

IN THE FEDERAL SHARIAT COURT
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

CRIMINAL APPEAL NO.01-Q OF 2020

RAZ MUHAMMAD SON OF HAJI AKHTAR MUHAMMAD, CASTE
DUMMAR, USMANZAI, RESIDENT OF POI, TEHSIL SINJAVI.
(PRESENTLY CONFINED IN DISTRICT JAIL LORALAI)

Appellant

VERSUS

THE STATE

Respondent

Counsel for the Appellant : Syed Ayaz Zahoor, Advocate

Counsel for the State : Mr. Ameer Hamza Mengal,
Deputy Prosecutor General,
Balochistan.

FIR No., Date &
Police Station : 01/2013, 11.01.2013
Levies Station, Sinjavi.

Date of Impugned Judgment : 30.12.2019

Date of Institution : 13.02.2020

Date of Hearing : 07.04.2021

Date of Judgment : .06.2021

J U D G M E N T

Khadim Hussain M. Shaikh –J. The captioned criminal appeal is directed against the judgment dated 30.12.2019, passed by the learned Additional Sessions Judge, Loralai in Haraabah Case No.4 of 2019 re-The State v. Raz Muhammad and another, emanating from Crime No.01 of 2013 registered at Levies Station, Sinjavi for offence under Section 17(4) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 whereby appellant Raz Muhammad son of Haji Akhtar

Muhammad has been convicted under Section 302(b) PPC and sentenced to suffer imprisonment for life as *Tazir* and to pay Rs.100,000/- (one lac) as compensation to the legal heirs of deceased Hafiz Sharaf ud din within the purview of Section 544-A Cr.P.C and in default whereof to further undergo S.I for four months, extending him benefit of Section 382-B Cr.P.C.

2. Briefly, the facts of the prosecution case are that on 11.01.2013 at 10.30 a.m, complainant Haji Muhammad Rasool son of Haji Khundai lodged his report at Levies Station Sinjavi mainly stating therein that he is resident of Killi Poi and has taken land situated at Nari Dag on lease from one Noor Muhammad. On the same date viz 11.01.2013 at 08.00 a.m, complainant's son Hafiz Sharaf ud din accompanying labourers Syed Khan son of Muhammad Khan and Fateh Muhammad son of Abdul Karim left his village, on his motorcycle Hi-speed Model 2011 engine No.1478960, chassis No.SR 70812048 and proceeded towards his land to work there; at 10.00 a.m eye witness Syed Khan son of Muhammad Khan informed the complainant through cell phone that at 09.00 a.m when they reached at Mether ascending, they found four farmers armed with firearm weapons with two motorcycles; out of whom, they identified two farmers namely Raz Muhammad son of Haji Akhtar Muhammad and Zallah Khan son of Haji Abdul Hakeem, while the two others could not be identified by them. The said four persons attempted to snatch motorcycle of Hafiz Sharaf ud din, who showed resistance to which the accused persons made firing upon him and committed his murder. On such report the Levies Station Sinjavi registered the case vide the aforementioned F.I.R. After usual

investigation, report under Section 173 Cr.P.C was submitted whereupon the learned trial Court took the cognizance of the case.

3. After completing all the formalities, a formal charge was framed against accused Raz Muhammad [**“the appellant”**], to which he pleaded ‘not guilty’ and claimed his trial.

4. In order to prove its case, the prosecution examined in all 6 (six) PWs. PW.1 complainant Haji Muhammad Rasool, who is father of deceased Hafiz Sharaf ud din and is not an eye witness, produced his report at Ex.P/1-A, lodged by him on receiving information about the incident from eye witness PW.2 Syed Khan, and reiterated the contents of his report; PW.2 Syed Khan and PW.4 Fateh Muhammad, who having witnessed the occurrence, are ocular witnesses of the incident and they both have categorically stated that on the fateful day of incident i.e. 11.01.2013, they alongwith deceased Hafiz Sharaf ud din were going to work as labour in his land on his motorcycle and at about 09.00 a.m, when they reached at Methar Charahi, where they found four persons duly armed with Kalashnikovs, out of whom they identified two persons namely Zallah Khan and Raz Muhammad (appellant) while the two others could not be identified by them, claiming that they will identify them, if they are brought before them. The accused wanted to snatch away the motorcycle, but deceased Hafiz Sharaf ud din did not hand over his motorcycle to the accused, who made firing upon him, who died on the spot, while the accused made their escape good on their motorcycles; PW.5 Ghulab Khan Levies Spoy, who is the mashir of memos, produced mashirnama of recovery at Ex.P/5-A, whereby three empty shells of Kalashnikov were secured from the place of incident, recovery memo Ex.P/5-B, whereby four blood stained stones were taken

into possession by PW.6 Abdul Khaliq Dufedar Levies Sinjavi, recovery memo Ex.P/5-C, whereby motorcycle of deceased was taken into possession by PW.6 Abdul Khaliq Dufedar Levies; recovery memo Ex.P/5-D, whereby the blood stained clothes of deceased were taken into possession by PW.6 Abdul Khaliq Dufedar Levies during the course of investigation; PW.3 Dr. Sohail Ashraf Medical Officer RHC Sinjavi, who produced MLC at Ex.P/3-A, stated that on 11.01.2013 at 09.00 a.m he examined the dead body of deceased Hafiz Sharaf ud din in RHC Sinjavi and found the following injuries:-

- i). A 4x5 cm linear wound on right thumb.*
- ii). A round wound on right elbow of bullet inside (Palpable and visible).*
- iii). One small circular wound on entry on right hypochondrium, the other on right flank.*
- iv). Two small circular wounds of entry on left lumber region with no wounds of exit.*

Cause of death : Massive bleeding from liver and major vessels.
Time since death : about 4-5 hours.
Weapon used : Fire arm.

PW.6 Abdul Khaliq Dufedar Levies, who is Investigating Officer, inspected the place of vardhat and took into possession four blood stained stones, three empty shells of Kalashnikov and motorcycle of deceased Hafiz Sharaf ud din; he prepared site map, danistnama of deceased Hafiz Sharaf ud din and memos of recovery of the above material, he also recorded the statements of PWs under Section 161 Cr.P.C and he produced F.I.R at Ex.P-6/A, site map prepared by him at Ex.P-6/B, second site map prepared by Patwari at Ex.P/6-C, receipt of receiving dead body of deceased by PW.1 complainant Haji Muhammad Rasool at Ex.P-6/D, danistnama at Ex.P-6/E and the FSL report at Ex.P-6/J and then the side of the prosecution was closed. Thereafter, the

statement of the appellant under Section 342 Cr.P.C was recorded, wherein he denying the prosecution allegations professed his innocence and his false implication in this case at the instance of one Molvi Jan Muhammad and Salah ud din, who, per him, are inimical to him. The appellant neither examined himself on oath nor did he examine any person as his defence witness.

5. At the conclusion of trial and after hearing the parties' counsel, the learned trial Court convicted and sentenced the appellant vide impugned judgment dated 30.12.2019 as discussed in paragraph-I *supra*.

6. Having felt aggrieved by the impugned judgment dated 30.12.2019, the appellant has preferred this criminal appeal.

7. The learned Counsel for the appellant has mainly contended that PW.1 complainant Muhammad Rasool is not eye witness of the occurrence; that PW.2 Syed Khan and PW.4 Fateh Muhammad being labourers of deceased Hafiz Sharaf ud din are interested witnesses and no independent person was cited or examined as witness by the prosecution although the place of incident is situated on the road side near Mether ascending where people would be available; that four accused allegedly made firing at deceased Hafiz Sharaf ud din and at the PWs 2 & 4, but no one among both the PWs, sustained any injury, per learned Counsel, they are chance witnesses and their presence at the place of incident was doubtful; that there are material contradictions in the evidence led by the prosecution; that the empty shells secured from the place of vardhat were not sent to the ballistic expert for his expert opinion, which, per learned counsel, also

has adverse effect on the prosecution case; that the prosecution has failed to prove its case against the appellant beyond the reasonable doubt; that co-accused Atta Gul has been acquitted of the charge by the Court of learned Session Judge Loralai, therefore, per learned counsel the appellant is also entitled to his acquittal on the rule of consistency; that the learned trial Court has not properly appreciated the evidence brought on the record; and, that the impugned judgment is illegal. The learned counsel placing his reliance on the cases of **ALI SHER AND OTHERS VS. THE STATE (2008 SCMR 707)**, **GHULAM AKBAR AND ANOTHER VS. THE STATE (2008 SCMR 1064)**, **MUHAMMAD FAROOQ AND ANOTHER VS. THE STATE (2006 SCMR 1707)**, **G. M. NIAZ VS. THE STATE (2018 SCMR 506)**, **MUHAMMAD ASGAR ALIAS NANNAH AND ANOTHER VS. THE STATE (2010 SCMR 1706)**, **WARIS AND ANOTHER VS. THE STATE AND OTHERS (2020 SCMR 2044)** and **TARIQ SHAH AND OTHERS VS. THE STATE AND OTHERS (2019 SCMR 1394)**, prays that this criminal appeal may be allowed, the impugned judgment may be set-aside and the appellant may be acquitted of the charge, extending him benefit of doubt.

8. Conversely, Mr. Qazi Mushtaq, Ahmed Additional Prosecutor General, Balochistan has contended that the F.I.R was promptly lodged and the present appellant was nominated in the F.I.R with role of firing at Hafiz Sharaf ud din resulting into his death; that the presence of eye witnesses of PW.4 Fateh Muhammad and PW.2 Syed Khan at whose narration the F.I.R was promptly lodged cannot be doubted; that after the commission of the offence the appellant having

absconded away, remained fugitive from the law and was arrested after 06 (six) years of the incident; that due to abscondence of the appellant recovery of the crime weapon could not be made, which would have no adverse impact on the prosecution case; that the prosecution by examining all the material witnesses including two eye witnesses, the mashir, the Medical Officer, and Investigating Officer etc, and by producing all the necessary documents including MLC, memos of place of vardhat, recovery of empties, blood stained stones and motorcycle of deceased Hafiz Sharaf ud din from the place of incident, danistnama, sketch and map prepared at the spot of scene, blood stained clothes of deceased and Forensic Expert Report, etc, has proved its case against the appellant beyond reasonable doubt, therefore, per him, the learned trial Court has rightly convicted and sentenced the appellant. The learned Additional Prosecutor General prays for dismissal of the instant criminal appeal.

9. We have considered the submissions of the learned counsel for the appellant, and the learned Additional Prosecutor General, Balochistan and have gone through the evidence brought on the record with their assistance.

10. From a perusal of the record it would be seen that four accused committed murder of deceased Hafiz Sharaf ud din by making fires from their Kalashnikovs at him during the process of robbery of his motorcycle; of them appellant Raz Muhammad and absconding co-accused Zallah Khan are nominated in the F.I.R, while the two others were not known to ocular witnesses viz PW.2 Syed Khan and PW.4 Fateh Muhammad, who claimed to have seen them and will identify

them if they are brought before them; PW.1 complainant Haji Muhammad Rasool, on having information from PW.2 eye witness Syed Khan about the incident, had lodged his F.I.R at Levies Station, Sinjavi; both the eye witnesses namely PW.2 Syed Khan and PW.4 Fateh Muhammad have categorically stated that they were with deceased Hafiz Sharaf ud din and while were going to his land being his labourers for working there, appellant Raz Muhammad alongwith Zallah Khan and two other unknown culprits duly armed with Kalashnikovs, singled them to stop the motorcycle to which deceased Hafiz Sharaf ud din stopped his motorcycle; the accused attempted to snatch away the motorcycle, which was refused by the deceased Hafiz Sharaf ud din to which the appellant and his other three accomplices made firing upon deceased Hafiz Sharaf ud din, resulting into his death on the spot; the incident is shown to have taken place on 11.01.2013 on broad daylight at 09.00 a.m and undeniably appellant Raz Muhammad and absconding accused Zallah Khan were already known to both the eye witnesses PW.2 Syed Khan and PW.4 Fateh Muhammad, therefore, there was no question of mistaken identity of appellant Raz Muhammad by the ocular witnesses namely PW.2 Syed Khan and PW.4 Fateh Muhammad, who being present at the scene of crime, had witnessed the occurrence from a close distance and have supported the prosecution case, they were subjected to lengthy and searching cross-examination, but nothing could be elicited to shatter their testimony; they remained consistent on all material particulars i.e. the time of occurrence, the manner of attack and the receipt of injuries by deceased Hafiz Sharaf ud din; no doubt there are some minor contradictions in their statements, but those being natural because of lapse of such long time of more than six (06) years

between the incident and their examination, are insignificant; the most significant feature of the case is that the occurrence had taken place on 11.01.2013 at 09.00 a.m; PW.1 complainant Haji Muhammad Rasool, who despite being father of deceased Hafiz Sharaf ud din did not claim himself to be an eye witness of the actual occurrence, lodged his report at 10.30 a.m at Levies Station Sinjavi on receiving information about the incident from PW.2 eye witness Syed Khan on cell phone at 10.00 a.m i.e. within half an hour and thus, there was no delay in lodgment of the F.I.R. This factor by itself would rule out the possibility of false implication of the appellant in this case involving such heinous offence of robbery and murder of an innocent person namely Hafiz Sharaf ud din, who was done to death only on his showing slightest resistance during the process of robbery of his motorcycle by the appellant and his accomplices; PW.1 complainant Haji Muhammad Rasool, after lodging his F.I.R at 10.30 a.m rushed to the place of incident accompanying the Levies officials within half an hour where his son Hafiz Sharaf ud din was found lying dead and both the eye witnesses namely PW.2 Syed Khan and PW.4 Fateh Muhammad present there; the presence of both the said ocular witnesses at the place of incident, who accompanying deceased Hafiz Sharaf ud din as his labourers, were going towards the land of deceased Hafiz Sharaf ud din, being logical could not be doubted and further the danistnama produced at Ex.P-6/E would reveal that it was prepared on the pointation of both the eye witnesses namely PW.2 Syed Khan and PW.4 Fateh Muhammad with their thumb impressions, which established their presence at the place of incident beyond any doubt; moreover the statements under Section 161 Cr.P.C of PW.2 Syed Khan and PW.4 Fateh Muhammad were also recorded on

the same day of incident; the subject crime was committed on 11.01.2013 and appellant Raz Muhammad after the incident had absconded away and was arrested on 18.03.2019 i.e. after the span of 06 (six) years; the factum of the abscondence of the appellant for such a period of more than six years cannot be brushed aside, more particularly in view of the fact that the appellant is hailing from almost the same vicinity where the parties reside; the murder of deceased Hafiz Sharaf ud din was not secret and the appellant was nominated to be an accused of the case crime; manifestly after the incident the appellant had absconded away with an object to vanish of the evidence namely crime weapon etc, so that he may not be roped in the matter squarely and remained enlarged from the clutches of law for such a long period; after due proceedings under the provisions of Section 87 & 88 Cr.P.C, the appellant was declared proclaimed offender; even otherwise the appellant throughout the proceedings has not taken a plea that he was not aware about his implication as an accused in the subject case crime; the appellant has also neither examined himself on oath to explain and justify his whereabouts for such a long period of more than 06 (six) years after the incident nor has he examined any person as his witness on this aspect. Such conduct displayed by the appellant, who remained fugitive from the law and Court for more than 06 (six) years, without any plausible and reasonable explanation, was also indicative of his guilt when considered in conjunction with the ocular and the other circumstantial evidence. Reliance in this context is placed on the case of ***MST.ROHEEDA VS. KHAN BAHADUR AND ANOTHER (1992 SCMR 1036)*** and the case of ***ALLAH DAD AND 2 OTHERS VS. THE STATE (PLD 1978 SC 1)***.

11. The motive behind the occurrence was the attempt of snatching of motorcycle of deceased Hafiz Sharaf ud din by the appellant and his accomplices i.e. absconding co-accused Zallah Khan and two unknown persons, who on refusal of deceased Hafiz Sharaf ud din's handing over his motorcycle, committed his murder by making firing with their Kalashnikovs upon him.

12. On our own independent evaluation of the evidence brought on the record, we find that the testimony of eye witnesses PW.2 Syed Khan and PW.4 Fateh Muhammad have emerged unscathed from the lengthy cross-examination and the defense has not been able to establish their interestedness either in favour of the prosecution or against the appellant; PW.1 Haji Muhammad Rasool, who had immediately lodged F.I.R on receiving information about the incident from eye witness PW.2 Syed Khan, having no occasion to consult his kith and kin before lodging the report wherein he directly charged the appellant, alongwith absconding co-accused Zallah Khan and two unknown persons with active role of firing with their Kalashnikovs at deceased Hafiz Sharaf ud din resulting into his death; medical evidence, which has gone unchallenged, is also in line with the ocular account, for, PW.3 Dr. Suhail Ashraf, who had examined the dead body of deceased Hafiz Sharaf ud din, found four injures namely i) **A 4X5 cm linear wound on right thumb**, ii) **a round wound on right elbow of bullet inside (palpable and visible)**, iii) **one small circular wound of entry on right hypochondrium**, the other on right flank, iv) **two small circular wounds of entry on left lumber region with no wounds of exit**, four injures on the person of deceased Hafiz Sharaf ud din and while giving cause of death he opined that the massive bleeding from lever and

major vessel was the cause of death and time since death was opined to be 4-5 hours”; both the ocular witnesses were found present at the place of occurrence at the time of spot inspection by PW.6 Abdul Khaliq Dufedar Levies, the investigating officer of the case, who prepared site map, took into possession four blood stained stones, three empty shells of Kalashnikov, the motorcycle of deceased Hafiz Sharaf ud din and prepared memos of place of incident, recovery of above material, danistnama with the thumb impressions of the aforesaid both the eye witnesses at the place of incident; both the ocular witnesses, whose presence at the time and place of incident, cannot be doubted, deserve much credence because they stuck to their version till the end in spite of their having no axe to grind of their own to falsely involve the appellant; their depositions on oath cannot be brushed aside simply on the bald allegation that they were labourers of deceased Hafiz Sharaf ud din; and, the venue of the occurrence is also undisputed. And, thus the prosecution, by producing ocular evidence of unimpeachable nature supported by the medical and other circumstantial evidence, has proved its case against the appellant beyond any shadow of doubt. The appellant has not produced any evidence even to remotely suggest his false implication in this case and he has also failed to prove any malafide or ill will or enmity of the PW.2 Syed Khan and PW.4 Fateh Muhammad to falsely implicate him in this case.

13. So far the contention of the learned counsel for the appellant regarding non recovery of crime weapon from the appellant is concerned, the incident had taken place on 11.01.2013, the appellant, who was nominated in the F.I.R with active role in the commission of the

offence, after the incident had absconded away and was subsequently arrested on 18.03.2019 after the span of more than 06 (six) years, the availability of crime weapon under the peculiar circumstances of this case, does not appeal and its non recovery would have no adverse impact on the prosecution case, more particularly in view of the fact that the recovery of crime weapon at the best would have been a corroborative piece of evidence of the ocular account and mere non recovery thereof does not render the direct ocular evidence, medical evidence, recovery of incriminating articles from the place of incident and FSL report unworthy of credence, it is reiterated that the rule of corroboration is applied as an abundant caution and is not a mandatory rule to be always and necessarily insisted upon in each case. The requirement of corroboration depends upon the facts and circumstances of each case and in the nature of the evidence in the said case; if the evidence does not suffer from any major or significant contradiction, the corroboration is not insisted upon. The learned counsel for the appellant has failed to satisfy the Court as to how non recovery of the crime weapon under the given circumstances, would affect the prosecution case; and thus, his such contention being untenable is rejected. As far as the contention of learned counsel for the appellant that co-accused Atta Gul has been acquitted, therefore, the appellant is also entitled to acquittal on the rule of consistency is concerned, patently the case of acquitted co-accused Atta Gul is not at par with the case of appellant Raz Muhammad as the appellant is nominated in the F.I.R lodged with promptitude as well as in the statements under Section 161 Cr.P.C of eye witnesses PW.2 Syed Khan and PW.4 Fateh Muhammad, recorded on the very same day of the incident, with active role of committing

murder of Hafiz Sharaf ud din on slightest resistance shown by the latter during the process of robbery of his motorcycle, while the name of acquitted co-accused Atta Gul, was neither mentioned in the F.I.R nor was shown in the statements under Section 161 Cr.P.C of the eye witnesses of PW.2 Syed Khan and PW.4 Fateh Muhammad and thus, this contention of the learned counsel being misconceived is untenable. So far the contention of the learned Counsel for the appellant that both the ocular witnesses are chance witnesses and no one among them had sustained any injury, therefore, their presence at the place of incident was doubtful is concerned, a chance witness is one, who appears at the place of occurrence incidentally as per chance, the Hon'ble Supreme Court of Pakistan in case of **MUHAMMAD AHMAD AND ANOTHER VS. THE STATE AND OTHERS (1997 SCMR 89)**, while discussing about the chance witnesses has held that *when a crime is committed on a public thoroughfare or at a place frequented by the public generally, the presence of passerby cannot be rejected by describing them as mere chance witnesses, unless, of course, it is found that the witnesses concerned could not give any satisfactory explanation of their presence at or near the spot at the relevant time or there is otherwise any inherent weakness or contradiction in their testimony.* The appellant has failed to bring on record any material even to remotely suggest that the witnesses namely PWs.2 & 4 were either passerby or appeared all of sudden at the time of incident or that there was any inherent weakness or contradiction in their testimony; none of the eye witnesses has stated that it was by chance that they came at the place of occurrence incidentally, but on the contrary, both the eye witnesses have categorically stated in their statements before the police and during the

trial that on the day of incident they left their village together with deceased Hafiz Sharaf ud din being his labourers to go to his land for working purpose there and it was within their sight the appellant and his accomplices attempted to snatch motorcycle from deceased Hafiz Sharf ud din, who resisted such attempt to which the appellant and his accomplices by making firing from their Kalashnikovs committed his murder and their presence at the place of incident at the relevant time stood established as discussed *supra* and thus both the ocular witnesses being natural witnesses of the occurrence, can be termed to be chance witnesses, therefore, the contention of the learned Counsel in this regard being untenable is rejected.

14. The objection of the learned counsel for the appellant regarding non sending of empties secured from the place of incident to the ballistic expert for his opinion is concerned, needless to say that the empties are sent to the ballistic expert for the purpose of their comparison and matching with the crime weapon; under the peculiar circumstances of this case, non sending of empties to the ballistic expert in view of the fact that there was no recovery of crime weapon in this case because of own conduct of the appellant, who after the incident remained fugitive from the law and Court for more than 06 (six) years, does not have any adverse impact on the prosecution case and this slightest omission cannot brush aside, the overwhelming direct ocular evidence supported by strong circumstantial and medical evidence discussed *supra*; even otherwise no hard and fast rule can be laid down as regards the weight to be given to the expert opinion; in a case like the case one in hand, which otherwise stands proved against the accused

by reliable, truthful and confidence inspiring evidence, then the lack of expert opinion would hardly have any adverse impact in this case. In case of **MUHAMMAD HANIF VS. THE STATE (PLD 1993 SC 895)** the Hon'ble Supreme of Pakistan has held that ***“The expert’s evidence may it be, medical or that of ballistic expert, is entirely in the nature of confirmatory or explanatory of direct or other circumstantial evidence, but if there is direct evidence as in the instant case, which is definite, trustworthy, the confirmatory evidence is not of much significance. In any case, it cannot outweigh the direct reliable, truthful and credible evidence.”*** Thus this objection of the learned counsel being misconceived is also rejected.

15. The contention of the learned Counsel for the appellant that as the ocular witnesses PW.2 & PW.4 have not sustained any injury in the incident, therefore, their presence was doubtful being devoid of force is rejected for the simple reason that there cannot be a presumption or rule that all the persons, who were under attack from firearms ought to have received injuries and mere fact that some of them did not receive injury does not make their presence at the place and time of incident doubtful. The reliance in this context is placed on the case of **MEHBOOB SULTAN AND 2 OTHERS VS. THE STATE (2001 SCMR 163)**, wherein the Hon'ble Supreme Court of Pakistan has observed that ***“His presence cannot be disbelieved only because he did not receive any injury. There are so many occurrences of this nature where people escape unhurt though fired.”***

16. A perusal of the judgment of the learned trial Court would reveal that after overall assessment of the evidence the learned trial

Court has rendered the finding of guilt of the appellant and such finding arrived at by the learned trial Court based on appraisal of evidence does not suffer from any illegality or infirmity. As the ingredients of Section 17(4) Haraabah Offences Against Property (Enforcement of Hudood) Ordinance, 1979 have not been fulfilled and the proof of Qatl-e-Amd liable to Qisas as specified in Section 304 PPC is not available in either of its form, therefore, the appellant has been convicted and sentenced under Section 302(b) PPC to suffer imprisonment for life as *Tazir* and to pay Rs.100,000/- (one lac) as compensation to the legal heirs of deceased Hafiz Sharaf ud din within the purview of Section 544-A Cr.P.C extending him the benefit of Section 382-B Cr.P.C. It needs no reiteration that the normal sentence for such an offence is a death penalty, but the learned trial Court, considering non recovery of crime weapon and joint firing by the appellant and his three accomplices resulting into death of deceased Hafiz Sharaf ud din as extenuating and mitigating circumstances, has awarded the sentence of life imprisonment to the appellant instead of normal death sentence, thereby the learned trial Court has already given maximum relief to the appellant; the impugned judgment dated 30.12.2019, passed by the learned trial Court, which is apt to the facts and circumstances of the case, suffering from no illegality or any infirmity does not call for any interference of this Court. The learned Advocate for the appellant has also not been able to point out any illegality or misreading or non-reading of the evidence by the learned trial Court, warranting interference of this Court in its appellate jurisdiction. The case law cited by the learned counsel for the appellant being distinguishable on facts and circumstances and speak of the different situations, is of no help

to the appellant as none of the cited cases involved the facts and circumstances as are involved in the case one in hand.

17. In view of what has been stated above, we are of the considered view that the prosecution has proved its case against the appellant beyond any shadow of doubt and the learned trial Court has rightly convicted and sentenced the appellant as discussed *supra*. Accordingly, this criminal appeal being devoid of merit is dismissed.

(JUSTICE KHADIM HUSSAIN M. SHAIKH)
JUDGE

(JUSTICE MUHAMMAD NOOR MESKANZAI)
CHIEF JUSTICE

*Khurram**