

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Sardar Tariq Masood

**JAIL PETITION NO. 887 OF 2018**

*(On appeal against the judgment dated  
07.11.2018 passed by Lahore High Court,  
Rawalpindi Bench, in Crl. A. No. 1127/2017)*

*Shakeel Abbas*

*... Petitioner*

**Versus**

*The State*

*... Respondent*

For the petitioner: Through jail

For the State: Mirza Abid Majeed,  
Deputy Prosecutor General, Punjab.

Date of Hearing: 13.02.2020.

**ORDER**

**Qazi Faez Isa, J.** FIR No. 219 was registered at police station Saddar, District Chakwal on 6<sup>th</sup> August 2016 at 9.45 pm on the report of Mst. Sumbal Khalil (PW-5) alleging that her husband, the petitioner herein, had done to death their two minor sons, namely Abu Zar aged two years and Farman Haider aged about six months. The learned Judge of the Trial Court convicted the petitioner under section 302 (b) of the Pakistan Penal Code ("PPC") on two counts and sentenced him to imprisonment for life but ordered the running of sentences concurrently and directed payment of compensation to the legal heirs of the deceased of an amount of one hundred thousand rupees on account of each death and in default thereof to undergo simple imprisonment for six months on each count as well. The appeal filed by the petitioner was partly accepted by the High Court by acquitting the petitioner from the charge of murder and he was instead convicted under section 316 PPC -*qatl shibh-i-amd*- and sentenced him to five years rigorous imprisonment and ordered him to pay *diyat* under section 323 PPC of an amount of Rs. 2,174,577. The State did not challenge the petitioner's acquittal under section 302 (b) PPC nor sought enhancement of his sentence.

2. The petitioner has filed this petition through jail. A number of questions arise which require consideration:

- (i) The learned Judge of the High Court came to the conclusion that the killings were not intentional, and substituted the petitioner's conviction under 316 PPC, however, if there was no "*intent to cause harm to the body*" (as per section 315 PPC) whether conviction is sustainable under section 316 PPC;
- (ii) If in the facts and circumstances of the case the conviction under section 316 PPC is not sustainable whether the petitioner could still be convicted under section 319 PPC -*qatl-i-khata*- and/or section 321 PPC -*qatl-bis-sabab*;
- (iii) Whether the petitioner can be detained indefinitely if he fails to pay the *diyat* on account of his poverty and whether such detention accords with the injunctions of the Holy Qur'an and *Sunnah* which section 323 PPC states must be abided by;
- (iv) Section 323 PPC requires the Federal Government to keep "*in view the financial position of the convicts*" in fixing the value of *diyat*, however, notifications issued thereunder simply fix the same *diyat* amount payable by all convicts alike, that is the value of 30,630 grams of silver and do not distinguish between convicts who can pay and impecunious convicts, who then on account of their inability to pay remain incarcerated indefinitely; and
- (v) Rule 11 of the Diyat, Arsh and Daman Fund Rules, 2007 ("**the Rules**") permits a convict "*to be released on such terms and conditions as may be determined by the Court for payment of remaining amount*" after making "*part payment*" and "*the Court may pass an order for detention of the convict if he fails to fulfill the terms and conditions for release*". The question arises what constitutes "*part payment*", what kind of "*terms and conditions*" can be imposed and whether on account of the financial inability of the convict the Court can pass an order for his detention.

3. We accordingly grant leave to appeal to consider, amongst others, the aforesaid points. Mr. Sagheer Ahmed Qadri, learned ASC, is appointed as counsel for the petitioner at State expense. Office is directed to provide him a complete set of paper book alongwith a copy of this order.

4. To consider points (iii), (iv) and (v) above, notices be issued to the Attorney General for Pakistan, Advocate General, Punjab and the Prosecutor General, Punjab as it requires interpretation of the PPC and the Rules. Notice be also issued to the Ministry of Religious Affairs and Interfaith Harmony which should forward a copy of this order to all the recognized *Wafaqul Madaris* and obtain their respective opinions with regard to points (iii), (iv) and (v) above and upon receipt of their opinions forward the same to this Court. Notice be also issued to the Vice Chairman, Pakistan Bar Council and the Director General, *Shariah* Academy of the International Islamic University, Islamabad as *amicus* to assist this Court themselves or depute a learned person from their respective institution. It will be appreciated if all those to whom notices are issued file their respective submissions in writing within one month from receipt of this order. Copies of this order to accompany the notices.

5. In view of the importance of the issues noted herein the office should place this matter for consideration of the Hon'ble Chief Justice who may be graciously pleased to consider whether a Bench of three or more Judges should hear it.

Judge

Judge

*Bench-IV*  
Islamabad  
13.02.2020

Not Approved for Reporting  
(Atif)