

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, Chairman  
Justice Naeem Akhtar Afghan  
Justice Shahid Bilal Hassan  
Dr. Muhammad Khalid Masud  
Dr. Qibla Ayaz

**Criminal Shariat Appeal No. 05 of 2018**

(Against the judgment dated 07.03.2017 of the Federal Shariat Court passed in  
Crl. A. No. 15-I & M.R. No. 02-I of 2016 a/w. Crl. A. No. 60-I of 2009)

Shameem Khan

Appellant

*Versus*

The State

Respondent

For the Appellant:

Mr. Rizwan Ejaz, ASC

For the State:

Mr. Noroz Khan, Addl.A.G., KPK

Date of Hearing:

08.08.2024

**J U D G M E N T**

**Naeem Akhtar Afghan, Member.** As per version of FIR No.216/07 registered with Police Station Ghazi, District Haripur on 10 August 2007 u/s 17(4) of Offences against Property (Enforcement of Hudood) Ordinance, 1979/section 13 Arms Ordinance (**A.O.**)/411 PPC by ASI *Shabbir Hussain Shah* the Appellant alongwith co-convict *Muhammad Afzal* tried to snatch Suzuki Carry Van from its driver *Liaqat Ali* in the area of *Khaprooch* but due to resistance, the driver was fired upon and killed. The accused fled from the place of occurrence. The people of locality and police chased and apprehended both the accused in the area of *Khajooria*. At the time of their arrest, the appellant was holding a .30 bore pistol in his hand.

2. The police recovered one crime empty from the place of occurrence. After preparing inquest report, postmortem of the deceased was conducted. Statements of the witnesses were recorded. The recovered pistol alongwith one crime empty were sent to the firearm expert for analysis on 13 August 2007. Positive report of the firearm expert dated 23 August 2007 was received. During investigation, on the disclosure and pointation of accused *Afzal*, Rs.300/- and mobile phone (without cover, battery and sim) were recovered from bunch of trees on the hill. Confessional statement of the appellant u/s 164 Cr.P.C. was recorded. On completion of investigation, final report/*challan* was submitted.

3. On conclusion of trial, *vide* judgment dated 31 March 2009, the appellant was awarded conviction u/s 302 (b) PPC and sentenced to death, to pay compensation of Rs.100,000/- to legal heirs of deceased recoverable as arrears of land revenue and in default thereof to suffer simple imprisonment (**S.I.**) for six months. The appellant was also convicted u/s 392 PPC and sentenced to ten years Rigorous Imprisonment (**R.I.**), to pay fine of Rs.25,000/- and in default thereof to further undergo one year S.I. The appellant was also convicted u/s 13 of A.O. and

was sentenced to suffer two years R.I. with fine of Rs.5,000/- and in default thereof to undergo six months S.I.

The Trial Court also convicted the co-accused *Afzal* u/s 302(b)/34 PPC and sentenced him to S.I. for life, to pay compensation of Rs.100,000/- to legal heirs of deceased recoverable as arrears of land revenue and in default thereof to suffer six months S.I. The co-accused *Afzal* was also convicted u/s 392 PPC and sentenced to suffer ten years R.I. with fine of Rs.25,000/- and in default thereof to further suffer one year S.I. with benefit of section 382-B Cr.P.C. Both the sentences of co-convict *Afzal* were ordered to run concurrently.

4. The appellant and co-convict *Afzal* challenged their conviction and sentence by filing appeals before Federal Shariat Court. Trial Court also forwarded Murder Reference No.02/I of 2016 for confirmation or otherwise of the death sentence of the appellant.

5. While answering Murder Reference No.02/I of 2016 in affirmative, the appeals filed by the appellant and co-convict were dismissed by the Federal Shariat Court *vide* common judgment dated 7 March 2017.

The appellant challenged his conviction and sentence by filing Jail Shariat Petition No.01(S) of 2018. The appellant was granted leave to appeal *vide* order dated 25 September 2018 to reappraise the entire evidence available on record for safe administration of criminal justice.

6. At the very outset, learned counsel for the appellant stated that he is not pressing the instant appeal for acquittal of the appellant and is pressing the same to reduce the death sentence of the appellant to imprisonment for life u/s 302(b) PPC and to make all the sentences of the appellant to run concurrently with benefit of section 382-B Cr.P.C. on the grounds that co-convict *Afzal* had abetted the appellant for committing the offence, he had shared common intention with the appellant in commission of the offence and being vicariously liable for the same, he has been awarded lesser sentence of life imprisonment u/s 302 (b) PPC, the confessional statement of the appellant is not corroborated by the medico legal evidence, the medico legal evidence is also lacking corroboration due to recovery of one crime empty.

7. Learned Additional Advocate General, Khyber Pakhtunkhwa strongly opposed the reduction of the sentence of the appellant from death to imprisonment for life u/s 302 (b) PPC on the grounds that the case of co-convict *Afzal* is distinguishable as vital shot was fired upon the deceased by the appellant, the appellant was caught with pistol, the crime empty recovered from the place of occurrence was found matching with the pistol by the firearm expert, the appellant has confessed his guilt in his confessional statement recorded u/s 164 Cr.P.C. which is corroborated by circumstantial evidence.

8. After hearing learned counsel for the appellant and the learned Additional Advocate General, KPK, we have perused the available record which reveals that the

co-convict Afzal had abetted the appellant for committing the offence, the Suzuki Carry Van was hired/booked by the co-convict *Afzal* from *Pinnian* and the appellant was picked on the way near *Kharooch* barrier. The co-convict *Afzal* made search of the driver and he snatched Rs.300/- and one Nokea mobile from the driver. He demanded more money from the driver but the driver had no cash. When they tried to snatch the Suzuki Carry Van, the driver stopped the vehicle near a populated area. Due to apprehension of their arrest, the appellant made a fire upon the driver and they both started running towards hills but the people and police chased and they were apprehended.

9. According to the confessional statement of the appellant recorded u/s 164 Cr.P.C., he fired once upon the deceased and only one crime empty was recovered from the place of occurrence, which was from within the said vehicle, therefore, if he had repeated the fire such empty would also have been found. There are precedents of the Supreme Court that firing only once from a firearm is a mitigating factor attracting the alternate sentence of imprisonment for life. Moreover in his confessional statement the appellant had stated that co-convict Afzal persuaded and abetted the appellant for commission of the offence and had fully participated in the crime with the appellant. It is settled law that either a confessional statement is accepted in its entirety or discarded, therefore, if it contains something beneficial to the appellant that cannot be discarded. Having shared common intention with the appellant, the co-convict Afzal was vicariously liable for the offence, however he has been awarded the lesser sentence of imprisonment for life u/s 302(b) PPC while the appellant has been awarded death sentence.

10. Considering all the above as mitigating circumstances, while maintaining the conviction of the appellant under section 302(b) PPC, his sentence of death is reduced to imprisonment for life. The amount of compensation to be paid to the legal heirs of the deceased and the period to undergo in default thereof is maintained. The conviction and sentence of the appellant under section 392 PPC and 13 A.O. are also maintained. All sentences to run concurrently and benefit of section 382-B Cr.P.C. is extended to the appellant.

The appeal is partly allowed in the above terms.

Chairman

Member

Member

Member

Member