

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Jamal Khan Mandokhail
Justice Syed Hasan Azhar Rizvi
Justice Naeem Akhtar Afghan

CRIMINAL PETITION NO.668 OF 2019

(On appeal against the judgment dated 30.04.2019 passed by the High Court of Sindh, Larkana Bench, in Crl. Jail Appeal No.D-35/2018)

Khalid	Petitioner(s)
Versus			
The State thr. PG Sindh	Respondent(s)

For the petitioner	:	Mr. Shahab Sarki, ASC
For the State	:	Mr. Saleem Akhtar Buriro, Addl. PG Sindh
For the complainant	:	Mr. Inayatullah Morio, ASC Ms. Perveen Chachar, ASC Syed Rifaqat Hussain Shah, AOR
Date of hearing	:	21.05.2024

JUDGMENT

Naeem Akhtar Afghan, J. The petitioner and co-accused Muhammad Siddique were convicted under section 302(b) of the Pakistan Penal Code (**PPC**) by the learned Sessions Judge Larkana (**the Trial Court**) vide judgment dated 31.05.2018 in FIR No.87/2008 registered on 24.06.2008 at Police Station (**PS**) Hyderi, District Larkana for committing murder of Abdul Basit by firing. The petitioner was awarded death penalty, he was made liable to pay compensation of Rs.1,00,000/- to the legal heirs of the deceased in terms of section 544-A of the Code of Criminal Procedure (**Cr.P.C.**) and in case of default of payment of compensation, the same was ordered to be recovered as arrears of land revenue. The co-accused Muhammad Siddique was awarded sentence of imprisonment for life as Tazir, he was made liable to pay Rs.1,00,000/- as compensation under section 544-A Cr.P.C. and in default of payment of compensation to further undergo imprisonment for six months with benefit of section 382-B Cr.P.C.

2. The petitioner and co-convict Muhammad Siddique preferred Jail Appeals before the High Court of Sindh, Circuit Court Larkana (**the Appellate Court**). The Jail Appeal filed by the petitioner was dismissed while the Jail Appeal filed by the co-convict Muhammad Siddique was accepted by the Appellate Court and he was acquitted of the charge vide common judgment dated 24.04.2019.

Feeling aggrieved of the conviction and sentence awarded by the Trial Court and maintained by the Appellate Court, the petitioner has filed instant Criminal Petition for Leave to Appeal.

3. After hearing learned counsel for the petitioner and learned APG we have perused the record. According to the case of prosecution, Abdul Qadir (Complainant) alongwith his cousin Abdul Basit (deceased), nephews Habib-Ullah and Ali Ahmed were going by foot towards *Gajjanpur Chowk* from their house situated in *Kausar Mill Mohallah*; when they reached near Floor Mill of Abdul Aziz Jarwar near *Daya Chowk Kausar Mill Larkana*, at about 7:30 pm, the petitioner armed with pistol, Muhammad Siddique (acquitted accused) and one un-identified accused armed with pistol came from *Brohi Street*; accused Muhammad Siddique made *Lalkara* and instigated the petitioner and the un-identified person to kill Abdul Basit; Abdul Basit tried to run but he was fired upon by the petitioner from a distance of two or three paces; Abdul Basit fell on the ground; the un-identified accused also fired upon Abdul Basit; all the accused fled; fearing for their life, they did not chase the accused; Abdul Basit was taken to hospital being injured and unconscious; he succumbed to the injuries in the hospital at about 8:30 pm.

The motive for the occurrence was stated to be a property dispute between acquitted accused Muhammad Siddique and his brother Muhammad Ishaq with deceased Abdul Basit and matrimonial relations established by Muhammad Ishaq with Sher Muhammad (brother of deceased Abdul Basit) which annoyed the acquitted accused Muhammad Siddique and others.

4. While appearing at the trial as PW-2, the complainant Abdul Qadir being an eye witness of the occurrence, has incriminated the petitioner with role of firing upon the deceased. While appearing at the trial as PW-3 the

eye witness Habibullah has fully supported the prosecution case by attributing role of firing upon the deceased to the petitioner.

5. The unshaken testimony of PW-2 and PW-3, being eye witnesses of the occurrence and close relatives of the deceased is fully supported/corroborated by the medico legal evidence, recovery of four crime empties of .30 bore and blood stains from the place of occurrence, blood stained clothes of the deceased, report of the chemical expert, recovery of crime weapon (.30 bore pistol) from the house of the petitioner on his pointation and positive report of the firearm expert.

6. Record does not reveal of any animus of PW-2 and PW-3 for false implication of the petitioner.

In absence of any ulterior motive/animus for false implication of an accused, the confidence inspiring testimony of an eye witness, whose presence with the deceased at the time and place of occurrence is established, cannot be discarded merely due to his relationship with the deceased. Reference in this regard is made to the cases of '**Aman Ullah v. the State**'¹ and '**Imran Mehmood v. the State**'².

7. Record transpires that the occurrence had taken place at 7:30 pm. on 24.06.2008. PW-2 Abdul Qadir alongwith PW-3 Habibullah and Ali Ahmed (not produced at the trial due to his death in a road accident) immediately shifted the deceased to the hospital whereafter PW-2 went to the Police Station at about 9:00 pm. for getting the FIR registered. There is no inordinate or unexplained delay in lodging the FIR.

8. On re-appraisal of the evidence available on record, it is concluded that the prosecution has proved the charge against the petitioner beyond reasonable doubt by producing eye witnesses of the occurrence whose testimony is fully supported/corroborated by the circumstantial evidence.

9. For determining the quantum of sentence each case has to be decided on its own merits. In the instant case, though the motive of the occurrence is alleged to be the previous enmity due to land dispute as well as matrimonial relations established by Muhammad Ishaq (brother of

¹ 2023 SCMR 723

² 2023 SCMR 795

acquitted accused Muhammad Siddique) with Sher Muhammad (brother of deceased Abdul Basit) but the prosecution has failed to prove the same.

10. According to the settled principles, non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance for reducing the quantum of sentence awarded to an accused. Reference in this regard is made to the cases of '**Zeeshan Afzal alias Shani v. the State**'³, '**Amjad Shah v. the State**'⁴ and '**Muhammad Yasin v. the State**'⁵.

11. The petitioner is in custody since 05.07.2008. He has been in the death cell for 16 years awaiting the fate of his juridical remedies. The inordinate delay in disposal of case is not attributable to the petitioner as the trial proceedings were twice remanded by the Appellate Court to the Trial Court; firstly, due to defective charge and non-examining the 2nd investigating officer and secondly, due to defective 342 Cr.P.C. statement of the petitioner.

In the cases of '**Hassan v. the State**'⁶ and '**Sikandar Hayat v. the State**'⁷ it has been laid down by this Court that in a case where a convict sentenced to death undergoes period of custody equal to or more than a full term of imprisonment for life during the pendency of his judicial remedy against his conviction and sentence of death, the principle of '*expectancy of life*' may be considered as a relevant factor alongwith other circumstances for reducing his sentence of death to imprisonment for life.

Due to all the above reasons the instant petition was converted into appeal and the same was partly allowed by us vide short order dated 21.05.2024 which reads as follows:

"For the reasons to be recorded later, the petition is converted into an appeal and is partly allowed. The conviction awarded to the appellant under section 302(b), PPC is maintained, however his sentence of death is converted into imprisonment for life on the basis of the mitigating circumstances. The compensation amount to be paid to the legal heirs of the deceased is enhanced from Rs.1,00,000/- to Rs.5,00,000/-. In case the amount of

³ 2013 SCMR 1602

⁴ PLD 2017 SC 152

⁵ 2024 SCMR 128

⁶ PLD 2013 SC 793

⁷ PLD 2020 SC 559

compensation is not paid, the petitioner shall further undergo 6 months SI. The benefit of section 382-B, Cr.PC is extended.”

Judge

Judge

Judge

Islamabad:
05.06.2024

(M. Saeed/Zohaib Afzal, LC

APPROVED FOR REPORTING.