

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Salahuddin Panhwar
Justice Ishtiaq Ibrahim

Criminal Misc. Application No. 714/2023 in
Jail Petition No. 235/2021 and

Jail Petition No. 235/2021

(On appeal against the judgment dated 07.06.2021
passed by the Lahore High Court, Lahore in
Crl. A. No. 86478-J.2017 and M. R. No. 545/2017)

Tanvir Hussain

Petitioner(s)

Versus

The State

Respondent(s)

For the Petitioner(s):

Nemo

For the State:

Mr. Irfan Zia, Addl. PG

For the Complainant:

Nemo

Date of Hearing:

20.02.2025

ORDER

Muhammad Hashim Khan Kakar, J. The petitioner/convict, Tanvir Hussain, was booked in case FIR No. 260 dated 21.07.2015, registered under section 302 of the Pakistan Penal Code (P.P.C) at Police Station Saddar Lalamusa, District Gujrat for the murder of Muhammad Younas by means of causing firearm injuries. After investigation and a regular trial, the petitioner was convicted under section 302(b) PPC and sentenced to death as Tazir and further to pay a compensation of Rs.300,000/- (three hundred thousand rupees) under section 544-A of the Code of Criminal Procedure (Cr.P.C) to the legal heirs of the deceased and in default thereof to further suffer six-months S.I. The conviction of the petitioner was also maintained in appeal by the Lahore High Court, Lahore vide its judgment dated 07.06.2021, however, his sentence of death was modified to life imprisonment and benefit under section 382-B Cr.P.C was also extended to him. Compensation under section 544-A Cr.P.C and sentence in default thereof was ordered to be maintained. The

petitioner through instant petition has sought grant of leave to appeal by this court against the impugned judgment.

2. The facts of the case have been stated by Muhammad Bashir complainant (PW-1) in his statement before the learned trial court, which are hereby reproduced for narration of the facts:

“Brief facts of the case in order to dispose of this criminal case are that PW.1 Muhammad Bashir complainant recorded his Fard Biyan Exh.PA before police at RHC Lalamusa mentioning therein that on 21.07.2015 at about 5.00 PM complainant alongwith real brother Muhammad Younas deceased, brother Khurshid Ul Hassan Pw (since given up) and Muhammad Shabir real son of complainant (Pw-2) were sitting in the courtyard of complainant’s house and were busy in talking, in the meanwhile one Tanvir Hussain son of Nazir Ahmad who is nephew in relation with complainant, came there and started quarrel with Muhammad Younas deceased by asking him that he has suffered heavy loss due to you. We want to ask him that what the loss is caused by Muhammad Younas deceased to him but in the meanwhile accused Tanvir Hussain pulled out his pistol from the Naifa of his Shalwar and made straight firing upon Muhammad Younas which landed on his chest and his arm and he fell down on the ground due to fire shots. They tried to apprehend the accused but he also made fire upon them but luckily they remained saved. They raised hue and cry upon it accused Tanvir Hussain decamped from the scene. Motive behind the occurrence was domestic dispute between deceased and accused Tanvir Hussain. He alongwith Pws witnessed the occurrence. Then they brought Muhammad Younas injured to RHC Lalamusa but he succumbed to the injuries in the way and died. Then complainant recorded his Fard Biyan EX.PA to police upon which formal FIR EX.PG was chalked out.”

3. We have heard the learned Additional Prosecutor General appearing for the State and also perused the available record with his assistance, which reveals that the occurrence in this case took place on 21.07.2015 at 5:00 p.m and the matter was reported to the police at 6:30 p.m within a period of one and a half hour which shows that FIR was registered with promptitude without consultation and deliberation whereby the petitioner has been nominated with specific role of causing firearm injuries to deceased as a sole perpetrator. The ocular account has been furnished by Muhammad Bashir complainant (PW-1) and Muhammad Shabbir (PW-2), whose presence at the time and place of occurrence cannot be doubted in any manner. They remained consistent on each and every material point. The minor contradictions and discrepancies are not helpful to the defence because with the passage of time such discrepancies are bound to occur. The parties are known to each other and the occurrence took place in broad daylight, so there was no chance of mistaken identity or substitution. Similarly, the medical

evidence furnished by Dr. Pervaiz Akhter (PW-11) fully supports the ocular account.

4. The Trial Court and the High Court after proper appraisal of the evidence have recorded conviction of the petitioner. We have also gone through the entire evidence and the material available on the record with the assistance of the special prosecutor and found nothing to interfere with the conviction recorded by the courts below. Since the motive alleged by the prosecution was not proved, so the benefit to that extent i.e., conversion of death sentence to life imprisonment, has already been extended to the petitioner in his appeal before the High Court.

5. It is worth mentioning that during pendency of the instant petition, Crl.M.A. No.714/2023 accompanied by a compromise deed was submitted and the same was sent to the learned District and Sessions Judge, Gujrat with direction to verify the list of legal heirs of deceased Muhammad Younas and record the statements of major heirs and submit a report regarding genuineness and completion of the stated compromise between the parties. The learned District and Sessions Judge was also directed to confirm as to whether the deceased was survived by any minor heir/s or not and if so whether the interests of minor/s heirs have been secured and safeguarded or not. The learned District and Sessions Judge submitted his report, the relevant part whereof reads as under:

"The other legal heir Muhammad Amir is minor son of Muhammad Younus deceased. Learned Advocate appeared on behalf of Tanvir Hussain convict on 07.07.2023, 21.07.2023, 31.07.2023, 05.08.2023, 30.08.2023 and sought adjournment and time to manage the "Diyat" amount to safeguard the interest of minor namely Muhammad Amir and needful has not been done till date i.e. 02.10.2023. Mr. Aurangzeb Marl Advocate entered appearance on behalf of convict Tanvir Hussain today i.e. 02.10.2023 and contended that "Diyat" amount falling in share of Muhammad Amir minor son of Muhammad Younas could not be arranged due to poor financial condition of the convict. Interim reports were already submitted on 07.07.2023, 31.07.2023 and 21.09.2023.

4. In view of above mentioned prevailing circumstances, compromise between Tanvir Hussain convict and legal heirs of Muhammad Younas deceased is incomplete."

6. It would be relevant to mention here that it is now well settled that the share of minor legal heirs in Diyat shall remain protected under all

circumstances, regardless of whether a compromise has been reached by all legal heirs of the deceased in view of the dictum laid down by this court in the cases 2003 SCMR 658, 2011 SCMR 1964 and PLD 2012 SC 769.

7. So far as the issue of inability of convict to pay the amount of Diyat due to weak financial resources is concerned, in the case of *Government of Punjab v. Abid Hussain* (PLD 2007 SC 315) this Court issued directions to the Federal Government to frame rules on this matter. Consequently, the Rules i.e. Diyat, Arsh and Daman Fund Rules, 2007, were framed by the Federal Government under the mandate of section 338-G PPC. These rules provide four types of remedies for convicts/inmates unable to pay the amounts of Diyat, Arsh or Daman subject to the terms and conditions specified therein, namely; (i) provisions of Soft Loans, (ii) grant out of the Fund, (iii) release on Parole, and (iv) facilitation for Jobs. In such view of the matter, the petitioner is at liberty to approach the administrative committee constituted under the Rules for the management of the Fund. Similarly, the petitioner can also approach the Trial Court under section 331 PPC for payment of Diyat amount in installments.

8. For the foregoing reasons and observations, this petition is dismissed.

ISLAMABAD
20.02.2025
(Farrukh)

Announced in open Court at Islamabad on 20.2.2025

Judge

Approved for Reporting