THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

Jail Petition No.609 of 2019
(Against the judgment dated 26.09.2019, passed by the Lahore High Court, Lahore in Criminal Appeal No.1670 of 2016 and Murder Reference No.393 of 2016)

Abu Huraira

…Petitioner(s)

VERSUS

The State

…Respondent(s)

For the Petitioner(s): Miss Mehnaz, ASC

For the State: Mirza Abid Majeed, DPG, Punjab

Date of hearing: 26.10.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- Petitioner Abu Huraira, charged in case FIR No.387/15 dated 16.08.2015, under section 302 PPC, registered at Police Station Saddar, Gojra, for committing murder of his brother Muhammad Musa deceased on 16.08.2015 at about 07.00 A.M. in the area of Chak No.425/JB, Gojra, was tried by the learned Additional Sessions Judge, Gojra ('Trial Court'). Upon conclusion of trial, the learned trial Court vide judgment dated 27.08.2016, convicted the petitioner under section 302(b) PPC and sentenced him to death with direction to pay Rs.5,00,000/- as compensation under section 544-A Cr.P.C. to legal heirs of the deceased and in default thereof to further undergo six months simple imprisonment. The learned Lahore High Court, Lahore ('the High Court') while dismissing appeal of the petitioner, maintained his conviction under section 302(b) PPC, however, commuted his death sentence into imprisonment for life and consequently answered Murder Reference No.393 of 2016, sent by the Trial Court for confirmation or otherwise of the death sentence in the negative vide judgment dated

26.09.2019, hence, this jail petition, which is barred by eight days, however, keeping in view the sentence of the petitioner, the delay in filing the petition is condoned.

2. We have heard the learned counsel for the petitioner as well as the learned State counsel and have perused the available record with their assistance.

3. It appears from the record that the occurrence took place on 16.08.2015 at 07.00 AM within the territorial limits of Chak No.425/JB. The petitioner, Abu Huraira, is the real brother of Muhammad Musa deceased and brother-in-law (*Dewar*) of the complainant Mst. Shahid Parveen (PW.9), whereas Zubair (PW.10) is the complainant's brother. The complainant and PW Zubair furnished the ocular account of the occurrence. According to the statement of the complainant, the petitioner had previously threatened to kill her deceased husband on account of the destruction of the *watt* of his land. To resolve the said dispute, she called her brothers, Zubair and Abid Hussain on her *Dera* and on the fateful day, she along with her brothers and deceased husband, approached the petitioner for settlement of the matter. When the deceased attempted to reason with him, the petitioner started hurling abuses, went to his village, brought a pistol and fired a shot at the deceased, with which he got hit in the abdominal region. Zubair (PW.10) reiterated the same story as set forth by the complainant. We have noted that the petitioner has not denied the occurrence in his statement under section 342 Cr.P.C., however, has advanced a different version of the same. He asserted that on the fateful day he was cutting fodder for cattle along with his father, Abdul Sattar and brother Abu Bakar Siddique, when the deceased along with his wife Mst. Shahid Parveen and her brothers, namely, Abid Hussain and PW Zubair, arrived at the spot. The complainant raised a *lalkara* exhorting her husband to catch hold of and kill them (the petitioner and his companions), whereupon the deceased grappled with him (the petitioner). During the ensuing altercation, Abid Hussain allegedly fired a shot with a pistol at the petitioner, which instead struck the deceased in the abdomen. The petitioner denied having committed the murder of the deceased.

4. The evidence brought on record by the prosecution when examined in juxtaposition with the stance adopted by the petitioner in his statement recorded under section 342, Cr.P.C., does not satisfactorily bring to light the actual genesis of the occurrence or the precise manner in which it occurred. The ocular account furnished by the eyewitnesses to the effect that the petitioner, after hurling abuses, went to his village, fetched a pistol and, upon his return, opened fire at the deceased, is an after thought as it is difficult to comprehend why the petitioner would have resorted to abusive language without any apparent provocation, or why he would have escalated the matter to the extent of opening fire upon the deceased when the complainant party had allegedly approached him for an amicable settlement of an existing dispute. Similarly, the conduct of the deceased and the eyewitnesses, that they remained at the spot awaiting the petitioner's return with a firearm from village, despite having allegedly witnessed the escalation of the dispute also does not appeal to prudent mind for the reason that in the ordinary course of human conduct, a person placed in such a situation would be expected to anticipate the possible consequences and take steps to avoid further confrontation. Another significant circumstance emerging from the prosecution evidence is that, on the fateful day, it was the complainant, Mst. Shahida Parveen, who first summoned her brothers, namely Abid Hussan and PW Zubair, to her Dera, whereafter she, accompanied by her said brothers and her deceased husband, proceeded to the place of the petitioner, ostensibly for the settlement of the existing dispute. The assembly of the complainant's brothers at her instance, followed by their collective visit to the petitioner's place, assumes significance in determining the actual genesis and circumstances of the occurrence. Such conduct, when considered in conjunction with the subsequent events, raises a legitimate question as to whether the visit was, in fact, motivated by a genuine desire for reconciliation or whether some other consideration lay behind it. The possibility that the purported object of settlement was merely a pretext for a confrontation cannot, in the peculiar circumstances of the case, be altogether ruled out. It appears that the occurrence developed at the spot in the course sudden provocation between the parties and took an unfortunate turn in the heat of the moment. Nevertheless, the precise circumstances that triggered the fatal episode remain

shrouded in uncertainty. The medical evidence furnished by Dr. Muhammad Qasim Ikram (PW-8), who conducted the post-mortem examination of the deceased, establishes that the deceased sustained a single firearm entry wound, which proved fatal and resulted in his death.

5. The foregoing circumstances, when considered cumulatively and in the light of the petitioner's stance in his statement under section 342, Cr.P.C., lead us to the conclusion that the occurrence appears to have originated from a sudden confrontation at the spot, rather than from an act executed in furtherance of an established prior plan or deliberate premeditation. The uncertain genesis of the occurrence, the absence of convincing evidence of prior preparation, the circumstances in which the parties came face to face, and the fact that only a single firearm injury was found on the person of the deceased are circumstances which, when assessed in their entirety, assume material significance in determining the appropriate penal provision applicable to the petitioner. Consequently, in the peculiar facts and circumstances of the case, we are persuaded to hold that the case of the petitioner falls within the ambit of section 302(c), P.P.C., rather than section 302(b), P.P.C.

6. Accordingly, this petition is converted into an appeal and partly allowed. The conviction and sentence of the appellant Abu Huraira under section 302(b) PPC, are set aside, however, he is convicted under section 302(c) PPC and sentenced to undergo rigorous imprisonment for fourteen years and to pay Rs.5,00,000/- as compensation under section 544-A Cr.P.C. to legal heirs of the deceased and in default thereof to further undergo six months simple imprisonment. Benefit of Section 382-B Cr.P.C is extended to him.

Judge

Judge

Judge

Islamabad the
26th October, 2026
Not Approved for Reporting
M.Siraj Afridi PS