

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(A.P.R.)

**JAIL PETITION NO. 496 OF 2019**

(On appeal against the judgment dated 27.04.2018  
passed by the High Court of Sindh, Karachi in Cr. Jail  
Appeal No. 52/2015)

Muhammad Usama

... Petitioner

**VERSUS**

The State

... Respondent

For the Petitioner: Mr. Anis Muhammad Shehzad, ASC

For the State: Mr. Zafar Ahmed Khan, Addl. P.G. *sindh*

For the Complainant: Mr. Haider Zaman, in person

Date of Hearing: 20.10.2022

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Petitioner was tried by the learned Sessions Judge, Malir, Karachi, pursuant to a case registered vide FIR No. 699/2012 under Section 302 PPC at Police Station Shah Latif Town for committing murder of Noman Khan, brother of the complainant. The learned Trial Court vide its judgment dated 10.02.2015 convicted the petitioner under Section 302(b) PPC and sentenced him to imprisonment for life. Petitioner was also directed to pay compensation amounting to Rs.50,000/- to the legal heirs of the deceased or in default thereof to further undergo six months SI. Benefit of Section 382-B Cr.P.C. was also extended to him. In appeal, the learned High Court maintained the conviction and sentence recorded by the learned Trial Court.

2. The prosecution story as given in the impugned judgment reads as under:-

"2. Precisely the facts of the prosecution case as disclosed by complainant, Qamar Zaman Khan in the FIR are that his younger brother namely Noman Khan aged about 18 years, who was a

student of Intermediate Part-II, and after college time he used to come to his shop situated at Total Petrol Pump, near Chokandi Graveyard. On 03.12.2012, the complainant was present at his shop where on telephone Nasir Khan informed him that one Osama, resident of Green Park City, has inflicted Motorcycle's wire lock injury to his brother near milk shop and his brother was taken to Jinnah Hospital. On receiving such information the complainant alongwith other relatives reached at Jinnah Hospital, where he found dead body of his brother Noman Khan in mortuary. On inquiry, Nasir Khan disclosed that at about 02.15 p.m. he and deceased Noman Khan were coming from Green Park City and upon reaching the gate No. 2 near Milk shop, Osama/appellant inflicted motorcycle's wire lock blow to the head of Noman Khan/deceased and fled away. Accordingly, statement of complainant under Section 154 Cr.P.C. was recorded by ASI Raza Mohammad of Police Post Khudabad of Police Station Shah Latif Town, Karachi at Jinnah Hospital on the basis whereof FIR was registered.

3. After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced as many as seven witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. He also examined himself on oath under Section 340(2) Cr.P.C. However, he did not produce any evidence in his defence.

4. At the very outset, learned counsel for the petitioner submitted that he does not challenge the conviction of the petitioner. However, he submitted that the petitioner was 14 years of age at the time of commission of offence and there was no previous enmity, premeditation or preparation for commission of murder. Contends that the weapon allegedly used was not conventional rather it was picked up from the nearby place and the occurrence took place at the spur of the moment on account of trivial altercation, therefore, the petitioner deserves leniency in the sentence awarded to him.

5. On the other hand, learned Law Officer defended the impugned judgment. He contended that the petitioner was specifically nominated in the crime report with a specific role of taking life of brother of the complainant. Contends that the ocular account has been proved beyond shadow of doubt and the medical evidence supports the same. However, he

did not dispute the use of non-conventional weapon and the age of the petitioner at the time of occurrence. Lastly contends that the prosecution has proved its case through cogent and confidence inspiring evidence, therefore, the petitioner does not deserve any leniency by this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on record.

In order to prove its case, the prosecution has mainly relied upon the statements of Muhammad Imran (PW-2) and Muhammad Nasir (PW-3), who were the eye-witnesses of the occurrence. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be produced on record. These PWs remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. The medical evidence available on the record is in line with the ocular account so far as the nature, locale, time and impact of the injury on the person of the deceased is concerned. These witnesses have specifically explained their presence at the spot. No material contradiction in the statements of the PWs, which could shatter the case of the prosecution, could also be brought on record. On account of lapse of memory owing to the intervening period, some minor discrepancies are inevitable and they may occur naturally but the accused cannot claim benefit of such minor discrepancies. The eye-witnesses have given details of the occurrence in a natural manner, which prove that they have witnessed the occurrence. In these circumstances, it can safely be said that the prosecution has brought on record reliable evidence to sustain the conviction of the petitioner. The only question which requires determination by this Court is that in the given circumstances whether the conviction and sentence recorded by both the courts below commensurate with the act of the petitioner. We have noted certain material aspects of the case, which clearly reflect that the petitioner was minor at the time of occurrence; the occurrence has taken place at the spur of the moment and without any

preparation or premeditation; the weapon used by the petitioner is ordinarily attached to the motorcycle/cycle for safety and the same without any stretch of imagination cannot be termed as a weapon for committing such like crimes. All these aspects when read conjointly with the statement of the petitioner under Section 340(2) Cr.P.C., it further strengthens the view of this Court that the occurrence has taken place without premeditation and possibility cannot be ruled out that the same was result of some trivial altercation/use of filthy language as stated by the petitioner. These aspects when adjudicated, there is no second cavil to this proposition that the petitioner has made out a case, which squarely attracts the provision of Section 302(c) PPC. During the course of proceedings, it was argued by the learned defence counsel that the petitioner was aged about 14 years at the time of occurrence, which has not been rebutted by the learned Law Officer. Keeping in view the nature of the occurrence as stated above, we are of the view that the sentence of imprisonment for life would be too harsh for the petitioner. Consequently, we convict the petitioner under Section 302(c) PPC and sentence him to the period, which he has already undergone. The amount of fine and the sentence in default whereof shall remain intact.

7. For what has been discussed above, this petition is converted into appeal, partly allowed and the impugned judgment is modified as stated in the preceding paragraph.

Islamabad, the  
20<sup>th</sup> of October, 2022  
Approved For Reporting  
Khurram