

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

Jail Petition No.378 of 2022

(Against judgment dated 17.02.2022 of
the High Court of Sindh, Karachi
passed in Crl. Appeal No.54 of 2021
and Confirmation Case No.03/2021)

Mannan ...Petitioner

Versus

The State ...Respondent

For the petitioner: Mr. Kamran Murtaza, Sr. ASC

For the State: Ms. Rahat Ehsaan, Additional Prosecutor General,
Sindh

For the complainant: Nemo.

Date of hearing: 15.04.2025

ORDER

Athar Minallah, J.- This petition is barred by 171 days. The delay in filing of the petition is condoned in the interest of justice.

2. The petitioner has sought leave against the judgment of the High Court dated 17.02.2022. The petitioner and five others were nominated in crime report No.538/2019 registered at P.S. Darakshan, Karachi South for the alleged offences under sections 302, 324 and 34 of the PPC. One of the nominated accused i.e. Javed was not arrested and therefore, he was declared as an absconder. Asghar Hussain, another co-accused, was let off by the investigating officer on the basis of the statement made by the complainant. The trial court upon conclusion of the trial convicted and sentenced the petitioner and two other co-accused i.e. Bashir and Yousaf Khan as under:

1. *Accused Manan s/o Hussain alias Hassan is convicted for committing murder of deceased Moosa and punished with Death. He is liable to pay compensation of Rs.600,000/- under section 544-A Cr.P.C. to the legal heirs of the deceased and in case of failure in payment of compensation to further suffer S.I. for six months. He was convicted under section*

324 PPC and sentenced to suffer R.I. for 10 years. He was also convicted under sections 337-A(i) PPC for causing injuries to the complainant Haji Umar and sentenced to suffer R.I. for two years and also to pay 'Damaan' in the sum of Rs.1,00,000/- to the said injured. He was further convicted under section 337-F(ii) PPC for causing injuries to injured Ahmed and sentenced to R.I. for three years and to pay 'Damaan' in the sum of Rs.1,00,000/- to the said injured. The sentences were ordered to run concurrently with the benefit of section 382-B Cr. P.C.

The accused Basheer son of Hussain alias Hassan was convicted under section 324 PPC and sentenced to suffer R.I. for 10 years. He was also convicted under sections 337-A(i) PPC for causing injuries to the complainant Haji Umar and sentenced to suffer R.I. for two years and also to pay 'Damaan' in the sum of Rs.1,00,000/- to the said injured. He was further convicted under section 337-F(ii) PPC for causing injuries to injured Ahmed and sentenced to R.I. for three years and to pay 'Damaan' in the sum of Rs.1,00,000/- to the said injured.

The accused Yousuf Khan son of Younas Khan was convicted under section 324 PPC and sentenced to suffer R.I. for 10 years. He was also convicted under sections 337-A(i) PPC for causing injuries to the complainant Haji Umar and sentenced to suffer R.I. for two years and also to pay 'Damaan' in the sum of Rs.1,00,000/- to the said injured. He was further convicted under section 337-F(ii) PPC for causing injuries to injured Ahmed and sentenced to R.I. for three years and to pay 'Damaan' in the sum of Rs.1,00,000/- to the said injured.

The sentences of all the accused were ordered to run concurrently with the benefit of section 382-B Cr. P.C."

The petitioner and the other co-accused challenged their convictions and sentence~~s~~ before the High Court and their appeals were dismissed. In case of the petitioner, the murder reference was answered in the affirmative. It is noted that the two convicted accused Basheer and Yousaf Khan have not challenged the judgment of the High Court whereby their convictions and sentences were upheld.

3. We have heard the learned counsel for the petitioner as well as the learned Additional Prosecutor General at considerable length. We have also perused the available record with their able assistance.

4. The occurrence in this case had taken place at 10:30 p.m. on 26.07.2019. The ocular account was deposed by Haji Umar Khan and Ahmed Khan who entered the witness-box as (PW-01) and (PW-09) respectively. Both these witnesses had also sustained injuries during the incident. Qayyum Khan (PW-07), Jibrael (PW-02), Gul Muhammad (PW-03) and Samar Khan (PW-04) had also entered the witness-box and had supported the ocular account. The testimonies of all these witnesses were consistent on all material facts and we have found them to be confidence-inspiring, reliable and trustworthy. The medical evidence brought on record by Dr. Ejaz Ahmed (PW-05) supports the ocular account. The prosecution had definitely proved its case to the extent of the guilt of the petitioner beyond reasonable doubt and to this extent the concurrent findings of the trial court and High Court are unexceptionable and do not warrant any interference.

5. The motive in this case set up by the prosecution that there was altercation between the deceased and Dawood (PW-10) could not be substantiated beyond a reasonable doubt. We have noted that no firearm weapon was sent to the Forensic Science Laboratory (FSL) because no report in this respect was brought on record by the prosecution. The recovery was therefore, inconsequential and it was also noted by the High Court that no recovery of firearm weapon was affected. These mitigating factors make out a case to reconsider the quantum of the sentence because in the presence of such factors the sentence of death was not justified. Therefore, the petition is dismissed to the extent of conviction handed down by the trial court and upheld by the High Court. However, it is converted into an appeal and is partly allowed by modifying the sentence of death to life imprisonment. The compensation ordered to be paid to the legal heirs of the deceased under section 544-A Cr.P.C. and the sentence required to be undergone in default thereof, shall remain intact. The convictions and sentences of the petitioner Mannan as handed down by the trial court and upheld by the High Court under sections 324, 337-A(i) and 337-F(ii) of the PPC shall also remain intact. However, the trial court while imposing 'Damaan' on the appellant in the sum of Rs.1,00,000/- to be paid to the injured Haji Umar under section 337-A(i) and 'Damaan' in

the like amount to be paid to the injured Ahmed under section 337-F(ii) did not mention that what would the consequence of non-payment of the amounts of 'Damaan'. Therefore, it is held that the appellant shall be kept behind the bar till the payment of the amounts of 'Damaan' and during the said period he shall be treated as if awarded the punishment of simple imprisonment. Furthermore, the sentence of fine under section 324 PPC was not imposed against the appellant which was mandatory under the law, therefore, it is held that the appellant shall also pay an amount of Rs.200,000/- as fine for offence under section 324 PPC and in default thereof, he shall further undergo simple imprisonment of six months. All the sentences shall run concurrently. The benefit of section 382-B Cr. P.C. is extended in favour of the appellant.

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Islamabad

15th April, 2025
M. Azhar Malik/* a