

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT,**  
**RAWALPINDI BENCH RAWALPINDI**  
JUDICIAL DEPARTMENT

**Murder Reference No.130 of 2021**

The State                      Versus                      Imtiaz Ullah

**Criminal Appeal No.60592 of 2021**

# Imtiaz Ullah          Versus          The State

Date of hearing: **11.03.2024**

Appellant by: M/s. Samina Jadoon &  
Sardar Gul Nawaz Khaliq,  
Advocates.

State/complainant by: Mr. Naveed Ahmed Warraich, DDPP with Sher Ahmed, ASI.

**SADAQAT ALI KHAN, J.** Appellant (Imtiaz Ullah)

has been tried by the trial Court in case FIR No.377 dated 28.05.2016 in offences under Sections 302/324/34 PPC Police Station City, District Mianwali, and was convicted and sentenced vide judgement dated 30.07.2021 as under:-

**Imtiaz Ullah (appellant)**

**U/S 302(b)**  
**PPC**

Sentenced to DEATH as *Ta'zir* for committing *Qatl-i-Amd* of Khurram Awais (**deceased**) with compensation of Rs.500,000/- payable to legal heirs of deceased u/s 544-A Cr.P.C. and in default whereof to further undergo simple imprisonment for 6-months.

**U/S 324 PPC** Sentenced to 5-years Rigorous Imprisonment for attempting to commit *Qatl-i-Amd* of Imtiaz Hussain (**complainant/injured PW**) with fine of Rs.20,000/- and in default whereof to further undergo simple imprisonment for 2-months.

**U/S 337-F(i) PPC** To pay *Daman* of Rs.10,000/- for each injury payable to complainant/injured PW and in default whereof to remain in jail till the recovery of Daman i.e. Rs.20,000/-.

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The sentences of the appellant were ordered to run concurrently with benefit of Section 382-B, Cr.P.C.

**2.** Appellant has filed this Criminal Appeal against his convictions and the trial Court has sent Murder Reference for confirmation of his death sentence or otherwise, which are being decided through this single judgment.

**3.** Heard. Record perused.

**4.** Khurram Awais was done to death whereas his father Imtiaz Hussain<sup>PW-10/complainant</sup> sustained injuries during the occurrence took place in the street on 28.05.2016 at 09:40 p.m. whereafter FIR was lodged on the same night at 11:10 p.m. on the statement of Imtiaz Hussain<sup>PW-10</sup>, who and his son Kaflain Mehmood Shah<sup>PW-11</sup> while claiming themselves to be the eye-witnesses of the occurrence stated in their statements before the trial Court that on 28.05.2016 at 09:15 p.m. they alongwith deceased (**Khurram Awais**) after closing their hotel proceeded to their house on foot via *Wandhi Ghund Wali*, when reached near *Morh Masjid Syedan Wali* at about 09:40 p.m., Imtiaz Ullah (**appellant**) armed with pistol .30-bore alongwith with an unknown accused came there on motorcycle and raised *lalkara* to teach them a lesson for refusal of compromise relating to the family dispute and made fireshot causing injuries on index and middle fingers of right hand of the complainant (**Imtiaz Hussain<sup>PW-10</sup>**), second fireshot made by him hit on left thigh of Khurram Awais (**deceased**) as a result of which he fell down, they (**Imtiaz Hussain<sup>injured/PW-10</sup> and Khurram Awais, deceased/the then injured**) were shifted to DHQ Hospital, Mianwali for treatment, fromwhere Khurram Awais (**deceased, the then injured**) was referred to PIMS Islamabad where he succumbed to the injuries on 29.05.2016 at 04:00 a.m.

**5.** Appellant is Damaad (son-in-law) of the complainant, having this close relationship there is no question of his misidentity despite the fact that occurrence took place at night as complainant cannot take risk to falsely involve his “سہیل” in the murder case of his son to ruin the matrimonial life of his daughter, especially when in the same occurrence he (complainant) himself sustained firearm injuries, leaving actual culprit scot free. In these circumstances, in such like cases, substitution of an accused is a rare phenomenon.

**6.** Both these eye-witnesses (**Imtiaz Hussain<sup>PW-10</sup> and Kaflain Mehmood Shah<sup>PW-11</sup>**) were cross-examined at length but their evidence could not be shaken during the process of cross-examination. They have corroborated each other on all material aspects of the case. They have also established their presence at the time of occurrence at the place of occurrence with their stated reasons. Their evidence is straightforward, trustworthy and confidence inspiring.

**7.** The discrepancies in the statements of the PWs pointed out by learned counsel for the appellant, are minors and general in nature, occur in every case when witnesses (**who are human-beings**) are cross-examined after a long time of the occurrence as in present case, are not fatal to the prosecution case.

**8.** Dr. Saad Abdullah<sup>PW-14</sup> during medical examination observed firearm entry wound on left thigh of Khurram Awais (**deceased, the then injured**) and firearm grazing wounds on the fingers of right hand of Imtiaz Hussain/injured/complainant<sup>PW-10</sup> attributed to the appellant. On death of Khurram Awais (**deceased**), Dr. Muhammad Abdul Maalik<sup>PW-9</sup> during post-mortem examination also observed firearm injuries on his (**Khurram Awais/deceased**) dead body which were ante-mortem in

nature and were sufficient to cause death in ordinary course of nature, therefore, the medical evidence has fully supported the ocular account discussed above.

**9.** Motive of occurrence was that daughter (**Mehwish**) of the complainant being wife of the appellant was not ready to reside with him (**appellant**) as he was the man of bad character but she has not been produced in support of this motive which is not believable.

**10.** Recovery of pistol .30-bore on pointing out of the appellant in presence of negative report of Punjab Forensic Science Agency qua matching of the crime empties is inconsequential but does not fatal to the prosecution case.

**(2021 SCMR 104)** “Akbar Ali and others Vs. The State and others”.

**11.** Appellant has denied his involvement in this case in his statement recorded u/s 342 Cr.P.C. and stated that he is innocent and has falsely been involved in this case. He has neither opted to appear as witness u/s 340 (2) Cr.P.C. nor produced any defence evidence (**except production of copies of certain documents as Exh.DA to Exh.DF**) in support of his defence plea which has rightly been discarded by the trial Court through the impugned judgment with sufficient reasons.

**12.** In view of above, if evidence of motive and recovery is excluded from consideration, even then prosecution has proved its case beyond shadow of doubt against the appellant through the evidence discussed above.

**13.** Coming to the quantum of sentence, we have noted some mitigating circumstances i.e. **firstly**, recovery of pistol .30-bore on pointing out of the appellant in presence of negative report of Punjab Forensic Science Agency qua matching of the crime empties is inconsequential, **secondly**, single fire shot has been attributed to the appellant on the person of deceased, there is no allegation

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of repetition and **thirdly**, motive has been disbelieved by us with the reasons mentioned in para 9 of this judgment. It is not determinable in this case as to what was the real cause of occurrence and as to what had actually happened immediately before the occurrence which resulted into present unfortunate incident. **(2014 SCMR 1227)** “Zafar Iqbal and others Vs. The State”.

**14.** In these circumstances, while maintaining the conviction of the appellant (**Imtiaz Ullah**) in offence under Section 302(b) PPC, his sentence is altered from death to imprisonment for life. The compensation and sentence in default whereof awarded by the trial Court are maintained. Convictions and sentences of the appellant on other heads are also maintained. All the sentences of the appellant shall run concurrently with benefit of Section 382-B Cr.P.C.

**15.** Consequently, with the above said modification in the impugned judgment, instant Criminal Appeal filed by the appellant (**Imtiaz Ullah**) is hereby **dismissed**. **Murder Reference** is answered in **NEGATIVE** and **death sentence** of Imtiaz Ullah (appellant) is **NOT CONFIRMED**.

**(ASJAD JAVAID GHURAL)**  
**Judge**

**(SADAQAT ALI KHAN)**  
**Judge**

**Approved for reporting.**

**JUDGE**

**JUDGE**

*Inaam Sandhu\**