

**THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**Criminal Jail Appeal No. D-177 of 2019**

**Confirmation Case No. D- 11 of 2019**

**Present**

**Mr. Justice Muhammad Iqbal**

**Kalhor**

**Mr. Justice Arbab Ali Hakro**

Date of hearing: **16-01-2024**

Date of decision: **16-01-2024**

Appellant: **Talib Hussain Baladi** through Mr. Bakhshan Khan Mahar, Advocate.

The State: Through Mr. Aftab Ahmed Shar, Additional Prosecutor General.

**J U D G M E N T**

**MUHAMMAD IQBAL KALHORO, J:-** Appellant Talib Hussain Baladi stood trial in a Sessions Case No.784 of 2013, arising out of Crime No.118 of 2013, registered at P.S, Faiz Ganj-Khairpur u/s 302 PPC for murdering Muhammad Tufail (brother of complainant) by causing him a firearm injury through and through over left side of nipple with a .30 bore pistol at a link road leading from Karoondi towards Baseero in the house of Fakir Raham Ali Kalhor, Taluka Faiz Ganj, district Khairpur on 31.08.2013 at 1300 hours. He has been convicted u/s 302(b) PPC vide impugned judgment dated 26.08.2019 by learned Additional Sessions Judge, Mirwah and sentenced to death with fine of Rs.100,000/- and in default thereof, to suffer S.I for six months more. He has also been directed to pay compensation of Rs.10,00,000/- to legal heirs of deceased in terms of Section 544-A CrPC, and in case of default, to be recovered as land revenue arrears. 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 story has not been established. In support of his submission,

he has relied upon the case law reported as **2017 SCMR 2024** (*Fayyaz alias Fiazi v. The State*). 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 as many as seven witnesses including complainant, the eyewitnesses, Investigating Officer, 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, clothes, arrest of appellant and recovery of crime weapon, recovery of bike and blood stained cover of a car, inquest form and post-mortem report 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 the deceased in his evidence (Ex.4) has described the whole incident as narrated by him in FIR that on 31.08.2013 at 1300 hours, on a petty dispute, appellant Talib Hussain on a link road leading from Karoondi to Baseero at the house of Fakir Raham Ali Kalhoro in presence of PWs made a direct fire from his pistol upon deceased Muhammad Tufail hitting him on left side above nipple who died at the spot, arrest of accused at the spot with the help of villagers and recovery of crime weapon i.e. pistol, used in the commission of offence. Complainant accordingly appeared at Police Station on the same day i.e. 31.08.2013 and registered FIR at 1430 hours.

**5.** Maqbool Hussain and Himat Ali, PWs-2&4, (Ex.5&8), the eye witnesses, in their evidence have supported the complainant. They have, in detail, described the story that appellant armed with a pistol fired upon Muhammad Tufail and he was arrested at the spot with the help of villagers along with pistol, used in the commission of offence. In their cross-examination, lengthy albeit, nothing substantial favorable to appellant over main features of the incident has come on record. Medical Officer, PW-3 (Ex.6) has verified the injury on the person of deceased Muhammad Tufail and has opined that injury was caused by firearm, leading to his death. PW-5 is Tapedar Shafquat Hussain (Ex.9), who has visited the place of incident in presence of Mashirs and prepared such report and

sketch. PW-6 PC-Gulsher (Ex.10) has deposed to have brought the dead body of deceased at RHC, Faiz Ganj, where postmortem of deceased was conducted and thereafter he handed over dead body to his brother. Investigating Officer, examined as PW-7 (Ex.11), has confirmed inspecting place of incident, recording statements of witnesses, recovering one bike, blood stained seat cover of a car, one empty bullet of pistol, arresting accused and recovering crime weapon i.e. pistol, used in the commission of offence and sending it to the Ballistic Expert for a report. PW-8 Azmat Ali examined at Ex.12 is the Mashir of inspection of dead body of deceased, recovery of blood stained seat cover, empty shell of bullet from the place of incident, handing of clothes of deceased by doctor to PC Gulsher etc. The record further shows that positive report of chemical examiner was exhibited in off-shoot case of 24 SAA, 2013, crime No.119 of 2013 of P.S, Faiz Ganj. All these pieces of evidence are part of the prosecution case.

**6.** From a perusal of aforesaid entire evidence, it becomes quite clear that prosecution has been able to prove the charge against appellant beyond a reasonable doubt. Evidence of complainant, eye witness, Medico-Legal Officer, Mashirs and Investigating Officer 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 to award capital punishment i.e. death, and this appears to be the reason why learned Additional P.G has 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 directed to pay compensation of Rs.10,00,000/-(Ten Lac) to the legal heirs of the deceased under Section 544-A CrPC, and in case of default, same shall be recovered as land revenue arrears, 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 Talib Hussain Baladi, the appeal is **dismissed**. Consequently, death reference is hereby replied in negative and is accordingly **disposed of**.

**J U D G E**

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Ahmad