

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

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

Jail Petition No. 416/2022

(Against judgment dated 05.10.2022 of the High Court of Sindh, Circuit Court, Hyderabad passed in Crl.A.D-139/19, Confirmation Case 35/19, Crl.A. 196/19)

Mehtab Ali

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s): Mr. Rifaqat Islam Awan, ASC
Mr. Aftab Alam Yasir, ASC

For the State: Mr. Salim Akhtar, Addl. PG

Injured: Javeria (in-person)
(Through video-link from Karachi)

complainant: Nemo

Date of Hearing: 13.05.2025

ORDER

Athar Minallah, J.- Mehtab Ali ('petitioner) has sought leave against the judgment of the High Court dated 05.10.2022 whereby convictions and sentences handed down by the trial court vide judgment dated 03.08.2019 were upheld and the reference was answered in the affirmative.

2. The petitioner was nominated along with other co-accused in crime report No. 151/2015 dated 25.08.2015 registered at Police Station Matli, District Badin for alleged commission of offences under sections 302, 324, 506/2, 109 and 34 of the Pakistan Penal Code, 1860 ('PPC'). The completion of investigation had led to the filing of report



under section 173 of the Code of Criminal Procedure, 1898 (**Cr.P.C.**) and pursuant thereto charge was framed. The petitioner did not plead guilty and, therefore, upon conclusion of the trial, the trial court convicted and sentenced the petitioner vide judgment dated 03.08.2019 as under:

- Death under section 302(b) of PPC on two counts with direction to pay Rs.500,000/- as compensation under section 544-A Cr.P.C. to legal heirs of each deceased and default thereof to undergo one year simple imprisonment on each count.
- Five years rigorous imprisonment under section 324 PPC and to pay Rs.50,000/- as compensation to Mst Javeria and in default thereof to further undergo simple imprisonment for one year.
- Five years rigorous imprisonment under section 336 PPC and to pay Mst. Javeria one half of the Diyat under section 337-R PPC and in default thereof to remain in jail till the payment of diyat.

A separate case was also registered against the petitioner i.e. crime report No.154/2015 for the alleged commission of offence under sections 23(1)(a) and 25 of the Sindh Arms Act, 2013 and he was convicted and sentenced to suffer two years rigorous imprisonment. Moreover, he was ordered to pay fine of Rs.10,000/- and in default thereof to suffer simple imprisonment for six months. The petitioner challenged his convictions and sentences before the High Court and his appeals were dismissed vide the impugned judgment dated 05.10.2022. The reference was answered in the affirmative and, therefore, the sentence of death was confirmed..

3. We have heard the learned counsel for the petitioner, injured witness Javeria in person as well as the learned Additional Prosecutor General, Sindh at considerable length. With their able assistance we have also perused the record.



4. The petitioner was alleged to have caused unnatural deaths of Abdul Qadir and Mst. Khursheed who were his father-in-law and mother-in-law respectively. The crime scene was the house of the deceased victims. The petitioner was married to the daughter of the deceased victims, namely, Mst. Mehwish. The prosecution had alleged that the petitioner was demanding return of Mst. Mehwish but the father-in-law refused and this led the petitioner to commit the gruesome crime. The prosecution in order to prove its case had produced Ejaz Ali (PW-1), Muhammad Mushtaq (PW-5) and Mst. Javeria (PW-2) who had deposed the ocular account. The latter had sustained serious injuries during the occurrence. The ocular account deposed by these three witnesses was consistent regarding all material facts and we have found them to be reliable, trust worthy and confidence inspiring. The medical evidence which was brought on record by Dr.Ghazi Amanullah (PW-3) and Shumail Bukhari (PW-6) supported the credible ocular account. The petitioner was arrested on 26.08.2015 and he had led to the recovery of the firearm weapon on 01.09.2015. The spent bullets recovered from the crime scene and the firearm weapon were sent to the Forensic Science Laboratory (**FSL**) on 04.9.2015. The recovered spent bullets and the firearm weapon were sent together and therefore, despite the positive report of the FSL, it would not be safe to place reliance thereon. It is further noted that the motive set out by the prosecution is shrouded in mystery. The injured witness Mst. Javeria (PW-2) in her examination in chief had deposed that the petitioner had pronounced oral divorce to Mst. Mehwish and had also stated that Mst. Mehwish had filed a suit for dissolution of the marriage. In her cross examination the witness while responding to the suggestion had acknowledged that

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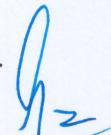
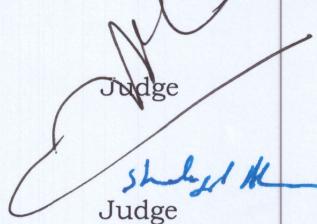
Mst. Mehwish had contracted marriage with another person and that she was living with him. However, the prosecution did not bring on record credible and trustworthy evidence to prove the factum of motive. Nonetheless, we are of the opinion that the prosecution had proved its case to the extent of the guilt of the petitioner through credible and confidence inspiring testimonies of witnesses who were present at the crime scene at the time of commission of the offence. One of the witnesses who had deposed the ocular account had also sustained serious injuries during the occurrence. As already noted, the medical evidence supported the ocular account. The conviction handed down by the trial court and later upheld by the High Court are unexceptionable and do not require any interference. The learned counsel for the petitioner has argued that on account of the mitigating factors, the sentence of death was not justified keeping in view the facts and circumstances of the case. We have already noted that the prosecution was not able to prove the factum of motive and that the evidentiary value of the recovery of the firearm weapon was not free from doubt. These mitigating factors indeed did not justify handing down the sentence of death.

5. In view of the above, this petition is converted into appeal and it is partly allowed only to the extent of modification of the sentence of death under section 302(b) of PPC to imprisonment for life. The conviction under section 302(b) of PPC is upheld as well as the compensation ordered under section 544-A Cr.P.C and the sentence required to undergone in default thereof. The convictions and sentences in case of all other offences handed down and upheld by the High Court are maintained. The payment of compensation ordered by the trial court



for committing offence under section 324 PPC shall be treated as payment of fine. The compensation, fine and payment of diyat ordered by the trial court and upheld by the High Court shall remain intact. The appellant shall remain incarcerated till the payment of amount of diyat as ordered by the trial court and such incarceration shall be treated as simple imprisonment. The sentences, except which are required to be served in default of payment of compensation, fine or payment of diyat, shall run concurrently. The benefit under section 382-B Cr.P.C. is extended in favour of the appellant.

The above are the reasons for our short order of even date.


Judge
Judge
Judge**ISLAMABAD**

13th May 2025
(Aamir Sh.)

"Not Approved for Reporting"