

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Criminal Appeal No. 279-P/2025

Faiz-ur-Rehman
Vs
The State & another

JUDGMENT

Date of hearing: **27.11.2025**

Appellant by: Mr. Fawad Hussain,
Advocate via Video link.

The State by: Mr. Aqil Hussain, AAG

Respondent/Complainant by Nemo.

SAHIBZADA ASADULLAH, J.- Through this criminal appeal, appellant Faiz-ur-Rehman has questioned the judgment of the learned Sessions Judge/Judge Juvenile Court, Hangu dated 20.02.2025 rendered in case FIR No. 582 dated 01.07.2023 under sections 302/34 PPC read with section 15 AA registered at Police Station City, District Hangu whereby, the appellant was convicted and sentenced as under: -

“U/s 302 (b) PPC to imprisonment for life by committing the murder of deceased Wisal and Irshad Habib on two counts and also to pay compensation of Rs.2,00,000/- (rupees two lac) to the LRs of each deceased within the meaning of section 544-A CrPC and, in default whereof, to suffer simple imprisonment for six months.

U/S 15 of the Arms Act to imprisonment for one year and to pay a fine of Rs. 10,000/- and in default whereof, to suffer simple imprisonment for one month.

Both the sentences shall run concurrently. Benefit of section 382-B Cr.PC was extended in favor of the appellant.

2. The narration of facts contained in the First Information Report (FIR) is that on 01.07.2023, complainant Said Habib, brought the dead bodies of his sons Wisal and Muhammad Irshad Habib to DHQ Hospital and reported the matter to the police to the effect that he, alongwith his sons, was present

at their house when both the deceased, with his prior permission, left for Eid greetings at the house of Ghani-ur-Rehman; that the complainant followed them after some time; that when they reached to the place of occurrence, an altercation ensued between Zia-ur-Rehman and Faiz-ur-Rehman, sons of Ghani-ur-Rehman. During the altercation, accused Zia-ur-Rehman took out his pistol and started firing at Wisal, while accused Faiz-ur-Rehman fired at Muhammad Irshad Habib, resulting in their instantaneous deaths; that the complainant, being empty-handed, do nothing; that there was no motive behind the occurrence; that the accused were charged for the commission of the offence, leading to the registration of the present FIR.

3. It is pertinent to mention that on the same day, i.e. 01.07.2023, Faiz-ur-Rehman (appellant), who was in an injured condition, was brought to THQ Hospital, Hangu and was unable to speak, so he reported the matter in writing in Pashto, wherein the deceased, Muhammad Irshad Habib and Wisal, were

charged for the injuries sustained by him, which was later on penned down in shape of daily diary No. 13.

4. It is pertinent to mention that as the appellant was seriously injured, so he was arrested in the hospital. After completion of investigation, complete challan submitted to the court. As accused was juvenile, so separate challan was submitted to the learned trial court. Provisions of section 265-C CrPC were complied with and the appellant was charge sheeted, to which he pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 10 witnesses. After closure of prosecution evidence, statement of the appellant was recorded under section 342 CrPC, wherein he posed innocence, however, neither he wished to be examined on Oath as required under section 340 (2) Cr.PC, nor wanted to produce evidence in defence. The learned trial Court, after full-fledged trial convicted the appellant vide the impugned judgment hence, the instant appeal.

5. Arguments heard and record scanned through with their valuable assistance.

6. The grief-stricken father carried the dead bodies of his two sons to the hospital and reported the occurrence. The injury sheets and inquest reports were prepared, and the dead bodies were sent for post-mortem examination. The Investigating Officer visited the place of occurrence, recorded the statement of the complainant, and prepared the site plan. During spot inspection, blood-stained earth and pebbles were collected from the respective places of the deceased and 05 empties of .30-bore lying scattered at the scene were secured. The accused initially absconded but was later arrested and placed in physical custody. After his arrest, he led the police to the place of occurrence and pointed out the relevant spots. The recovered empties were sent for forensic examination, and the Firearms Expert Report received telling that they all had been fired from a single weapon. On completion of the investigation, the accused was tried before the court of competent jurisdiction. Upon careful

appraisal of the evidence on record, the learned Trial Court found him guilty and accordingly convicted and sentenced him, after due application of judicial mind. It is also of significance that on the day of the occurrence the appellant, Faiz-ur-Rehman, was himself shifted to the hospital, where he reported the incident and attributed his injuries to the deceased. His injury sheet was prepared, he was medically examined, and his medico-legal certificate was issued. As both the persons named by him died in the same incident, that case could not proceed further. The prosecution thereafter examined its witnesses in the present case and exhibited the relevant documents through them. This Court is now required to consider whether the learned Trial Court duly took into account the injuries sustained by the appellant in the same transaction and whether any benefit arising therefrom was extended to him. Equally important the determination is that who was the aggressor and who was the aggrieved, particularly when the incident allegedly

occurred in front of the house of the accused and the deceased are said to have come there while armed. To avoid any miscarriage of justice, it is necessary to re-examine the record, re-assess the parties' versions, and carefully scrutinize the statements of the witnesses.

7. The points requiring determination before this Court are as to whether the occurrence took place in the mode, manner and at the stated time; whether the complainant was present at the spot and it was he who lodged the report at the hospital; whether the deceased met their deaths in the incident as alleged; whether, in the same occurrence, the accused/appellant also sustained injuries at the hands of the deceased; whether the medical evidence lends support to the prosecution case and whether the prosecution has succeeded in proving the guilt of the appellant beyond reasonable doubt.

8. To appreciate the peculiar circumstances of the case, it is necessary to consider the report lodged in respect of the incident and the counter-version recorded by

the appellant in the daily diary. This Court is further required to examine how the incident occurred, who was the aggressor and who was subjected to aggression, and what circumstances led to the tragic outcome. It is also to be seen who caused the fatal injuries and whether the act was that of a single individual. It is an admitted position between the parties that the sister of the appellant was married to one of the deceased and, owing to strained relations, she was residing at her parental home. This estrangement appears to have been the origin cause of the dispute and led the deceased to approach the house of the appellant. As the incident admittedly occurred in front of the house of the accused, this Court must examine what provoked the confrontation, whether there was a prior verbal altercation or a free fight, and at what stage the firing took place. For this purpose, it becomes essential to examine the statement of the complainant, who appeared as prosecution witness and was examined as PW-8. He explained the circumstances in which the

incident occurred and stated that the deceased had informed him of their intention to visit their sister for Eid greetings, whereupon he followed them. According to him, upon reaching the spot, a scuffle ensued between the accused and the deceased, after which firing took place, resulting in the death of the deceased. During cross-examination, this witness was questioned on material aspects, particularly with regard to his presence at the spot, the time of arrival, and the manner in which the altercation occurred before the firing. He endeavoured to establish his presence at the scene and explained the background that led to the unfortunate incident, asserting that the deceased had left with his consent and that he followed them to the place of occurrence. While the presence of the deceased at the relevant time is not disputed, the serious firearm injury sustained by the appellant lends support to the version that a confrontation did take place. The medical evidence leaves no room for doubt that the injury suffered by the appellant was neither

self-inflicted nor fabricated. The circumstances suggest that both sides suffered in the incident: two persons lost their lives, while the appellant sustained a firearm injury. However, the crucial question remains whether the appellant fired in self-defence or whether he initiated the firing before sustaining injury himself. This issue is central to the case and requires careful consideration, as its determination will enable the Court to reach a just and proper conclusion regarding both the individual and collective liability of the accused, as well as the precise role of the appellant in the occurrence. The complainant, with the help of others, shifted the bodies from the place of occurrence to the hospital, where he reported the matter to PW-2. Upon receipt of the report, injury sheets and inquest reports alongwith other necessary papers were prepared, and the dead bodies were sent for post-mortem examination. At the same time, the appellant, Faiz-ur-Rehman, was also brought to the hospital in an injured condition. He too reported the incident, and his version was recorded in the daily diary as a

counter-case. He was medically examined and a medico-legal certificate was issued. The scribe of the report of the complainant was examined as PW-2. He explained how the report of the complainant was recorded and how the dead bodies were forwarded for post-mortem examination. He was questioned at length regarding the time of arrival of the bodies and the recording of the report, yet nothing adverse to the prosecution could be extracted from his testimony. PW-3 described the arrival of the injured appellant at the hospital and the manner in which his report was recorded. He stated that the statement of the appellant was made in Pashto and was reduced to writing accordingly. The record further shows that although the appellant was nominated by the complainant and arrested in the present case, his physical remand was not sought owing to the serious nature of his injuries. The medical officer confirmed the arrival of the dead bodies at the hospital and stated that he conducted the post-mortem examinations without delay. Another doctor,

who examined the appellant in his injured condition was examined as PW-6, who issued his medico-legal certificate. It is pertinent to mention that, as explained by the scribe, the appellant was unable to speak due to firearm injury to his mouth, which had fractured his jaw and dislodged his teeth. For this reason, he was allowed to write his report himself in Pashto, which was thereafter verified. Though unusual, this circumstance gains importance in view of the physical condition of the appellant and lends assurance to the genuineness of his injuries and the manner in which his report was made. Since both reports were lodged and the dead bodies as well as the injured appellant were brought there soon after the occurrence, neither version can be lightly ignored. The report of the appellant, in particular, confirms his presence at the place of occurrence at the stated time. This Court must therefore examine whether the investigating officer properly investigated both versions and whether the witnesses connected with the counter-case were examined, so as to understand how the

incident occurred, what injuries were sustained by the appellant, and how his report was recorded. As the accused named in the counter-case were the deceased in the present case, no trial could proceed against them after their death. Nevertheless, in the present trial, the prosecution witnesses were examined, relevant documents were brought on record, and even the witnesses connected with the counter-version appeared before the trial court. In these circumstances, the remaining question is not merely the timing of the reports or the shifting of the injured and the dead bodies.

9. The crucial issue is to determine who initiated the incident, who was the aggressor, and whether the appellant fired in the exercise of his right of private defence. These are the central matters which this Court must examine with care, for their determination will decisively affect the question of liability and the ultimate conclusion as to where the fault truly lies. The Investigating Officer appeared before the Court and gave his statement. He explained his visit

to the place of occurrence and confirmed the recovery of blood-stained earth and pebbles and 05 empties from the spot. He also stated that, in the same incident, the appellant received a firearm injury, who was taken to the hospital, and reported the matter. A separate site plan was prepared in relation to the report of the appellant. The site plan shows that the houses of the accused were near the place of occurrence, while the deceased had come there from another village. The Investigating Officer acknowledged that the incident occurred in front of the house of the appellant and admitted that the appellant was injured in the same transaction. Not only this, but at the time of lodging his report, the appellant was also found to be in possession of one pistol drawer, two charges and 20 live rounds of .30 bore, which was taken into possession and thereby justifying the insertion of Section 15-AA. It bears emphasis that the appellant himself produced and voluntarily handed over the same to the investigating officer, and the recovery was effected openly and in the presence of

witnesses. In these circumstances, no manner of doubt survives that the same were recovered from the conscious and exclusive possession of the appellant. Where a recovery is proved through natural and disinterested witnesses, its probative worth stands unimpeached.

10. The Court must next consider what led the parties to such a tragic end. It is on record that the sister of the appellant was married to one of the deceased and, due to strained relations, had returned to live with her parental family. This dispute appears to have been the background of the incident. In these circumstances, it becomes necessary to consider the intention with which the deceased came to the place of occurrence and the intention with which the appellant and the other accused confronted them. The material on record suggests that the deceased came to the place armed and that the appellant also came out of his house in an armed state. A verbal exchange followed, the situation worsened, and firing then took place. It stands proved that the deceased travelled from

another village and reached to the house of the appellant while the complainant has suffered the loss of his sons, the firearm injury sustained by the appellant cannot be ignored. There was clearly an attempt on his life, though he survived. The injury suffered by him is an important fact which must be considered while examining the conduct of both sides. The defence argued that the appellant fired only in self-defence. This Court, however, is not persuaded to accept that submission fully. The circumstances suggest that the force used exceeded what was strictly necessary. There is also no clear evidence that the deceased began firing immediately upon arrival. Even according to the version of the appellant, the parties first came face to face, exchanged words, and the deceased used abusive language. He stated that he warned them, but the argument escalated and firing followed. This shows that the incident did not begin with gunfire, but with a quarrel which gradually turned violent. In such a situation, the case cannot be seen simply as one of aggressor and

victim. The initial meeting may have been for discussion, but mutual provocation led to a tragic outcome. For this reason, the Court cannot accept the defence submission that the appellant deserves complete benefit at the cost of two lost lives. The circumstances show that both sides played a part in the escalation. The appellant was not free from blame, yet the conduct of the deceased also contributed to the incident. The defence further argued that the complainant failed to prove his presence at the spot, as there was no reason for him to follow his sons if they were merely going to visit their sister for Eid greetings. Even if this argument is accepted, the report of the appellant remains decisive. He admitted his presence at the spot and described how the deceased arrived, how the argument took place, and how the firing occurred. His injury and his arrest from the hospital soon after the incident further support this position. It is true that the complainant did not explain the injuries sustained by the appellant and focused only on the death of his sons. This omission suggests that the full

picture was not placed before the Court. For that reason, the report of the appellant, the medical evidence of his injury, and his admitted presence at the scene must be given due weight. Taken together, the evidence shows that firing took place from both sides and that the appellant was an active participant in the incident. The Hon'ble Supreme Court of India considered the effect of non-explanation of injuries sustained by the Accused person in **Takhaji Hiraji vs. Thakore Kubersing Chamansing and Ors.** MANU/SC/0345/2001: (2001) 6 SCC 145 and held as under:

“17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the Accused persons. In Rajender Singh v. State of Bihar MANU/SC/0255/2000: (2000) 4 SCC 298, Ram Sunder Yadav v. State of Bihar MANU/SC/0540/1998: (1998) 7 SCC 365 and Vijayee Singh v. State of U.P. MANU/SC/0284/1990: (1990) 3 SCC 190, all three-Judge Bench decisions, the view taken consistently is that it

cannot be held as a matter of law or invariably a Rule that whenever the Accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the Accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the Accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the *evidence* consists of interested or partisan witnesses where the defence gives a version which competes in probability with that of the prosecution.”

11. The remaining question is the nature of his role and whether he exceeded the limits of the right of private defence. This issue

is central to the case and will determine the extent of his liability and the sentence, if any, that should follow. The doctor who examined the injured appellant appeared before the Court as PW-6. He stated the time at which the appellant arrived at the hospital, he was referred to him for medical examination, and that he examined him and prepared the medico-legal certificate. The doctor described the injuries in detail, confirming their severity. He explained that the appellant had sustained a fractured jaw and had several teeth dislodged as a result of the firearm injury. These medical findings confirm not only the presence of the appellant at the place of occurrence but also that he received his injuries in the same incident. Although the appellant did not claim, in his statement under Section 342 Cr.P.C., that he fired in self-defence, the circumstances require careful judicial consideration. The appellant was arrested from the hospital while injured, he lodged his report there, the Investigating Officer admitted the counter-version, and the relevant documents, including

the daily diary entry, injury sheet, and medico-legal certificate, were placed on record, with witnesses examined to confirm the injuries received to the appellant and his report. Taken together, these facts establish the presence of the appellant and participation in the incident.

12. It is also undisputed that the appellant was a juvenile at the time of trial. Juvenility, however, does not automatically entitle him to extraordinary relief or acquittal; he was tried in accordance with law. On the evidence before the Court, it is clear that the trial court was justified in finding him involved in the incident. Nevertheless, the assessment of the learned trial court regarding the role of the appellant and the sentence imposed appear to reflect an incomplete appreciation of the evidence. In light of this, a careful re-examination of both the facts and the appropriate sentence is necessary. This Court finds no doubt as to the participation of the appellant in the incident. The medical evidence corroborates the case of the prosecution, and the injuries sustained by the appellant in the

same transaction further confirm his presence at the scene at the stated time. The defence, despite its strenuous efforts, has failed to establish any reasonable doubt in this regard. It is generally true that medical evidence alone may not be decisive in the absence of eyewitnesses, the present case presents a cumulative picture. The complainant reported the incident promptly, the presence of the parties at the scene is firmly established on record, and the Investigating Officer confirmed that the house of the accused was situated near the place of occurrence. Taken together, these facts leave no doubt that the incident occurred at the stated time and in the manner described.

13. The motive for the confrontation is clearly established on record. It arises from the strained relationship between the parties, following the return of the wife of the deceased, the sister of the appellant to her parental home. This fact was corroborated by the Investigating Officer, the appellant himself, and the complainant. The defence does not meaningfully dispute this point. In the

circumstances, the motive provides context to the tragic events but does not in itself absolve any party of responsibility. The Court must ascertain which parties intended to injure or kill, and the evidence satisfies this requirement. The suggestion that the incident was solely the act of a single accused is unconvincing. The complainant stated categorically that the appellant, a juvenile at the time, was accompanied by an absconding co-accused. It was the coordination between the two that enabled the unfortunate sequence of events. This Court is satisfied that the appellant participated actively and was rightly charged alongside the co-accused.

14. The principal issue for determination is whether the trial court exercised its discretion correctly in awarding the sentence, having regard to the unique circumstances of the case, including the inter-relationship of the parties and the damage suffered by both sides. The complainant suffered the irreparable loss of two sons, the appellant also sustained serious injury,

confirmed by the medical evidence. The doctor described the injuries in detail, including fractures of the jaw and dislodged teeth, establishing the gravity of the harm inflicted upon the appellant. The evidence shows that the deceased approached the appellant to confront him regarding the family dispute. They travelled a considerable distance, carrying weapons, not with premeditation to kill, but with the purpose of confronting the appellant about the situation. A verbal altercation ensued, abusive language was exchanged, tempers flared, and the situation escalated to firing. The appellant himself confirmed that he warned the deceased to desist, but the argument intensified, leading to the tragic incident in which he too was injured. Although the defence contends that the appellant acted in exercise of his right of private defence, this Court cannot accept that submission in full. Both parties were responsible for the escalation, and both contributed to the unfortunate outcome. Certain material facts were concealed from the

investigating agency and the trial court, which warrants careful consideration in determining the appropriate sentence. Having considered the totality of the evidence, the nature of the incident, the role of the appellant, and the circumstances under which the tragedy occurred, this Court is of the opinion that the sentence of life imprisonment imposed under Section 302(b) PPC calls for reconsideration. The participation of the appellant in the incident is established beyond doubt, and while the gravity of the offence cannot be understated, the peculiar circumstances, including the mutual altercation, the provocation, and the injuries sustained by the appellant, warrant a modification of the sentence. In this respect reliance is placed on the judgment of Apex Court titled “*Fayyaz Ahmed and another vs Muhammad Khan and others*” (2020 SCMR 281), wherein, it has been held as under:

“The facts and circumstances of the case clearly demonstrate that the encounter between the

parties was a chance and sudden encounter and there was no premeditation involved in this case. In this sudden occurrence only one blow was given by Rozi Khan appellant to Safdar Ali deceased and despite an opportunity being available in that regard he had not repeated that blow. In the heat of passion at the spot no undue advantage had been taken by the appellants and they had not acted in any manner which could be termed as cruel or unusual. For all these reasons we have concluded that the actions attributed to the appellants attracted the provisions of section 302(c), P.P.C. With this conclusion we hold that the trial court was quite justified in convicting and sentencing Fayyaz Ahmed appellant for an offence under section 302(c), P.P.C. and the

conviction and sentence of Rozi Khan appellant for an offence under section 302(b), P.P.C. were unjustified.”

15. Accordingly, while maintaining the conviction of the appellants under the relevant provision of law, this Court finds the sentence of imprisonment for life to be harsh and disproportionate. Consequently, the instant criminal appeal is partially allowed whereby, the conviction of the appellant is converted from section 302(b) PPC to section 302(c) PPC and his sentence is reduced to **12 years rigorous imprisonment** while the remaining portion of the impugned judgment shall remain intact.

Announced
27.11.2025

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