

**THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

**Criminal Appeal No.D-70 of 2015  
Criminal Appeal No.D-74 of 2015  
Confirmation Case No.09 of 2015**

**Present**

**Mr. Justice Muhammad IqbalKalhoro**

**Mr. Justice Muhammad SaleemJessar**

Date of hearing: 16.11.2022

Date of decision: 16.11.2022

Appellant: Wazir Ali through Mr. Wazeer Hussain Khoso  
advocate.

Complainant: Nemo.

The State: Through Mr. ShawakRathore, Deputy Prosecutor  
General, Sindh.

**JUDGMENT**

MUHAMMAD IQBALKALHORO, J:- Appellant Wazir Ali stood a trial in Special Case No.19 of 2014, arising out of Crime No.81/2014, PS Town, District Mirpurkhasu/s 302, 114, 34 PPC for murdering Gul Hassan by making straight fires with pistols upon him, along with co-accused in front of Court of 3<sup>rd</sup> Senior Civil Judge Mirpurkhas on 16.07.2014 at about 1030 hours, and has been convicted and sentenced vide impugned judgment dated 31.07.2015 by learned Anti-Terrorism Court Mirpurkhas in the terms as stated below.

*“I, therefore, convict the accused Wazir Ali u/s 302(a) PPC and section 7 (a) of Anti-Terrorism Act, 1997 and sentence to death by hanging him by neck till he is dead and to pay fine of Rs.100,000/- in default of payment of fine to suffer further RI for three years.”*

2. He also stood a trial in Special Case No.20 of 2014, arising out of Crime No.82/2014, PS Town, District Mirpurkhasu/s 24 Sindh Arms Act, 2013 for recovery of a pistol (crime weapon), and has been convicted by the same Court vide same judgment dated 31.01.2015 to suffer RI for 03 years and to pay fine of Rs.50,000/- in default whereof to suffer SI for six months more. Benefit of section 382-B CrPC has been

extended to him. Co-accused Mst. Noor Jehan and minor/juvenile accused Sher Ali have been acquitted whereas case against absconding accused Babar Ali has been kept on dormant file.

3. Aggrieved by said judgment, he has filed instant appeals. Learned defence counsel after arguing 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 in this case motive has remained un-proved. To bring home his point, he has relied upon 2017 SCMR 2024. Learned DPG has not opposed his request in view of ratio laid down in the aforesaid case.

4. 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 however he examined himself on oath as well as examined his two daughters namely Mst. Najma, Mst. Rani, brother Muhammad Hanif and one Muhammad Yameen in his defence.

5. Complainant, who happens to be step brother of deceased in his evidence (Ex.24) has described the whole incident as narrated by him in FIR that on 16.07.2014 at about 10.30 am on first floor of Sessions Court Building in his presence accused Mst. Noor Jehan instigated accused Wazir Ali and Babar Ali that since her daughter Mst. Najma against their consent married Gul Hassan so they both kill Gul Hassan on which they both made straight fires from their respective pistols upon Gul Hassan resultantly he become injured and subsequently succumbed to injuries at Civil Hospital Hyderabad. After burial of dead body, he appeared at Police Station and registered FIR.

6. Misri, PW-2, (Ex.27), in his evidence has supported the complainant. He was also with the deceased at the time of incident like the complainant and has, in detail, narrated the role played by appellant: that he alongwith co-accused armed with pistol on instigation of Mst. Noor Jehan (co-accused) made direct fires upon Gul Hassan which hit him on his different parts of body. They both have identified the appellant, already known to them. In their cross-examination, lengthy

albeit, nothing substantial favorable to appellant over main features of incident has come on record. Dildar, PW-3, (Ex.35), eye witness, in his evidence has deposed the same story of complainant. Rajab Ali, PW.4, (Ex.37) in his evidence has deposed that on 16.07.2014 he was deputed as Security Guard at main entrance gate of Sessions Court building Mirpurkhas and at about 10.30 am he along with other police constables arrest appellant along with crime weapon/pistol.

7. Investigation Officer, examined as PW-5 (Ex.39), has confirmed inspecting place of incident, securing dry blood recording statements of witnesses and recovering nine empties of pistol and seven pieces of lead (sheeho). He has further affirmed that on the same day he had lodged FIR No.82/2014 at police station Town Mirpurkhas against appellant Wazir Ali for recovery of licensed pistol of 30 bore from his possession u/s 24 of Sindh Arms Act, 2013.\*\*\*

The record further shows that in the investigation, blood stained earth and one empty shell from the spot were also collected by the I.O. regarding which positive reports of chemical examiner (Ex.6/G& 6/I) are available on record. Tapedar PW-5 (Ex.7) had visited site in presence of complainant and prepared its sketch which has also been produced in the trial. Medico-Legal Officer, PW-6 (Ex.8) has verified the injury on the person of deceased and has opined that cause of his death was shock and hemorrhage and rupture of lungs by firearm. SIP Ghulam Murtaza PW.7 (Ex.9) has confirmed preparation of Lash Chakas Form and Danishnama. PW.8 Muhammad Qabil Judicial Magistrate (Ex.10) has deposed that on 01.04.2019 appellant had voluntarily made confessional statement before him, which he has produced as Ex.10/B. All these pieces of evidence are parts of the prosecution case.

8. When we take a collective view of such evidence available on record, it becomes 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 supports such

features of the case relevant to the role performed by them in the case. They have in fact complemented each other qua prosecution's version of the incident and nothing is left out of sight clouding the slightest part in the story. During cross-examination of witnesses, no material contradiction has come on record which may create a doubt over veracity of prosecution story. 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 nephew by substituting the real culprit. There is also a judicial confession made by appellant before Judicial Magistrate Sehwan on 01.04.2019 which although he has retracted in his statement u/s 342 CrPC but if the same is seen in backdrop of entire evidence discussed above, appears to ring true. When the entire evidence was put to the appellant for his explanation, he has simply pleaded his innocence and in support has stated that complainant party has enmity with Mahar community and deceased had been murdered by them. However no proof to that effect has been brought on record by him.

9. We therefore, find no illegality in the impugned judgment as far as declaration of guilt/conviction of the appellant is concerned. Nonetheless, we are of the view that 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. The motive part of the story that there was a dispute over entering the house during a marriage ceremony between the deceased and appellant, alleged by the prosecution, is shrouded in mystery and has not been proved. 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 APG has not opposed alteration of sentence of the appellant.

10. 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. Rs.200,000/- to be paid by appellant as fine is converted into compensation u/s 544-C CrPC as Section 302(b) PPC does not stipulate any provision of fine, its default shall expose appellant to further SI for six months, however, benefit of Section 382-B CrPC is extended to him. With such modification in the quantum of sentence of

appellant Murtaza s/o Photo, Criminal Appeal No.D-01/2020 is dismissed and Criminal Appeal No.D-104/2020 is dismissed as not pressed. Both the sentences awarded to the appellant shall run concurrently. Consequently, death reference is hereby replied in negative and accordingly disposed of.

11. Both the appeals are disposed of accordingly.

**JUDGE**

**J U D G E**

Irfan Ali