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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD HASHIM KHAN KAKAR
JUSTICE SHAKEEL AHMAD
JUSTICE ISHTIAQ IBRAHIM

44/25

JAIL PETITION NO.515 OF 2022

(Against the judgment dated 29.11.2022, in Criminal Jail Appeal No.D-76 of 2019 and Crl. Confirmation case No.D-43 of 2019 passed by the High Court of Sindh Circuit Court Larkana)

Meeral

...Petitioner (s)

Versus

The State

...Respondent(s)

For the Petitioner(s):	Mr. Riaz Hussain Azam, ASC
For the Respondent(s):	Mr. Aftab Alam Yasir, ASC
For the State:	Mr. Khadim Hussain, Addl. PG
Date of hearing:	30.06.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Petitioner Meeral charged for committing murder of Ghulam Asghar Malano deceased was tried by learned Additional Sessions Judge, Qamber in case FIR No.01 /2009, under sections 302, 114 and 34 of the Pakistan Penal Code, 1860 (**"PPC"**), registered at Police Station *Mahi Makol*. Upon conclusion of the trial, the petitioner was convicted under section 302(b) PPC and sentenced to death as *Ta'azir* and to pay Rs.500000/-, as compensation under Section 544-A Cr.P.C. to the legal heirs of the deceased and in default thereof to further undergo six months simple imprisonment vide judgment dated 14.11.2019.

2. The learned High Court of Sindh Circuit Court, Larkana, while dismissing Jail Appeal of the petitioner-convict, maintained his conviction and sentence and answered the Murder Reference sent by the learned Trial Court for confirmation or otherwise of the death sentence, in the Affirmative vide judgment dated 29.11.2022 (**"impugned judgment"**).

3. Through the instant petition, the petitioner-convict seeks leave to appeal against the impugned judgment.

4. The prosecution's case as per First Information Report ("**FIR**") is Ghulam Akbar, brother of complainant Ghulam Mustafa Malano (PW.1) was blamed by Sheral Malano (absconding co-accused) for *Karo Kari* with his wife. Subsequently, the matter was resolved through a private settlement, however, the petitioner, his brothers, Sheral Malano and Gulam (absconding co-accused) being unhappy on the said settlement used to extend threats of dire consequences to the complainant party. On 10.01.2009 complainant and his brothers Ghulam Asghar deceased, Ghulam Sarwar Malano (PW.2) and nephew Allah Dino were present in their lands situated in *Deh Mahi Makol Taluka Qamber* for looking after paddy crops. At 7.30 p.m. they heard some voice towards their western side and in torch light spotted the petitioner-convict along with Sheral Malano and Gulam (absconding co-accused) armed with shotgun and pistol. The accused Gulam raised *Lalkara* that today they will take revenge of the *Karo Kari*. Accused Sheral Malano instigated the petitioner Meeral to kill Ghulam Asghar deceased, on which he fired at the deceased with his pistol while co-accused Meeral fired at him with his shotgun, as a result, the deceased got hit and died on the spot. After commission of the offence the accused decamped from the spot. Motive behind the occurrence was revenge of *Karo Kari*.

5. On arrest of the petitioner-convict and completion of investigation, report under section 173 Cr.P.C. was submitted against him before the learned Trial Court where he after facing regular trial was convicted under section 302(b) PPC and sentenced to death. The conviction and sentence of the petitioner convict was maintained by the learned High Court vide impugned judgment.

6. We have heard the arguments of learned counsel for the petitioner and the learned Additional prosecutor General Sindh, appearing on behalf of the State and perused the record, evidence and the impugned judgments with their able assistance.

7. We have noticed that the Courts below while placing reliance upon the ocular account furnished by complainant Ghulam Mustafa (PW-1) and Ghulam Sarwar (PW-2), coupled with medical evidence and circumstantial pieces of evidence such as recovery of blood of the deceased from the spot, recovery of crime empties, and the abscondence of the petitioner, proceeded to record the conviction of the petitioner. The incident in question is stated to have taken place on 10th January, 2009

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at 07:30 p.m. It is an admitted position that in the month of January by 07:30 p.m., complete darkness prevails. The occurrence is alleged to have taken place in an open field situated in *Deh Mahi Makol Taluka Kamber*. However, none of the eyewitnesses deposed regarding the availability of any source of light at the place of occurrence except the torch allegedly in their possession, but it is quite astonishing that neither any such torch was produced by them before the Investigating Officer, nor recovery of the same was effected through a recovery memo by the I.O.. In a nocturnal incident, where the environment is shrouded in darkness, the presence and production of a light source, particularly a torch, assumes vital evidentiary significance for establishing the identity of the accused. The non-production of the torch renders the prosecution's version regarding identification of the assailant(s) highly doubtful. This omission in the prosecution's case alone is sufficient to shake the very foundation of the prosecution's case. The assertion of the eyewitnesses that the accused raised a *lalkara* prior to opening fire upon the deceased is implausible and does not appeal to reason or the conduct of a prudent mind. It is a matter of common experience and judicial notice that assailant who choose the cover of night to commit an offence ordinarily do so to conceal their identity and avoid detection. In such circumstances, it is highly unlikely that they would deliberately expose themselves by raising a *lalkara* or engaging in any form of conversation with the complainant party, thereby undermining the very purpose of selecting a nocturnal hour for the commission of the offence.

8. There is a material contradiction regarding the time of occurrence. In the FIR the time of occurrence is mentioned as 07:30 p.m but the complainant and PW Ghulam Sarwar in their statements disclosed the same to be 07:00 p.m., and the former further claimed that that at the time of occurrence dark had not yet prevailed. The complainant further deposed that the distance between the place of incident and Civil Hospital Qamber, where the dead body of the deceased was shifted, was covered within half an hour, implying arrival of the dead body at the hospital at either 08:00 p.m. or 07:30 p.m., depending on the accepted time of occurrence. Contrary to this, Dr. Guru Dino (PW-6), who conducted the postmortem examination of the deceased, categorically stated that he received the dead body of the deceased at 11:00 p.m. on 10.01.2009, commenced the postmortem at 11:30 p.m., and concluded it at 01:30 a.m. on 11.01.2009. This material inconsistency between the medical evidence and the ocular account casts serious doubt on the

credibility of the prosecution's narrative. Such contradictions cannot be brushed aside lightly.

9. The medical evidence furnished by Dr. Guru Dino (PW-6) further casts serious doubt on the ocular account relied upon by the prosecution. The autopsy report reveals that the deceased sustained solitary lacerated punctured wound measuring 3 x 2 cm with inverted margins, along with a corresponding lacerated exit wound on the left side of the occipital bone without ward margins. The nature and dimension of the entrance wound, particularly its size, are inconsistent with an injury typically caused by a pistol shot. This discrepancy significantly undermines the prosecution's claim that the petitioner, armed with a 30-bore pistol, fired at the deceased. It is pertinent to note that the role attributed to the petitioner-convict is of having fired at the deceased with a pistol. However, the co-accused, who is also alleged to have fired at the deceased, is absconding. Despite the serious nature of the allegations, Dr. Guru Dino (PW.6) did not clarify whether the fatal injury was caused by a bullet or a pellet, leaving a crucial gap in the medical evidence. This omission renders the connection between the alleged weapon and the injury suffered by the deceased highly questionable. Although the Investigating Officer has shown recovery of a 30 bore pistol from the crime scene but it is significant to observe that no such weapon has been shown recovered from the petitioner. The recovery of a crime empty attributed to a 30 bore weapon, in absence of a corresponding recovery of the firearm from the petitioner, carries little evidentiary value and cannot be used conclusively to connect the petitioner with the offence. In such view of the matter, the medical evidence not only contradicts the ocular version but also weakens the prosecution's case with respect to the alleged role of the petitioner.

10. Adverting to the motive as alleged by the prosecution, it is the consistent stance from the very inception of the case that Ghulam Akbar, the brother of the complainant, was accused of having illicit relations (*Karo Kari*) with the wife of the absconding co-accused Sheral Malano. This alleged motive was reiterated by the eyewitnesses during their testimonies. However, a critical examination of the record reveals that the deceased, who was never implicated in the alleged illicit relationship nor was any such allegation levelled against him at any stage of the proceedings, was targeted. Furthermore, during cross-examination, the eyewitnesses candidly admitted that no accusation of *Karo Kari* had ever been made against the deceased. This admission significantly weakens

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the prosecution's theory of motive and raises serious doubts as to why the petitioner would have singled out the deceased for elimination, particularly when the purported grievance of honour was against Ghulam Akbar.

11. In view of the foregoing discussion, we are compelled to conclude that the prosecution's evidence is shaky, scanty, and riddled with major contradictions and discrepancies. It is, therefore, insufficient to sustain the conviction of the petitioner. The learned courts below have failed to properly appreciate the evidence on record in its true perspective and have consequently reached an erroneous conclusion in holding that the prosecution established the petitioner's guilt through cogent and credible direct evidence, corroborated by circumstantial and medical evidence.

12. Accordingly, this petition is converted into an appeal and is allowed. The conviction and sentence of the petitioner/appellant recorded by the courts below are set-aside and he is acquitted of the charge levelled against him. He be set at liberty forthwith if not required in any other case.

Announced in open Court at Islamabad on 3 July 2025

Not Approved for reporting.
M.Siraj Afridi PS

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