

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

CRIMINAL APPEAL NO. 5-P OF 2021

*(On appeal against the judgment dated 03.07.2015
of the Peshawar High Court, Mingora Bench (Dar-
ul-Qaza), Swat in Cr. Appeal No. 88-M/2013 and
M.R. No. 1-M/2013)*

Khursheed Ali

... Appellant

Versus

The State through Addl. A.G. KPK and another

... Respondents

For the Appellant: Mr. Zia-ur-Rehman Tajik, ASC
Syed Rifaqat Hussain Shah, AOR

For the Complainant: Mr. Astaghfirullah, ASC
Mr. Anis Muhammad Shahzad, AOR a/w
complainant

For the State: Mr. Shah Faisal Ilyas, Addl. A.G. KPK

Date of Hearing: 14.04.2025

ORDER

ATHAR MINALLAH, J.- The appellant had sought leave and it was granted by this Court vide order dated 28.06.2021. The appellant has challenged his convictions and sentences handed down by the Trial Court and later upheld by the High Court vide the impugned judgment dated 03.07.2015.

2. The appellant was nominated in Crime Report No. 296 dated 02.07.2000 registered at Police Station Nawagai, District Boner for commission of the alleged offences under Sections 302/324/109/449 PPC. The Trial Court upon conclusion of the trial, convicted and sentenced the appellant as under:-

Under Section 302(b) PPC

To death and to pay Rs.200,000/- as compensation to the legal heirs of the deceased or in default thereof to further undergo simple imprisonment for a period of six months.

Under Section 324 PPC

To seven years RI and to pay compensation of Rs.100,000/- to the injured as *Daman*.

The sentences of imprisonment were ordered to run concurrently. Benefit of Section 382-B Cr.P.C. was also extended in favour of the appellant.

3. The appeal preferred by the appellant was dismissed by the High Court and the murder reference was answered in the affirmative.

4. We have heard learned counsel for the appellant, the complainant as well as learned Law Officer at great length and have perused the record with their able assistance.

5. The incident of this case had taken place on 02.07.2000 and the appellant was arrested on 29.08.2011. The ocular account was deposed by Akbar Ali (PW-3), Mst. Bakht Sehar (PW-4) and Mst. Musarrat (PW-5). The medical evidence was placed on record by Dr. Syed Zafar Ali (PW-2). The ocular account has been found by us to be consistent in all material facts and reliable, trustworthy and confidence inspiring. The ocular account is supported by the medical evidence. Moreover, the absconcence of the appellant further corroborated the ocular account. The guilt of the appellant was proved by the prosecution beyond a reasonable doubt. We are, therefore, not inclined to interfere with the conviction of the appellant handed down by the Trial Court and later upheld by the High Court. However, the learned counsel for the appellant has argued that the motive i.e. dispute over the property was not proved by the prosecution and he has referred to the testimony of Akbar Ali (PW-3), who in his cross-examination had conceded that no documentary evidence was produced in evidence. The factum of motive was, therefore, not proved by the



prosecution. Moreover, the firearm weapon was recovered after the arrest of the appellant on 29.08.2011 but it was never sent to the Forensic Science Laboratory. The recovery was, therefore, inconsequential and could not be relied upon. The mitigating factors pointed out by the learned counsel indeed make out a case for modification of the sentence because in the facts and circumstances of the case, handing down the sentence of death was not justified. The appeal is, therefore, dismissed to the extent of conviction handed down by the Trial Court and later upheld by the High Court. However, it is partly allowed and the sentence of death is modified to imprisonment for life. The compensation ordered by the Trial Court and the sentence required to be undergone in default thereof shall remain intact. The conviction under Section 324 PPC is maintained. However, the compensation ordered by the Trial Court and upheld by the High Court as *Daman* shall be treated as fine for the commission of the offence and in case of default in payment of fine the appellant shall undergo further simple imprisonment for six months. All the sentences shall run concurrently with benefit of Section 382-B Cr.P.C extended in favour of the appellant.

Islamabad, the
14th of April, 2025
Not Approved For Reporting
Khurram