

MALIK SHAHZAD AHMAD KHAN, J. - I have gone through the majority judgment authored by Hon'ble Mr. Justice Athar Minallah. Although I agree with the reasoning and conclusion of the majority judgment to the extent that the prosecution has failed to prove its case against the petitioner for the charge under section 7(a) of the Anti-Terrorism Act, 1997, resulting into acquittal of the petitioner from the said charge and to the extent that the prosecution has also proved its case against the appellant beyond the shadow of any doubt for the charge under section 302(b) PPC, however, with respect, I do not agree with the reasoning and conclusion of the majority judgment about maintaining the sentence of death awarded to the petitioner for the charge under section 302(b) PPC and give my own reasoning.

2. It is true that the occurrence in this case took place inside the Courtroom of Miss. Nasira Parveen, Civil Judge/Judge Family Court, Gujrat, where the suit for dissolution of marriage filed by Mst. Naeema Bibi deceased (wife of the petitioner), was statedly pending but mere this fact that the occurrence took place inside the Courtroom, by itself is not sufficient to withhold the relief of alternate punishment i.e., imprisonment for life while ignoring the mitigating factors available in a case in favour of the accused. Reference in this context may be made to the judgments reported as "Muhammad Yaqoob v. The State" (**PLD 2019 Supreme Court 580**) and "Abrar Ahmad Farooq and others v. The State and another" (**PLD 2024 Supreme Court 815**). In the case reported as ***Muhammad Yaqoob*** supra, the occurrence took place inside the Courtroom of learned Additional Sessions Judge, Gujranwala but keeping in view the mitigating factors of the said case including the

failure of the prosecution to prove the alleged motive, the sentence of the accused of the said case under section 302(b) PPC, was altered from death into imprisonment for life.

3. In the instant case, we have noted that Muhammad Nawaz SI (PW-8), was the complainant of this case. He alleged that the motive behind the occurrence was a domestic dispute between the petitioner and the deceased. No detail of the domestic dispute between the petitioner and the deceased was brought on the record that as to whether it was dispute of marriage of children of the parties, dispute of maintenance or property etc. Even the family suit which was statedly pending between the parties in the Court of learned Judge Family Court, Gujrat was not produced in the prosecution evidence. Relevant part of the statement of Muhammad Nawaz SI (PW-8), in this respect, reads as under:-

".....I did not produce any judicial record of the Family Court before the I.O....."

A vague and general motive was alleged by the prosecution, which has not been proved in this case.

4. I have also noted that only the police officials have appeared in the witness box to prove the occurrence and no family member of the deceased had deposed against the petitioner. It is further noteworthy that the mother of Mst. Naeema Bibi (deceased) namely Mst. Bushra Iftikhar (PW-2), also appeared in the witness box as she was witness of identification of the dead-body of Mst. Naeema Bibi (deceased) and in her cross-examination she had categorically stated that she earlier lodged FIR No.1086/2013, dated 02.11.2013, under section 365 PPC, at police station Civil Lines, Gujranwala (Ex.DA), regarding the abduction of her daughter

namely Mst. Naeema Bibi (deceased). The occurrence in this case took place on 24.01.2014. Mst. Bushra Iftikhar (PW-2), further stated during her cross-examination that one Altaf Rabbani was implicated later-on in the said earlier case with the allegation that he had got sent Mst. Naeema Bibi (deceased) to '*Darul-Aman*'. She further stated that on the day of occurrence i.e., 24.01.2014, she (PW-2), appeared in the Court of Miss. Nasira Parveen, Civil Judge/Judge Family Court, Gujarat and she had not seen Maaf Ali (petitioner), in the said Court. She had also stated that she had told the police that the abovementioned Altaf Rabbani had committed the murder of her daughter but the police had not recorded her version. The abovementioned statement of the mother of Mst. Naeema Bibi (deceased), shows that she was not supporting the prosecution case against the petitioner.

5. I have further noted that admittedly the petitioner and the deceased had two (02) children but Mst. Naeema Bibi (deceased), was living in '*Darul Aman*', at the time of occurrence. The real mother of Mst. Naeema Bibi (deceased), namely Mst. Bushra Iftikhar (PW-2), had herself earlier lodged FIR regarding the abduction of her daughter namely Mst. Naeema Bibi (deceased) by one Altaf Rabbani. The said facts speak volumes about the conduct of Mst. Naeema Bibi (deceased), towards her husband and children. As mentioned earlier, not a single member from the family of Mst. Naeema Bibi (deceased), had appeared in the witness box against the petitioner rather her real mother had tried to protect the petitioner in this case. Furthermore, the children of the petitioner had already lost their mother. Now the death sentence of the

petitioner will deprive them from the love and affection of their real father.

6. As mentioned earlier, the motive has not been proved in this case. Keeping in view all the abovementioned facts, it is not determinable in this case that as to what had actually happened immediately prior to the occurrence between the petitioner and the deceased, which instigated the petitioner to commit the occurrence and which resulted into present unfortunate incident. I am, therefore, of the view that the sentence of death awarded to the petitioner is quite harsh and the sentence of imprisonment for life would meet the ends of justice. I may refer here the case of "Muhamad Aslam and another v. The State" (2007 SCMR 1412), wherein at page Nos.1416 & 1417, it has been held as under:-

".....No doubt normal penalty for an act of commission of Qatl-i-Amd provided under the law is death but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence because no hard and fast rule can be applied in each and every case."

Similarly in the cases reported as "Ansar Ahmed Khan Barki v. The State" (1993 SCMR 1660), "Mir Muhammad @ Miro v. The State" (2009 SCMR 1188) and "Ahmed Nawaz v. The State" (2011 SCMR 593), the sentence of death awarded to the accused of the said cases was altered from death to imprisonment for life on the ground that the motive alleged by the prosecution was not proved.

7. In my humble view, it has wrongly been given an impression in the majority judgment that the petitioner belonged to a powerful segment, whereas, the deceased was an under privileged member of the society. The said observation is not based on any evidence

produced in this case. It is evident from the perusal of record that the petitioner and the deceased being husband and wife were of the same social status and there is no material available on the record to support the abovementioned observation of the majority judgment.

8. Moreover, if for the sake of arguments, it is presumed that as Mst. Naeema Bibi (deceased), had filed a family suit against the petitioner, therefore, the petitioner had committed her murder but even then, the other attending circumstances, of the case cannot be ignored while determining the quantum of sentence. As mentioned earlier, the petitioner had two (02) children from Mst. Naeema Bibi (deceased), who disappeared from her house while leaving the responsibility of her children to others. The real mother of the deceased namely Mst. Bushra Iftikhar (PW-2), had herself lodged an FIR regarding the abduction of Mst. Naeema Bibi (deceased), against one Altaf Rabbani. According to the prosecution case, Mst. Naeema Bibi (deceased), thereafter filed a suit for dissolution of marriage against the petitioner and started living in Daral Aman. It is a common observation that under the above circumstances, the petitioner must be facing different remarks of the society and undergoing the mental torture. We cannot ignore the hard realities of our society while deciding the question of quantum of sentence awarded to the petitioner. When the family life of the petitioner, as well as, the life of his children was destroyed then he must have lost his senses and self-control. The petitioner was a human being and not a machine. Under the circumstances, if the above motive of the prosecution is presumed to be correct (though not proved), even then the circumstances of the case do

not justify the sentence of death awarded to the petitioner. It is true that the above circumstances also do not justify the act of the petitioner but I am not acquitting the accused from the charge. Life imprisonment is also a legal punishment for the offence under section 302(b) PPC and in my humble view under the above circumstances, the sentence of life imprisonment shall meet the ends of justice.

9. In the light of all the aforementioned mitigating factors, I convert this petition into an appeal and partly allow to the extent that Maaf Ali (petitioner), is acquitted of the charge under section 7(a) of the Anti-Terrorism Act, 1997, whereas the conviction of the petitioner/ appellant under section 302(b) PPC, awarded by the learned trial Court and upheld by the learned High Court is maintained, however, his sentence is altered from death to imprisonment for life. The direction regarding the payment of compensation and sentence in default thereof is maintained and upheld.

JUDGE

Approved For Reporting