

Judgment Sheet**PESHAWAR HIGH COURT, ABBOTTABAD BENCH**

JUDICIAL DEPARTMENT

**Criminal Appeal No.204-A/2022 with
Murder Reference No.05-A/2022**

Meesam Abbas... (Appellant)

versus

The State etc... (Respondents)

Present: M/S Fazal-e-Haq Abbasi, Owais Abbasi and Azeemullah Khan Tahirkheli, Advocates for appellant.

Sardar Waqar-ul-Mulk, Assistant Advocate General for State,

Mr.Javed Khan Tanoli, Advocate for respondent No.2/complainant.

Date of hearing: **10.10.2023.**

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Through the instant appeal, appellant has challenged the order and judgment dated 12.08.2022 passed by learned Additional Sessions Judge, Haripur at Ghazi whereby the appellant was convicted and sentenced, in a case registered vide FIR No.359 dated 09.09.2019 under sections 302/324/ 337-D PPC, at Police Station Ghazi, District Haripur, as under:

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- (i) Convicted under section 302(b) of the Pakistan Penal Code for committing Qatl-e-amd of Nayyar Zaman son of Ahmad Zaman and sentenced to death as Ta'zir (subject to confirmation by the Peshawar High Court). Further sentenced to pay compensation to the tune of Rs.500,000/- or in default to suffer simple imprisonment for six (06) months. Reference for confirmation or otherwise of death sentence within the meaning of section 374 of the Cr.PC was also forwarded to the High Court.
- (ii) The accused/convict is also sentenced under section 324 of the PPC to five (05) years RI for attempting at the life of injured/complainant Azmat Ali with a further sentence to a fine of Rs.100,000/- in case of default, he shall further undergo three (03) months simple imprisonment.
- (iii) The accused/convict is further sentence under section 337-D of the PPC and is held to be liable to pay Arsh to injured Azmat Ali which shall be one-third of the Diyat. He is further sentenced to RI of one year as Ta'zir. He was extended benefit of section 382-B Cr.PC.



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2. Precisely, the facts of the present case are that on 09.09.2019 at 14.30 hours, complainant Azmat Ali son of Ahmad Zaman (who is respondent No.2 herein) alongwith his real brother Nayyar Zaman, both in injured condition, lodged report to Sarfraz Khan IHC (PW-8) in Emergency Ward of THQ Hospital Ghazi to the effect that he alongwith his brother Nayyar Zaman was present at their shop situated at Pahai; when in the meanwhile, Meesam Abbas (who is appellant herein) equipped with Churri came to their shop and as soon as reached there, he stabbed the Churri (knife) on left side of chest of his real brother with intent to murder him; when he moved forward to rescue his brother, appellant also stabbed the Churri (knife) in his abdomen with intent to murder him also; thereafter appellant fled away from the spot; the occurrence besides him was stated to have been witnessed by Sabir son of Ghulam Hassan (PW-11) and Qasim son of Qamar Zaman (abandoned) who were present on the spot and they took them to the hospital for treatment. No previous enmity/motive was mentioned in the FIR. He charged the appellant for commission of

offences. The said IHC prepared the injury-sheets of both the injured and reduced the report of the complainant into writing in shape of Murasila (Ex.PW-8/1) and the same was sent to the Police Station through constable Dildar No.49 for registration of case; resultantly instant FIR (Ex.PW-6/1) was registered. Lateron, one of the injured namely Nayyar Zaman succumbed to injuries. In the wake thereof, appellant was arrested.

3. After the completion of investigation, the complete challan was submitted before the court against the appellant upon which a full-fledged trial was conducted. Prosecution in order to prove its case against the appellant, produced as many as seventeen (17) witnesses including the important statements of Azmat Ali as PW-10, who is the complainant of this case and narrated almost the same facts which he recorded in his report Ex.PW-8/1. PW-11 is Sabir Ali son of Ghulam Hassan. He being eyewitness of the occurrence also narrated the facts regarding the occurrence while toeing the complainant/PW-10. PW-12 is Waseel Ahmad son



of Muhammad Ashraf. He too, provided ocular account of the occurrence and shifted injured Azmat to hospital through motorcycle. PW-13 is Malik Basharat Ali son of Abdul Qadir. He is also stated to have witnessed the occurrence and to have sent both the injured Azmat Ali through PW Waseel Ahmad, and Nayyar Zaman through Suzuki Van of Asad to the hospital. He also stated to have caught hold of appellant and snatched knife from him and handed it over to police through Sher Azam Khan who appeared as PW-15. PW-16 is Arshad Khan Sub-Inspector. He conducted investigation after the conduct of initial investigation by Javed Khan IHC/PW-3. When prosecution closed its evidence, statement of the appellant was recorded under section 342 Cr.P.C before the learned trial court, wherein he claimed innocence. However, he neither wished to produce the defense evidence nor desired to be examined as witness under section 340(2) Cr.PC. After hearing arguments of both the sides, the learned trial court passed convictions and sentences against the appellant under the relevant sections of



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law as stated hereinabove, through order and judgment dated 12.08.2022 which order and judgment has now been challenged by the appellant through the instant criminal appeal.

4. Arguments of the respective learned counsel for the appellant as well as learned Assistant Advocate General assisted by the learned counsel for complainant were heard in considerable detail and record perused with their able assistance.

5. It is the case of prosecution as reported by PW-10 namely Azmat Ali to PW-8 namely Sarfraz Khan IHC to the effect that on the day and time of occurrence when his brother namely Nayyar Zaman was present in his shop when in the meanwhile, the appellant who was equipped with a knife came to their shop and as soon as he reached, he stabbed his brother with the knife on his left side of chest and when he rushed for the rescue of his brother, the appellant also gave him a Churri blow on his belly and then he fled away from the spot. The said occurrence was stated to be witnessed by Sabir who appeared as PW-11 and Qasim who was abandoned. It has also been



specifically stated that two PWs namely Sabir and Qasim have shifted them to the hospital and motive was stated to be no previous enmity. It is also part of the record that the occurrence has taken place at 1.30 hours, whereas the report has been made at 14.30 hours and it was soon thereafter when the injured brother of the complainant namely Nayyar Jamal succumbed to his injury and died approximately two hours after the occurrence.

6. In order to prove the charge, the prosecution has produced the ocular account through PW-10 Azmat Ali who has also received a stab wound on his belly and PW-11 who was shown as an eyewitness of the occurrence in the FIR, whereas one witness Waseel Ahmad was also produced as PW-12. The evidence of the injured PWs was gone through word by word and the same was found in complete conformity and in line with the charge as set up in the First Information Report and since he has himself sustained injury in the occurrence, therefore, being an injured witness his evidence could not be lightly ignored. His statement confirms the time, mode and manner of



the occurrence, place of occurrence as well as his presence at the relevant time. Though learned counsel for the appellant tried to shatter his evidence, however, we do not find ourselves to hold his evidence as unbelievable.

7. We have also noted that as per the First Information Report, the occurrence has taken place at 1.30 hours and the same was promptly reported at 02.30 p.m. which fact alone excludes the possibility and hypothesis of any consultations or deliberations on the part of the complainant party. It was also noted that the appellant as well as the complainant party belong to the same village and occurrence has been taken place at broad daylight, therefore, the element of misidentification or wrong identification could not even be inferred which stamps the case of prosecution with truthfulness and correctness. It is also part of the record that the appellant has singularly and specifically been charged for causing fatal stab blows to the deceased then injured as well as to the complainant (PW-10) and thus a single accused



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has been nominated for causing fatal injuries to the two persons.

8. The medico-legal evidence available on file would show that the appellant was all out to make a murderous assault on two persons. As per record, the deceased then injured has received a fatal blow on left side of his chest which was lateron proved fatal for his life whereas the complainant too has received an injury on his belly which has caused his intestines out of the cavity/trunk, therefore, in the given facts and circumstances, the intention of the appellant to make a murderous assault on two persons is established on the face of record.

9. During the course of arguments, learned counsel for the appellant made much stress that infact the injuries on both the victims were of such a nature and their condition was opined as critical by Dr.Qasim (PW-5), therefore, they would not have been able to make the report or to verify the same as alleged by the prosecution, however, his this stance is, *prima facie*, misconceived as in the case of both the injured,



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the doctor has opined and has found their clinical condition as "vital stable" which means that their respiratory system, pulse, heartbeat and blood-pressure were normal and thus when they were normal in terms of the above factors then they could have also made the report or to verify the same. It is also established on the face of record that the occurrence has occurred at place, where the same has been alleged, as PW-3 namely Javed Khan IHC in his court statement has categorically stated that after receiving of the copy of FIR, he rushed to the place of occurrence where he took into possession blood through cotton from the places of deceased Nayyar Zaman as well as of the complainant Azmat Ali. Similarly, the blood stained Bunyan and Shalwar of the deceased and cloth (*Chadar*) of injured were also taken into possession and when the same were sent to the Forensic Science Laboratory, the same was found to have human blood and of same group.


10. It was also argued on behalf of appellant that the complainant in the First Information Report has only stated regarding the injury

sustained by his deceased brother on his chest and he has not uttered a single word regarding the injury sustained by his deceased brother on his thigh, however, when the said complainant appeared in the court as PW-10, in his cross-examination, a specific question was asked from him and he has explained the same that when he saw the appellant by giving Churri blow on the chest of his brother, he ran to rescue him through the second door of the shop during which moment accused might have caused the second blow, therefore, such objection of learned counsel for appellant too is misconceived.

11. The prosecution has not only relied on the statement of PW-10 Azmat Ali but they have also produced other PW namely Sabir who appeared as PW-11 and he too, has furnished a consistent evidence qua the material particulars of the occurrence and the defence has not been able to shatter his evidence as well and thus in view of the above, the prosecution has been able to produce consistent, trustworthy and confidence inspiring evidence through PW-10 and PW-11.



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12. Apart from the ocular account, the prosecution has also been able to prove their case through circumstantial evidence as stated hereinabove that the blood from the places of deceased (then injured) and injured/PW-10 have been shown recovered. Similarly, the blood stained cloths of the deceased as well as Shawal of injured have also been taken into possession through recovery memo and were produced in the court.

13. In view of the above discussion and the material available on file as well as the evidence as produced by the prosecution, the prosecution has been able to prove the guilt of the appellant and thus he has rightly been convicted, however, whether on the available record, the learned trial court has rightly awarded the maximum punishment of death to the appellant? or as to whether on the available record the capital punishment was not legally justified? These questions are to be answered hereinafter.

14. As observed, discussed and held in the preceding paras of this judgment that the prosecution has been able to prove the guilt of the

appellant, however, there are certain mitigating circumstances available on file which could be considered for reduction of capital punishment of death into imprisonment for life, which are as under:

(I) As per the contents of First Information Report, the complainant/ PW-10 has not set any motive for the said occurrence. Similarly, when he appeared in the court as PW-10 there too, he has not uttered a single word regarding the existence of any motive, however, when the other PW Sabir Ali who was duly mentioned in the First Information Report as eyewitness and he appeared in the court as PW-11, he during his cross-examination has clearly stated that altercation between the appellant and the deceased inside the shop remained round about for 2 to 3 minutes in his presence. He has further stated that on the notice of altercation inside the shop he had not went inside the shop, which obviously means that PW-10 and PW-11 are not in line qua the motive of the occurrence or at least complainant/PW-10 Azmat Ali has suppressed the motive and it is still shrouded in mystery what thing flared up



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the appellant or had the deceased enraged the appellant which resulted into the occurrence. This aspect of the case is one of the circumstances which could mitigate severity of punishment of appellant qua reduction from capital punishment of death into imprisonment for life. In the case titled "**ZAFAR IQBAL alias ZAFARULLAH KHAN vs. The STATE**" reported as **2017 SCMR 1721** the august Supreme Court has held that as far as awarding of death sentence to the appellant by the Courts below is concerned, we have observed that the occurrence had taken place at the spur of the moment due to sudden provocation without any pre planning and pre-meditation. The mode and manner of the occurrence would further reveal that there was a single shot fired at the deceased without repeating the same. There was no motive for the appellant to commit Qatl-i-amd of the deceased. All these aspects compel us to exercise caution in the matter of appellant's sentence of death.



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(II) If the consistent plea of the complainant qua non-existence of any previous motive is taken and considered as true and correct then even absence of any motive between the appellant and deceased could be considered as a mitigating circumstance for reduction of sentence of death into that of imprisonment for life. In the case titled "BAKHT MUNIR and another vs. The STATE and another" reported as 2020 SCMR 588 the Apex Court has converted the sentence of death of the convict into imprisonment for life by holding that it is crystal clear that there was no previous enmity between the parties. The circumstances of the case unequivocally suggest that the occurrence had taken place at the spur of the moment without any premeditation on the part of the appellant.

(III) It is also part of the record and as stated by PW-11 that before the occurrence, there was altercation between the appellant and the deceased and it was during the said altercation when the appellant flared up, however, the

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appellant has opted only for a single stab blow at the vital part of the deceased and has not repeated any blow thereafter, therefore, it is a case of a single stab blow as well as in the aforementioned context it appears to be an occurrence that took place at the spur of the moment which fact too, can be considered as a mitigating circumstance for reduction of capital punishment of death into imprisonment for life. In the case titled "**REHMAT KHAN and another vs. The STATE and others**" reported as **2017 SCMR 2034** the Apex Court has observed that in appeal, the learned Division Bench of the Lahore High Court after taking into consideration the mitigating circumstances of the case i.e. single fire shot attributed to the petitioner and the alleged recovery of pistol being inconsequential rightly converted his death sentence to life imprisonment.

- (IV) It is also part of the record that soon after the occurrence, one PW Malik Basharat who is stated to have attracted to the spot and who snatched knife from the appellant, however, as per record/FSL



report, neither the said knife was stained with any blood nor the same was produced to the police by aforesaid PW Malik Basharat rather the same was produced to the police by one Sher Azam who appeared as PW-15 but he did not utter a single word that this knife was used in the commission of offence, obviously for the reason that he himself is not an eyewitness of the occurrence, therefore, whether it was the same knife which was used in the commission of offence or not is a question which could neither have been explained nor answered by the prosecution, hence, this aspect of the case too, can be considered as a mitigating circumstance for reduction of capital punishment of death into imprisonment for life.

- (V) It is also part of the record and as stated by PW-3 namely Javed Khan IHC that on the day of occurrence he got the information that the appellant is at home and thus when he went towards the house of appellant where he was found present and accordingly he was arrested,



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therefore, his presence at the home after the occurrence instead of opting to flee away speaks volume of an unnatural conduct rather it speaks of an innocent character.

(VI) It is also part of the record that though the deceased then injured has received injury on his thigh, however, when his Shalwar was produced, the same was neither stained with any blood nor the same is having any corresponding cut which fact too, can be considered as a mitigating circumstance for reduction of capital punishment of death into imprisonment for life.

(VII) It was also noted that the complainant party has alleged that at the time of occurrence, complainant (PW-10) and deceased Nayyar Zaman, PW Sabir, PW Qasim and PW Waseel Ahmad were present, whereas the appellant was shown all alone, however, despite the fact that the complainant party was comprising of five persons but they could not overpower a single person i.e. the appellant or at least to stop him from further/maximum damage.



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15. Keeping in view the above aspects of the case, this court has come to the conclusion that as like the concept of benefit of doubt for considering the question of guilt or otherwise, the court of law could also consider any mitigating circumstance(s) for awarding lesser penalty keeping in view the facts and circumstances of the case. The aforesaid principle of appreciating of evidence qua considering the mitigating circumstances for the purpose of reduction in capital punishment was applied by the Apex Court in the case titled "**Mir Muhammad alias Miro vs. The State**" reported as **2009 SCMR 1188** where the Apex Court converted the death sentence awarded to the accused into that of life imprisonment. Similarly, in the case titled "**Mir Muhammad alias Miro vs. The State**" reported as **2007 SCMR 1413**, it has been observed by the Apex Court that normally penalty for an act of commission of Qatl-i-Amd provided under the law is death, but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence,

because no hard and fast rule can be applied in each and every case. In view of the above discussion and for mitigating circumstances as highlighted in the preceding Paras of this judgment, the sentence of appellant awarded to him under section 302(b) PPC is reduced from that of death to the imprisonment for life.

16. In view of the above discussions and expositions of law on the subject, this court while maintaining the conviction of the appellant recorded by learned trial court vide its order and judgment dated 12.08.2022, however, his sentence of death recorded under section 302(b) PPC as ta'zir is converted and altered to imprisonment for life under section 302(b) PPC as ta'zir, whereas rest of the convictions and sentences awarded to the appellant under section 324 PPC as well as under section 337-D PPC, by the learned trial court through the aforesaid order and judgment are maintained. The compensation amount of Rs.500,000/- awarded by the learned trial court under section 544-A Cr.PC shall also remain intact. All the sentences shall run concurrently to



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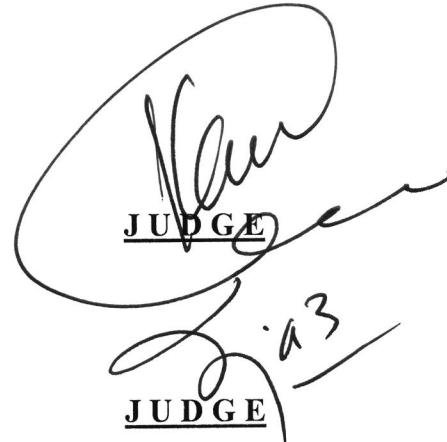
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each other and the benefit of section 382-B Cr.PC shall also be extended to him. With the aforesaid modification, the appeal in hand is partially allowed, while the Murder Reference No.5-A/2022 sent by the learned trial court for confirmation of death sentence is answered in negative.

The above are the detailed reasons of the short order of even date.

ANNOUNCED.
10.10.2023.

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A handwritten signature in black ink, appearing to read "Kamran Hayat Miankhel". Below the signature, the word "JUDGE" is written twice in capital letters, once above and once below a horizontal line, with the number "13" written next to the second "JUDGE".

(OPENING SHEET FOR MURDER REFERENCE)

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
(JUDICIAL DEPARTMENT)**

MURDER REFERENCE NO. 05-A/2022

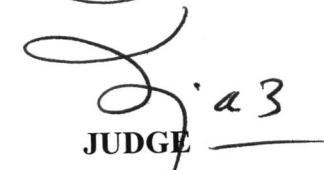
Referred by the learned Additional Sessions Judge, Haripur at Ghazi in terms of Section 374 Cr.PC (Act-V of 1898) for confirmation of death sentence passed on Meesam Abbas S/o Abbas Khan, Caste Tahirkheli, R/o Pahai, Tehsil Ghazi, District Haripur, presently confined in Central Prison, Haripur in Sessions Case No.46/7 by the order of learned Additional Sessions Judge, Haripur at Ghazi dated 12.08.2022 in case FIR No.359, dated 09.09.2019, u/s 302/324/337-D PPC, Police Station Ghazi, District Haripur for committing murder of Nayyer Zaman S/o Ahmad Zaman.

The learned trial court found the accused Meesam Abbas S/o Abbas Khan, Caste Tahirkheli, R/o Pahai, Tehsil Ghazi, District Haripur, presently confined in Central Prison, Haripur charge of murder and sentenced him to death subject to the confirmation by the Peshawar High Court for which the proceedings have now been forwarded.

ORDER OF THE COURT: -

The sentence of death is answered in Negative.


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