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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Revision No. 40476/2019
(Manzoor Hussain Vs. The State etc.)

JUDGMENT

Date of hearing	07.11.2023
For the Petitioner:	Sardar Khurram Latif Khan Khosa, Advocate.
For the State:	Ms Maida Sobia, Deputy Prosecutor General.
For Respondents No.2 & 3:	Mr Muhammad Asif Mughal, Advocate, with Mr Abdul Ghaffar Dhariwal, Advocate.

Tariq Saleem Sheikh, J. – The Petitioner, Manzoor Hussain (PW-6), lived in Chak No.336/G.B., District Toba Tek Singh. On 10.1.2018, he lodged FIR No.15/2018 Exh. PG/1 at Police Station Rajana, stating that the same day, around 11:00 a.m. he was going to his factory on a motorcycle with his brother, Haji Muhammad Hussain. When they were about 100 feet from the Rajana Toll Plaza, Muhammad Iqbal (armed with a pistol), Abdul Jabbar, Nisar, Shabbir, and Shakeel (armed with *sotas*), intercepted them. The accused forcibly took the Petitioner to a nearby orchard, physically assaulting him. Muhammad Hussain rushed to rescue him upon which Iqbal shot Muhammad Hussain with his pistol in the head near the right ear, causing him to fall. Iqbal then fired a second shot at Muhammad Hussain's head. Jabbar struck Manzoor Hussain on the head above the left ear with a *sota*, and Nisar inflicted another *sota* blow on his right thigh. The remaining accused kept raising *lalkaras* during the episode. Meanwhile, Jameel Murtaza (PW-7) and Muhammad Boot arrived and witnessed the occurrence. Many other people gathered at the scene, and upon their arrival, the accused fled towards Chak No.517/G.B. Toba in a white car, issuing threats of dire consequences. Muhammad Hussain succumbed to his injuries on the spot.

2. Subsequently, the Petitioner recorded a statement with the Investigating Officer, Muhammad Aslam/Inspector, through which he identified an error in naming accused Muhammad Khalil, recorded initially

as Shakeel Ahmad, and sought its correction. The Investigating Officer rectified the mistake.

3. The police investigated the case and submitted a report under section 173 Cr.P.C. on its completion. On 16.3.2018, the Additional Sessions Judge indicted all the accused persons who pleaded not guilty and claimed trial.

4. On the conclusion of the trial, vide judgment dated 22.2.2019, the Additional Sessions Judge acquitted Shabbir Ahmad and Muhammad Khalil. However, he convicted and sentenced Muhammad Iqbal, Abdul Jabbar and Muhammad Nisar as follows:

Muhammad Iqbal

Convicted under section 302(b) PPC and sentenced to death with a direction to pay a sum of Rs.3,00,000/- to the legal heirs of the deceased as compensation in terms of section 544-A Cr.P.C. and, in default thereof, to undergo simple imprisonment for a further period of six months.

Abdul Jabbar

Convicted under section 337-A(ii) PPC and sentenced to pay *Arsh* Rs.1,02,796/- to Manzoor Hussain.

Muhammad Nisar

Convicted under section 337-L(2) PPC and sentenced to pay *Daman* Rs.20,000/- to Manzoor Hussain.

5. Muhammad Iqbal, Abdul Jabbar and Muhammad Nisar challenged their conviction and sentence through Criminal Appeal Nos.11311/2019 and 11527/2019, while the Additional Sessions Judge sent Murder Reference No.50/2019 to this Court under section 374 Cr.P.C. for confirmation of the death sentence awarded to Muhammad Iqbal. This Court, vide judgment dated 17.4.2019, set aside the trial court's judgment to the extent of the above-mentioned three convicts and remanded the case with a direction to re-write the judgment after affording an opportunity to the parties to present their arguments. Crl. Appeal Nos. 11311/2019 and 11527/2019 were disposed of accordingly, and Murder Reference No.50/2019 was answered in negative.

6. In the post-remand proceedings, the Additional Sessions Judge, vide judgment dated 27.5.2019, convicted and sentenced Muhammad Iqbal, Abdul Jabbar and Muhammad Nasir to the same punishments as in the earlier round (see paragraph 3, above).

7. The Additional Sessions Judge has sent Murder Reference No.163/2019 to this Court under section 374 Cr.P.C., seeking confirmation of the death sentence imposed on Muhammad Iqbal through the judgment dated 22.2.2019 delivered in the post-remand proceedings. On the other hand, Muhammad Iqbal, Abdul Jabbar, and Muhammad Nasir have filed Criminal Appeal Nos. 38062/2019 and 38065/2019 against that judgment, challenging their conviction and sentence.

8. On 28.5.2019, Abdul Jabbar and Muhammad Nasir (Respondents No. 2 and 3) filed an application before the trial court, seeking permission to deposit the *Arsh* and *Daman* amount under protest, subject to their right to appeal, which they subsequently exercised as mentioned above. According to the Petitioner, he did not receive notice of that application, though the Public Prosecutor represented the State. During the hearing of that application, the counsel for Respondents No.2 and 3 stated that he had no objection to the above-referred *Arsh* and *Daman* amount being given to the Petitioner, who was held entitled thereto. By order dated 29.5.2019, the Additional Sessions Judge accepted the application. Thereupon, Respondents No.2 and 3 deposited the money in the government treasury in *Madd-e-Amanat* (R.D. Account) after which they were released from jail.

9. The Petitioner has assailed the above-mentioned order dated 29.5.2019 in this Court through this revision petition.

10. Heard.

11. According to section 53 of the Pakistan Penal Code 1860 (PPC), a court of competent jurisdiction, upon conviction for offences under the Code, may sentence an offender to one or more of the following punishments: (i) *Qisas*, (ii) *Diyat*, (iii) *Arsh*, (iv) *Daman*, (v) *Ta'zir*, (vi) death, (vii) imprisonment for life, (viii) imprisonment which may be either rigorous, i.e., with hard labour, or simple, (ix) forfeiture of property, and (x) fine. Clause (b) of section 299 PPC defines "*Arsh*" as the compensation specified in Chapter XVI of the Code to be paid to the victim or their heirs. Clause (d) of section 299 defines "*Daman*" as the compensation determined by the court to be paid by the offender to the victim for causing hurt, not liable to *Arsh*. Section 337-Y PPC describes how the court should determine the value of *Daman*, with sub-section (1a) stating that it may be

payable in a lump sum or instalments over five years from the date of the final judgment. Sub-section (2) outlines the procedure where a convict fails to pay *Daman* or any part thereof within the period specified in sub-section (1a). Clause (e) of section 299 PPC states that “*Diyat*” refers to the compensation specified in section 323 [value of *Diyat*] payable to the legal heirs of the victim. *Qisas* and *Ta’zir* are defined in clauses (k) and (l) of section 299, respectively.

12. Chapter XXVIII of the Code of Criminal Procedure 1898 (Cr.P.C.) delineates the procedure for executing orders and the punishments imposed upon a conviction. Section 383 Cr.P.C. specifies that when an accused is sentenced to life imprisonment or imprisonment in cases not covered by sections 381 and 382-A Cr.P.C., the court that passed the sentence must expeditiously dispatch a warrant to the jail where the accused is presently held or designated to be confined. If the accused is not already in that jail, the court must transfer him to it with the warrant. This signifies that, following a conviction, an individual must be taken into custody to enforce the imprisonment sentence unless section 381 or 382-A is applicable.

13. Section 382-A Cr.P.C. is relevant for our present purpose. It states that the sentence shall not be executed immediately when a person is convicted and sentenced to imprisonment for less than one year, provided they furnish bail to the court’s satisfaction for their appearance at the designated time and place. This deferral of the sentence continues until the period allowed for filing an appeal against the sentence elapses. If an appeal is filed within that duration, the implementation of the imprisonment sentence is postponed until the appellate court affirms the sentence. Nevertheless, the sentence will be carried out as soon as practicable after the expiry of the appeal filing period or, in the case of an appeal, after the receipt of the appellate court’s order confirming the sentence.

14. In *Muhammad Adnan alias Dana v. The State and others* (2015 SCMR 1570), the Supreme Court of Pakistan ruled that the appeal against conviction is not maintainable unless the convict surrenders before the court. In *Riaz Hussain v. The State and others* (2022 PCr.LJ 1793),

this Court held that when a convict submits bail bonds under section 382-A Cr.P.C., it amounts to surrendering before the court.

15. Section 426 Cr.P.C. addresses situations where a convict is in custody pending an appeal and is not covered by section 382-A Cr.P.C. It empowers the court to grant bail by suspending the sentence.

16. A review of the relevant legislative provisions and case law shows that, upon conviction, the sentence of imprisonment must be carried out unless it is deferred or suspended under section 382-A or section 426 Cr.P.C. It is impermissible for the trial court to allow the convict to deposit *Diyat, Arsh, or Daman* under protest for release. Any deviation from the prescribed course would constitute an act without lawful authority and would not be sustainable under the law.

17. The Additional Sessions Judge, by order dated 29.5.2019, allowed Respondents No.2 and 3 to deposit the *Arsh* and *Daman* amount in the government treasury under protest. In view of what has been discussed above, we hold that the said order is illegal and without jurisdiction and set it aside.

18. Petition accepted.

(Syed Shahbaz Ali Rizvi)
Judge

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge

Judge