

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

**(AFR)**

**CRIMINAL PETITION NOS. 53-Q & 66-Q OF 2020**

(On appeal against the judgment dated 30.06.2020 passed by the High Court of Balochistan, Quetta in Criminal Appeal No. 437/2017 & Murder Reference No. 11/2017)

Gul Zarin S/O Abdul Hakim etc  
Kamal-ud-Din

(In Cr.P. 53-Q/2020)  
(In Cr.P. 66-Q/2020)

... Petitioners

**Versus**

Kamal-ud-Din and another  
The State

(In Cr.P. 53-Q/2020)  
(In Cr.P. 66-Q/2020)

...Respondent(s)

For the Petitioners: Mr. Kamran Murtaza, Sr. ASC  
(In Cr.P. 53-Q/2020)

Mr. Jameel Ramzan, ASC  
(In Cr.P. 66-Q/3030)

For the State: Syed Pervaiz Bukhari, State counsel

Date of Hearing: 09.03.2022

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Petitioner Kamal-ud-Din was tried by the learned Additional Sessions Judge, Killa Abdullah at Chaman pursuant to a case registered vide FIR No. 68/2003 dated 31.05.2003 under Sections 302/324/337-A/147/148/149 PPC for committing murder of Muhammad Sabir, cousin of the complainant. The learned Trial Court vide its judgment dated 27.12.2017 convicted the petitioner Kamal-ud-Din under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.500,000/- to the legal heirs of the deceased or in default whereof to further suffer SI for six months. In appeal, the learned High Court, while maintaining the conviction of the petitioner under Section 302(b) PPC, altered the sentence of death into imprisonment for life. The amount of compensation and the sentence in default whereof was maintained. Benefit of Section 382-B Cr.P.C. was also extended to him. Against the impugned

judgment, the petitioner Kamal-ud-Din has filed Criminal Petition No. 66-Q/2020 whereas the complainant has filed Criminal Petition No. 53-Q/2020 seeking enhancement of the sentence awarded to the petitioner-convict Kamal-ud-Din.

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

"2. The prosecution case as gleaned from the application submitted by PW-1A Gul Zarin are that on 31<sup>st</sup> May, 2003 at 8:00 pm his three brothers Muhammad Hanfia, Muhammad Aulia, Noor Shah and cousin Muhammad Sabir were on their way home situated at Killi Salahuddin from border and when they reached Boghra Road bypass the accused persons Kamal, Karam, Fateh Khan, Abdul Samad sons of Umai, Dilbar son of Fateh Khan, Abdul Samad, Sher Ali, Muhammad Wali sons of Abdul Qadeer, Shaista Khan, Gaji, Janan sons of Abdul Raheem and four unknown person had blocked the road by parking their vehicles, on which the brother of the complainant namely Hanfia told the accused persons to open the road, whereupon the accused persons became furious and attacked upon his brothers and cousins with Churries, knives and pistols. It was alleged that accused Kamal, Fateh Khan, Karam, Abdul Samad sons of Haji Umai and Dilbar son of Fateh Khan were making firing with pistols. It was alleged that due to firing made by accused Kamal, Muhammad Sabir became seriously injured and succumbed to his injuries on his way to hospital, whereas Muhammad Hanfia, Muhammad Aulia and Noor Shah were injured by knives and churries of accused persons. It was further alleged by the complainant that he can recognize the four accused persons by their appearance. With these allegations FIR No. 68 of 2003 under Sections 302, 324, 337-A, 147, 148, 149 PPC was registered with Levies Thana Chaman, District Killa Abdullah."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced ten witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner-convict pleaded his innocence and refuted all the allegations leveled against him. He also recorded his statement on oath as envisaged under Section 340(2) Cr.P.C and produced one witness Asmatullah in his defence.

4. Learned counsel for the petitioner-convict argued that there are glaring contradictions and dishonest improvements in the statements of the

*prosecution witnesses of the ocular account, which have escaped notice of the courts below. Contends that the prosecution has miserably failed to prove its case against the petitioner beyond reasonable doubt, therefore, there was no justification to convict the petitioner. Contends that when the learned High Court after close scrutiny of the evidence has held that the occurrence took place at the spur of the moment, there was no motive or premeditation on the part of the petitioner, then there was no occasion to maintain his conviction. Contends that on the same set of evidence, co-accused Samad has been acquitted of the charge by the learned Trial Court, therefore, the petitioner also deserves the same treatment to be meted out.*

5. *On the other hand, learned counsel for the complainant assisted by learned Law Officer contended that the impugned judgment to the extent of altering the sentence of death awarded to the petitioner-convict into imprisonment for life is contrary to law and facts and as such is liable to be set aside. Contends that the statements of the witnesses of the ocular account are sufficient to sustain the conviction of the petitioner on the capital charge but the learned High Court reduced the quantum of punishment on shaky and vague grounds, which are not tenable in law.*

6. *We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.*

*In order to prove its case, the prosecution has mainly relied upon the statements of injured witnesses namely Muhammad Hanfia (PW-3), Olia (PW-4), Noor Shah (PW-6) and the statements of Sirajuddin (PW-2) and Nizamuddin (PW-5). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner-convict 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. As far as minor contradictions in the statements of the PWs are concerned, the same are*

natural as admittedly the petitioner remained absconder for a period of 12 long years and the trial begun after his arrest on 24.09.2015. After such a lapse of time, some minor discrepancies may occur but the same are neither dishonest nor are sufficient to discard the testimonies of the PWs of the ocular account. 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. So far as the question that the PWs were closely related to the deceased, therefore, their testimony cannot be believed to sustain conviction of the petitioner-convict is concerned, it is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case but no such thing could be brought on record. All these PWs have reasonably explained their presence at the place of occurrence. Learned counsel for the petitioner-convict could not point out any reason as to why the complainant has falsely involved the petitioner-convict in the present case and let off the real culprit, who has committed murder of his causin. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit and falsely involve the petitioner without any rhyme and reason. The recovery is held to be inconsequential as admittedly the petitioner was arrested after 12 years of the occurrence and it was impossible to retain the crime weapon with him in such a long period of time. The petitioner had also got recorded his statement under Section 340(2) Cr.P.C and produced one defence witness in support of his version that he was not present at the place of occurrence at the relevant time. However, except for the bald statement, no credible evidence in this regard could be brought on record. As far as the argument of learned counsel for the petitioner that on the same set of evidence co-accused Samad who was ascribed the similar role has been acquitted whereas the petitioner has been convicted is concerned, the learned High Court has rightly observed that the case of the petitioner is distinguishable to that of the acquitted co-accused as all the eye-witnesses stated that the bullet, which hit the deceased, was fired by the petitioner whereas only a general role of firing was ascribed to the co-accused Samad. In these circumstances, it can safely be said that the prosecution has brought on

record reliable evidence to sustain the conviction of the petitioner. However, so far as the quantum of punishment is concerned, we are of the view that when the learned High Court itself has observed that the occurrence took place at the spur of the moment over the blockage of passage and there was no pre-meditation on the part of the petitioner; the petitioner only fired single shot and did not repeat the same despite having ample opportunity to do so; no motive has been alleged by the prosecution for the commission of the crime and the recovery of the weapon is inconsequential, the sentence of imprisonment for life was not justified. In this view of the matter, we convict the petitioner Kamal-ud-Din under Section 302(c) PPC and sentence him to fourteen years RI. So far as the argument of the learned counsel for the complainant that it was not a sudden affair and the finding that the petitioner only fired single shot is contrary to record is concerned, despite our repeated queries he could not show us from record anything in support of his contention, which could persuade us to hold otherwise.

7. For what has been discussed above, Criminal Petition No. 66-Q/2020 is converted into appeal and partly allowed and the impugned judgment is modified as stated in the preceding paragraph whereas Criminal Petition No. 53-Q/2020 is dismissed. The above are the detailed reasons of our short order of even date.

Islamabad, the  
9<sup>th</sup> of March, 2022  
Approved For Reporting  
Khurram