

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.236 of 2023

(Against judgment dated 09.05.2023 of
the High Court of Sindh, Circuit Court
Larkana passed in Crl. Jail Appeal No.D-
26 of 2019 and Crl. Confirmation Case
No.09 of 2019.)

Siraj Ahmed ...Petitioner
Versus

The State ...Respondent

For the petitioner: Mr. Imran Feroze, ASC

For the State: Mr. Saleem Akhtar Burero,
Additional Prosecutor General,
Sindh

Date of hearing: 12.05.2025

ORDER

Athar Minallah, J.- The petitioner Siraj Ahmed has sought leave against judgment of the High Court, whereby his conviction and sentence were upheld. The petitioner was nominated in criminal report No.226/2008 registered at P.S. Shahdadkot for commission of the offences under sections 302 and 109 of the Pakistan Penal Code, 1860 ('PPC'). The trial court upon conclusion of the trial convicted the petitioner under section 265-H(ii) of the Criminal Procedure Code, 1898 ('Cr.P.C.') for commission of murder of Atta Muhammad Mekan and sentenced him to death as *tazir* under section 302(b) of the PPC. The petitioner was also ordered to pay compensation of Rs.3,00,000/- to the legal heirs of the deceased in terms of section 544-A of the Cr. P.C. and in case of non-payment of compensation to further undergo S.I. for six months. The High Court dismissed the appeal preferred by the petitioner and the reference was answered in the affirmative.



2. We have heard the learned counsel who has appeared on behalf of the petitioner and the learned Additional Prosecutor General for the State. We have also perused the record with their able assistance.

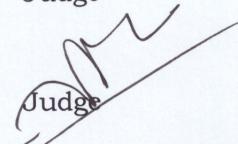
3. The petitioner was the sole nominated accused in the crime report. It was a daylight occurrence as it took place on 19.11.2008 at 8:50 a.m. The prosecution in order to prove its case had produced Mian Ata Rasool (PW-01), Noorullah (PW-02) and Mian Noor Muhammad (PW-03) who had deposed the ocular account. They were consistent on all material facts and we have found them to be trustworthy, reliable and confidence-inspiring. The ocular account furnished by them was supported by Dr. Roshan Ali Soomro (PW-05). The petitioner was arrested on 19.11.2008 and the crime weapon was also recovered from his possession. However, the crime-weapon was not sent for chemical analysis and there is no report of the Forensic Science Laboratory (FSL) on the record. The recovery was, therefore, inconsequential. The prosecution had set up a motive regarding the dispute over some shops and exchange of hot words between the victim and the petitioner. However, this factum of motive was not proved by the prosecution by bringing on record reliable and unimpeachable evidence. It is noted that Ata Rasool (PW-01) in his deposition had also acknowledged that no document or any material could be produced through evidence to prove the factum of motive. However, we have noted that the petitioner had recorded his confessional statement under section 164 of the Cr. P.C. The confessional statement was recorded by Muhammad Islam-ul-Haq, Civil Judge after observing the safeguards prescribed under the law. Moreover, while recording his statement under section 342 of the Cr. P.C. the petitioner had admitted his guilt.

4. As already noted, the prosecution had produced evidence which was reliable and confidence-inspiring to prove the guilt of the petitioner.

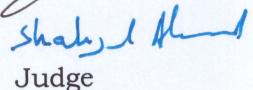
The concurrent findings regarding the guilt and conviction of the petitioner have been found to be unexceptionable and therefore, they do not require any interference. However, the prosecution was not able to prove the motive and the recovery was also inconsequential because the report of FSL was not tendered in evidence or brought on record. These mitigating factors did not justify handing down the sentence of death. In view of the above, the petition is converted into an appeal and it is partly allowed to the extent of modification of the sentence of death to that of life-imprisonment. However, the appeal is dismissed and the conviction of the petitioner is upheld. Likewise, the compensation ordered by the trial court and upheld by the High Court as well as the sentence required to be undergone in default thereof, are maintained and to that extent the appeal is dismissed. The benefit of section 382-B Cr. P.C. is also extended in favour of the appellant. The appeal is, therefore, partly allowed in the above terms.



Judge



Judge



Judge

Islamabad12th May, 2025

M. Azhar Malik/*