. Both of them in a same breath deposed that on the fateful day i.e 09.11.2019, they along with their brothers Muhammad Waseem (deceased), and Imdad when were working in the land, present appellant/accused Muhammad Ameen, duly armed with repeater, emerged there who while raising hakal, fired at their brother Muhammad Waseem with intention to commit his murder, at 12.00 noon, which hit him on front of his skull and he fell down and later the accused fled away. Muhammad Waseem was immediately shifted to RHC Waggan but he succumbed to injuries on the way. Leaving witnesses over his dead body, the complainant went to police station and lodged the FIR (Ex.5/A). In the instant case, except for the deceased Muhammad Waseem not a single person has received injury.

12. In cross examination, the complainant deposed that at the time of incident, his brother Muhammad Waseem was also working at the land at distance of about 10/20 paces away from him. The accused Muhammad Ameen fired at his brother at distance of 04/05 paces at 12 noon and no other person came at the land at

the time of incident. The complainant further deposed that he and his brothers Saleem and Imdad boarded the dead body of their brother Muhammad Waseem in a Datsun and took him towards RHC Waggan who succumbed to injuries on the way. PW/eye-witness Saleem in his cross examination deposed that as soon as Muhammad Ameen came at the land, he extended hakal not to spare his brother Muhammad Waseem and also made fire with his repeater straight at him with intention to commit his murder while the dead body of his brother was taken on the cot within 10/15 minutes. He further deposed that the farmers also accompanied them towards the hospital.

13. The prosecution examined PW-3/ Sumair Ahmed, the mashir of this case. He produced memo of dead body Ex.7/A, inquest report as Ex.7/B. He has also produced Memo of place of incident, recovery of empty cartridge and blood stained earth as Ex 7/C. The prosecution witness also produced memo of arrest as Ex.7/D so also memo of recovery of crime weapon as Ex.7/E. In cross-examination, he deposed that ***“I do not know about the survey numbers and names of the owners about the adjoining lands of the place of the incident. It is correct to suggest that the place of incident was surrounded by the agricultural land but I do not remember the survey numbers and names of the owners of the adjoining lands.”***

14. PW-05 Gadda Hussain/Tapedar produced certain documents as Ex.9/A & 9/B. PW-06 Zulfiquar Ali, the author as well as I.O of the case, repeated almost same story as disclosed by the prosecution witnesses. However, he confirms that he has recorded the statements of prosecution witnesses under section 161 Cr.P.C and prepared the documents of the case already produced by the PW-3 Sumair Ahmed/Mashir. He has also produced road certificate as Exh.10/E, Chemical Examiner's report as Exh.10/F and FSL report as Exh.10/H. In cross-examination, he has denied the

suggestion that nothing was recovered from the possession of appellant.

15. In the instant matter, eye-witnesses of the incident have supported the prosecution story which also finds support from the medical evidence concerning the cause of death and time of incident and weapon used in the commission of an offence. It is established from the evidence of Dr. Masood Ahmed (PW-7) M.O, RHC, Waggan, who received the dead body of deceased Muhammad Waseem. The dead body was identified by Zulfiqar Ali and Imdad Ali (deceased's brothers). He started postmortem at 02:30 pm and finished at 04:30 pm on 09.11.2019. He produced a police letter at Exh.10/I. During the external examination, he found the following injuries on the person of deceased:

1. *One lacerated punctured wound of entrance 06 cm x 04 cm over right front-parietal region and skull, (through and through), brain substance visible with bleeding, black charring around wound with inverted margins.*
2. *One lacerated punctured wound of exit 08 cm x 06 cm over occipital region of skull with everted margins and bleeding with posterior outside of brain tissue.*

16. After external and internal examination on dead body of the deceased, the medical officer formed his opinion that all the injuries were ante-mortem in nature and death has occurred due to ante injury leading to hemorrhage and brain damage due to discharge of firearm and injury No.1 was sufficient to cause death. The time between injury and death was 02 hours approximately and between death and postmortem was within two hours. He produced such postmortem report at Exh.11/A. In cross examination, he deposed that the deceased survived for 01/02 hours after sustaining injury.

17. The medical evidence also finds support from the ocular account which is further strengthened by the circumstantial account, produced in shape of recovery of empty cartridge from the venue of occurrence, the same on forensic analysis was found

matched with the repeater secured from the present appellant. Besides, the blood stained soil collected by the police and sent to the office of Chemical Examiner, resulted into a report that “**The earth material of above said white cloth parcel No.1 is stained with human blood.**” The prosecution witnesses are at line in respect of the present appellant on the vital points in their depositions and they could not be shaken during cross examination. The presence of appellant at the venue of occurrence has been established during the evidence of the complainant and eye-witness and no any material contradiction has been noticed in their evidence.

18. In the present case, the complainant and eye-witness have provided a clear, consistent, and detailed account of the incident, including its’ date, time, and location, leaving a little room for ambiguity. Their narrative of the events has been presented in a straightforward and convincing manner. The record also establishes that the parties are closely related inter-se, which eliminates any possibility of mistaken identity of the appellant. It is a well-settled principle of law that when the witnesses are categorized as natural witnesses and narrate the occurrence in a manner inspiring confidence, their testimony cannot be disregarded lightly. The burden then shifts upon the accused to convincingly demonstrate that such witnesses are not truthful but are instead interested or biased. In this case, the appellant has failed to discharge that burden. In cases involving the capital punishment, a mere assertion of a dispute or enmity is not sufficient to discredit otherwise reliable witnesses. The accused must bring forth credible evidence to substantiate that such a dispute existed and that it was of such magnitude that it could plausibly explain a false implication by the witnesses, even at the cost of shielding the actual perpetrator. It is noteworthy that the deceased was the real brother of the complainant, and PW-2 also happens to be real brother to the complainant and the deceased. In such a close familial context, the possibility of substituting an innocent person

with real offender becomes highly improbable. The appellant has not produced any substantial material to establish the existence of a deep-rooted enmity that could have reasonably motivated such false implication. The reliance in this context is placed upon case of ***Zulfiqar Ahmad and another v. The State (2011 SCMR 492)***, wherein the Hon'ble Supreme Court of Pakistan has elaborated that:

“6..... The petitioner and the complainant party are undisputedly closely related to each other. The petitioner is a maternal-cousin of the deceased, so also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High Court that the blood relation would not spare the real culprit and instead would involve an innocent person in the case. Further, it has rightly been observed that it was not essential for the prosecution to produce each of the cited witnesses at the trial.”

19. So for the recovery of crime weapon/Repeater is concerned, the recovery of the weapon was effected on 13-11-2019 vide memo of recovery dated 13.11.2019 at Exh.7/E and the same was prepared by the Investigating Officer (I.O.). Despite this, the I.O. had obtained a remand extending up to 21-11-2019. Notably, on 21.11.2019, the I.O. made a further request for police custody, as reflected in the Order dated 21.11.2019 issued by the Judicial Magistrate concerned. However, this request was declined, and the rejection was recorded in the following terms:

“Heard ASI and perused record. Police has already availed, eight days PC remand but failed to recover crime weapon hence further PC remand is declined. Accused remanded to Judicial custody up to 26.11.2019, with directions to ASI complete the investigation in the above stipulated period and submit final report under section 173, Cr.P.C. on 27.11.2019 without fail”.

20. The aforementioned facts clearly indicate that, until 21-11-2019, the Investigating Officer (I.O.) had not disclosed the recovery of the weapon used in the crime. In this context, the legitimacy of the weapon's recovery becomes highly questionable. Given that such recovery does not constitute direct evidence but merely serves as a corroborative element, it may justifiably be considered a mitigating factor in support of reducing the sentence.

21. Further, the law of land normally provides a sentence for an offence of Qatl-i-amd (murder) is death which is to be awarded as a matter of course except where the Court finds some mitigating circumstances, which may warrant the imposition of a lesser sentence. On careful appraisal of evidence, we have found that the motive set up by the prosecution was quite vague and admittedly no independent witness was brought by the prosecution, even not a single word has been uttered by any of the witnesses regarding the background of any ill-will or bitterness between the appellant and the deceased. The investigation with regard to previous enmity is very much silent to it, as there was no any documentary proof produced by the appellant either during course of investigation or even at close of trial which may give color to the motive behind the incident. It has come to light from the FIR that the appellant fired a single shot at the deceased which crossed through and through his skull, hence in absence of repetition of fire by the appellant dispels the premeditation to kill the deceased. When the motive is not proved, the Honourable Apex Court in multiple cases has reduced the sentence from death to imprisonment for life. The reliance in this regard is placed on the case of **Haq Nawaz v. The State (2018 SCMR-21)**, wherein the Honourable Supreme Court of Pakistan has held that;

“3. After hearing the learned counsel for the parties and going through the record we have observed that the High Court had categorically concluded that the motive set up by the prosecution had not been proved by it. The law is settled by now that if the

prosecution asserts a motive but fails to prove the same then such failure on the part of prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmed Nawaz v. The State (2011 SCMR-593), Iftikhar Mehmood and another v. Qaisar Iftikhar and others (2011 SCMR-1165), Muhammad Mumtaz v. The State and another (2012 SCMR-267), Muhammad Imran @ Asif v. The State (2013 SCMR-782), Sabir Hussain alias Sabri v. The State (2013 SCMR-1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR-1602), Naveed alias Needu and others v. The State and others (2014 SCMR-1664), Muhammad Nadeem Waqas and another v. The State (2014 SCMR-1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR-2035) and Qaddan and others v. The State (2017 SCMR-148).

22. In another case of ***Muhammad Nadeem Ramzan v. The State (2018 SCMR-149)***, the Honourable Supreme Court of Pakistan has held as under;

“The motive asserted by the prosecution had, thus, remained far from being proved”

23. In the above circumstances, we would like to observe that punishment provided under Section 302(b) PPC as Tazir is either death or imprisonment for life, both sentences are available under this head but the circumstances are not spelt out in section 302(b) PPC, in which case either of the two punishment can be awarded. We are fortified on this point with the case of ***Muhammad Sharif v. The State (PLD 2009 Supreme Court-709)*** whereby the Honourable Supreme Court has elaborated the similar question as under;

“It has been seen and observed from the perusal of the various proceeding in relation to section 302 PPC in particular its clause (b), that there is a choice and discretion with the Court to inflict punishment with death or imprisonment for life as tazir having regard to the facts and circumstances of the case”.

24. For what has been discussed hereinabove, the Criminal Jail Appeal No.D-06 of 2020 filed by appellant Muhammad Ameen Waggan is **dismissed**. The conviction awarded to him for the offence under section 302 (b) PPC is maintained but sentence to death on the charge of murder of deceased Muhammad Waseem is reduced/converted to imprisonment for life. He is also directed to pay Rs.20,00,000/- as compensation to the legal heirs of deceased Muhammad Waseem in terms of Section 544-A Cr.P.C and in failure thereof, he shall suffer six month's S.I more. The benefit of Section 382-B Cr.P.C is also extended in favour of appellant Muhammad Ameen.

25. As a result of the above findings, the reference bearing Crl.Conf. Case No.D-07 of 2020 submitted by the learned trial Court for confirmation of death sentence to the appellant Muhammad Waseem is answered in **NEGATIVE**.

JUDGE

JUDGE