

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:-

Mr. Justice Shamsuddin Abbasi
Mr. Justice Ali Haider 'Ada',

Cr. Jail Appeal No. D-03 of 2022

Appellant	Imtiaz Ali s/o Haleem @ Muhammad Hayat Bangulani Through Mr. Habibullah G. Ghouri, advocate
Complainant	Muhammad Rahim Nindwani (In person).
State	Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing	23-09-2025
Date of judgment	23-09-2025

J U D G M E N T

Shamsuddin Abbasi, J. Through instant criminal appeal, appellant Imtiaz Ali s/o Haleem Alias Muhammad Hayat, has impugned the Judgment dated 08.02.2022, passed by the learned I-Additional Sessions Judge/MCTC Kandhkot, in Session Case No. 356/2020, (re: The State V/S Hafizullah), arising out of Crime No. 36/2020 of Police Station Karampur, for the offence U/s 302, 324, 114, 337-H(ii), 148, 149 P.P.C. After full dressed trial, the appellant was convicted U/s 265-H Cr.P.C for the offence punishable U/S 302(b) P.P.C and sentenced to death (hanged by neck till his death) subject to confirmation of this court and to pay fine of Rs.500,000/- as compensation for disbursement among L.Rs of the deceased as required U/S 544-A Cr.P.C. In case of default he will suffer R.I for 6 months more. Benefit of Section 382-B Cr.P.C was extended to the appellant.

2. Relevant facts of the prosecution case as per FIR got registered on dated 21.4.2020, at 1500 hours by complainant Muhammad Rahim Nindwani are that there was dispute between complainant party and accused Imtiaz Bangulani and others over entrance of cattle in the lands and such case/Crime No. 27/2020, under section 337-Ai, Fi, 506/2 PPC was got registered by the complainant party against accused Imtiaz and others and they were

issuing threats to complainant party to withdraw the case otherwise they (complainant party) would be murdered. It is alleged in the FIR that on 20.04.2020 complainant along with his nephew Bashir Ahmed, brother Manzoor Ahmed, son Bahadur was going to Ghouspur on Rickshaw, when complainant party reached at road leading from Ghouspur to Tangwani in the meantime at 08:30 am, 08 accused persons came there on three bikes, intercepted complainant party. It is alleged that complainant party identified accused each one Imtiaz, Khadim both sons of Haleem alias Hayat, Mubarak son of Haleem, Salleh son of Moraan, Hafizullah son of Hidyatullah, Sabzal son of Baggan all by caste Bangulani r/o near village Salleh Bangulani taluka Tangwani including two unknown accused persons. It is alleged in the FIR that all the accused persons took out pistols from their folds, out of the accused persons, accused Sabzal said that complainant party has not withdrawn from the case registered against them, hence today they will commit murder of Bahadur, saying so he (accused Sabzal) instigated other accused to commit murder of Bahadur, on such instigation accused Imtiaz opened direct fire with TT pistol at Bahadur with intention to commit his murder which hit him on his abdomen, accused Mubarak opened direct fire with his TT pistol at Bahadur with intention to commit his murder which hit him at his right arm, accused Khadim opened direct fire with his pistol at Bashir Ahmed with intention to commit his murder which hit him on left thigh, due to receiving fire arm injuries, Bahadur and Bashir Ahmed fell down. The complainant party raised cries which attracted passersby and on seeing them accused persons made aerial firing to create harassment and went away towards northern side on same bikes. It is further alleged in the FIR that Bahadur and Bashir Ahmed were injured and blood was oozing from their wounds, as such, complainant party arranged the conveyance, shifted the injured to PP Jamal wherefrom injured were referred to RHC Karampur but on the way to RHC Karampur, injured Bahadur succumbed the injuries and expired, the complainant party informed to police of PP Jamal and brought the injured Bashir and dead body of Bahadur at RHC Karampur wherefrom injured Bashir was referred to Larkana Hospital for further treatment. According to FIR complainant sent the injured Bashir through his relatives to Larkana Hospital, however, the post mortem of dead body of Bahadur was got conducted by the police after completing the legal formalities, as such, the dead body of Bahadur was handed over to complainant who brought the dead body at village,

as such, after burial and funeral complainant went to Ps and got registered instant FIR.

3. After completion of investigation, the charge sheet against accused persons was submitted before the concerned Judicial Magistrate, wherein accused Hafizullah was shown in custody, Sabzal and Salleh in column No:2 of the charge sheet while Imtiaz, Khadim, Mubarak as absconder, as such, the learned Judicial Magistrate took cognizance against let off accused shown in column No:2 of the charge sheet and joined them to face trial vide order dated 13.05.2020. After observing legal formalities, the charge was framed against the present appellant at Ex.3, to which he denied, pleaded not guilty and claimed trial vide his plea at Ex.4.

4. Charge against accused Hafizullah was framed at Ex:6. He pleaded not his guilt & claimed trial. Such plea was recorded at Ex:6/A.6. The prosecution in order to substantiate its case got examined Tapedar Abdul Nabi Bijarani at Ex:8, he produced sketch of place of incident at Ex:8/A. The accused Imtiaz Ali was produced through supplementary challan dated 15.02.2021. Amended charge was framed against accused Hafizullah and Imtiaz Ali at Ex:10. They pleaded not their guilt & claimed trial. Such pleas were recorded at Ex:10/A & B, respectively

5. At trial, the prosecution examined author of FIR HC Rabban at Ex:11, he produced DD entries, letter to M.O, memo of inspection of injuries of injured, memo of inspection of dead body, danistnama, laash chakas form, memo of cloths of dec ased and FIR at Ex:11/A to 11/I, respectively, PW ASI Hakim Ali Buriro who submitted charge sheet was got examined at Ex:12, complainant Muhammad Rahim was got examined at Ex:13, he produced receipt of dead body at Ex:13/A, injured PW Bashir Ahmed was got examined at Ex:14, ASI/I.O Hamal Jafferri was got examined at Ex:15, he produced DD entry, R.Cs, FSL report regarding empties and FSL report regarding blood stained cloths of deceased at Ex:15/A to E, respectively, Medical Officer Basit Ali Jakhrani was got examined at Ex:17, he produced post mortem report of deceased (Bahadur) and MLC of injured (Bashir Ahmed) at Ex:17/A and B, respectively, corpus bearer PC Dost Muhammad Bijrani was got examined at Ex:18, Tapedar Abdul Nabi Bijarani was got examined at Ex:19, mashir Abdul Hameed was got examined at Ex:20, he produced memo of place of incident, memo of arrest and body search of accused Hafizullah at Ex:20/A & B,

respectively, ASI/I.O Muhammad Nawaz Bajkani was got examined at Ex:21, he produced letter to Mukhtiarkar and DD entry at Ex:21/A and B, respectively. Learned ADPP for state closed the prosecution side vide his statement at Ex:22

6. Examination of accused Hafizullah and Imtiaz Ali, as provided under section 342 Cr.P.C was made at Ex:23 and 24, respectively, wherein they claimed themselves innocent and pleaded their false implication in instant case. They did not get examine themselves on oath nor any witness in their defense, however, they claimed that they have falsely been implicated in this case by the complainant due to money matter.

7. On conclusion of trial, the learned trial Court found the appellant guilty of the offence charged with and, thus, convicted and sentenced him as stated in para-1 (supra), which necessitated the filing of the listed appeal.

8. At the very outset, learned counsel for the appellant does not press this jail appeal on merits and requests that this case may be remanded back to learned trial court to record the statement of accused/appellant afresh for the reason that learned trial court while convicting the appellant for capital sentence never put any question about evidence of P.W Abdul Nabi (tapedar), who prepared sketch of place of incident available at Ex.8-A. He has also pointed out that no questions were put up from the appellant about injuries sustained by the injured Bashir, occurrence, mashirnama of seeing dead body. He has further pointed out that learned trial court while convicting the appellant had relied on these pieces of evidence which is against the fair trial guaranteed by Constitution of the Islamic Republic of Pakistan, 1973, under Article 10-A.

9. The complainant is present in person and relied on learned D.P.G.

10. Learned D.P.G. has admitted these facts and has consented for remand of case to the extent that trial court may be directed to record the statement of appellant afresh and thereafter announce the judgment within a month.

11. We have heard the learned counsel for the appellant, complainant in person, the learned D.P.G for the State and have gone through the entire material available before us with their able assistance.

12. Since the counsel for appellant is not pressing this appeal on merits and requests to remand back this case for recording the statement of appellant afresh by placing of these materials which have been discussed by learned trial court in its judgment while convicting the appellant for capital punishment. Such as evidence brought on record of Tapedar, mashinrma of injures of injured, mashirnama of seeing dead body, inquest report and other pieces of evidence which were relied by the learned trial court. Learned trial court is directed to conclude the trial preferably within a month.

13. In view of above, impugned judgment is set-aside and instant appeal is allowed to the extent for recording statement of appellant afresh and therefore announce the judgment in accordance with law.

14. Instant appeal stands allowed to the extent for recording statement of appellant afresh and thereafter announce the judgment.

15. The reference sent by the learned trial court is answered as **Negative**.

Judge

Judge