

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

**JAIL PETITION NO. 351 OF 2017**

(Against the judgment dated 13.04.2017 passed by the  
Lahore High Court, Lahore in Capital Sentence Reference No.  
38-T/2014 and Criminal Appeal No. 1747/2014)

Muhammad Nasir

...Petitioner(s)

**VERSUS**

The State

...Respondent(s)

For the Petitioner(s): Mr. Anis Muhammad Shahzad, ASC

For the State: Mr. Muhammad Jaffer, Addl. P.G. Punjab

For the Complainant: Mst. Razia Muzafar, In person

Date of Hearing: 13.10.2022

**JUDGMENT**

**SAYYED MAZHAR ALI AKBAR NAQVI, J.-** Petitioner Muhammad Nasir was tried by the learned Judge Anti Terrorism, Court No. II, Lahore pursuant to a case registered vide FIR No. 93/2014 under Sections 302/324/336-B/109/337-A(I)/337-F(3) PPC read with Section 7 of the Anti Terrorism Act, 1997 at Police Station Ravi Road, Lahore, for committing murder of his wife Mst. Sakeena Bibi and for causing injuries to Mst. Rasheeda Bibi, Shaukat Ali and Ibrahim, minor. The learned Trial Court vide its judgment dated 25.09.2014 convicted and sentenced the petitioner as under:-

1) **Under Section 302(b) PPC**

To death with a direction to pay Rs.500,000/- as compensation to legal heirs of deceased or in default whereof to further undergo six months SI.

2) **Under Section 7(1)(a) of Anti Terrorism Act, 1997**

To death with a fine of Rs.100,000/- or in default whereof to further undergo three months SI.

3) **Under Section 336-B PPC**

To imprisonment for 14 years on two counts alongwith fine of Rs.10,00,000/- for each count or in default whereof to further undergo SI for six months for each default.

4) **Under Section 7(1)(c) of Anti Terrorism Act, 1997**

To 10 years imprisonment on two counts with fine of Rs.50,000/- on two counts or in default whereof to further undergo SI for three months for each default.

The property of the petitioner was also directed to be forfeited in favour of State under Section 7(2) of the ATA, 1997, in addition to the above-referred sentences. All the sentences were directed to run concurrently with benefit of Section 382-B Cr.P.C.

2. In appeal the learned High Court maintained the convictions and sentences recorded by the learned Trial Court. Being aggrieved by the impugned judgment, the petitioner/convict has filed the instant Jail Petition.

3. The prosecution story as given in the judgment of the learned Trial Court reads as under:-

"2. The brief facts as came out from complaint Ex.PA/1 made by Sakeena Bibi alias Billo (now deceased) while in injured condition to Muhammad Hussain SI Police Post Sabzi Mandi Police Station, Ravi Road, Lahore on 09.02.2014 on the basis of which formal FIR Ex.PA was recorded are that she is housewife and dispute of divorce is pending between her and her husband Nasir and due to it 5/6 days earlier she alongwith her children came to house of her parents at Shams Pura. Today i.e. 09.02.2014 at about 1:30 pm she alongwith her son Ibrahim aged one year, her brother Shaukat Ali, her Bhabhi Rashedan Bibi were taking meal at the roof top of the house when Nasir accused came and threw acid on them which fell on her face and other parts of the body and on right cheek and right arm of Rasheedan Bibi and on left arm of her brother Shaukat Ali and on face and on back side of belly and on right arm of Ibrahim and they became injured whereas, the accused fled away. This occurrence was also seen by Mazhar Ali and Mst. Razia Bibi. The injured were shifted to hospital by Rescue-1122. The motive of occurrence is that a dispute of divorce is pending in between her and her husband and due to that grudge he threw acid on them."

4. During the course of proceedings before this Court, it transpired that the petitioner committed murder of his wife from whom he had a son namely Ibrahim, who was about one year of age at the time of incident. The said minor son is alive and in-fact direct descendant of the

petitioner and is his 'wali'. Before proceeding further, it would be in order to reproduce Sections 306 & 308 PPC, which reads as under:-

**"306. Qatl-i-amd not liable to qisas.**---Qatl-i-amd shall not be liable to qisas in the following cases, namely:-

(a) when an offender is a minor or insane:

Provided that, where a person liable to qisas associates himself in the commission of the offence with a person not liable to qisas, with the intention of saving himself from qisas, he shall not be exempted from qisas;

(b) when an offender causes death of his child or grand child, how low-so-ever; and

(c) when any wali of the victim is a direct descendant, how low-so-ever, of the offender."

**308. Punishment in qatl-i-amd not liable to qisas, etc.:** (1) Where an offender guilty of qatl-i-amd is not liable to qisas under Section 306 or the Qisas is not enforceable under clause (c) of Section 307, he shall be liable to diyat:

Provided that, where the offender is minor or insane, diyat shall be payable either from his property or, by such person as may be determined by the Court:

Provided further that where at the time of committing qatl-i-amd the offender being a minor, had attained sufficient maturity or being insane, had a lucid interval, so as to be able to realize the consequences of his act, he may also be punished with imprisonment of either description for a term which may extend to twenty-five years as ta'zir.

Provided further that, where the Qisas is not enforceable under clause (c) of Section 307, the offender shall be liable to diyat only if there is any wali other than offender and if there is no wali other than the offender, he shall be punished with imprisonment of either description for a term which may extend to twenty-five years as ta'zir.

(2) Notwithstanding anything contained in sub-section (1), the Court, having regard to the facts and circumstances of the case in addition to the punishment of diyat, may punish the offender with imprisonment of either description for a term which may extend to twenty-five years, as ta'zir."

5. There are various judgments of this Court, which enunciate that the provisions of Sections 306 & 308 PPC would only be attracted in the

cases of qatl-i-amd liable to 'qisas' under Section 302(a) PPC. However, at the same time, the view persists that *"in case we subscribe to the view that provisions contained in Sections 306 and 308 PPC apply to the cases of qisas only, it is apt to give rise to an anomaly. The anomaly is that if sentence in qatl-i-amd liable to qisas, despite stern and stringent forms of proof, can be lenient in view of the circumstances mentioned in sections 306 and 308 PPC why can't it be lenient in view of the same circumstances in the case of tazir notwithstanding the forms of proof and sentence provided thereunder are comparatively less stern and stringent."* Reliance is placed on Zahid Rehman Vs. The State (PLD 2015 SC 77). There is no direct judgment on the subject except Khalil-uz-Zaman Vs. Supreme Appellate Court (PLD 1994 SC 885) wherein while dealing with a similar case, this Court held that *"language of Sections 306 and 308 PPC is plain enough to show that Qatl-i-Amd committed by the petitioner was not liable to Qisas and Qatl-i-Amd not liable to Qisas is specifically punishable under Section 308 PPC only. So, the petitioner could be convicted under Section 308 PPC and not under section 302 PPC to death as Qisas or Ta'zir."* Although review was filed in this case i.e. Faqirullah Vs. Khalil-uz-Zaman (1999 SCMR 2203), which was accepted, the conviction of the petitioner under Section 302(b) PPC as Ta'zir was maintained and he was ultimately executed but from perusal of the judgment, it is apparent that the Court itself observed that the provisions of Sections 306 to 308 PPC are not violative of any Quranic text or the Sunnah. The relevant portion of the judgment reads as under:-

"Due to paucity of time we have not been able to make further research in the matter ourselves. The opposite side had also not assisted us on the subject. Nonetheless, the amendments were introduced in the year 1990 in the Pakistan Penal Code including the provisions of clause (c) of section 306 and clauses (a) and (b) of section 304 of the P.P.C. with a view to bringing those provisions in conformity with the Injunctions of Islam and Sunnah. The presumption, therefore, is that aforementioned provisions are not violative of any Qur'anic text or the Sunnah of the Prophet (p.b.u.h.). The second contention is, therefore, devoid of any force."

6. For what has been discussed above, the questions as to (i) whether the case of the petitioner is covered under Section 306(c) PPC for which the maximum punishment provided under Section 308 PPC is 25

years along with payment of diyat, and (ii) whether the conviction and sentence recorded against the petitioner under Section 302(b) PPC as Ta'zir was appropriate as per scheme of law squarely, requires consideration. We, therefore, grant leave to appeal in this petition. As the matter requires interpretation of the afore-referred provisions as per the intent of the Legislature, therefore, we deem it appropriate to send the matter to Hon'ble Chief Justice for constitution of a larger bench to adjudicate the matter for authoritative judgment, as the earlier matter was heard by a bench comprising five members.

JUDGE

JUDGE

JUDGE

Islamabad, the  
Announced on \_\_\_\_\_

Not Approved For Reporting  
Khurram