

**JUDGMENT SHEET**  
IN THE HIGH COURT OF SINDH, KARACHI.  
Cr. Appeal No.302 of 2012  
Confirmation case No.04 of 2012

*Present:*

*Mr. Justice Muhammad Iqbal Kalhoro, J.*  
*Mr. Justice Khadim Hussain Shaikh, J.*

Appellant: Mansoor Khan @ Danish through Mr. Abdul Razak Advocate.

Respondent: The State through Mr. Arbar Ali Khichi D.P.G duly assisted by Mr. Muhammad Irfan advocate for complainant.

Date of hearing: 11.09.2017

Date of decision: 11.09.2017.

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

**MUHAMMAD IQBAL KALHORO J:** Appellant Mansoor Khan @ Danish was tried in S.C. No.360/2009 bearing crime No.95/2009 of P.S. Sharafi by learned Sessions Judge, Malir Karachi and was convicted vide impugned judgment dated 25.09.2012 u/s 302(b) PPC, sentenced to death and ordered to be hanged by neck till death and to pay an amount of Rs.50,000/- as compensation to the legal heirs of deceased Muhammad Zeeshan alias Shani u/s 544-A Cr.P.C in default whereof to suffer SI for six months more

2. Briefly, the prosecution case is that on 31.05.2009, complainant Muhammad Imran was sitting in the hotel, when at about 1.30 pm a friend of his brother Muhammad Zeeshan alias Shani came there and informed that Manzoor alias Danish has caused firearm injuries to his brother Muhammad Zeeshan alias Shani in Malir River bank No.2. Upon which he reached the pointed place and found dead body of his brother. He took the dead body to Jinnah Hospital, where police arrived and recorded his statement, which was subsequently incorporated in 154 Cr.P.C book by SIP Rana Bashir. At Hospital police also inspected the dead body, prepared its memo and inquest report and delivered the dead body to the complainant. On the same date viz. 31.05.2009 appellant was arrested by SIP Malik Jahan Khan under mashirnama

and recovered from him one 30 bore pistol. He also recovered three empties of same bore from the place of incident and sent the same to ballistic expert for examination and report. On completion of investigation challan was submitted against the appellant.

3. A formal charge against the appellant was framed at Ex.2 to which he pleaded not guilty and claimed his trial.

4. In the trial, the prosecution examined P.W.1 Complainant Muhammad Imran at Ex.4, P.W.2 Zubair Muhammad at Ex.5, P.W.3 Ashraf Ali at Ex.6, P.W.4 Dr. H. Zeeshan Haider at Ex.8, P.W.5 SIP Malik Jahan Khan at Ex.9 and P.W.6 SIP Rana Muhammad Bashir at Ex.11. They produced all necessary documents including FIR, memos of inspection of dead body, arrest and recovery, medical certificate of deceased and chemical examiner's report etc. Statement of appellant u/s 342 Cr.P.C was recorded at Ex.22, in which he has denied the allegations and claimed his innocence. At the conclusion of trial, learned trial court convicted and sentenced the appellant vide impugned judgment as stated above and through the instant appeal, the appellant has challenged the same.

5. Mr. Abdul Razak, learned defence counsel has argued that the appellant is innocent and has been falsely implicated in the case; that there are contradictions in the evidence of the P.Ws which have made the prosecution case doubtful; that the complainant in the FIR disclosed that a friend of his deceased brother informed him about the incident but in his evidence he did not disclose his name; that the arrest of the appellant is shrouded in the misty and the recovery of crime weapon i.e. 30 bore pistol from him has not been proved beyond reasonable doubt; that the eyewitnesses namely Zubair Muhammad and Ashraf Ali have contradicted each other on material points of the case and their evidence is not worthy of credence; that the said eyewitnesses are chance witnesses and their presence at the spot has not been fully

established by the prosecution; that the medical evidence is in conflict with the ocular evidence as the Medico Legal Officer in his deposition has described injury No.5 as firearm cutter shape wound which was not caused by any bullet injury but by a shot gun, however, none of the witnesses has deposed that the appellant was armed with shot gun or the deceased had sustained any firearm injury from a shot gun and thus the prosecution case qua presence of the witnesses at the spot is doubtful; that there is delay of more than one month in sending the crime weapon and crime empties to the FSL for examination which has not been properly explained by the prosecution and such delay has rendered the recovery of crime weapon and crime empties doubtful; that even the prosecution case itself suggests that the murder of the deceased was not preplanned but it happened at the spur of moment without premeditation and thus the death penalty awarded to the appellant is not warranted under the law. Learned counsel in support of his arguments has relied upon 2014 P Cr. L J 865, 2015 SCMR 1142, AIR 2008 SC 320, 2010 SCMR 1604, 2010 SCMR 374, 1007.

6. On the other hand, Mr. Muhammad Irfan learned counsel for the complainant has supported the impugned judgment. Learned DPG has also supported the prosecution case but has not denied that the incident took place without premeditation on the part of the appellant, who was the childhood friend of the deceased but it was due to some quarrel between them, at the spur of moment the appellant committed the murder of deceased.

7. We have considered the submissions of the parties and perused the material available on record with their assistance and have also attended to the case law cited at bar. P.W.1 Muhammad Imran, who is complainant and brother of deceased is not the eyewitness of the incident. On the day of incident, he was present in some hotel near his house when information of murder of his brother was communicated to

him. He rushed to the place of incident, found the dead body of his brother there and brought it at Jinnah Hospital Karachi, where his postmortem was conducted and after due formalities, he was handed over the dead body of his brother. However his statement u/s 154 Cr.P.C was recorded at the hospital in which he has not named any one as accused. It is only during investigation, the statement of eyewitnesses was recorded, who have implicated the appellant in commission of offence. Out of these eyewitnesses, the prosecution has examined P.W. Zubair Muhammad Ex.5 and Ashraf Ali Ex.6. They both have described the incident in detail and the manner it took place. Both these eyewitnesses are not only the friends of the deceased but they are also friends of the appellant because the appellant is mutual friend of both of them including the deceased. They disclosed that on the day of incident, deceased slapped the appellant Mansoor @ Danish, which led the appellant taking out the pistol and fired straightly at the deceased Muhammad Zeeshan. Presence of these witnesses is fully established, these witnesses are not only residents of the same area but being mutual friends of the deceased and the appellant, were present with them at the time of incident. They both have directly implicated the appellant to have committed murder of the deceased on the day of incident at the relevant time. Both these witnesses have withstood volley of questions in their cross examination without wavering on any material facts of the prosecution viz a viz role of the appellant in committing murder of deceased with his pistol. Their evidence is supported by the recovery of three crime empties from the place of incident which were sent alongwith crime weapon recovered from the appellant to FSL for the purpose of examination and report. Such report has been produced by P.W.5 SI Malik Jahan khan, who is I.O. of the case in his evidence Ex.9. This report indicates that the crime empties recovered from the place of incident were fired from the pistol recovered from the appellant. Although learned defence counsel in his arguments

contended that FSL report is not reliable as it does not suggest as to on what basis and on what tests, the said report has been prepared and it has been concluded that the crime weapon recovered from the appellant was used by him in the commission of offence, we however do not agree with his contention. We have seen that in the report the breech face mark on the basis of which the empties are shown to have been fired from the said pistol are specifically referred to and on the basis of those criterion it has been concluded by the Forensic Science Expert that from the said pistol empties were fired.

8. The evidence of the eyewitnesses is further supported by the medico legal evidence and based on postmortem report of deceased which indicate that the deceased received as many as seven fire arm injuries out of which three are entry wounds and three exit wounds. Both the eyewitnesses in their evidence have disclosed that deceased was fired at by the appellant three times which is in complete synchronization with the medical evidence. Regarding contention of learned defence counsel that fire arm cutter shape wound was caused to the deceased by a shotgun and such fact is in contradiction of the prosecution case, it may be mentioned that we have observed that in cross examination no such suggestion has been given to MLO namely Dr. H. Zeeshan Haider P.W.4 Ex.8 nor any such material has been produced before us to presume that cutter shape wound is caused by firearm injury caused by a shotgun and not by the pistol. In absence of any such suggestion in this regard on the part of defence counsel and/or in absence of any material in this regard, we cannot conclude that cutter shape wound was caused to the deceased through a shotgun and thus suspect the presence of the witnesses at the spot. The eyewitnesses are independent and have no motive to falsely implicate the appellant who is also their friend as suggested during the trial. Their evidence as disclosed above is consistent on each salient feature of the case and is confidence inspiring. No material contradiction is available

in their cross examination to give benefit thereof to the appellant. We have also not found any discrepancy creating a reasonable doubt in the prosecution case. The prosecution, in our view, has fully established its case against the appellant insofar as murder of the deceased at his hands is concerned.

9. However as the record stands, the murder of the deceased by the appellant took place without any premeditation on his part. The appellant and the deceased were friends since childhood and on the day of incident were available together where on some petty matter the deceased slapped the appellant which enraged him and he committed murder of the deceased at the spur of moment. Besides we have noted that the recovered crime weapon and crime empties were sent to the FSL for examination after delay of one month on 04.07.2009 whereas the incident is shown to have taken place on 31.05.2009 and the recovery of incriminating articles effected on the same date, this delay has not been properly explained by the prosecution which in the given facts and circumstances in our view are the mitigating circumstances in favour of the appellant. The appellant is not shown to have committed any criminal offence in the past. The appellant is behind the bars since the day of incident viz. 31.05.2009, therefore, while keeping in view above stated extenuating circumstances we are of the view that formal death penalty to the appellant would not be justified. We, therefore, dismiss the appeal but convert the death penalty into imprisonment for life u/s 302 PPC and award benefit of section 382-B Cr.P.C to the appellant. The compensation awarded to the legal heirs of deceased u/s 544-A Cr.P.C to be paid by the appellant would remain intact. The Death reference stands replied in negative.

These are the reasons for our short order dated 11.09.2017, whereby this appeal was dismissed converting the death sentence to imprisonment for life and death reference was replied in negative.

JUDGE

A.K.