

The State Versus Zeeshan Ali

Zeeshan Ali Versus The State, etc.

Date of hearing: **06.11.2024**
Appellant by: M/s. Muhammad Asad
Abbas Raja, Umar Sohail
Shah and Muhammad
Mansab Bhatti , Advocates.
State by: Mr. Naeem Akbar, DPG with
Hafeez SI.
Complainant by: Ch. Farrukh Javed,
Advocate with complainant.

SADAQAT ALI KHAN, J. Appellant (**Zeeshan Ali**)

has been tried by the trial Court in case FIR No.440 dated 26.08.2021 in offence under Section 302 PPC Police Station Kallar Syedan, District Rawalpindi, and was convicted and sentenced vide judgement dated 31.05.2023 as under:-

Zeeshan Ali (appellant)

u/s 302 (b) PPC Sentenced to DEATH as Tazir for committing *Qatl-i-Amd* of Tehmina Bibi (deceased) with compensation of Rs.2,00,000/- payable to legal heirs of deceased u/s 544-A Cr.P.C. (recoverable as arrears of land revenue) and in default whereof to further undergo simple imprisonment for 6-months.

- 2.** Appellant has filed this Criminal Appeal against his conviction and the trial Court has sent Murder Reference for confirmation of his death sentence or otherwise, which are being decided through this single judgment.
- 3.** Heard. Record perused.
- 4.** Tehmina Bibi sustained firearm injuries at the hands of her brother-in-law “ ,” during the occurrence took place

in her house (where she was living with her husband) on 26.08.2021 at about 02:30 p.m. whereafter FIR was lodged on the same day at 04:15 p.m. on her statement in the hospital, which is hereby reproduced as under:-

"بیان از اس تحمینہ بی بی زوجہ توقیر نواز قوم راجپوت سکنہ نندنہ جٹال کلر سید اس ضلع راولپنڈی۔
 بیان کیا کہ میں پتہ بالا کی رہائشی ہوں آج مورخہ 26/8/21 کو اپنے بچوں کے ہمراہ اپنے گھر پر موجود تھی کہ میرا دیور راجہ ذیشان ولد ربنواز سکنہ دیہہ جو گھر پر تھا جس نے مجھے کہا کہ بھوک لگی ہے روٹی پکا کر مجھے دو تو میں نے کہا کہ آٹا نہیں ہے اور اپنی بیٹی کو نہلانے کیلئے ہاتھ روم چلی گئی بوقت تقریباً 2/30 بجیدن وہ ہاتھ روم میں آگیا اور مجھے گھسیٹتے ہوئے سامنے کمرے میں لے گیا اور ساتھ ہی مجھے گندی گالیاں دینا شروع کر دی۔ جب میں نے منع کیا تو اس نے ہاتھ میں پسٹل 30 بور اٹھایا ہوا تھا جس نے مجھے قتل کرنے کی نیت سے سیدھا فائر مجھ پر کیا جو مجھے چھاتی کے درمیان تھوڑا نیچے لگا فائر اور شور وادیل کی آواز سنکر فیضان آگیا جو سب مجھے لیکر THQ ہسپتال کلر سید اس لے آئے میرے دیور نے مجھے قتل کرنے کی نیت سے فائر مار کر سخت زیادتی کی ہے۔ ذیشان کے خلاف قانونی کارروائی کجائے۔ راجہ ذیشان جو کہ میرا دیور ہے آئے روز مجھ سے لڑائی جھگڑا کرتا رہتا ہے جسے گھر والوں نے بھی متعدد بار اسے سمجھایا ہے۔
 ذیشان آئے روز مجھے جان سے مارنے کی دھمکیاں بھی دیتا رہتا تھا مذکورہ کے خلاف دعویدار ہوں قانونی کارروائی کجائے۔"

5. Tehmina Bibi (deceased/the then injured) died on 28.08.2021 at 12:45 a.m. after two days of the occurrence.

6. Above narrated statement (Exh.PM) of Tehmina Bibi (complainant/deceased, the then injured) has been treated by the trial Court as her dying declaration. MLR (Exh.PC) of Tehmina Bibi (deceased/the then injured) shows that she reached hospital on 26.08.2021 at 03:55 p.m. (soon after 1 hour and 25-minutues of the occurrence) and was conscious, well oriented in time, place and person having GCS (Glasgow Coma Scale) 15/15. Naeem Maqsood ASI^{PW-10} after getting the information regarding the present occurrence also reached T.H.Q. Hospital, Kallar Syedan and moved written application (Exh.PE) to obtain permission from Medical Officer for recording the statement of Tehmina Bibi (deceased/the then injured) present in hospital as to whether she was able to make her statement or not whereupon Dr.

Humairah Khalid^{PW-4} (Medical Officer) has specifically stated in writing at the bottom of said application (Exh.PE) that she (deceased/the then injured) is able to make her statement whereafter above narrated statement of the deceased/the then injured was recorded by Naeem Maqsood ASI^{PW-10} wherein she has fully implicated her brother-in-law “رجل” (appellant) with specific role of effective fire shot upon her person.

7. Both the abovementioned witnesses (Naeem Maqsood/ASI^{PW-10} and Dr. Humairah Khalid^{PW-4}) have absolutely no grudge or ill-will to falsely implicate the appellant (accused) in the present case, rather they are independent witnesses and have nothing to do with any of the parties. They were cross-examined at length but their evidence could not be shaken during the process of cross-examination. They have corroborated each other on all material aspects of the case. Their evidence is straightforward, trustworthy, confidence inspiring and cannot be discarded mere on probabilities.

8. The discrepancies in the statements of the PWs pointed out by learned counsel for the appellant, are minors and general in nature, occur in every case when witnesses (who are human-beings) are cross-examined after a long time of the occurrence as in present case and are not fatal to the prosecution case.

9. Statement of Tehmina Bibi (deceased, the then injured) shows that she has fully implicated the appellant which has a great weight and sanctity under the law which was made soon after the occurrence excluding the chances of consultation and deliberation. Learned counsel for the appellant could not single out any illegality or infirmity in this respect which has rightly been relied upon by the trial

Court as her (deceased, the then injured) dying declaration. **(2021 SCMR 325)** “Abdul Khaliq Vs. The State”, **(2019 SCMR 1308)** “Nazeer Khan Vs. The State and another” and **(2015 SCMR 10)** “Sikandar Shah Vs. Raza Shah and another”.

10. It was a day light occurrence. Zeeshan Ali (appellant) is brother-in-law “جے” of complainant/deceased and also inmate of the house of occurrence, having this close relationship inter-se the parties, there is no question of misidentity of the appellant leaving the actual culprit scot free. In such like cases, substitution of an accused is a rare phenomenon.

11. Postmortem report shows that Dr. Qamar-ur-Nisa during postmortem examination on the dead body of Tehmina Bibi (deceased) observed firearm injuries on her person attributed to the appellant which were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. Dr. Sidra Shabbir appeared in secondary evidence as PW-12, who had worked with Dr. Qamar-ur-Nisa at THQ Hospital, Kallar Syedan and identified her handwriting and signatures on postmortem report, therefore, medical evidence has fully supported the ocular account discussed above.

12. There is no need to discuss the motive separately as same is mentioned in the statement of Tehmina Bibi (deceased, the then injured) which has been accepted by this Court as well as the trial Court as her dying declaration.

13. Pistol .30-bore recovered on pointing out of the appellant has matched with the crime empty collected from the place of occurrence (Report of PFSA Exh.PW).

14. Although in the instant case, deceased herself cited Faizan Ali (her brother-in-law “جے”) as an eyewitness of the

occurrence yet he (Faizan Ali) while appearing before the trial Court as PW-13 has become hostile under brotherly love bonding, he has favoured his brother (appellant), husband of Tehmina Bibi (deceased, the then injured), being brother of the appellant also remained mum in this respect, which is not fatal to the prosecution case. It is settled principle of law that each criminal case is to be decided having regard to its own peculiar facts and circumstances. A test to be essentially applied in one case may absolutely be irrelevant in another case as the crimes are seldom committed in identical situations.

15. Appellant has denied his involvement in this case in his statement recorded u/s 342 Cr.P.C. and stated that he is innocent and has falsely been involved in this case merely on suspicion and misunderstanding. He has neither opted to appear as witness u/s 340 (2) Cr.P.C. nor produced any defence evidence in support of his defence plea which has rightly been discarded by the trial Court through the impugned judgment with sufficient reasons.

16. In view of above, prosecution has proved its case beyond shadow of doubt against the appellant through dying declaration of the deceased/the then injured supported by medical evidence and positive report of PFSA qua matching of crime empty with the weapon of offence, discussed above.

17. Coming to the quantum of sentence of Zeeshan Ali (appellant), considering the peculiar facts and circumstances of this case, we are of the view that alternative sentence i.e. imprisonment for life would meet the ends of justice instead of death sentence. **(2014 SCMR 1034)** "Ghulam Mohy-ud-Din alias Haji Babu and others vs. The State".

Murder Reference No.30 of 2023 &
Criminal Appeal No.304 of 2023.

18. Considering above, while maintaining the conviction of the appellant (Zeeshan Ali) in offence under Section 302(b) PPC, his sentence is altered from death to imprisonment for life. The compensation and sentence in default whereof awarded by the trial Court are also maintained. Benefit of Section 382-B Cr.P.C. is extended to the appellant.

19. Consequently, with the above said modification in the impugned judgment, instant Criminal Appeal filed by the appellant (Zeeshan Ali) is hereby **dismissed.** **Murder Reference** is answered in **NEGATIVE** and **death sentence** of Zeeshan Ali (appellant) is **NOT CONFIRMED.**

(MIRZA VIQAS RAUF)
Judge

(SADAQAT ALI KHAN)
Judge

APPROVED FOR REPORTING.

JUDGE

JUDGE

*Inaam Sandhu**