JUDGMENT SHEET
**IN THE PESHAWAR HIGH COURT,**
**BANNU BENCH**
(Judicial Department)

**Cr.ANo.326-Bof 2023**
**Zahir Abbas**
**Vs**
**The State etc**

Date of hearing: **07.03.2024.**

Appellant (s) by: Mr. Muhammad Anwar Khan
Maidad Khel, Advocate.

State by: Mr. Habib Ullah Khan, AAG.

Complt: by: Mr. Salah-ud-Din Khan Marwat, Advocate.

## JUDGMENT

**SAHIBZADA ASADULLAH, J.** Through this single judgment we intend to decide the instant criminal appeal as well as the connected **Cr.R No.51-B/2023 "Munir Khan Vs The State etc"**, as both the cases are the outcome of one and same judgment dated 12.07.2023, passed by learned Additional Sessions Judge-I, Lakki Marwat, delivered in case FIR No.890 dated 30.12.2018 under sections 302/506/452/354 PPC, Police Station Lakki, whereby the appellant was convicted and sentenced in the following manner:-

> i. Under section 302 (b) of the Pakistan Penal Code, 1860 the appellant is sentenced thereunder to imprisonment for life (R.I) as Ta'zir with payment of compensation of Rs.4,00,000/- (four lac) to the legal heirs of deceased under section 544-A Cr.P.C, recoverable as arrears of land revenue or in default to undergo simple imprisonment for a period of six months.
> ii. The accused was also held guilty of trespassing into the house of complainant in order to commit offence punishable with death, he was convicted under section 449 of the Pakistan Penal

Code, 1860 and was sentenced to Rigorous Imprisonment for 06 years and payment of Rs.10,000/- as fine, recoverable as arrears of land revenue or in default to undergo simple imprisonment for a period of three months.

iii. The accused was also held guilty of criminally intimidating the complainant Muneer Khan and eyewitness Mst. Nasreen Bibi by threatening to cause their murders or grievous hurt by aiming his pistol at them and was convicted under section 506 (ii) of the Pakistan Penal Code, 1860 and was sentenced thereunder to Rigorous Imprisonment for three years and payment of Rs.10,000/- as fine, recoverable as arrears of land revenue or in default to undergo simple imprisonment for a period of one month. All the sentences shall run concurrently. The convict was given the benefit of Section 382-B of the Code of Criminal Procedure."

2. The facts merging from the contents of FIR are that on 30.12.2018 at 16:40 hours complainant Munir Khan brought the dead body of his sister Mst. Salma Bibi to the police station in a Datsun pickup with the help of co-villagers and reported the matter to the police that on the day of incident he alongwith his sisters Mst. Nasreen Bibi and deceased Salma Bibi were present in their house, when the accused Zahir Abbas armed with 30 bore pistol entered into their house, grabbed the hand of Mst. Salma Bibi and forcibly tried to take her along. When he (the complainant) and his sister Mst. Nasreen Bibi tried to intervene, the accused aimed his pistol at them and threatened to kill them. The accused tried to take Mst. Salma Bibi alongwith him, but she resisted due to which he got annoyed and fired at her, as a result

whereof she got injured and fell down. In the meanwhile Mst. Nasreen Bibi tried to catch hold of the accused and during scuffle with accused, right sleeve of her shirt was torn and the accused managed to decamp. The complainant party being empty handed could do nothing and when they attended Mst. Salma Bibi, she breathed her last. Motive for the offence was that accused had demanded the hand of Mst. Salma Bibi, but they had refused, as she was already engaged to one Tariq Zaman. He charged the accused for commission of the offence, hence, the present FIR.

3. After arrest of the accused and completion of investigation, complete challan was put in Court. The provisions of Section 265-C Cr.P.C were complied with and charge was framed against the appellant to which he pleaded not guilty and claimed trial. In order to substantiate its claim, prosecution produced and examined 10 PWs. After closure of the prosecution evidence, statement of accused was recorded under section 342 Cr.P.C, however, neither he opted to be examined on oath under section 340 Cr.P.C, nor wished to produce evidence in defence. The learned trial Court, after conclusion of the trial, found the appellant guilty of the charge and sentenced him as mentioned in the earlier part of this judgment, hence, this appeal.

4. We have considered the submissions of learned counsel for the parties, alongwith learned AAG for the

State and with their valuable assistance the record was scanned through.

5. It was on 30.12.2018 when the deceased lost her life, owing to firearm injuries, the dead body was shifted to the police station, where the complainant reported the matter and the eyewitness verified the same. The injury sheet and inquest report were prepared and the dead body was sent for postmortem examination. The investigating officer received copy of the FIR, visited the spot and on pointation of the witnesses prepared the site plan. During spot inspection blood stained earth was collected from the place of the deceased and two empties of .30 bore from the place assigned to the accused/appellant. The accused after commission of the offence went into hiding till his arrest on 20.11.2019.The appellant faced the trial and on conclusion of the trial the learned trial Court was pleased to convict and sentence him, vide the impugned judgment.

6. The learned trial Court appreciated the evidence and statements of witnesses and found the appellant guilty. As single accused is charged that too for the murder of a 16-year-old minor girl, so this Court is to see as to whether the prosecution succeeded in bringing home guilt of the appellant and as to whether the learned trial Court was justified in picking the sentence it did. There is no denial to the fact that in case of single accused substitution is the rarest

phenomenon, but it by itself will not be the only determining factor, rather the prosecution is to collect independent evidence and the Courts are to apply their judicial mind with extra caution, so that justice is not miscarried.

7. The points for determination before this Court are as to whether the incident occurred in the mode, manner and at the stated time; as to whether the witnesses were present at the time of incident and that the report was made by the complainant; as to whether the incident occurred inside the house of the complainant and that the medical evidence supports the case of the prosecution and as to whether the prosecution succeeded in bringing home guilt against the appellant.

8. The tragic event resulted in the untimely death of a young girl who had yet to experience the fullness of life. The motives driving the accused to commit the crime, as well as the manner in which the victim was killed, necessitate a thorough reevaluation of the available evidence. In order to resolve the controversy, we deem it essential to go through the statements of the witnesses. The unfortunate incident occurred at 1600 hours, the matter was reported to the local police in the police station at 1640 hours, whereas the FIR was chalked out at 1710 hours, so apparently the matter was promptly reported. The incident occurred inside the house of the deceased and that the matter

was reported by the complainant i.e. her brother and verified by the eyewitness i.e. her sister, so this Court is to confirm from record the availability of these two witnesses at the time of incident and thereafter. The complainant was examined as PW-6, who stated that on the day of incident he alongwith his family members was present in the house; that the accused/appellant entered the house, duly armed; warned them not to move and dragged the deceased towards the main gate of the house; that the deceased resisted and the appellant fired at her; that after receiving firearm injuries the deceased fell on the ground; that Mst. Nasreen wanted to catch hold of the accused and during struggle her shirt was torn; that the accused decamped from the spot; the dead body was shifted to the police station, where the matter was reported. The eyewitness was examined as PW-7, who also narrated the events which led to the tragic incident and she also supported the report of the complainant. The witnesses were put to the test of searching cross-examination, but the witnesses remained consistent on material aspects of the case. In this particular case it is not only the eyewitness account which was taken into consideration, rather the official witnesses also remained consistent in respect of shifting of dead body from police station to the hospital and in respect of the time at which the matter was reported, the documents were prepared and the dead body was received by the

doctor. The complainant disclosed that during the days of incident he was posted at Mir Ali in Frontier Constabulary and it was on an official visit that he accompanied his high-ups to D.I.Khan and it was on their permission that he visited his house on 27.12.2018 and remained there. He further disclosed that it was 1600 hours, when the accused/appellant entered the house, wanted to take away the deceased, but on her resistance she was done to death.

9. It is pertinent to mention that during spot inspection the respective places were shown to the investigating officer and the site plan depicts the initial places, where the witnesses, the deceased and the accused/appellant were present and the subsequent places, when the deceased was dragged and fired at. The witnesses were examined regarding the manner in which the incident occurred and regarding the places where they, the deceased and the appellant were present. The complainant explained that he was present at distance of 15 feet from the appellant and that when the appellant dragged the deceased, he came few feet forward, but when the deceased was fired at, the eyewitness rushed to the appellant and attempted to catch hold of him. He further explained that during the struggle the shirt of the eyewitness was torn and the accused/appellant decamped from the spot. When the eyewitness was examined in this respect, she explained the circumstances, as were

explained by the complainant. When the statements of these two witnesses are juxtaposed, we could not come across the slightest variation between the two, rather the witnesses remained exact and accurate regarding the manner in which the incident occurred and regarding their individual responses at the time and after the incident. The witnesses were asked regarding the remaining family members, who explained the same and when the investigating officer was asked as to why he did not record statements of the remaining inmates of the house, he explained that as three of the brothers of the complainant were drivers by profession and were not available and that he did not record the statements of the remaining family members. Defense tried to impress that no family member other than the complainant and the eyewitness was not willing and interested in taking part in his prosecution. We stand unmoved, as the incident was witnessed by the most naturally placed persons, whose presence cannot be disputed. We are surprised with the manner in which the witnesses responded to the questions put to them. An attempt was made to convince that Mst. Nasreen was not present in the house, as she was married to one Adnan, whose house was situated at a distance of one kilometer from the spot house. The witnesses explained that as Mst. Nasreen and her husband were having strained relations, so the eyewitness left his house many years

before the incident. Both the witnesses were examined in this respect and both the witnesses remained consistent and they explained the circumstances in which Mst. Nasreen left the house of her husband. The presence of the eyewitness cannot be doubted, as it was she who wanted to resist the killing, it was she who attacked the appellant and it was during the scuffle that she got her shirt torn and the same was taken into possession by the investigating officer and the same was duly exhibited. The eyewitness was asked as to whether she handed over the shirt in the police station to the investigating officer, she replied that as at the time of report she was putting on the shirt, so she could not, rather she handed over the same to the investigating officer during spot inspection. The explanation of the witness is not only convincing, but natural as well, as she was putting on the shirt at the time of report, so there was hardly an occasion for her to remove the same in the police station. This particular circumstance has strengthened the prosecution case, as the incident occurred all at once, as the dead body was hurriedly shifted to the police station, so there was hardly an occasion for the eyewitness to change her clothes, rather she with the complainant shifted the dead body to the police station. Her presence in the house at the time of incident and in the police station at the time of report gets support from this aspect of the case. The manner

in which the circumstances are explained is so accurate that despite efforts the defence could not create even a small dent to persuade the mind of this Court otherwise. The dead body was shifted to the police station in a Datsun pickup arranged from the road and besides the complainant and eyewitness other private people also accompanied the same. The dead body was identified by one Suran and one Gultiaz and admittedly these two witnesses are not only the relatives of the deceased, but were living in the same village and in the same area. The defence wanted to convince that when the dead body was not identified by the complainant and the eyewitness, then no other inference can be drawn, but the one that they were not present with the dead body. We are not convinced with what was submitted, as admittedly the incident occurred inside the house and as admittedly the dead body was hurriedly shifted to the police station, so the witnesses being inmates of the house were very much available and that they accompanied the dead body from spot to the police station. If an attempt was made to procure witnesses, then instead of Mst. Nasreen the prosecution would have planted a male member from the house, but it did not. The attending circumstances of the present case leave no ambiguity regarding the presence of the witnesses at the time of occurrence and at the time of report. As the incident occurred inside the house, so availability of

identifiers in the hospital with the dead body is natural. Had the incident occurred away from the village, then the defense could convince, but in this particular case we are not ready to subscribe to the submissions of the learned counsel. Even otherwise, it is not necessary that in all cases the complainant and the eyewitness must be the identifiers and in our understanding no procedural illegality was committed. The identifiers were examined regarding their presence in the police station and regarding their arrival to the police station, but they validly explained the manner in which they received information and came to the police station. As the matter was promptly reported, so to test the veracity of witnesses, every individual witness was asked regarding the time at which the dead body arrived to the police station and regarding the time the dead body was shifted to the hospital. The scribe was examined as PW-5, who disclosed that while present in police station the dead body was brought by the complainant Munir accompanied by Mst. Nasreen and private people. He further explained that the complainant reported the matter and the eyewitness verified the same. The witness explained that the dead body was dispatched to the hospital at 1710 hours and he also confirmed the distance between the police station and hospital as one kilometer. In respect of the time we deem it essential to re-consider the statement of another

witness who escorted the dead body of the deceased from the police station to the hospital, who was examined as PW-4. The witness explained that he took the dead body from police station to hospital alongwith injury sheet and inquest report. He further explained that after postmortem examination he received the dead body, postmortem report and garments of the deceased and handed over the same to the investigating officer on the spot. It is interesting to note that this witness was questioned regarding the time at which the dead body, the injury sheet and inquest report were handed over to him, he explained that he received the same in police station at 05:13 pm to 05:15 pm. He also explained that he handed over the dead body to the doctor at 05:23pm /05:24 pm and he further confirmed that he left the hospital for the spot at 06:30 pm. Not only these witnesses, but the doctor also confirmed the time between injury and death and the time between death and postmortem. Admittedly, the postmortem was conducted at 06:00 pm, so all the three witnesses agreed in particulars and they supported the manner in which the dead body was brought to the police station, the report was made and the same was received by the doctor. The consistency amongst these witnesses by itself is sufficient to tell regarding the veracity and trustfulness of the witnesses. The question was put to the complainant regarding the condition of the deceased at

the time of shifting to the police station, though he disclosed that her chin and toe were tied, but when the eyewitness was examined, she explained that she straightened her legs and arms, but she did not tie her chin and her toe. An attempt was made to convince that had the witnesses been present, then the mouth of the deceased would have been closed and her chin and toe would have been tied. We are not convinced with this limb of argument of the learned counsel for the appellant, as admittedly the witnesses were in panic, they were terrorized, so much so, the eyewitness struggled to catch hold of the appellant, so under these circumstances such behavior cannot be expected from the witnesses. It has never been the requirement of law that under all circumstances the eyewitnesses are to close the mouth of the deceased or must tie the chin and toe of the deceased, rather it depends upon the particular circumstances of each particular case. We cannot apply such rules which are not universal and we cannot shut our eyes to the fact that human behavior is dynamic and not static. There is no denial to this fact that every individual responds differently in different circumstances and in different situations. As the dead body was hurriedly shifted to the police station and the matter was reported within 40 minute of the occurrence, so the prompt report by itself confirms that no consultation and no deliberation was made. True that the witnesses are related, but

mere relationship of the witnesses would hardly be a ground for excluding their presence on the spot, unless the defence succeeds to convince that the witnesses had an interest to falsely implicate. Reliance can be placed on **"Imran Mehmood Vs the State and another" (2023 SCMR 795),** which reads as follows: -

> "However, it is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses out-rightly. If the presence of the related witnesses at the time of occurrence is natural and their evidence is straight forward and confidence inspiring, then the same can be safely relied upon to award capital punishment. Learned counsel for the appellant could not point out any reason as to why the complainant has falsely involved the appellant in the present case and let off the real culprit, who has brutally murdered her father and uncle. Substitution in such like cases is a rare phenomenon."

10. The investigating officer, examined as PW-9, explained as to how he and the witnesses reached to the spot and that how the spot was pointed out and recoveries were made from the spot. The record tells that during spot inspection the investigating officer collected two empties of .30 bore from the spot, supports the stance of the complainant. It is further supported by the medical evidence, as the unfortunate deceased received two fatal firearm injuries on her body. The investigating officer was asked regarding

non-examination of the other family members, who confirmed that three brothers of the complainant were drivers by profession, and were not available in the house, so he recorded the statements of the eyewitness. The non-examination of some witnesses by itself is not a determining factor and it cannot be weighed in favour of the appellant. As admittedly, two trustworthy and reliable witnesses were examined, so it is not the quantity, but the quality of evidence which the prosecution must produce. It is the prerogative of prosecution to select its witnesses from an available range. As the complainant and eyewitness witnessed the incident and as they succeeded to resist the searching cross-examination, so non-examination of any other witness would hardly be a circumstance to favor the appellant. It is evident from record and so confirmed by the witnesses that the appellant was the resident of the same village and that he was interested in marrying the deceased. It has been brought on record that the deceased was already engaged to one Tariq Zaman, but even then the appellant was pressing for her hand and it was his stubbornness which persuaded him to kill the deceased. True that the statements of the mother of the deceased and that of Tariq Zaman were not recorded, but as mentioned earlier, the choice of witnesses is for the prosecution to exercise, and non-production of a witness does not damage the rest of their evidence. True that no spent

bullet was recovered and no bullet mark was noted on the walls of the house, but as two empties were recovered from the spot and two injuries were received by the deceased, so the circumstances tell that the appellant fired two fire shots.

11. The medical evidence fully supports the ocular account. As the witnesses disclosed that the deceased was dragged and then fired upon. The doctor was examined as PW-8, who explained the nature of injuries in the following manner:-

> "i. Firearm entry wound .5x5 inch on the frontal temporal region about 02 inches from the pina of left ear.
> ii. Firearm exit wound on the right perital region about 02 inches above the pina of right ear 1x1 in size.
> iii. Firearm entry wound on the front of left shoulder joint .5x5 inch in size. Corresponding holes in Qamis f ound.
> iv. Firearm exit wound on the back near the root of neck on right side 1x1 inch with averted margins."

It is interesting to note that the firearm entry wounds on the frontal temporal region were having tattoo in around it. The presence of tattooing sufficiently explains that the deceased was fired at from the closest range and the same confirms the statements of the witnesses, who disclosed that the deceased was dragged and fired. The medical evidence is in harmony with the ocular account. The consistency between the two has established the prosecution case beyond doubt and it confirms that the incident occurred in the

mode, manner and at the stated time. As is held in case titled **"Ansar and others Versus The State and others", (2023 SCMR 929)**, which is reproduced herein below: -

> "All these witnesses of the ocular account remained consistent on each and every material point qua the date, time, mode, manner of the occurrence and the locale of the injuries on the person of the deceased and the injured PW. Sarfraz (PW-3) had sustained injuries during the occurrence, which have fully been supported by the medical evidence given by Dr. Muhammad Tariq, who appeared as PW-8. The testimony of this injured PW as well as the stamp of injuries on his person clearly proves his presence at the place of occurrence. These PWs remained consistent on each and every material point inasmuch as they made deposition according to the circumstances surfaced in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. These PWs were subjected to lengthy cross-examination but their testimonies could not be shattered."

12. The collected empties were sent to the firearms expert to ascertain that from how many weapons the same were fired. After examining the same a comprehensive report was received, telling that the same were fired from one weapon. As single accused is charged and as it was he who fired at the deceased, so the laboratory report has supported the prosecution case to a great extent. True that laboratory report is supportive in nature, but equally true that once veracity of the witness is not shattered, then this piece of evidence can be taken into consideration and as such we considered the same.

13. The motive was stated to be the demand of the hand of the deceased and that as the deceased was engaged to one Tariq Zaman, so the demand of the appellant could not be fulfilled. True that apart from the witnesses, no other witness was examined, but as there was no previous ill-will between the parties, so the arrival of the appellant to the house and killing of the deceased, are the circumstances that lend credence to the prosecution's position, that the appellant was interested in marrying the deceased. As the unfortunate incident occurred inside the house and as the deceased was targeted, despite the fact that other family members were present, so it confirms the interest of the appellant in the deceased and that he wanted to have her at any cost. Weakness or absence of motive hardly justifies acquittal if the charge is otherwise established. It is well settled that absence of motive would hardly be a circumstance for the acquittal of an accused, provided the prosecution otherwise succeeds in establishing its charge and in proving the guilt of the accused. As the prosecution fully succeeded in bringing home guilt against the appellant, so the weakness or absence of motive would hardly be a circumstance to come to his rescue.

14. The appellant remained absconder for sufficient long time till his arrest on 20.11.2019. The appellant failed to explain that why he did not surrender to the law enforcement agency, soon after the incident. True

that abscondence alone would hardly be a circumstance for the conviction of an accused, but when the prosecution succeeds in establishing its case and when the witnesses confirmed their trustfulness, then abscondence as a circumstance can be taken into consideration. As the witnesses remained firm and consistent, so the unexplained abscondence is a circumstance which, we are inclined to read in favour of the prosecution.

15. The cumulative effect of what has been stated above, leads this Court to an irresistible conclusion that the prosecution succeeded in bringing home guilt against the appellant and that the learned trial Court was justified in holding him responsible for the murder of the deceased. The impugned judgment is based on sound reasons that do not call for interference. The instant criminal appeal is lacking in substance; the same is dismissed as such.

16. Now diverting to Criminal Revision No.51-B of 2023, through which the complainant has asked for the enhancement of sentence. No doubt, the learned trial Court while handing down the impugned judgment dilated upon, that particular aspect of the case as well, still this Court is eager to know as to whether the reasons given, would serve the purpose. True that the learned trial Court, while awarding the lesser sentence, was influenced from the alleged motive, as to it the motive was shrouded in mystery, but equally true that

the learned trial Court fell into error while appreciating this particular aspect of the case. Despite the fact that prosecution succeeded in establishing its case, the learned trial Court went for lesser sentence. Although we would have preferred to know the reasons that prevailed with learned Court below, however, we deem it apt to discover the areas that would enable us to make an appropriate choice about the sentence i.e. life imprisonment and the death sentence. We are conscious of the fact that most of the trial Courts take the absence or weakness of motive a circumstance for awarding lesser sentence, but in our understanding this conscious attempt deprives one at the cost of the other. We note with concern that in most of the cases the easy choice is the lesser sentence, and this practice has virtually relegated capital punishment to redundancy. We do not advocate for capital punishment; however, it remains a consideration until it is officially ruled out, and till that time it decorates the book. Every effort was made by the legislature to curb the crime and so, for every offence distinct punishment is provided. We are to apply what is provided, as the Courts are left with a limited choice to choose it like. In the matter of sentence the Courts must apply extra care as it is to protect the interest of the parties. Human life is scared because from its beginning it involves the creative action of God and it remains forever in a special relationship with the creator, who is

its sole end. Intentional killing is strongly condemned and is rewarded with the harshest punishment. The subject in hand is dealt with in the Holy Quran in the following manner:-

> "And who ever kills a believer intentionally, their reward will be hell- where they will stay indefinitely. Allah will be displeased with them, and will prepare for a tremendous punishment."

The Holy Quran first educated, then warned and lastly, prescribed the punishment to be awarded. The punishment for killing a human being finds mention in the Holy Quran in following words:-

> "O you who have believed, prescribed for you is legal retribution for those murdered – the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct."

We are not surprised from the gradual attempt to convince, as Almighty Allah created mankind and He knew what to follow. We heard the same when the creation of mankind was decided. The echoes of the hot talks still occupy the air, what a reasoning that was:-

> "Call to mind, when your Lord announced to the angels: I am about to place a vicegerent in the earth. They said: Will You place there someone, who creates disorder and bloodshed, while we glorify You with your praise and extol your holiness? Allah admonished them: I know that which you know not.(surah Al-baqarah 2:30)"

It took years to legislate and the legislature took pain to look for appropriate punishments, how Qisas is

enforced and after what evidence? Society changed rapidly and so the moral values. It was this degradation which led the responsible to think and consider that whether the required evidence could be procured and that the witnesses would qualify the test sensing the doing an alternate was provided in shape of Taz'ir, the scope was enlarged with the sole purpose, behind to reward the killer with the desired punishment. In cases where Qisas is not enforceable under section 302 (a) PPC, for so many reasons, the Courts are endowed with the power to punish under Tazir under section 302 (b) PPC. Even there the Courts are left with the choice to award Death as Taz'ir or imprisonment for life. In our understanding we failed to appreciate the wisdom behind. Most of us could not balanced the scale, rather misconstrued the very purpose. The choice to award Death as Taz'ir or life imprisonment, under section 302 (b) PPC can never be restricted to favour the accused, but the same equally applies while dealing with the adversary. We must know that if in appropriate cases Qisas cannot be enforced, even then Death as Taz'ir can be awarded, but also in appropriate cases the Courts have the option to punish as imprisonment for life. An other alternate under section 302 (c) is also available, but the same is irrelevant for present discussion. It is not the matter of choice, rather these are the circumstances of each particular case which would

determine the issue. To be more specific, it is for the Court to decide whether Death as Taz'ir or imprisonment for life. The question would arise as to what would be the determining factor, whether discretion or the circumstances of that particular case. In our understanding discretion in this particular matter alone, will lead to miscarriage of justice unless the circumstances of that particular case qualify for the use of discretion. Returning to this particular case, we are to determine as to what persuaded the learned trial Court to choose the awarded sentence. As discussed in the early part of the judgment, that the prosecution ideally proved its case through the most natural witnesses. The witnesses passed through searching cross-examination, but they stood like a rock. The learned trial Court instead of awarding the normal penalty of death chose to award the lesser one. We are to see that what prevailed with the learned trial Judge to exercise the easiest choice, that too, by ignoring the tragic aspects of the case and by overlooking his brutality against the deceased. What a conduct he displayed against a poor little soul. We despite efforts could not come across the fault of the deceased, her only fault was to resist his unholy wishes, but for the same she received a bad price. The weakness of motive drifted away the learned trial Judge from awarding the normal penalty of death, we find no justification and even the learned Judge failed

to justify the same. Discretion must stand on reason and be circumscribed by law if it is not to descend into injustice. The trial court's integrity is above board, however, it is human to err in application of law, and it is our duty to set it right when noted. In order to do justice with the little soul of the deceased we deem it imperative to reevaluate the sentencing of the appellant. In criminal justice in general, and in the given circumstances of case in particular, we cannot afford to be carried away in either direction. This balance between rights of the individual and the community is a tight rope walk. The learned trial Court decided to award the lesser sentence, but it apparently failed to fully appreciate the manner the deceased was done to death. The circumstances of the present case leave little for the absence or weakness of motive. What reasons he had to kill? He was brutal; he acted inhumanly. What justification was available to the convict to kill, that too, by trespassing into the house. The spot is proved, the witnesses are consistent and the matter was promptly reported. We are hardly persuaded from the observations rendered and are not impressed from the conclusion drawn, so we conclude that the convict deserves the major penalty of death, as that would be the appropriate punishment and that commensurate with the gravity of the offence and would reciprocate what the appellant did. As is held in

case titled **"Muhammad Akhtar Ali Vs The State" (2000 SCMR 727)**, which reads as follows:-

> "In the end, the learned counsel stressed that it was not a case in which death penalty could legally be imposed. However, he was unable to refer to any mitigating reason/circumstance which could be considered for awarding the lesser penalty of life imprisonment. This was a brutal murder of a young girl of 15/16 years of age without any justification and the petitioner acted as desperate and hardened criminal and fired two shots at innocent girl and so the imposition of normal penalty of death was fully justified."

We, therefore, allow the instant criminal revision to the extent of conviction under section 302(b) PPC, and enhance the sentence from life to death; he shall be hanged by neck till death. The remaining sentences awarded by the learned trial Court shall remain intact.

**JUDGE**

**JUDGE**

**Announced**
**07.03.2024**

*Ihsan PS*

(DB) Mr. Justice Sahibzada Asadullah & Mr. Justice Kamran Hayat Miankhel

1 0 MAY 2024