

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Hashim Khan Kakar
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Ishtiaq Ibrahim

Criminal Petition No. 344 of 2018

*(Against the order dated 16.11.2017 of the
Peshawar High Court, D.I. Khan Bench passed in
Criminal Appeal No. 73-D/2016)*

Mehboob. ... *Petitioner*

Versus

The State and others. ... *Respondents*

For the Petitioner: Mr. Ahmed Ali, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the State: Syed Kauser Ali Shah,
Additional Advocate-General, KP.

For Respondents No. 2-4: Mr. Saleem Ullah Ranazai, ASC.

Date of Hearing: 05.03.2025.

ORDER

Muhammad Shafi Siddiqui, J. This petition seeks leave to appeal against the judgment dated 16.11.2017 of the Peshawar High Court, D.I. Khan Bench, whereby the appeal filed by the petitioner was dismissed and his convictions and sentences of imprisonment for life on two counts awarded by the learned Additional Sessions Judge-IV, D.I. Khan *vide* judgment dated 05.12.2016 in case FIR No. 122, dated 09.04.2013 registered under section 302(b) of the PPC read with section 13 of the Arms Ordinance at Police Station Paroa, District D.I. Khan, was upheld.

Facts:

2. Brief facts of the case as per FIR is that Mehboob, the petitioner/accused killed his sister, namely, Mst. Farhat Bibi and his relative

Saif Ullah, after finding them both in a compromised position. He was not able to tolerate the sight of them and he shot them both with a shotgun. On hearing the fire, other members of the house woke up and rushed to the spot. The accused did not try to escape the place and surrendered himself, along with a weapon of offence to the police. After investigation *challan* submitted with a varied form and trial commenced. To substantiate the charge prosecution produced 15 witnesses and thereafter the accused was examined where he professed innocence and his false implication.

Judgment of the Trial Court:

3. The Additional Session Judge, D.I. Khan convicted the petitioner under Section 302(b) PPC for murder. According to the judgment, he committed the crime under grave and sudden provocation and normal penalty for death was avoided. He was sentenced to life imprisonment on two counts. Benefit of doubt under section 382-B Cr.P.C. was also extended to the petitioner/ accused. The accused was also convicted and sentenced under section 13 of Pakistan Arms Ordinance, 1965, to 3 years R.I. with a fine of Rs.50,000/ or in default of payment of fine he shall further undergo three months S.I.

High Court Appeal and Revision:

4. Appeal was filed from both parties: petitioner against his conviction and complainant seeking enhancement of sentence. Further to the facts mentioned above, it is stated that FIR was lodged at the spot and thumb impression of the accused was taken, though the accused denied having lodged the report. The motive, setup by the prosecution for the commission of the offence is not denied by the defence. The convict in his statement has not denied the motive, rather he denied the report and his involvement in the commission of crime.

Criminal Appeal No. 73-D/2016 filed by Mehboob (petitioner) against his conviction.

After reviewing the facts and circumstances of the case, the court upheld the conviction of the appellant, stating that no other conclusion was possible for the trial court. The conviction was based on evidence of unimpeachable character and sound legal reasoning. Appeal dismissed.

Criminal Revision No. 11-D/2016 was also filed by the complainant (Allah Ditta) seeking enhancement of the sentence.

Regarding the sentence, the court found it reasonable and sufficient to serve the ends of justice, rejecting the complainant's request for an enhancement on the basis that the complainant was unable to make a case for sentence enhancement. Revision dismissed.

5. We have perused the judgment of the trial court rendered by Additional Sessions Judge-IV, D.I. Khan as well as the impugned judgment of the High Court dated 16.11.2017. In the reported incident two lives of individuals were taken. The prosecution in an attempt to prove their case have examined 15 witnesses. The petitioner/accused alongwith his deceased sister were related to the other deceased Saifullah and Allah Ditta. According to the facts disclosed in the FIR, the petitioner/accused/complainant on seeing his sister Mst. Farhat Bibi with his relative Saifullah (**'the two deceased'**) in a compromising position could not tolerate and shot both of them with a shotgun.

6. The trial court in para 10 disclosed that it is a case of two version as stated by the prosecution and defence. The place of occurrence, commission of offence with shot gun (12 bore) bearing No.790812, recoveries from the spot in the shape of empties, blood of the deceased and their relations is not

disputed. The examination conducted by Dr. Hina Ayub (PW-3), Senior Registrar, Mufti Mahmood Hospital, D.I. Khan of deceased Mst. Farhat Bibi is clear as to the vaginal examination. The accused during his trial for the first time introduced his defence that it was committed with gun of Allah Ditta, his father. He also stated that crime weapon was handed over to the police by his father. Incidentally, father's name of petitioner and that of deceased Saifullah is same (but different individuals). In his defence plea, he produced Ghulam Shabbir son of Malik Ahmadu as (DW-1) and during cross-examination the said DW admitted that he was examined by the trial court on 19.09.2014 and his statement was recorded under section 512 of the Cr.P.C. wherein he fully supported the version of the prosecution, hence could not be read in support of defence.

7. The events disclosed in the FIR, however, cannot loose its sight. The occurrence took place in the house where other inmates were also residing. Allah Ditta (Saifullah's father) was also examined as (PW-11) and he attempted to explain the situation differently. He stated that on the night of occurrence he was present inside his house alongwith other inmates, including Mst. Shehzad Bibi when Saif Ullah came inside the house and took a milk pot for bringing milk when he reached near the house of accused/petitioner he took him inside the house alongwith Mst. Farhat Bibi and killed them. The accused/petitioner thus cannot take advantage merely by denying the events that took place. The entire case was undisputedly seen as a case of sudden provocation as the circumstantial evidence has not denied the relationship of the two deceased and if that is so whether the conviction awarded by the trial court and not interfered by the High Court in the appeal of the petitioner was justified.

8. We have gone through two landmark judgments on the issue of sudden provocation. The cases of State vs. Muhammad Hanif and 5 others¹ and Ali Muhammad vs. Ali Muhmmad² seem to be the most relevant case to understand the consequences of sudden provocation and the events discussed. In the later case, this Court observed that the High Court was not right in holding that the accused had not committed any offence and was not liable to any punishment on account of sudden provocation/self-defence. The said judgment discussed in detail about the facts of sudden provocation, mental condition of the accused etc. and gave detailed analysis of situations. The judgment also discussed the section 302 of the PPC which itself divides Qatl-i-Amd for the purposes of punishment into three categories;

- i. Qatl-i-Amd which is punishable with death as Qisas;
- ii. Qatl-i-Amd punishable with death or life imprisonment as Ta'zir; and
- iii. Qatl-i-Amd punishable with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of Qisas is not applicable.

A situation cannot be ruled out that one of the deceased provided the situation of sudden provocation as to the cases falling under clause (c) of section 302 of the PPC; the law maker has left it to the court to decide on a case to case basis depending upon the gravity and intensity of provocation and the time taken for the reaction. In the instant case it was spontaneous.

9. To our understanding of law and as discussed in the aforesaid cases, we are of the view that the petitioner was rightly convicted, however, the petitioner's case to be considered within the frame of section 302(c) of the

¹ 1992 SCMR 2047.

² PLD 1996 Supreme Court 274.

PPC and substantive sentences shall run concurrently. Above are the reasons for our short order passed on 05.03.2025 and reproduced below:

'For reasons to be recorded later, this petition is converted into an appeal and partly allowed. The conviction of the appellant awarded under section 302(b) PPC is converted into one under section 302(c) PPC and his sentence of imprisonment for life on two counts is reduced to fourteen years with the benefit of section 382-B Cr.P.C.'

Judge

Judge

Judge

Islamabad:
05.03.2025

Approved for Reporting

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