

Stereo. H C J D A 38
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Criminal Appeal No.318 of 2014

Muhammad Farooq etc. versus The State etc.

Murder Reference No.56 of 2014

The State versus Muhammad Farooq etc.

Date of hearing **08.05.2017**

Appellant by M/s Nighat Saeed Mughal and Muhammad Arshad Bhatti, Advocates.

The State by Mr. Munir Ahmed Sial, Deputy Prosecutor General. Azeem Khan, S.I.

Asjad Javaid Ghural, J. Through this Criminal Appeal No.318-J of 2014 appellants namely Muhammad Farooq and Munir Ahmed have challenged the vires of judgment dated 06.02.2014 passed by the learned District & Sessions Judge, Okara in a private complaint titled “*Mst. Nusrat Bibi vs. Farooq etc*” in respect of offences under Sections 302, 324, 148 and 149 PPC arising out of case FIR No.238, dated 20.06.2011 registered at Police Station Satghara whereby they were convicted and sentenced as under:-

i) Appellant Muhammad Farooq.

“Under Section 302(b) of the Pakistan Penal Code, 1860.

Death and to pay the compensation of Rs.100,000/- under Section 544-A Cr.P.C. to the legal heirs of the deceased and in default thereof to further undergo simple imprisonment for six months.

ii) Appellant Munir Ahmed.

“Under Section 302(b) read with 34 of the Pakistan Penal Code, 1860.

Imprisonment for life with fine of Rs.50,000/- and in default thereof to further undergo simple imprisonment for three months.

“Under Section 324 of the Pakistan Penal Code, 1860.

Rigorous imprisonment for seven years alongwith fine of Rs.30,000/- and in default thereof to further undergo simple imprisonment for six months.

All the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C. were also given to the appellant Munir Ahmed.

2. **Murder Reference No.56 of 2014** for confirmation or otherwise of the death sentence of appellant Muhammad Farooq shall be decided through this single judgment.

3. The prosecution story unfolded in the private complaint, is that on 20.06.2011 at about 09:00 p.m. the complainant alongwith her mother Mst. Shahida Bibi, her father Ahmed Ali, her brother Muhammad Saleem and one Basharat Ali was sitting in her house and the light was illuminated inside and outside, when Farooq (appellant) and Munir armed with gun 12-bore, Usman and Hayat armed with 30-bore pistol and Nawaz armed with sota reached there. Upon calling of Farooq, Muhammad Saleem went outside the house. At the same time, the complainant, her mother, her father and Basharat Ali (PW-2) also came out of the house. Nawaz raised a lalkara that Muhammad Saleem should not be spared. Muhammad Farooq fired with his gun 12-bore at Muhammad Saleem, which hit on the left side of his chest, who fell down on the ground. Munir Ahmad fired with his gun at Mst. Shahida Bibi, which hit on the left side of her buttock. The accused persons Usman and Hayat made straight fire shots towards the complainant side but they remained saved. All the accused persons fled away from the place of occurrence while making indiscriminate firing. Muhammad Saleem had succumbed to the injuries on the spot. All the accused, in consultation with each other and with common object murdered Muhammad Saleem and they were identified in the light of bulb.

Motive behind the occurrence was that Muhammad Farooq etc. had been demanding one marla of land from the complainant and her family.

4. On the written application of complainant a case FIR No.238/2011 was registered at Police Station, Satghara. The allegation of the complainant

was that on the recommendation of one MPA, some of the respondents were neither arrested nor investigated by the police and afterwards they were declared innocent. The state case was sent up before learned trial Court and proceedings were conducted, Munir accused was declared proclaimed offender and charge was framed against accused Muhammad Farooq on 27.09.2011. On 10.10.2011, the complainant had filed a private complaint, upon which, challan case was attached and proceedings were conducted in the private complaint. After recording cursory evidence, the accused were summoned by the trial Court, charge was framed against four accused persons who were facing trial on 18.01.2012 and after the arrest of Munir (P.O.), charge was again framed on 04.10.2012 against all the five accused persons.

5. Muhammad Aslam, S.I. (CW.4) had conducted investigation of the case, prepared inquest report Ex.CW.4/A, prepared injury statement Ex.CW-4/C, prepared injury statement of injured PW Mst. Shahida bibi Ex.CW-4/E, collected blood stained earth of deceased Muhammad Saleem vide recovery memo Ex.P-C, collected four crime empty cartridges P-9/1-4 vide recovery memo Ex.P-D. On 11.07.2011 he arrested accused Farooq, obtained his physical remand who on 22.07.2011 led the recovery of 12-bore gun P-1 along-with one cartridge P-2 vide recovery memo Ex.PE. On 05.09.2011 the accused Usman, Hayat and Nawaz were found not involved in the commission of alleged offence and he prepared incomplete challan on 06.09.2011 and sent it to Court.

Faqir Muhammad, S.I. (CW-2) also conducted partial investigation of the case and arrested accused Munir Ahmed, who during physical remand led to the recovery of gun 12-bore (P-8) vide recovery memo Ex.PJ.

6. Dr. Zulfiqar Ali (PW-4) had conducted autopsy of deceased Muhammad Saleem on 21.06.2011 at about 07:30 a.m. and observed two lacerated wounds on his body. Cause of death was hemorrhagic shock. Probable time between injuries and death was immediate whereas between death and postmortem about 8 to 9 hours.

7. Lady Doctor Shagufta Yasmeen (PW-8) had conducted examination of injured Mst. Shahida Bibi and observed firearm three lacerated wounds on her body. All the injuries were kept under observation for X-Ray.

Probable duration between injuries and medicolegal examination was approximately within 1 to 3 hours.

8. At the commencement of the trial, the learned trial Court had framed the charge against the appellant and his co-accused to which they pleaded not guilty and claimed to be tried.

9. The prosecution had produced 13-witnesses besides the reports of Chemical Examiner Ex.PW and Serologist Ex.PX whereas four witnesses had been examined as 'Court Witnesses'. On completion of prosecution evidence, the statements of the accused persons were recorded under Section 342 Cr.P.C. and in reply to question as to why this case was registered and why the prosecution witnesses had deposed against him, appellant Muhammad Farooq replied as under:-

“All the private PWs are closely related to each other as well as with the deceased. Mst.Shahida bibi injured PW had a previous track record of registering false criminal cases as she got registered criminal cases against my cousin Shahzad etc and his in-laws. Number of FIRs have been lodged by Shahida bibi which shows that she is in the habit of falsely implicating innocent persons in the criminal cases and it is more important that all the persons who have been dragged by Shahida bibi were acquitted of the charges after facing the trial. The falseness of allegations leveled by the complainant and injured PW can be thrashed out from this fact that she registered a case of rape against a real son-in-law namely Nasir with the allegation that he committed rape with her daughter Iqra bibi. But later on, the case was recommended for cancellation being false. Thereafter Shahida bibi filed a private complaint U/S 376 PPC against her real son-in-law Nasir, his brothers and sisters were later on Nasir etc were also acquitted of the charges. Similarly, case FIRs No. 128/2004 U/S 354/34 PPC, 115/2009 U/S 452,354,337- L(2)/34 PPC P/S Satghara and a case U/S 452,354 PPC was got registered at P/S Satghara by Shahida bibi. The accused persons were acquitted of the charges. In-fact, it was a blind murder committed by some unknown accused persons during dacoity. Whereas, Shahida bibi was injured prior in time to the present occurrence and this fact is admitted from scaled as well as rough site plan. No blood stained earth was taken into possession from the place where allegedly Shahida bibi fell on the ground. None of the PWs were present at the place of occurrence nor had witnessed the occurrence. I and my brother have been falsely involved in this case due to

supporting the persons against whom Shahida bibi injured had got registered criminal cases. I am innocent in this case.”

Appellant Munir Ahmed replied as under:-

“All the private PWs are closely related to each other as well as with the deceased. My brother namely Zameer Ahmad got married with the daughter of Shahida bibi injured PW Noureen bibi. But “Rukhsati” was not taken place. Mst.Shahida bibi demanded Rs.3lac for the “Rukhsati” of her daughter and my brother Zameer refused to pay the same, thereafter Shahida bibi extended threats of dire consequences to my brother. As a result of which my brother left the village and could not be traced till today. I blamed number of times Shahida bibi for this, as a result of which she nourished the grudge and involved me falsely in this case on the asking of my enemies also. Mst.Shahida bibi injured PW had a previous track record of registering false criminal cases as she got registered criminal cases against my cousin Shahzad etc and his in-laws. Number of FIRs have been lodged by Shahida bibi which shows that she is in the habit of falsely implicating innocent persons in the criminal cases and it is more important that all the persons who have been dragged by Shahida bibi were acquitted of the charges after facing the trial. The falseness of allegations leveled by the complainant and injured PW can be thrashed out from this fact that she registered a case of rape against a real son-in-law namely Nasir with the allegation that he committed rape with her daughter Iqra bibi. But later on, the case was recommended for cancellation being false. Thereafter Shahida bibi filed a private complaint U/S 376 PPC against her real son-in-law Nasir, his brothers and sisters, later-on Nasir etc were also acquitted of the charges. Similarly, case FIRs No. 128/2004 U/S 354/34 PPC, 115/2009 U/S 452,354,337-L(2)/34 PPC P/S Satghara and a case U/S 452,354 PPC was got registered at P/S Satghara by Shahida bibi. The accused persons were acquitted of the charges. Criminal cases were also got registered against Shahida bibi injured PW by different persons of the locality. In-fact, it was a blind murdcy, committed by some unknown accused persons during dacoity, whereas, Shahida bibi was injured prior in time to the present occurrence at some elsewhere place and this fact is admitted from scaled as well as rough site plan. No blood stained earth was taken into possession from the place where allegedly Shahida bibi fell on the ground. None of the PWs were present at the place of occurrence nor had witnessed the occurrence. I

and my brother have been falsely involved in this case due to supporting the persons against whom Shahida bibi injured had got registered criminal cases. I am innocent in this case.”

Except Usman, all the accused persons neither opted to appear under Section 340(2) Cr.P.C. nor produced evidence in their defence.

10. The trial Court, after hearing learned counsel for the parties while acquitting Usman, Nawaz and Hayat (co-accused), convicted and sentenced the appellants supra vide impugned judgment dated 06.02.2014. Hence, the present appeal as well as the connected Murder Reference.

11. Both learned counsels for the appellants have submitted in unison that the appellants are quite innocent and have falsely been implicated in this case, as they had no reason to commit the murder of deceased Muhammad Saleem and did not cause injuries to Mst. Shahida Bibi (PW-3); that no electric bulb or tube light had been taken into possession by the Investigating Officer; that the occurrence in this case had taken place in the dark night, the asserted source of light at the venue of occurrence had never been established before the learned trial Court and, thus, the identification of the culprits at the spot had not been conclusively recognized by the prosecution; that both the eye-witnesses were related and inimical towards the appellant and the fact that the said eye-witnesses were never harmed by the culprits, which shows that eye-witnesses were not present at the scene of occurrence during the relevant time; that the ocular account could not receive any independent corroboration and thus they were not worthy of implicit reliance; that motive was vaguely formulated by the prosecution; that no weapon of offence had been recovered at the instance of the appellants and the weapon shown to be effected from him was planted one; that no report of Punjab Forensic Science Agency had been produced in this regard. It is prayed that the appellants may be acquitted. In alternate, learned counsel for the appellant Muhammad Farooq submits that at the most it was not a case of capital punishment. Learned counsel for appellant Munir Ahmed had stated that the appellant had nothing to do with the alleged and had no motive to do away the deceased forever. In the end, he has prayed for acquittal of the appellants.

12. Conversely, learned Deputy Prosecutor General appearing for the State has controverted the arguments advanced by learned counsels for the appellants while submitting that the occurrence had taken place in the house of the deceased where the electric bulb was on inside and outside the house and to identify the appellants, being already known to the eye-witnesses, was hardly difficult for them; that ocular account was in consonance with the medical evidence; that motive part of the occurrence has already been well-established by the prosecution in the depositions of both the eye-witnesses; that acquittal of co-accused does not affect the conviction and sentence of the appellants, as the role of the acquitted co-accused was not at par to that of the present appellants; that Mst. Shahida Bibi who happened to be the mother of deceased Muhammad Saleem, had received injuries during the occurrence; that her deposition being injured witness and inmate of the house could not be discarded. He maintained that the conviction and sentence awarded to the appellants do not warrant interference by this Court.

13. We have heard learned counsels for the appellants, learned Deputy Prosecutor General appearing for the State and have perused the record with their assistance.

14. This unfortunate incident had taken place on 20.06.2011 at 09:00 p.m. in front of the house of complainant and the deceased as well as the injured witness Mst. Shahida Bibi (PW-3). The matter was sharply reported to the police at 11:15 p.m. on the same night, containing the names of appellants armed with respective weapons and specific role assigned to them. Appellant Muhammad Farooq had been attributed the role of causing firearm injury at the left side of chest of deceased Muhammad Saleem whereas appellant Munir Ahmed had made a fire shot, which landed at the right thigh of Mst. Shahida Bibi, the mother of deceased Muhammad Saleem. The inter-se distance between the place of occurrence and the Police Station has been mentioned as twelve kilometers. In this view of the matter, the crime report had been lodged within sufficient promptitude without deliberation, consultation and fabrication. To prove the guilt of the appellant, the prosecution had produced Mst.Nusrat Bibi (PW-1), Bisharat Ali (PW-2) and Mst. Shahida Bibi (PW-3). Complainant Mst. Nusrat Bibi (PW-1) was the real sister of deceased Muhammad Saleem and daughter of Mst. Shahida

Bibi injured (PW-3). Bisharat Ali (PW-2) was Ex son-in-law of Mst. Shahida Bibi (PW-3). They were closely related to deceased Muhammad Saleem and inmates of the house. Mst. Nusrat Bibi (PW-1) had deposed before the learned trial Court what she had averred before the police at the time of lodging the crime report stating that on the fateful night at 09:00 p.m. she alongwith Muhammad Saleem (her brother), Mst. Shahida Bibi (her mother), Ahmed Ali (her father) and Bisharat Ali was present in her house. The electric bulb was on inside and outside the house, when Muhammad Farooq and Munir Ahmed armed with gun 12-bore, Hayat and Usman both armed with pistol 30-bore and Nawaz armed with Sota, in furtherance of their common object, had come there, Muhammad Farooq appellant called Muhammad Saleem, upon which he had come out of the house. In the meanwhile, she alongwith her father Ahmed Ali, her mother Mst. Shahida Bibi and Bisharat Ali also came there, Nawaz raised a lalkara and asked Muhammad Farooq that Muhammad Saleem be not spared. Appellant Muhammad Farooq made a fire shot with his gun 12-bore, which hit on the left side of chest of Muhammad Saleem near armpit, who fell down on the ground. Munir Ahmed co-accused made a fire shot with his gun, which hit her mother Mst. Shahida Bibi on the left side of her buttock. Usman and Hayat co-accused also made fire shots with their pistol towards them but luckily they remained save. They raised alaram whereupon the accused persons managed to escape from the place of occurrence. Muhammad Saleem had succumbed to the injuries at the spot. Mst. Shahida Bibi injured (PW-3) and Bisharat Ali (PW-2) had deposed in line with Mst. Nusrat Bibi (PW-1) with regard to the mode and manner of the occurrence. They remained consistent on all material particulars and supplemented each other on each and every aspects of the case. Mst. Nusrat Bibi (PW-1) and Mst. Shahida Bibi (PW-3) had been cross-examined by the defence at full length but the defence remained fail to shatter their credibility and could not get anything to make a dent in the prosecution story. Both the eye-witnesses remained affirm with respect to the alleged occurrence qua the time, place and date of occurrence, name of the appellants and the respective roles assigned to them coupled with the seat of injuries, number of injuries on the body of deceased as well as injured PW, which lends full support from the

medical evidence. Learned counsels for the appellants have submitted that the deposition of prosecution witnesses could not be relied upon because they were habitual in lodging the false cases against different persons having enmity with them, firstly they had lodged cases against different persons and then made compromise after taking some benefit. The submission of learned counsels for the appellants is repelled straightway on the ground that whatever their conduct might be, the alleged occurrence had taken place in the street exactly in front of outer gate of the house of the deceased where he was called by appellant Muhammad Farooq. It could not be termed as an unnoticed or unwitnessed occurrence and the same had been committed just in front of the house of the deceased where prosecution witnesses were available and lights were on inside and outside the house. Mst. Shahida Bibi, the mother of the deceased had sustained firearm injury in attempting to rescue her son, which was a natural course of attitude whereupon both the appellants had made one fire shot each and fled away from the place of occurrence. They were already known to complainant party and their identification at the scene of occurrence could not be disputed, as appellant Farooq was real paternal cousin of deceased Muhammad Saleem and Munir Ahmed was real brother of son-in-law of Mst. Shahida Bibi injured/PW-3. To implicate by Mst. Shahida Bibi, mother of the deceased, in the case of death of her real son while letting off the real culprits, could not be believed. Even otherwise, to implicate an innocent person in place of actual culprit in such a close relationship is always a rare phenomena. We have reason to believe that both the appellants, in furtherance of their common intention, had come at the outer gate of the house of deceased, called him outside, committed his murder and also caused injuries to Mst. Shahida Bibi (PW-3).

15. So far as the case of co-accused who had been acquitted of the charge by the learned trial Court is concerned, though they were arrayed with the present appellants yet they did not cause any injury to the deceased or the injured PW. Their mere presence, at the scene of occurrence, cast a doubt with regard to their involvement and the learned trial Court had rightly extended the benefit of doubt to them. Their role was not at par with the present appellants, being quite distinguishable. We are of the affirmed view that the prosecution has been succeeded to bring home the guilt of the

appellants to the hilt. The ocular account furnished by the prosecution is confidence inspiring and is believed to be a true version.

16. The defence taken by both the appellants, in their statements recorded under Section 342 Cr.P.C., was that Mst. Nusrat Bibi (PW-3) had a previous record of registering false cases and number of FIRs had been lodged by her showing that she was in the habit of implicating the innocent persons falsely in criminal cases, Muhammad Farooq, the appellant had stated that the present case was a blind murder, committed by some unknown accused during dacoity whereas Mst. Shahida Bibi was injured prior in time to the present occurrence, none of the PWs were present at the place of occurrence nor had they witnessed the same.

Appellant Munir Ahmed had taken a plea that his brother Munir Ahmed was married with Mst. Noreen Bibi, the daughter of Mst. Shahida Bibi but Rukhsati had not taken place. Mst. Shahida Bibi had demanded Rs.3 lac for Rukhsati of her daughter but his brother Zameer refused to pay the same and due to the reason, he had been falsely involved in this case. This was the specific plea taken by both the appellants but they could not succeed to establish the same as it has already discussed that how could it be claimed that the instant case was a blind murder. The prosecution witnesses including Mst. Shahida Bibi, who had received firearm injuries at the place of occurrence, which had taken place just in front of the outer gate of her residence, had already been believed to be a true. The previous conduct of Mst. Shahida Bibi that she had registered some criminal cases and whatever their fate would be, the instant case cannot be said to be a blind murder and if the accused persons in some previous cases, implicated by her, had been acquitted, it does not mean that the deposition of an injured witness is not liable to be believed, mere on the ground that in some previous cases, the accused were acquitted of the charge. Even otherwise, nothing could be brought on record that Mst. Shahida Bibi had been declared by the Court to have committed perjury and she was in the habit of involving the innocent person and her statement was not to be relied upon.

So far as the plea taken by appellant Munir Ahmed is concerned, the same has no substance. Neither he opted to appear under Section 340(2) Cr.P.C. nor had he produced any defence evidence to substantiate the plea

taken by him whether any dispute had arisen between Mst. Shahida Bibi and brother of appellant Munir Ahmed and what was its nature, nothing has been brought on record to that extent. The plea taken by both the appellants remained far from being taken approval by this Court.

17. The motive set up by the prosecution in the crime report that appellant Muhammad Farooq was demanding land measuring one marla from the residential Ahata of the complainant and on refusal he had committed this occurrence but throughout the evidence, nothing has been brought on record that when this dispute sounded in air and for which purpose, they had been demanding the said amount. Whether earlier any quarrel or some untoward incident had taken place and what was its nature is not known. No Rapt in police diary or any civil suit on behalf of either party had been filed during trial to enlighten the motive part of the occurrence. It seems to be a vaguely formulated motive to which the prosecution had badly failed to substantiate.

18. Dr. Zulfiqar Ali (PW-4) had conducted postmortem examination on the dead body of deceased Muhammad Saleem on 21.06.2011 at about 07:30 a.m. and observed following injuries:-

“1-A. A lacerated wound 4 c.m. x 3 c.m. deep going inverted margins on the left lateral and middle chest, 7 c.m. from left nipple with 5 lacerated wounds with inverted margins and with blackening, each measuring 1 c.m. x 1 c.m. deep going 5 c.m. from the left nipple and 2 c.m. away from the injury No.1. on the left middle chest described earlier. This is wound of entry.

1-B. A lacerated wound 1 c.m. x 1 c.m. deep going with everted margins 17 c.m. away from the right nipple at the right lower posterolateral border of the right chest. This is wound of exit.”

ON DISSECTION:-

Pleura was ruptured, left lung ruptured, left fourth rib fractured at the posterior side. Chest cavity filled with blood, “semi clotted”, heart ruptured alongwith the vessels. Third and fourth thoracic vertebrae fractured with injury to the thoracic spine, fourth and fifth ribs fractured on the right side, right lungs ruptured and the cavity filled with semi clotted blood on the right side too. 1 wade and 4 pellets recovered and sealed.

Cause of death was due to excessive and irreversible hemorrhagic shock alongwith injuries to the vital organ i.e. heart due to

injury No.1-A. The injury was ante-mortem caused by firearm weapon. The probable duration between injuries and death was immediate whereas between death and post about 8 to 9 hours approximately.

The locale of injuries, seat of injuries, number of injuries and kind of weapon used exactly coincide with ocular account furnished by the prosecution. The medical evidence lends full support to the ocular account.

19. After registration of the case, appellant Muhammad Farooq was arrested on 11.07.2011 and during course of investigation, in pursuance of his disclosure, he led to the recovery of a gun 12-bore from his residential house on 22.07.2011. Appellant Munir Ahmed could not be arrested by the police and after adopting legal formalities, he was declared proclaimed offender. Later on, he was arrested on 30.08.2012 after more than one year of the alleged crime and nothing could be recovered at his instance. The Investigating Officer had secured four crime empties of gun 12-bore from the venue of occurrence but no report of Punjab Forensic Science Agency could be brought on record by the prosecution, thus, it cannot be said that the weapon recovered at the instance of appellant Muhammad Farooq was the same one, which he had used at the time of occurrence, therefore, the recovery of gun 12-bore remained inconsequential.

20. Having scanned the entire prosecution evidence, we are of the considered view that the prosecution has been succeeded to prove the guilt of the appellant beyond any shadow of reasonable doubt by producing cogent, reliable and trustworthy evidence, as both the appellants had committed the murder in issue, in furtherance of their common intention. They had jointly come at the place of occurrence and committed this occurrence. Both the appellants had shared their common intention and are responsible for the act committed by them individually as well as collectively. Though appellant Munir Ahmed had not caused any injury to the deceased yet he could not be relieved from the responsibility of murder of the deceased and he could not escape from the act committed by his co-accused, therefore, he has rightly been convicted and sentenced by the learned trial Court for sharing the common intention with co-appellant Muhammad Farooq. Upon our independent evaluation of the evidence available on record, we have no legitimate exception to escape from the

conclusion arrived at by the learned trial Court with regard to the conviction and sentence of both the appellants. Both the eye-witnesses were quite natural and they had no reason to falsely implicate the appellants in substitution while letting off the real culprits. We have reason to believe that the occurrence had taken place in the mode and manner, as described by the eye-witnesses. We have no reason to disbelieve the ocular account, as the occurrence had taken place in front of gate of the residence of the deceased where Mst. Shahida Bibi, being mother of deceased Muhammad Saleem had attempted to save the life of her son and also sustained firearm injuries at the spot. Both the prosecution witnesses had stated that the electric bulb was on inside and outside of the house in their depositions before the learned trial Court and in the crime report lodged by the complainant as well as the same has been shown in the scaled site plan prepared by Khalil-ur-Rehman draftsman (PW-9). Even otherwise, being close relative i.e. identification of the appellants at the scene of occurrence could not be disputed. The promptitude lodging the crime report, which contains the names and roles of the appellants specifically attributed the firearm injuries, which has been corroborated and supported by the medical evidence. We have given anxious consideration on the plea taken by both the appellants in their statements recorded under Section 342 Cr.P.C. which were found nothing more than vague and bald assertions and while putting both the versions of complainant and the defence in juxta-position, the plea taken by the defence stands nowhere whereas the prosecution has proved the charge beyond any shadow of reasonable doubt with confidence inspiring evidence and believed to be a true version.

So far as the quantum of sentence of appellant Muhammad Farooq is concerned, we have found that there are some mitigating factors flouting on the surface of record, which could be taken as mitigation for lesser sentence. The motive set up by the prosecution has not been proved and the recovery of weapon of offence remained inconsequential which are valid considerations and enough to reduce the sentence of death to imprisonment for life. It is well settled law by now that a single mitigating circumstance had been held to be sufficient to award life imprisonment instead of death penalty. We have obtained guidance from case titled "GHULAM MOY-UD-

DIN alias HAJI BABU and others versus The STATE” (2014 SCMR 1034)

wherein at page No.1044, it has been held as under:-

“In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternative course by awarding life instead of death sentence.”

21. For what has been discussed above, while maintaining conviction this appeal is hereby **dismissed**, however the sentence of death of appellant Muhammad Farooq is converted into imprisonment for life by taking into account the above noted mitigating factors. The compensation and the sentence in lieu thereof shall remain intact.

The sentence of appellant Munir Ahmed, in both the heads under Section 302(b) and 324 PPC shall remain intact. However, the sentence of fine awarded by the learned trial Court under Section 302(b) PPC is not warranted by law, therefore, the amount of fine is converted into one of compensation under Section 544-A Cr.P.C. He is on bail. He shall be taken into custody and sent to jail to serve out his sentence.

MURDER REFERENCE No.56 of 2014 is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

(Qazi Muhammad Amin Ahmed)
Judge

(Asjad Javaid Ghural)
Judge

APPROVED FOR REPORTING.

JUDGE