

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

Jail Petition No. 269 of 2017

(On appeal against the judgment dated 20.03.2017
of the Lahore High Court, Rawalpindi Bench passed
in Crl.A. No. 28-J/2014 and M.R. No. 37/2014)

Liaqat Hussain

...Petitioner

Versus

The state

...Respondent

For the petitioner:

Agha Muhammad Ali, ASC

For the state:

Mr. Irfan Zia, APG., Punjab

Date of Hearing:

22.05.2024

J U D G M E N T

NAEEM AKHTAR AFGHAN, J. On the charge of committing murder of his nephew Hassan Jaleel, his sister Taj Begum (mother of deceased Hassan Jaleel) and causing fire arm injuries to Mussarat Shaheen (wife of deceased Hassan Jaleel), *vide* judgment dated 24 May 2014 the petitioner Liaqat Hussain (**the Convict**) was awarded conviction and sentence as follows by the learned Additional Sessions Judge, Jand (Attock) (**‘the Trial Court’**) in FIR No.39 of 2013 lodged on 2 September 2013 with Police Station (**PS**) Injra by the complainant Naimat Khan (**PW.10**) u/s 302, 324 PPC.

*“Accused Liaqat Hussain is convicted under section 302 (b) PPC and sentenced to **DEATH** on the first count for the murder of deceased Hassan Jaleel subject to confirmation of the above said sentence by the Honorable Lahore High Court. He shall be hanged by his neck till the death prevails upon him. He shall pay **Rs.5,00,000/- (rupees five lacs)** as compensation to the legal heirs of the deceased Hassan Jaleel u/s 544-A Cr.P.C. In case of default in payment of said compensation convict shall have to undergo **SIX MONTHS SI**’. Accused Liaqat Hussain is convicted under section 302 (b) PPC and sentenced to **DEATH** on the second count for the murder of deceased Taj Begum subject to confirmation of the above said sentence by the Honourable Lahore High Court. He shall be hanged by his neck till the death prevails upon him. He shall pay **Rs.5,00,000/- (rupees five lacs)** as compensation to the legal heirs of the deceased Taj Begum u/s 544-A Cr.P.C. In case of default in payment of said compensation convict shall have to undergo **SIX MONTHS SI**’. Accused is convicted under section 324 PPC for commission of attempt to commit Qatl-e-Amd of Mussarat Shaheen and awarded sentence of 10 years R.I. and to pay fine of Rs.10000/- and in default of payment of fine to further undergo one month S.I. He is convicted under section 337Fiii PPC for causing injury to Mussarat Shaheen PW and sentenced to 03 years R.I. and to pay Daman of Rs.30000/- and in default of payment of Daman he will be confined as simple imprisonment till payment of Daman. He is convicted under section 337D PPC for causing “Jurh Jaifa” to Mussarat Shaheen and awarded sentence of 05 years R.I. and to pay Arsh of Rs.844025/- i.e. 1/3 of the Diyat for the year 2012-13 and in default of payment of Arsh he will be confined as simple imprisonment till payment of Arsh.*

Sentence awarded to convict Liaqat Hussain shall not be implemented unless confirmed by the Hon'ble High Court."

2. The Convict challenged his conviction and sentence before Rawalpindi Bench of Lahore High Court ('**the Appellate Court**') by filing Criminal Appeal No.28-J of 2014 while Murder Reference No.37 of 2014 was forwarded by the Trial Court to the Appellate Court. Both the matters were decided by the Appellate Court *vide* impugned common judgment dated 20 March 2017 whereby while answering Murder Reference No. 37 of 2014 in affirmative, the Criminal Appeal No. 28-J of 2014 filed by the Convict was dismissed with the order that the sentences of the Convict u/s 324, 337-F(iii)/337-D PPC shall run concurrently with benefit of Section 382-B Cr.P.C.

3. The Convict has challenged his conviction and sentence by filing the instant Jail Petition No.269 of 2017. On 27 September 2023 the complainant appearing in person stated that he is not in a position to engage a lawyer and further stated that the legal heirs of both the deceased have pardoned the Convict and they are not interested to further pursue the matter.

On the above date, learned counsel for the petitioner and the learned Deputy Prosecutor General were directed to assist the complainant with regard to the procedure for entering into compromise and submission of application for acceptance of compromise but on the subsequent dates no compromise documents were submitted by the complainant.

4. After hearing learned counsel for the petitioner and learned Additional Prosecutor General, Punjab we have perused the available record. It is the case of the prosecution that on 2 September 2013 at about 9 pm when PW.10 alongwith his relatives Hafeezullah Khan (PW.12) and Mohsin Ali Khan (not produced at the trial) were sitting in his house, they heard noise from the house of deceased Hassan Jaleel. They rushed and on reaching the house of deceased Hassan Jaleel they saw the convict armed with .30 bore pistol present in the courtyard of deceased Hassan Jaleel. The Convict was having altercation with deceased Hassan Jaleel and Taj Begum as to why they had tethered their cattle and built *gutter* on his land. The Convict warned PWs not to come forward. In the meanwhile, the Convict fired with .30 bore pistol upon deceased Hassan Jaleel which hit on his back. When his wife Mussarat Shaheen came forward to rescue her husband the Convict fired upon her arm and abdomen. When deceased Taj Begum tried to run away, the Convict fired upon her and she received firearm injury on her back. After receiving firearm injuries, both the deceased and the injured fell on the ground while the convict fled from the spot.

5. FIR of the occurrence was promptly lodged by PW.10 who is relative of the deceased, injured as well as the convict. Record does not reveal of any motive on the part of PW.10 and PW.12, being eye witnesses of the occurrence to falsely implicate the convict.

6. The unshaken and confidence inspiring testimony of eye witnesses i.e. PW.10, PW.12 and unshaken testimony of injured witness Mussarat Shaheen (PW.11) duly corroborated by the medico legal evidence, recovery of crime empties from the place of occurrence, blood stained clothes of the deceased and injured, blood stains collected from the place of occurrence, reports of the chemical expert/serologist, recovery of crime weapon on the pointation of the convict supported by positive report of the firearm expert of the Punjab Forensic Science Agency proves the charge against the convict beyond reasonable doubt.

7. In order to determine the quantum of sentence each case has to be judged upon its own facts and circumstances. According to settled principles of law, a single mitigating circumstance, available in the particular case, would be sufficient to put a Judge on guard for not awarding the penalty of death but imprisonment for life.

8. In the instant case though the complainant and legal heirs of the deceased have not filed compromise documents but the complainant has made statement before this Court on 27 February 2023 that the legal heirs of both the deceased have pardoned the convict and they are not interested to further pursue the matter.

9. The above circumstance coupled with motive of the occurrence and altercation of the convict with the deceased prior to the occurrence are considered as mitigating circumstances to reduce the sentence of death of the convict u/s 302(b) PPC as Ta'zir to imprisonment for life.

For the above reasons drawn today, the Jail Petition of 269 of 2017 was converted into appeal and same was partly allowed by us *vide* short order dated 22 May 2024 in the terms which read as follows:

"For reasons to be recorded later, this petition is converted into an appeal and is partly allowed. The conviction awarded to the petitioner under section 302(b) of the Pakistan Penal Code, 1860 ('PPC') is maintained, however his sentence of death on two counts is converted to that of imprisonment for life. The compensation of Rs.500,000/- each awarded to the appellant on two counts is maintained. In default thereof, to further undergo six months S.I. on each count. Similarly, the conviction and sentence awarded to the appellant under sections 324, 337-F(iii) and 337-D PPC along with fine etc. are also maintained. Benefit of section 382-B, Code of Criminal Procedure, 1898 awarded to the appellant is maintained. All the sentences are directed to run concurrently.

Judge

Judge

Judge

Islamabad

24.05.2024

Atif/Zohaib⁺

NOT APPROVED FOR REPORTING