JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Jail Appeal No. 460 of 2023

Muhammad Irfan Shah Vs . The State.

AND

Murder Reference No.27 of 2023

Muhammad Irfan Shah Vs . The State

Appellant by : M/s Qausain Faisal Mufti and Qaiser Kamal, Advocates.

Respondents by : Rana Hassan Abbas, ADPP.
Mehboob S.I, P.S Noon, Islamabad.

Date of hearing : 11.03.2025

MUHAMMAD AZAM KHAN, J. The Appellant [Irfan Shah] has been tried by the learned Trial Court in case FIR No. 54, dated 15.03.2020, under Section 302 PPC, P.S. Noon, Islamabad and was convicted and sentenced vide Judgment dated 07.12.2023 as under: -

Irfan Shah (Appellant)

Under Section 302 (b) PPC	Sentenced to death as Tazir for committing Qatl-e-Amad of Umair Sarwar (deceased) with compensation of Rs.500,000/- payable to legal heirs of deceased under Section 544-A Cr.P.C (recoverable as arrears of land revenue) and in default whereof to further undergo simple imprisonment for six months.

2. The Appellant has filed this Criminal Jail Appeal against his conviction and the learned Trial Court has sent Murder Reference for confirmation of the death sentence of the Appellant or otherwise, which are being decided through this single judgment.

3. Heard, record perused.

4. Umair Sarwar sustained a firearm injury at the hands of the Appellant during the occurrence took place on 15.03.2020 at about 04:30 p.m. Whereafter FIR was lodged on the same day at 07:00 p.m on a written Complaint drafted by

Tariq Mahmood ASI (PW-6) on the oral statement of Ghulam Sarwar, father of the deceased, which is reproduced as under:-

> "بیان کیا کہ میں ایڈریس بالا کا رہائشی ہوں۔ میرا بیٹا عمیر سرور میرے پاس میری دکان الاحمد الیکٹرک سٹور پر موجود تھا جس نے مجھے بتایا کہ میں نماز پڑھنے جا رہا ہوں۔ تقریبا 04/30بجیدن دن میرا بیٹا دکان پر آیا اور اس نے اپنی چھاتی پر ہاتھ رکھا ہوا تھا اور اس کے ساتھ میرا بھانجا محمد عثمان بھی تھا جس نے میرے بیٹے کو زخمی حالت میں تھاما ہوا تھا میرے بیٹے نے مجھے بتایا کہ مجھے عرفان شاہ نے جان سے مارنے کی نیت سے سیدھی گولی ماری ہے اور عثمان کے شورکرنے پر فائر کرتے ہوئے موقع سے فرار ہو گیا ہے جسکو میں فوری طور پر گاڑی میں ڈال کر قریبی کلینک رحمان میڈیکل سینٹر لے آیا جنہوں نے کہا کہ یہ پولیس کیس ہیں اسے فورا پمز لے جاؤ۔ جسے میں لیکر فورا پمز ہسپتال پہنچا جس کا علاج معالجہ شروع ہو گیا اور تقریبا-/ 25 منٹ بعد میرا بیٹا زخموں کی تاب نہ لاتے ہوئے فوت ہو گیا ۔ وجہ عناد چند دن قبل میں نے عرفان شاہ کو منشیات فروخت کرنے سے منع کیا تھا جس پر اس کی میرے بیٹے کیساتھ توں تکرار ہوئی تھی اور اس نے مجھے دھمکی بھی دی تھی کہ تم مجھے محلے میں بدنام کر رہے ہو میں آپکو اس کا مزہ چکھاؤں گا۔ یہ سارا وقوعہ میرے بھانجے عثمان نے اپنی آنکھوں سے دیکھا ہے۔ عرفان شاہ نے میرے بیٹے کو ناحق قتل کر کے زیادتی کی ہے اس کے خلاف دعویدار ہوں کہ سخت سے سخت قانونی کاروائی عمل میں لائی جائے۔"

5. Umair Sarwar (deceased/the then injured) died on 15.03.2020 at 06:00 p.m. i.e. on the same day at the hospital.

6. Prosecution produced thirteen (13) witnesses. Muhammad Usman (PW-12) who is the eye witness of the occurrence, categorically deposed that he is running a barber shop at Jhangi Syyadan, Muhammadi Town, Islamabad; that on 15.03.2020 he offered prayer at Ali Al-Murtaza Mosque, Muhammadi Town and came outside of Mosque at about 04:20 p.m, where some children were flying kites in the fields of wheat crop. He also stood there. The deceased Umair Sarwar was also present there. Meanwhile, the Appellant, who was a resident of Raza Town, came there and abused Umair Sarwar (deceased) and asked him to call his father and express in front of Irfan Shah that he was a drug dealer. Umair Sarwar (deceased) stopped him not to abuse, however, the Appellant took out his 30 bore Pistol and fired a direct shot at Umair Sarwar (deceased). Muhammad Usman (PW-12) proceeded towards the Appellant, but he made 4/5 aerial fires due to which he became scared and the Appellant fled away from the place of occurrence. Umair Sarwar (deceased) was lying on the ground and blood was oozing from his chest and back side. He then took him to the shop of his father which was nearby

and his father took him to hospital but Umair Sarwar (deceased) succumbed to the injuries in the hospital.

7. Ghulam Sarwar (PW-9), who is the father of the deceased Umair Sarwar, stated that on 15.03.2020 he was present along with his son Umair Sarwar at his shop Al-Ahmed Electric Store. His son told him that he was going to offer "Asar" prayer, at about 04:30 p.m, his son returned to his shop, while he was putting his hand on his chest. He was accompanied by his nephew namely Muhammad Usman, who was holding his son Umair Sarwar, who was in injured condition. His son, Umair Sarwar, told him that the Appellant had fired a direct shot at him, after which he fled upon Muhammad Usman's raising hue and cry. He immediately shifted his injured son to Rehman Medical Center in a vehicle, where they were told that it was a Police case and were asked to take him to PIMS hospital. He then took his son to PIMS hospital where he was treated but his son succumbed to injury almost after 25 minutes. The motive behind the occurrence was that he had forbidden the Appellant not to sell narcotics in the vicinity, upon which the Appellant exchanged hot words with his son and had also threatened him that he would teach him a lesson as his father had defamed him in the area. The statement made by the deceased namely Umair Sarwar before his father is a dying declaration that carries a great weightage in a criminal case of homicide as It has been established beyond any doubt that the deceased made this declaration immediately after the incident, ruling out any possibility of influence or other factors. Reliance is placed on the judgment of the august Supreme Court passed in the case of *"Muhammad Saeed & another…vs…The State & another"* reported as **2024 SCMR 1421**, wherein the Hon'ble Court has discussed as under: -

> *"11. Under Article 46 of the Qanun-e-Shahadat Order, 1984 the sanctity of a dying declaration has to be evaluated with great care and caution and the evidence consisting of dying declaration has to be appreciated with due diligence. A dying declaration is a question of fact which has to be determined on the facts of each case. To find out truth or falsity of a dying declaration, a case is generally to be considered in all its physical environment and circumstances. A dying declaration can be made before a private person but it should be free from any influence and the person before whom it is made has to be examined. It is necessary to ascertain that the dying declaration was made honestly, its maker was in a fit state of mind to make the statement, its maker was free from outside influence, its maker was fearing death and had made truthful statement."*

8. Both the above-mentioned witnesses (Muhammad Usman & Ghulam Sarwar) are the eyewitness of the occurrence and the witness of the last words of

the deceased. They were cross-examined at length but their evidence could not be shaken during the process of cross-examination. They were corroborated with each other on all material aspects of the case. Their evidence is straightforward, trustworthy, and confidence-inspiring and cannot be discarded merely on the probabilities.

9. The discrepancies in the statements of the PWs pointed out by the learned counsel for the Appellant are minor and general, and occurred in every case when witnesses (who are human beings) are cross-examined after a long time of the occurrence as in the present case, the occurrence took place on 15.03.2020, while evidence was recorded in the years 2022 & 2023 and are not fatal to the prosecution case.

10. Muhammad Usman (PW-12), who is the eyewitness of the occurrence, has fully implicated the Appellant which has a great weight and sanctity under the law. Similarly, the statement of the father of the deceased is also very much important as his deceased son told the whole facts, while in injured condition. This fact is proved by the Medical Report that when the deceased came to the hospital he was in a gasping position. Meaning thereby that he was alive till reaching hospital and before that at the initial stage of receiving a firearm shot, he told the real facts to his father. The learned counsel for the Appellant was unable to identify any illegality or flaw in this regard, which has been rightly relied upon by the learned Trial Court.

11. It was a daylight occurrence. Muhammad Usman is the nephew of the Complainant, but mere relationship of the witness with the Complainant or deceased is not sufficient to discard the creditability of his statement. In his testimony, said witness gave all necessary details of occurrence qua the date, time, place, manner of occurrence, kind of weapon used, and the locale of injury to the deceased. In this regard, reliance is placed on the Judgment of the apex Court in the case of *"Ijaz Ahmad…vs…The State"* reported as **2009 SCMR 99**, relevant para of which is reproduced hereunder: -

> *"9. As regards the contention that both the eye-witnesses were related and thus, interested, therefore, their testimony could not have been believed, it may be pointed out here that mere relationship of a witness with the deceased is no ground for discarding his evidence if he, otherwise appears to be truthful and his presence at the place of occurrence is probable. Mere relationship of a witness with any of the parties would not dub him as an*

> *interested witness because interested witness is one who has, of his own, a motive to falsely implicate the accused, is swayed away by a cause against the accused, is biased, partisan, or inimical towards the accused, hence any witness who has deposed against the accused on account of the occurrence, by no stretch of imagination can be regarded as an "interested witness". In the wake therefore, it proceeds that merely because the witnesses are kith and kin, their evidence cannot be rejected, if otherwise it is trustworthy. It would also be pertinent to mention here that related witnesses some time, particularly in murder cases, may be found more reliable, because they, on account of their relationship with the deceased, would not let go the real culprit or substitute an innocent person for him."*

Similarly, reliance is placed on the same point on the Judgments of the superior Courts i.e. **(i)** *Sheraz Tufail v. The State,* **2007 SCMR 518**, **(ii)** *Khair Muhammad and another v. State*, **2007 SCMR 158**, **(iii)** *Amal Sherin and another v. State through A.G. N.W.F.P.*, **PLD 2004 SC 371**, **(iv)** *Dosa and others v. The State*, **2002 SCMR 1578**, **(v)** *Mulla Riaz Ahmad v. The State*, **2002 SCMR 626**, **(vi)** *Feroze Khan v. The State*, **2002 SCMR 99**, **(vii)** *Farmanullah v. Qadeem Khan and another*, **2001 SCMR 1473**, **(viii)** *Muhammad Amin v. The State*, **2000 SCMR 1784**, **(ix)** *Saeed Akhtar and others v. The State*, **2000 SCMR 383**, **(x)** *Mir Hassan and others v. State and others*, **1999 SCMR 1418**, **(xi)** *Sharafat Ali v. The State*, **1999 SCMR 329**, **(xii)** *Sardar Khan and others v. State,* **1998 SCMR 1823**, **(xiii)** *Wahid Bukhsh and others v. The State*, **1997 SCMR 1424**, **(xiv)** *Muhammad Arshad alias Achhi v. The State*, **1995 SCMR 1639**, **(xv)** *State of Rajaathan v. Hanaman*, **AIR 2001 SC 282**, and **(xvi)** *State of Punjab v. Wassail Singh and others*, **AIR 1981 SC 697**.

12. Postmortem Report shows that doctor Muhammad Farrukh Kamal, Joint Executive Director/Incharge Medicolegal Department, PIMS, Islamabad (PW-7), during postmortem examination observed one firearm entry wound and exit wound on the dead body of deceased Umair Sarwar. In his opinion, deceased died due to firearm injury which caused rupture and damage of the right lung (haemothorax 2-3 litters of blood drained) and liver caused death, which were antemortem in nature and were sufficient to cause death in the ordinary course of nature. The said witness identified the emergency slip of Umair Sarwar (deceased) dated 15.03.2020 (Ex.PR), which was issued with the signatures of Dr. Usama who has left the job. As per the emergency slip, Umair Sarwar (deceased) was brought to hospital at 05:39 p.m on 15.03.2020, in gasping condition with firearm injury, BP less and pulse less and Umair Sarwar was declared dead at 06:00 p.m. The

Death Certificate (Ex.PS) was also prepared and signed by Dr. Usama which was verified by the said PW-7, Dr. Farrukh Kamal.

13. The motive behind the occurrence was that the Complainant namely Ghulam Sarwar (PW-9) forbade the Appellant (Irfan Shah) not to sell narcotics in the vicinity due to which the Appellant felt humiliated and fired one shot effectively on the son of the Complainant due to which he died in the hospital. Even otherwise, in the absence of motive, the death penalty cannot be withheld solely because the prosecution fails to allege or establish a motive. Reliance is placed on the ruling of the apex Court in the case of *"Muhammad Latif…vs…The State"* reported as **PLD 2008 SC 503** wherein it has been affirmed that:-

> *"Therefore, the old rule of failure of prosecution to prove the motive, took the change through the judgments of the superior courts with the passage of time. Now-a-days, lack, absence, inadequacy, weakness, or the motive, if any, set up by the prosecution and failure to prove it or the motive is shrouded in mystery, are not the grounds to withhold penalty of death or to order the sentence of life imprisonment, if the prosecution has succeeded to prove its case beyond any doubt or suspicion with regard to the commission of the offence."*

14. A 30 bore Pistol was recovered at the pointation of the Appellant, which matched with the crime empty collected from the place of occurrence (report of NFSA, Ex.PT). While the blood-stained earth collected by Muhammad Aslam Kalyar Inspector (died during investigation period) was verified as human blood through report of PFSA, Lahore (Ex.PU).

15. The Appellant has denied his involvement in this case in his statement recorded under Section 342, Cr.P.C and stated that *"he is innocent and has falsely been involved in this case, PWs are inter se related, occurrence was unseen one and he was made a scapegoat"*. He has neither opted to appear as witness under Section 340(2) Cr.P.C, nor produced any defense evidence in support of his defense plea which has rightly been discarded by the learned Trial Court through the Impugned Judgment with sufficient reasons.

16. Given the above, the prosecution has proved its case beyond any shadow of doubt against the Appellant by producing an eye witness namely Muhammad Usman (PW-12) and the father of the deceased namely Ghulam Sarwar (PW-9), before whom the deceased made dying declaration, which is supported by medical evidence and positive reports of NFSA, Islamabad and

PFSA, Lahore qua matching of crime empties with the weapon of offence and blood-stained earth as human blood, discussed above.

17. After having examined with utmost circumspection every bit of the prosecution case, we have found an inescapable conclusion that the guilt of the Appellant is proved beyond scintilla of any doubt. In such an eventuality, it can irresistibly be encapsulated that the death sentence awarded to the Appellant by the learned Trial Court does not suffer from any perversity and calls for no indulgence on our part, thus the same is upheld on the same terms. Consequently, while maintaining the conviction and sentence of the Appellant we hold that Criminal Jail Appeal No. 460 of 2023 filed by the Appellant has no merits, thus is ***dismissed***. Resultantly, Murder Reference No. 27 of 2023 is answered in the ***Affirmative*** and the death sentence awarded to the Appellant is confirmed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open Court on: 14.4.2025.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Approved for Reporting
Blue Slip added.

Sajid/--