Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

Cr.A No.13-B of 2023

Nawaz Khan alias Margha

Vs

The State etc

JUDGMENT

For appellant: **M/s Faqir Mehboob-ul-Hamid and Hujjat Ullah Khan, Advocates**

For respondents: **Haji Hamayun Khan Wazir Advocate**

For State: **Mr. Umer Qayyum, Asstt. A.G.**

Date of hearing: **31.05.2023**

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DR. KHURSHID IQBAL, J.--- By this single judgment we intend to dispose of the subject criminal appeal (No.13-B/2023) and the connected criminal appeal (No.19-B/2023). Both have arisen out of the same criminal case which the trial court decided by its judgment rendered on 12.01.2023. Samiullah (appellant in the connected appeal; hereinafter "complainant") registered the case against Nawaz Khan alias Margha (accused-convict; hereinafter "appellant" in the subject appeal). The complainant charged the appellant under sections 302/324, PPC in Police Station, Lakki Marwat, at the strength of FIR No.267, on 18.07.2018. The Additional Sessions Judge-III/Model Criminal Trial Court (MCTC) in Lakki Marwat, conducted the

trial of the appellant. She convicted the appellant under section 302 (b), PPC, and acquitted him from the charge under section 324, PPC. She recorded the conviction and sentence in the following terms:

> **The accused facing trial namely Nawaz Khan alias Margha s/o Nazar Khan is convicted under section 302(b) PPC and sentenced to death as ta'zir. Convict Nawaz Khan shall be hanged by the neck till he is dead and has been confirmed to be dead by the medical officer in the presence of Judicial Magistrate on duty in jail. However, this conviction is subject to confirmation by the august Peshawar High Court. The convict shall also be liable to pay Rs.10,00,000/- as compensation to the legal heirs of deceased Abdur Rehman u/s 544-A Cr.PC and in case of default, he shall further undergo simple imprisonment for six months.**

2. The first information of the case was furnished by the complainant in the Emergency Room of the Rural Health Centre (RHC) of Gambila town, where he had taken the dead body of one Abdur Rahman, his nephew. The information was that on 18.07.2018, the complainant and Abdur Rehman, was on the way back home after taking care of their fields. When they reached near the Government Primary School (Male) Kotka Gul Zaffar Khwaja Khel, at about 18:35 hours, the appellant, their co-villager, duly armed with a Kalashnikov,

came there on a motorcycle (CD-70). The appellant alighted from the bike. He started firing at them. As a result of his firing, Abdur Rahman was hit and fell on the ground; the complainant luckily escaped unhurt. Soon after the occurrence, the appellant decamped from the crime scene. Motive the complainant disclosed was that the appellant wanted what he termed as *friendship* with the deceased which the deceased had declined.

3. After completion of investigation, complete challan was put for trial against the appellant. The trial court supplied copies of the relevant documents to the appellant under section 265-C Cr.P.C. Charge was framed against the appellant under 302, PPC, for qatl-i-amd of Abdur Rahman and under 324, PPC, for ineffective firing at the complainant, to which he pleaded not guilty and professed innocence. The prosecution examined 12 witnesses. The appellant was examined under section 342 Cr.P.C, wherein he denied the charges and refuted the evidence of the prosecution. He didn't avail the opportunity to record evidence in defence or to give statement on oath within the meaning of section 340(2) Cr.P.C. After hearing arguments of the prosecution and defence, the trial court convicted the appellant under 302 (b), PPC, as per the details stated above, and acquitted him from the charge under 324, PPC.

4. We have anxiously considered the submissions advanced at the bar and perused the record.

5. The prosecution case primarily depends on the ocular account the complainant furnished as the sole eye witness of the occurrence (PW8). For the sake of brevity, we would avoid repeating his statement recorded as examination-in-chief. The same mostly reiterates the story of the incident narrated in the FIR. We would evaluate his statement under cross examination instead in which the defence endeavoured to establish that he was not present on the crime scene, and/or that he was an interested witness. Key aspects of his cross examination relate to:

- **The colour of the motorcycle of the appellant;**
- **Disclosure of the crime scene, most particularly the directions;**
- **The arrival of Waheedullah, his brother (PW7) at the crime scene and the shifting of the dead body of the deceased to the hospital;**
- **The attraction of other people to the crime scene;**
- **The occurrence of the death of the deceased on the crime scene; and**
- **The production of the record of rights of the fields (the land) which he had gone to look after alongwith the deceased.**

6. The complainant replied that at the time of the report, the police official did not ask him about the colour of the motorcycle of the appellant. He added that during the investigation also, he did not disclose the colour of the

motorcycle. Even then he stated that the motorcycle of the appellant was of black colour. This fact was not disputed anymore. As regards the disclosure of the directions in the FIR, he replied in the affirmative. It is an established judicial view that an FIR is not supposed to reflect the story of the commission of the crime in minute details. The purpose is to furnish the very first information regarding the commission of an offence. Indeed, many more details are to come forward during the investigation. However, he was further challenged on being asked a couple of questions. Before we consider his replies in this respect, we may make reference to the site plan (Ex.PB). A close reading of the site plan would show that the occurrence took place on a Kacha path, leading to the village of the complainant party. The crime scene is situated to the north of a Pakka road, leading to Khwaja Khel and Tajazai. The complainant party was moving from southwest towards northeast. Coming back to the statement of the complainant, it appears that he was able to state the directions correctly. As his deposition evinces:

> **Our village is situated towards east to the spot of occurrence. I have pointed out the spot to the I.O which is correct with all its footnotes. The landed property is situated towards west of the place of occurrence. There is a mettled [metalled] road near the place of occurrence. The [metalled] road is situated towards south of the place of**

occurrence at a distance of 30/40 paces. This road is leading from Tajazai to village Khwaja Khel and Kheaja Khel is towards east of it. The village Tajazai is situated towards eastern side.

7. As regards the arrival of Waheedullah (PW7) to the crime scene and shifting of the dead body to the hospital, the complainant deposed that Waheedullah (his brother) reached to the crime scene on a motorcycle within 4 to 5 minutes of the occurrence. He further deposed that his village is situated at a distance of about 02 kilometres from the crime scene. He added that Waheedullah managed to bring a datsun pickup to the crime scene within 45 to 60 minutes for shifting the dead body to the hospital. Waheedullah's testimony (PW7) needs to be examined here. When entered the witness box, he deposed in examination-in-chief that he identified the dead body of the deceased before the Medical Officer. While under cross examination, it was rather confirmed from him that he had reached the crime scene at about 06.45 pm after having been informed by the complainant; he accompanied the complainant from the crime scene while the dead body was being shifted to the hospital and that the dead body was shifted from the crime scene at 08.00 pm. Indeed, Waheedullah was not present at the time of the occurrence, a fact, which, too, was confirmed from him under cross examination. Waheedullah's testimony thus

substantiates that the complainant informed him at his home from the crime scene and when he reached there, the complainant was already present there.

8. Adverting to the issue pertaining to the attraction of other people to the crime scene, the complainant affirmatively deposed that from the locality, some people, such as, Jamal, Kamil, Nawab, etc, rushed to the crime scene, but he didn't produce them to the Investigating Officer for recording their statements. In the same vein, the complainant also admitted that the datsun pick up's driver Amin Jan, too, was not examined as witness. Indeed, it would have been much better, had these persons, or anyone amongst them, been examined. However, there could be no disputing the truth that potential witnesses usually remain reluctant to come forward as witnesses so as to shun inviting enmity of the accused party. Though unfortunate, it is common knowledge that the general public avoid coming forward as witnesses in criminal cases. The courts have been considering it since long. Reference may, for example, be made to a 1976 case of ***Rahim Bakhsh v. Muhammad Iqbal etc. (1976 SCMR 528)***. Moreover, prosecution is bound to produce material witnesses in support of its case.

9. The issue of the exact time of the death of the deceased is linked to the medical evidence. The complainant stated in the FIR that the deceased breathed his last on the crime scene. In

other words, the information he furnished was that as a result of the firearm injuries, the deceased died on the spot instantaneously. The post-mortem examination report shows that the *probable* time between injury and death was 20-30 minutes. Learned counsel for the appellant accentuated this entry of the post-mortem report, presenting it as a material contradiction. This aspect may need deeper critical analysis. In the post-mortem report, it is the *probable* and not the exact time between the injury and death that is recorded by a medical officer. The following explanations of the word "probable" are worth reading:

> **(a) The common use of this word is no doubt to imply that something is more likely to happen than not. In conversation, if one says to another "If you go out in this weather you will probably catch a cold" this is, I think, equivalent to saying that one believes there is an odds on chance that the other will catch a cold. The word "probable" need not, however, bear this narrow meaning... A close study of the rule was made by the Court of Appeal in the case of Victoria Laundry (Windsor) Ltd v Newman Industries Ltd [[1949] 1 All ER 997]. The judgment of the court was delivered by Asquith LJ who suggested the phrase "liable to result" as appropriate to describe the degree of probability required. This may be a colourless expression, but I do not find it**

> **possible to improve on it. If the word "likelihood" is used, it may convey the impression that the chances are all in favour of the thing happening, an idea which I would reject. The Heron II, Konfos v Czarnikow (C) Ltd [1967] 3 All ER 686 at 707-708, HL, per Lord Hodson:**
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> > **'The word "probable" is a common enough word. I understand it to mean that something is <u>likely to happen</u>.'** *Goldman v Thai Airways International Ltd [1983] 3 All ER 693 at 700, CA, per Eveleigh LJ*
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> |*Words And Phrases Legally Defined*; LexisNexis, 2013, 4th Ed., pp615-16|
>
> **(b) Probable. "Probable" means having more evidence for than against; supported by evidence which inclines the mind to believe, but <u>leaves some room for doubt</u>.**
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> |P Ramanatha Aiyar's *Advanced Law Lexicon*, Shakil Ahmad Khan, vol. 3, 2017, 5th Ed. LexisNexis, p4081|

10. The information the complainant furnished, too, couldn't be seen with arithmetic precision. It needs no mention that witnessing the murder, most notably of a near and dear one (brother, father, nephew, etc) tends to be a traumatic experience, triggering physical, and emotionally disturbing response and generating feelings of shock, stress, anxiety, intimidation and anger. The scene changes abruptly. No one can exactly visualize what a witness has actually seen. Indeed, it is

a moment full of the greatest grief and shock while witnessing a victim taking the last breaths of his life. In such a situation the exact time of the expiry of the deceased was not possible to be stated. Even otherwise, the probable time of death—20-30 minutes per the post-mortem report—happened on the crime scene as it took sufficient to arrange a datsun pick for its removal to the hospital. It means that the mere fact the complainant stated that the death occurred instantaneously couldn't be considered as much a material doubt as to lay axe at the roots of the prosecution case. Then, usually people from the near around area are attracted. Nothing could be observed with precision and that, too, with an idea that evidence of the same would be furnished before the Court. Moreover, it usually takes some time for all those on the crime scene to come back to the normal senses after what has happened. All that is required to be brought on the record and proved at the trial is that a crime has been committed, which a witness(s) has/have seen directly and that has resulted in the death/injury to someone. These circumstances are very much available in the instant case in the light of the above examination of the evidence and also proved. In light of the observations made in ***Nasir Ahmed Vs The State (2023 SCMR 478)***, it is settled law that where ocular evidence is found trustworthy and confidence inspiring—as is the case before us—then the same is given preference over medical

evidence and the same alone is sufficient to sustain conviction of an accused. Further, medical evidence is always considered a corroborative piece of evidence. It is treated to be confirmatory in nature. Another significant aspect of the medical evidence—the injury sheet, the inquest report and post-mortem report—evince that the deceased received two entry wounds with two exit wounds. Both are noted to be of the same size. This has proved that a single firearm weapon was used for the commission of the offence by a single person. If the ocular account is fully reliable in support of an incident, then a minor contradiction in the medical and ocular evidence should lose their weight. ***[Shafqat Ali and others v. The State (PLD 2005 S.C 288)]***.

11. Last, but not the least, the complainant didn't produce any document showing his ownership of the land he and the deceased had visited. If the prosecution has proved the natural presence of the complainant on the crime scene, the purpose of his visit to the land would become a secondary aspect. If at all, it may, at best, be seen as a minor discrepancy. In ***Falak Sher v. The State (NLR 2000 Criminal 188)***, the Supreme Court observed minor inconsistencies not of fatal character may not be used for acquittal though may be seen as a mitigating circumstances.

12. Learned counsel for the appellant raised two more

objections on the testimony of the complainant. Firstly, the complainant is an interested witness because he is the real uncle of the deceased; and secondly, in District Lakki Marwat, in the month of July, people usually don't go at such time as 06.30 pm to look after their fields. As regards the first objection, it is fully established that the complainant was the only witness accompanying the deceased at the relevant time. He was a natural witness. Mere close relationship of a witness is not fatal to the prosecution case. It needs no emphasis that all that must be seen is the intrinsic worth of evidence of an eye witness, no matter how close relative of the complainant party he may be. The intrinsic worth of the evidence shall come from its being natural, true and confidence inspiring. As discussed above, his presence on the crime scene was not shattered. So far as the second objection goes, suffice it to say that the complainant was not asked any question under cross examination that his visit to his fields at the relevant time is not practised as a part of the folkways (traditional behaviour or way of life of the local community). The Investigating Officer also collected no such evidence, nor was he cross-examined in this connection. The evidence demonstrates that the village of the complainant party is situated at a distance of about 02 Kilometres, a short distance, indeed. The mere fact that people would not go out at that point of time and that the complainant party had gone out could not

be seen as an act casting doubt on the very happening of the incident. Then, a question would arise as to why the complainant would charge the appellant falsely when, as per his own deposition, he stated to have no enmity with the appellant or even other persons in his village.

13. We would now examine the recovery of 04 empties of 7.62mm bore picked up from the crime scene. The empties were examined in the Forensic Science Laboratory (FSL). The significance of the FSL report lies in the fact that the empties were found to have been fired from one and the same weapon. It doubtlessly means that the empties were fired by one person. However, on balance, it is worth noting that no evidence was produced as who took the parcel containing the empties to the FSL. Moreover, the empties were received in the FSL on 15.08.2018, after 28 days of the occurrence. It may be observed here that: firstly, the weapon of offence was not recovered from the appellant. Secondly, no specific malice was attributed to the Investigating Officer. Thirdly, and if at all it is seen something to be reckoned with, the omission could at best be described as the inefficiency of the Investigating Officer. In ***Nawaz v. The State (2003 YLR 2926),*** this Court has held that mere delay in sending the recovered articles to the expert, in the absence of any malice on the part of the Investigating Officer, is not a good ground for rejecting their value and worth. Likewise, in ***Akhtar***

Ali v. The State (2016 PCrLJN 3), it was held that in absence of the crime weapon, the non-sending of the crime empties to the FSL, particularly in a case of single accused, would not damage the prosecution case.

14. Learned counsel for the appellant raised objection regarding the shifting of the dead body from the crime scene to the hospital. The PM report depicts that the dead body was taken to the hospital by Waheedullah. The inquest report shows that the dead body was received by the same Waheedullah. The objection of the learned counsel was that why didn't the complainant shift the dead body to the hospital. We have already discussed above with reference to the statements of the complainant and Waheedullah. The depositions of those witnesses show that the complainant informed Waheedullah, his brother. The latter reached to the spot. He, then, managed a datsun pickup. He and the complainant jointly shifted the dead body to the hospital at 08.00 pm from the crime scene. ASI Ghulam Saboor (PW2), the scribe of the murasila, deposed that in the inquest report, he has not mentioned the name of the complainant; rather he has mentioned the name of Waheedullah, having identified the dead body, alongwith one Sher Zaman Khan. We are of the view that the prosecution has substantially explained that PW Waheedullah reached to the crime scene quickly after having been informed by the

complainant, who thereafter procured the vehicle for shifting the dead body. Thus, his presence on the spot at that time is proved and it would make no difference if his name was mentioned in the inquest report as well as in the post-mortem report.

15. Coming to the delay in lodging the FIR. The arrangement of the vehicle is a time-consuming effort. The locality is typically a rural one. The distance between the crime scene and the hospital as the complainant has told, is 08 to 10 miles (approximately 12-16 Kilometres). There is no hard and fast rule that delay in lodging the report would automatically render the prosecution case injuriously doubtful unless there is sufficient evidence indicating consultation and deliberation. What is important is that it depends upon facts and circumstances of each case. The time spent in arrangement of a vehicle vis-à-vis the distance between the crime scene and the hospital makes delay natural. Needless to state that anyone, especially a close relative, a fact in the case in hand, who witnesses a murder couldn't be expected to act mechanically with a more than reasonable promptitude. So, the delay not being tainted with mala fide, deliberation and consultation, wouldn't negatively impinge on the veracity of the prosecution case. In this respect, reference may be made to ***Ali Ahmed v. The State (2022 PCrLJ 1480),*** in which it has been

held that mere delay in reporting of crime to the police by itself is not fatal to the prosecution case.

16. As regards the minor discrepancies, referred to above, suffice it to say that acquittal cannot be recorded solely on the ground of minor discrepancies or contradictions. It is settled law that any contradiction or discrepancy which does not go deep to the roots of a criminal case cannot be made sole ground for acquittal. The reason is that if the practice of recording acquittal on the basis of irrelevant discrepancies or contradictions is allowed to prevail, then conviction in criminal cases will become impossible. Needless to mention that this has never been the intent and purpose behind the concept of appraisal of evidence in administration of criminal justice. While appreciating the effect of minor discrepancies in one of the latest cases, the Supreme Court held that:

> **It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence**

> **in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. [*Imran Mehmood v. The State and another (2023 SCMR 795)*]**

17. In a 2022 case, the Court ruled:

> **While appreciating the evidence, the court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction. [*Shamsher Ahmad and another v. The State and others (2022 SCMR 1931)*]**

18. Coming to the motive, the general principle is that: firstly, it is not necessary for the prosecution to allege motive in each and every case. Secondly, once set up, motive must be proved. Motive is a state of mind of an accused person. It always remains secret and concealed until exposed through spoken words or actions. The complainant stated in the FIR that the appellant *liked* the deceased; he *urged the deceased to keep company with him*. The deceased, he added, was not willing to do so. He reiterated it in his deposition. The Investigating Officer stated that he asked about the motive from the people in the locality which was confirmed. However, he didn't record

the statement of any witness to elicit its proof. It means, no independent evidence came forth. However, except his oral testimony, the prosecution has failed to bring on the record independent evidence to substantiate the motive. One can't help appreciate that the nature of the motive is such that generally people avoid talking about it publically and, more so, in a court of law. The deceased, as the private counsel for the complainant stated at the bar, was a young handsome teenage boy of 12/13 years. This is undisputed. But, on balance, the appellant, too, is a young late teenage boy. His urge is absolutely not justified. Given his mental immaturity, the event preceded the incident appears to have flared up his emotions induced by displeasure which led to rob him of the power of self-control.

19. The jurisprudence developed by our Supreme Court on the role of a failed and/or non-proved motive as a mitigating factor in award of punishment is quite rich. Cases which may be called somewhat earlier ones are:

- ***Mst. Bevi v. Ghulam Shabbir and another*** **(1980 SCMR 859)**
- ***Ansar Ahmad Khan Burki v. The State and another*** **(1993 SCMR 1660)**
- ***Falak Sher v. The State (NLR 2000 Criminal 188)***

Recent rulings are:

- ***Zahoor Ahmad v. State*** **(2017 SCMR 1662).**
- ***Haq Nawaz v. The State*** **(2018 SCMR**

21)

- *Muhammad Umar v. The State* (2022 P.Cr.L.J. 695)

In the last mentioned case, the Court observed:

> **The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder |...|.**

The Court referred to the following case:

- *Ahmad Nawaz v. The State* (2011 SCMR 593)
- *Iftikhar Mehmood and another v. Qaiser Iftikhar and others* (2011 SCMR 1165)
- *Muhammad Mumtaz v. The State and another* (2012 SCMR 267)
- *Muhammad Imran @ Asif v. The State* (2013 SCMR 782)
- *Sabir Hussain alias Sabri v. The State* (2013 SCMR 1554)
- *Zeeshan Afzal alias Shani and another v. The State and another* (2013 SCMR 1602)
- *Naveed alias Needu and others v. The State and others* (2014 SCMR 1464)
- *Muhammad Nadeem Waqas and another v. The State* (2014 SCMR 1658)
- **Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035); and**
- **Qaddan and others v. The State (2017 SCMR 148)**

20. The conclusion of the above discussion, after the above

reappraisal of the evidence, is that the prosecution has proved that the complainant was present at the crime scene and has furnished direct evidence as the eye witness of the occurrence. His evidence is direct, concrete and confidence inspiring. The defence has not been able to shatter his presence on the spot and bring ill will on his part for roping the appellant in the case. The recovery of the empties from the crime and the medical evidence convincingly propped up the complainant's evidence. No question of misidentification of the appellant was raised. Certain discrepancies did surface, such as, delay in lodging the report; delay in sending the empties to the FSL; and proof of the motive. After having examined these discrepancies in juxtaposition with other key aspects, such as, the direct, positive and confidence inspiring evidence of the complainant; the recovery of the crime empties and blood stained earth from the crime scene and their positive FSL report; the appellant being a single accused duly identified on spot, we have reached to the conclusion that the prosecution has proved the charge of qatl-i-amd against the appellant.

21. We would now consider the issue of sentencing. The learned trial Judge has imposed the sentence of death for two reasons: firstly, the same is the normal penalty for qatl-i-amd; and secondly, the young age of the appellant is not a mitigating factor. The trial Court has relied on the ruling given in the case

of ***State Vs Waheed Iqbal (2005 PCr.LJ 1384) and 2010 PCr.LJ 1687 SC (AJ&K)***.

22. We have no central law of sentencing. Two provinces—the Punjab and the Khyber Pakhtunkhwa—have introduced sentencing laws in 2019 and 2021, respectively. Both the laws have the same text. They don't apply to cases where capital punishment is provided within the range of punishments. However, they lay down aggravating and mitigating factors which the (trial) court only may take into consideration while passing a sentence. Section 14(3) of the KP law provides that the court shall schedule a separate hearing for sentencing. Though, the 2021 KP law is not applicable to offences carrying capital punishment, still a separate hearing on sentencing would be helpful for a trial court. We respectfully urge the trial courts to conduct such separate hearing. Section 3(2) (a) of the KP law provides the age of the offender as one of the mitigating factors. Despite the absence of a sentencing law until very recently, the higher courts have attended to the issue in their judicial pronouncements. In a 2010 case, the Supreme Court held that the question of sentence demands utmost care on the part of the court dealing with the life and liberties of the accused person ***(Nadeem alias Manha alias Billa Sher v. State 2010 SCMR 949 Supreme Court)***. In ***Muhammad Ashraf v. State (2006 P Cr. L J 1431)***, it was held that the courts should not be

mechanical in awarding sentence. They are supposed to think and consider what a proper sentence ought to be. In the case of ***Saleemuddin v. State (2011 SCMR 1171),*** the Supreme Court of Pakistan has held that while awarding any sentence, the Court should always keep in mind all the surrounding circumstances, under which a particular offence is committed.

23. In ***Dhananjoy Chatterjee alias Dhana v. State of W.B (1994 2 SCC 220)***, the Supreme Court of India held:

> **15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime [...].**

24. In the case of ***Shailesh Jasvantbhai and Another v. State of Gujarat and Others (2006 2 SCC 359)***, the Supreme Court of India observed:

> **Friedman in his Law in Changing Society stated that: "State of criminal law continues to be--as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it**

was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

25. We have observed that the appellant is in his late teenage, aged about 19/20 years. The appellant has attained the age of majority. However, at such an age, mental maturity is still lacking. Next, the motive though was not proved independently. The Investigating Officer probed it in the locality. As we have observed above, the motive as expressed in the FIR is not usually spelt out in the public. Moreover, no other motive was stated. Then, the circumstances preceding the incident could be said to have put the appellant in distress due to which he could be safely said to have lost self-control, especially due to low mental maturity. We are of the view that life term would help create a scope for his reformation with the passage of time as his mental maturity increases.

26. As a corollary of the above discussion, while maintaining the conviction under section 302 (b), PPC, we partially allow this appeal by converting the death penalty to life imprisonment. On balance, however, we enhance the amount of fine from Rs. One million to Rs. Two million, which, if realized, shall be paid to the legal heirs of the deceased as compensation under section 544-A, Cr.PC. In default of

payment of fine, he shall further undergo 06 months S.I. Benefit under section 382-B Cr.PC is extended to the convict-appellant. We answer the death reference in the ***negative***.

27. So far as the criminal appeal of the complainant against acquittal of the appellant under section 324, PPC, is concerned, we find that the appellant had no intention to commit qatl-i-amd of the complainant. Had the appellant any intention to commit the murder of the complainant, he could do so easily, especially keeping in view the distance between the two and the fact that the complainant was empty handed. The acquittal of the convict-appellant under section 324 PPC is, thus, justified. Resultantly, the connected Criminal Appeal No.19-B/2023 titled *"Samiullah Khan v. The State"* is hereby dismissed.

28. These are the reasons for our short order of even date.

Announced
31.05.2023
(Ghafoor Zaman)

JUDGE

JUDGE

16 JUN 2023

(D.B)
Hon'ble Mr. Justice Fazal Subhan
Hon'ble Mr. Justice Dr. Khurshid Iqbal