

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:

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

Criminal Appeal No.42-L of 2020

(Against judgment dated 14.03.2014
of the Lahore High Court, Lahore
passed in Crl. Appeal No.863 of
2009, Crl. Appeal No.1103 of 2009
and M. R. No.245 of 2009)

Muhammad Tariq ...Appellant

Versus

The State, etc. ...Respondents

For the appellant: Syed Muhammad Tayyab Shah, ASC

For the State: Mirza Abid Majeed, Deputy Prosecutor General,
Punjab

For the complainant: Aftab Ahmed, in-person.

Date of hearing: 19.06.2025

ORDER

Athar Minallah, J.- Leave in this case was granted by this Court *vide* order dated 10.02.2020. The appellant has assailed his convictions and sentences *vide* the impugned judgment dated 14.03.2014 of the High Court. The complainant in this case, Atfab Ahmad (PW-9) had filed a complaint and pursuant thereto crime report No.195, dated 3.6.2008 was registered at P.S. City Kamalia, District Toba Tek Singh, for commission of the alleged offences under sections 302, 324, 394, 411, 353 and 109 of the Pakistan Penal Code, 1860 ('PPC'). The complainant had nominated one accused by name i.e. Zar Wakeel while the other was stated to be unidentified. Zar Wakeel, the nominated co-accused was killed immediately after commission of the offence since he had resisted his arrest. The appellant was arrested on 13.06.2008 and after conclusion of the trial, the trial court had convicted him under section 302(b) and he was sentenced to death for committing murder of Abdul



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Sattar deceased; with compensation of Rs.1,00,000/- to be paid to the legal heirs of the deceased and in case of default of payment to further undergo simple imprisonment for six months. He was further convicted under section 394 PPC and sentenced to life-imprisonment with fine of Rs.50,000/- and in case of default of payment of fine to further undergo simple imprisonment for six months. He was further convicted under section 412 PPC and sentenced to life-imprisonment with a fine of Rs.50,000/- and in default of payment of fine to further undergo simple imprisonment for six months. The appellant was further convicted under section 324 PPC and sentenced to rigorous imprisonment for 10 years with a fine of Rs.50,000/- and in default of payment of fine to further undergo simple imprisonment for six months. All the substantive sentences were ordered to run concurrently with the benefit of section 382-B of the Cr. P.C. The High Court had partly allowed the appeal preferred by the appellant and he was acquitted in case of offences under sections 412 and 324 of the PPC; whereas the convictions and sentences of the appellant under sections 302(b) and 394 of the PPC were upheld.

2. We have heard the learned counsel who has assisted us on behalf of the appellant and the learned Deputy Prosecutor General for the State. The record has been perused with their able assistance. The complainant in this case is also present and he has stated that he does not want to retain a counsel and that he would rely on the arguments advanced by the learned State counsel.

3. The occurrence in this case had taken place at the business place of the deceased, Abdul Sattar. It was situated in a market. The incident had taken place on 3.6.2008 at about 4 p.m. One of the accused was known to the complainant since he was previously employed by the shopkeepers as a watchman. The ocular account in this case was

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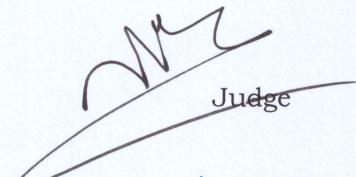
deposed by Aftab Ahmed (PW-9) and Rehmat Ali (PW-11). Both were natural witnesses as one was the son of the deceased while the other was his employee. The testimonies of both the witnesses have been found to be reliable, trustworthy and confidence-inspiring. The ocular account was supported by the medical evidence brought on record by Dr. Rana Jawaad Ahmed Khan who had entered the witness-box as PW-2. One other witness i.e. Muhammad Arshad (PW-13) had sustained injuries during the occurrence while he was shot at by the accused Zar Wakeel while he was escaping. His testimony has further corroborated the ocular account. The High Court had disbelieved the recovery of the firearm weapon as well as the recovery of motorcycle and cell phone. The prosecution, in our opinion, had proved the guilt of the appellant under section 302(b) PPC. However, since the High Court had disbelieved the recovery of the cell phone, therefore, it raises doubt regarding the offence alleged to have been committed under section 394 of the PPC. Moreover, the motive in this case is also shrouded in mystery. It is not disputed that the identified accused who was later killed in an encounter was known to the deceased as well as the complainant. The prosecution was not able to prove the factum of motive in this case and as already noted above; the offence under section 394 of the PPC has also not been established. The appellant is therefore, acquitted from the charge framed against him under section 394 of the PPC. However, his conviction under section 302(b) PPC is upheld. The compensation ordered by the trial court and upheld by the High Court and the sentence required to be undergone in default thereof, are also maintained. The learned counsel who has assisted us on behalf of the appellant has drawn our attention to the judgment of the High Court to show that the factum of recovery of the firearm weapon was also not proved by the prosecution and therefore, the positive report of the Forensic Science Laboratory ('FSL') was not safe to

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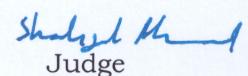
be relied upon. The learned counsel has, therefore, contended that in the facts and circumstances of the case, on account of the aforementioned mitigating factors, the sentence of death was not justified. The argument of the learned counsel is not without force. In the facts and circumstances of the case, the appeal is allowed only to the extent of acquittal of the appellant in case of the charge framed under section 394 of the PPC and modifying the sentence of death to that of imprisonment for life under section 302(b) *ibid*. However, to the extent of conviction under section 302(b) PPC, compensation and the sentence required to be undergone in default thereof, they are maintained. The appeal to that extent is, therefore, dismissed.



Judge



Judge



Judge

Islamabad, the

19th of June, 2025.

M. Azhar Malik/*