

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

Jail Petition No.50/2023

Against the order dated 16.03.2023
of the High Court of Sindh Circuit
Court, Hyderabad passed in Cr. J.A.
D-101/2019

1. Muhammad Juman
2. Arab

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s): Chaudhry Muhammad Zardad, ASC

For the State: Ms. Rahat Ehsan, Addl. P.G. Sindh

Date of Hearing: 25.06.2025

ORDER

Irfan Saadat Khan, J.- This Jail Petition has been directed against the judgment passed by the High Court of Sindh Circuit Bench, Hyderabad in Criminal Jail Appeal No.D-101 of 2019 and Confirmation Case No.17 of 2019 dated 16.03.2023, whereby the convictions and sentences of death awarded to the accused, namely Muhammad Juman and Arab (hereinafter referred to as the “**accused**”), by the learned trial Court through its judgment dated 12.06.2019 in Sessions Case No.05 of 2019 were maintained and their Criminal Jail Appeals were dismissed, with the corresponding confirmation references being answered in the affirmative.

2. Briefly stated the facts of the case as per the complainant namely Seendhal son of Soomar (hereinafter referred to as the “**complainant**”) are that he has four sons. One of his sons Abdul Qayyum (hereinafter referred to as the “**deceased**”) was an employee in a Government Department and was residing with him. One

week before the date of the incident, i.e. 29.11.2018, Abdul Qayyum had come to the village on leave. As per the complainant he did not have good relations with the accused due to some *biradari* issues. On the fateful day, i.e. 19.11.2018, the deceased left home to do some work, while the complainant was at home when he heard some noises and cries. The complainant then alongside his relatives, namely Abdul Rehman and Nawaz, went running to the place from where he heard the noises and saw the accused duly armed with a dagger and hatchet respectively, alongwith Jean armed with a hatchet and Mumtaz with a *Lathi* standing over there. Upon their arrival they saw that Juman scolded the deceased not to pass from the road to which the deceased replied that this is a Government Road and he has to go through this road to Mithi. These words, however, infuriated the accused. Arab then inflicted a hatchet blow on the head of the deceased causing him to fall down while raising cries whereafter Juman inflicted blows on the deceased's chest with his dagger. It is averred that both these accused inflicted the blows with the intention to kill the deceased. When the complainant alongside his relatives raised cries, the said persons left the deceased and went towards their houses. The complainant and his companions then arranged transport and took the deceased to Taluka Hospital, Diplo, where the police also arrived, however, due to excessive blood loss, the deceased succumbed to his injuries in the hospital. The complainant then had the deceased's postmortem examination conducted and later took his body to the village for burial purposes. Thereafter the complainant went to the police station to lodge the FIR, by specifically naming the accused as having caused hatchet and dagger injuries to the deceased due to which he had expired.

3. The matter proceeded before the trial Court, which after finding both the accused guilty convicted them under section 302(b) PPC (*Ta'zir*) and sentenced them to death. The trial Court additionally directed the accused to pay Rs.2,00,000/- as compensation to the legal heirs of the deceased and in case of

default thereof sentenced them to suffer rigorous imprisonment for six months. Jean and Mumtaz were however, acquitted by giving them benefit of doubt. The High Court also, in Criminal Jail Appeal No.D-101 of 2019 and Confirmation Case No.17 of 2019, maintained the conviction and the sentences as well as the compensation awarded by the trial Court, thereby answering the reference in affirmative. It is against this judgment of the High Court that the present Jail Petition has been filed.

4. Chaudhry Muhammad Zardad, learned ASC, has appeared on behalf of the accused and stated that there has been a delay of almost ten hours in lodging the FIR. He stated that under identical circumstances Jean and Mumtaz were acquitted, by giving them benefit of doubt. He stated that there was no motive available with the accused to kill the deceased as admittedly there was no enmity between the parties. He highlighted that the complainant has stated in his deposition that there was some *biradari* dispute with the accused party however, the said dispute cannot be considered to be of such a grave nature which could instigate the accused to kill the deceased. He also stated that all the witnesses are interested and are relatives of the complainant and no independent witnesses have been arrayed in the instant matter, who could support either the incident or the recovery of the crime weapons. He, therefore, stated that this is a case shrouded with mysteries and rife with doubts, the benefit of which ought to be given to the accused.

5. Ms. Rahat Ehsan, learned Additional Prosecutor General Sindh ('Addl. PG'), appeared on behalf of the State and stated that both the Courts below had found the accused to be guilty of the offence as the crime weapons, i.e. a hatchet and dagger, were recovered on their pointation. She stated that though it is averred that there was no enmity between the parties however it could not be denied that the accused and the complainant party had certain matrimonial and *biradari* disputes with each other due to which reasons the accused had killed

the deceased in a gruesome and brutal manner. She further stated that the role of Jean and Mumtaz was quite different from that of present accused as no fatal blows have been attributed to them whereas the medical report would reveal that the cause of death was due to hemorrhage caused by fatal blows on the chest and the head, which were specifically caused by Juman and Arab, the accused persons. She stated that Jean and Mumtaz were rightly acquitted by the trial Court by giving them benefit of doubt and no lease in this regard could be given to the accused, as their case is totally different from that of Jean and Mumtaz. She further stated that it is a day time occurrence and that there is no question of either mistaken identity or misidentification as the accused and the complainant party belong to the same caste i.e. *Bajeer*. She stated that the delay in the FIR was due to the fact that the complainant took the deceased in an injured condition to the Hospital where he passed away and after completing the postmortem examination and burial, the complainant reached the Police Station, Diplo for registering the FIR; thus, according to her, the delay has satisfactorily been explained, hence the ground of delay in lodging the FIR, in her view, is not available to the accused. She stated that the depositions of PWs have remained consistent and no dent has been put in the prosecution's case by the accused in this regard, hence, the conviction and the sentences as well as the compensation awarded by the trial Court and affirmed by the High Court may also be upheld by this Court by dismissing the instant petition.

6. We have heard both the learned counsel for the petitioner and the counsel for the State at considerable length and have also perused the record with their able assistance. Nobody has appeared from the complainant's side.

7. It is true that there is a delay of nine to ten hours in lodging the FIR but the complainant has plausibly explained the said delay. It is mentioned in the contents of the FIR that after arranging transport, the dead body of the son of the complainant namely Abdul Qayyum *alias* Mir Muhammad was taken to

Taluka Hospital, Diplo and after getting the postmortem examination conducted, the dead body was handed over to the complainant party who took the said dead body to the village. The complainant further stated therein that after performing the funeral rites, he went to the police station and lodged the FIR. Under the circumstances, the abovementioned delay in reporting the matter to the police has been plausibly explained by the prosecution and the same is not fatal to the prosecution case.

8. The ocular account of the prosecution was brought on record by the complainant-Seendhal and Nawaz Ali, PWs 1 and 2. The occurrence in this case took place in the area of the village Sobhiyar and both the above-mentioned eyewitnesses were residents of the same village. They further stated that upon hearing the hue and cry of deceased they came out of their houses and witnessed the occurrence. The said witnesses being residents of the houses situated near the place of incident were the natural eyewitnesses of the occurrence and their presence at the spot at the relevant time, i.e. 02:15 p.m., is neither unnatural nor improbable. Furthermore, they were cross-examined at length but their evidence could not be shaken. They corroborated each other on all material aspects of the case, and their evidence is reliable, trustworthy and confidence inspiring.

9. The medical evidence of the prosecution was brought on the record through Dr. Tarahchand (PW-4). According to the evidence of the eyewitnesses, the petitioner-Arab inflicted hatchet blow on the head of the deceased whereas the petitioner-Muhammad Juman inflicted dagger blows on the chest and back of the deceased. As per the medical evidence, injury No.3 was an incised wound at the right parietal region, whereas injury No. 1 and 2 were stab wounds on the chest of the deceased. We are, therefore, of the view that the medical evidence has fully supported the ocular account of the prosecution. Insofar as the recovery of the blood-stained dagger on the pointing of the petitioner-Muhamad Juman,

and the recovery of the blood stained hatchet on the pointing of the petitioner-Arab are concerned, it is noted that Niaz Muhammad (PW-3) had stated that the above-mentioned weapons were recovered at the petitioners' instance on 02.12.2018. According to the report of chemical examiner and serologist, the above-mentioned weapons were stained with human blood. It is, therefore, evident that the prosecution case is further corroborated by the recovery of the weapons of offence from the possession of the petitioners, as well as, by the reports of the chemical examiner and serologist.

10. According to the prosecution case the motive behind the occurrence was that the petitioners objected to the use of a passage in the village by the deceased and when the deceased used the said passage though he was forbidden, the petitioners committed his murder. We have gone through the site plan of the place of occurrence, Ex.No.28, which shows that the occurrence took place at the main link road from the village Mithi to the village Diplo. The village graveyard is also situated adjacent to the place of occurrence and a high school was also located near the said place. It is therefore evident that the occurrence took place at a public road which was meant for the use of general public. It is not understandable that as to why the petitioners would restrain the deceased from using a public road. No reason whatsoever has been given by the prosecution to show that as to why the petitioners raised an objection on the use of a public road by the deceased. We are, therefore, of the view that the motive alleged by the prosecution has not been proved in this case.

11. If all the above factors are seen and examined in juxtaposition it will reveal that the aspect of the accused's alleged motive for killing Abdul Qayyum appears to be lacking in the instant matter. In the case of Muhammad Yasin and another vs. The State and others (2024 SCMR 128), while elaborating on the issue of motive, this court observed as under:

"10. It is a well-settled proposition of the law that in the absence of premeditation to commit murder where motive is not proved by the prosecution, the same may be considered as the mitigating factor in order to reduce the quantum of sentence in cases involving the capital punishment. In *Iftikhar Mehmood & Another v. Qaiser Iftikhar & Others* (2011 SCMR 1165), this Court has held as:

[6]. We agree with the proposition that motive is not sine qua non for the proof of commission of the crime and at time motive is not known to any other person other than the deceased or the accused person which never surfaced on the record. **However, it cannot be denied that motive is always very relevant to determine the quantum of sentence that might be awarded to a person against whom charge of murder is proved.**

7. There is always a motive behind the commission of any crime. If a person commits theft or commits the offence of Haraaba/robbery, the motive and the object is to procure money. In case of sex related offences, the motive is to satisfy the sexual lust and so on and so forth; however, the gravity of motive differs from offence to offence and from case to case. There can be an immediate motive for the commission of a crime or an old motive for taking some revenge; there can be a small motive or a bigger one. In any case, motive is always relevant for the commission of crime. It is "reason" for which an accused person takes the law into his hands and commits the crime. Motive is in fact the foundation of the structure which ultimately culminates into the accomplishment of the crime. When motive is so basic and relevant for the commission of the crime, it would definitely have bearing in every case while determining the quantum of sentence.

11. In *Zeeshan Afzal alias Shani and another v. the State and another* (2013 SCMR 1602), this Court has held as:

[13]. ... It has been repeatedly held by this Court that **if motive is not alleged or is not proved, normally the sentence of death is converted into imprisonment for life.**

12. Moreover, the state of Pakistan is signatory to the International Covenant on Civil and Political Rights (the "ICCPR") and the same is ratified by the Federal Government in 2010. Article 6 of the ICCPR states as:

[1]. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, **sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime** and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the 'Prevention and 'Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

13. Interestingly, the Federal Government had reservations on certain articles of the ICCPR, including the aforementioned Article 6. However, the said reservations were subsequently withdrawn by the Federal Government except for the Articles 3 and 25. Hence, the withdrawal of said reservations give full force to said Articles. This also shows that the state of Pakistan is fully committed to fulfil its international obligations and commitments so as to achieve the highest level of civil and political rights of its citizens and non-citizens.

14. The phrase 'most serious crimes' is elucidated in the ICCPR's General Comment No. 6 of 1982 as follows:

[6]. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

15. Similarly, the phrase 'inherent right to life' is explained in General Comment No. 6 of 1982 as:

[5]:... The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.

16. The Resolution No. 1984/50 by the United Nations Economic and Social Council (the "ECOSOC"), titled as the 'Safeguards Guaranteeing Protection of Rights of those Facing Death Penalty' state as:

[I]n countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

17. The aforementioned settled proposition of law, recently reiterated by this Court, states the quantum of sentence may be reduced from the death penalty to the life imprisonment if the prosecution fails to establish motive. This principle is in conformity with the Article: 6 of the ICCPR, which stipulates that the death penalty may be only imposed for the 'most serious crimes'.

18. Similar to Article 2(1) of the ICCPR, the fundamental 'right to life' is also rooted in Article 9 of the Constitution of Pakistan, 1973 (the "Constitution") as established by this Court in Shehla Zia and others v. WAPDA (PLD 1994 Supreme Court 693). Article 4 of the Constitution grants protection from any action which is 'detrimental to the life, liberty, body, reputation or property of any person' except taken in accordance with law. The 'right of dignity' under Article 14 of the Constitution is inviolable.

19. In the present case, the High Court has rightly made observations in the Paragraph No. 14: of the Impugned Judgment. As already observed above, the motive has not been proved by the prosecution and the recovery of the crime weapon was inconsequential. As such, Respondent No. 2 (Mudassar) was entitled to the benefit of the reduction of sentence as held by the High Court."

12. Moreover, considering the depositions of various PWs and while coming to the conclusion that the prosecution failed to prove the alleged motive the matter tilts in favour of the accused persons to the extent of quantum of sentence and thus, we are of the view that in such situation awarding the sentence of death to the accused would not be justified.

13. Hence, under the given circumstances, we convert this petition into an appeal and partly allow the same. The conviction as well as the compensation and the sentence in default thereof are upheld, the appeal therefore is hereby dismissed to this extent. However, the sentence of death of each appellant is modified to that of life imprisonment to each. The benefit under section 382-B Cr. P.C. is also extended,

in favour of the accused-appellants and to this extent the appeal is partly allowed. The appeal stands disposed of in the above terms. These are the reasons of our short order dated 25.06.2025; wherein we have observed as under:

“For reasons to be recorded later, this petition is converted into an appeal and partly allowed. The conviction, compensation and the sentence required to be undergone in default thereof are upheld and to that extent the appeal is dismissed. However, the appeal is partly allowed by modifying the sentence of death to imprisonment for life. The benefit under Section 382-B Cr. P.C. is extended in favour of the appellant.”

ISLAMABAD
25.06.2025
arshed

“Approved for Reporting”