

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 petitions No.389 and 549 of 2023

Against the judgment dated 05.6.2023 passed by the Lahore High Court, Rawalpindi Bench in MR. No.43/2021, Criminal Appeal No.1413/2021 and Criminal Appeal No.1410/2021

Ahsin Ali (in JP 389/2023) ...Petitioner(s)
Muhammad Ramzan alias Jani (in JP 549/2023)

VERSUS

The State ...Respondent(s)

For the Petitioner(s):	Mr. Hameed uz Zaman, ASC
For the State:	Mr. Irfan Zia, Addl. PG, Punjab
For the Complainant:	Mr. Jalil ur Rehman, ASC a/w complainant
Date of Hearing:	07.05.2025

JUDGMENT

Irfan Saadat Khan, J.- The instant Jail Petitions have been filed by the petitioners impugning the judgment dated 05.06.2023 passed by the Lahore High Court, Rawalpindi Bench, whereby the Criminal Appeals No.1413 and 1410/2021 were dismissed. The death sentence awarded to the petitioner Ahsin Ali was confirmed and his murder reference was answered in affirmative, whereas the appeal filed by the Muhammad Ramzan alias Jani, in respect of the punishment of life awarded to him by the Trial Court, was maintained. The convictions and sentences of the petitioners under the charges under sections 393 and 449 PPC, the amounts of fine/compensation and the Simple

Imprisonment ('SI'), in case of default of payment of the said fine/compensation, were however maintained by the High Court.

2. The petitioners were tried by the learned Trial Court in Session Case No. 25 of 2020 and Session Trial No.17 of 2020 arising out of the FIR No.190 dated 18.12.2019 registered at Police Station Dhudial, District Chakwal for offences under sections 302/393/449/109 of the Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**"). The learned Additional Sessions Judge, Model Criminal Trial Court, Chakwal, upon conclusion of the trial, *vide* judgment dated 19.06.2021, convicted the petitioner, Ahsin Ali (in J.P. No.389/2023) under section 302(b) PPC and sentenced him to death as *Ta'zir* for committing *Qatl-i-Amd* of Muhammad Amjad (deceased), with compensation of Rs.500,000/- payable to the legal heirs of the deceased under section 544-A of the Criminal Procedure Code (hereinafter referred to as "**Cr.P.C.**") recoverable as arrears of land revenue and in default whereof to undergo SI for six months. He was further sentenced under section 393 PPC to undergo rigorous imprisonment for seven years with a fine of Rs.100,000/- for attempting to commit robbery and in default whereof to further undergo SI for three months. He was also sentenced under section 449 PPC to undergo R.I for ten years with fine of Rs.100,000/- for committing house trespass and in default whereof to undergo SI for three months.

3. The petitioner, Muhammad Ramzan alias Jani (in J.P. No.549/2023) was convicted under section 302(b) PPC and sentenced to imprisonment for life for committing *Qatl-i-Amd* of Muhammad Amjad (deceased) with compensation of Rs.500,000/- payable to legal heirs of deceased under section 544-A Cr.P.C., recoverable as arrears of land revenue and in default whereof to undergo SI for six months. Under Section 393 PPC he was also sentenced to undergo R.I for seven years with fine of Rs.100,000/- for attempting to commit robbery and in

default whereof to undergo SI for three months. He was also sentenced under section 449 PPC to undergo R.I for ten years with fine of Rs.100,000/- for committing house trespass and in default whereof to undergo SI for three months.

The sentences of imprisonment awarded to the petitioners however were ordered to run concurrently, with benefit of section 382-B Cr.P.C.

4. As per the complainant Abdul Qayyum (PW-2), aged 52 years, he narrated, as per the FIR that he is residing in Sang Kallan, Tehsil & District Chakwal, and is a cultivator. His paternal brother namely Muhammad Amjad (deceased) had established a Poultry farm at Sanga Adda. On the date of the incident he, alongwith Muhammad Ishaq, Muhammad Yaqoob and Abdul Qadoos, went to Muhammad Amjad's poultry farm for some brief talk at about 7:40 p.m. in the evening. When they reached near farm's gate they saw a white Suzuki Pick-up vehicle, bearing number "RIM-3700", with a cage for securing hens, placed on it. Upon making it inside the farm they saw that the bulbs were turned on. They however heard some noises and then rushed inside the residential room of the farm, where they saw accused Muhammad Ramzan alias Jani duly armed with a *danda* and Ahsin Ali armed with a hatchet. Muhammad Ramzan alias Jani at that time caught hold of Muhammad Amjad and Ahsin Ali started inflicting hatchet blows on his head who, after receiving the injuries, fell down on the cot. Thereafter the complainant, alongwith the help of other persons named above got hold of Muhammad Ramzan alias Jani and Ahsin Ali, took possession of their '*danda*' and hatchet respectively and informed the police about the incident. The police arrived at the incident and completed legal and codal formalities and arrested the two accused persons. The matter was then proceeded before the Additional Sessions Judge, Chakwal, who examined as many as nine prosecution witnesses, recorded their testimonies and after

finding both the petitioners guilty of committing the murder of Muhammad Amjad, convicted them and awarded them sentences noted above. The High Court thereafter affirmed the order of the Trial Court in the terms explained *supra*.

5. Mr. Hameed uz Zaman, learned ASC has appeared on behalf of the petitioners and stated that the accused persons have wrongly been implicated in the instant matter and that they are innocent and have no role in the commission of the murder of the deceased Muhammad Amjad. While elaborating his viewpoint, he submitted that as per the statement recorded under Section 342 Cr.P.C. by the Sessions Judge, both the petitioners categorically stated that they were not present at the crime scene at the time of the incident and have been falsely implicated due to either previous enmity or political rivalry. He stated that he will first make submissions with regard to the case of Muhammad Ramzan alias Jani, who has been convicted on the charge of '*Jappah*' only (an act of holding Muhammad Amjad). He stated that it is not the case of prosecution that Muhammad Ramzan alias Jani inflicted '*danda*' blows on the deceased, though it has been averred that he was carrying the same. He stated that simply on the basis of allegation of '*Jappah*', he cannot be sentenced for life. He stated that the prosecution has failed to place on the record any confidence-inspiring material against him except that he caused a '*Jappah*' to Muhammad Amjad, hence the convictions, sentences, compensation and the fine imposed upon him were incorrect, hence he may be acquitted in respect of the charges levelled against him. He stated that from the record it is evident that no prosecution witness has stated that he has caused any injury or blow to the deceased.

6. While explaining the case of Ahsin Ali, the learned counsel stated that it is clear from the postmortem report, conducted at 10:15 p.m. on the date of

incident, that no description of the weapon used to cause the fatal injuries to the deceased has been mentioned, though it has been averred that Ahsin Ali caused hatchet blows on the head of the deceased-Muhammad Amjad. He stated that the postmortem report described five wounds on the body of the deceased but, in his view, the report ought to have explained which weapon caused those injuries. He stated that this major flaw in the postmortem report puts a major dent in the prosecution's case and the benefit of such flaw ought to be given to the accused. As per the learned counsel the deposition of complainant Abdul Qayyum (PW-2) and Waseem Nazar (PW-3) clearly indicates that the I.O did not take the blood-stained clothes of the deceased from the spot in their presence. Mohsin Raza, ASI (PW-7) in his deposition stated that Ahsin Ali and Muhammad Ramzan alias Jani tried to commit dacoity on the Poultry Farm of Muhammad Amjad and for that purpose they brought the Suzuki Pick-up and statedly, they did so on the instigation of one Ghulam Nasrani, that, It is surprising to note that though the complainant attempted to array Ghulam Nasrani as a co-accused in the present incident, however he was found to be innocent by the Trial Court. He further stated that no looted money was recovered from the accused; '*Danda*' and the hatchet were also not recovered upon the pointation of the accused rather these were presented by the complainant; that there was no motive to kill the deceased by the accused persons as admittedly there was no previous enmity between the parties. He lastly stated that in view of these facts, the accused Ahsin Ali may also be acquitted from the charges levelled against him.

7. Mr. Irfan Zia, the learned Additional Prosecutor General (**APG**), Punjab, appeared on behalf of the State and has supported the judgments of the two courts below. He stated that both of the accused were caught red-handed from the place of incident, the recovered hatchet was stained with human blood, these two individuals came with the clear intent to commit dacoity as evidenced

by the presence of the Suzuki Pick-up vehicle at the crime scene however when they failed in their attempt they committed the murder of Muhammad Amjad in a gruesome manner. He stated that Muhammad Ramzan alias Jani was an aider and abettor in the incident hence, he also do not deserve any sympathy. He therefore prays that the convictions and sentences awarded to the petitioners by the Trial Court and upheld by the High Court, along with the fine and compensation, may be affirmed and these appeals, being devoid of any merits, may accordingly be dismissed.

8. Mr. Jalil ur Rehman, the learned ASC, appeared along with the complainant. He reiterated and adopted the arguments advanced by the learned APG. He also prayed that the convictions, sentences, compensations and the fines imposed by the Trial Court and affirmed by the High Court may be upheld by dismissing the instant petitions.

9 We have heard the learned counsel for the petitioners, the learned APG Punjab, as well as the learned counsel for the complainant at considerable length and have also perused the record with their able assistance.

10. The proceeding paragraphs discuss Muhammad Ramzan alias Jani's case. It is a matter of record that the role assigned to him was merely that of a '*Jappah*'. Not even a single witness has stated that he inflicted any '*danda*' blow on the deceased, Muhammad Amjad. No looted money or hens were recovered from his possession. The '*danda*' was not recovered on the pointation of the accused rather the same was given to the prosecution side by the complainant himself. It does not appeal to a prudent mind that he would catch hold the deceased when his co-accused was inflicting repeated hatchet blows on the body of the deceased because, in that case, there was every possibility to receive a fatal hatchet blow on his own body. It is evident that the role attributed to Muhammad Ramzan alias Jani was that of '*Jappah*' only, hence in our opinion,

the other factors connecting him to the commission of the offence are obviously lacking. We were able to lay on hands on the judgments rendered by this Court in the cases of Muhammad Anwar vs. The State (1981 SCMR 850) and Ahmad Ali vs. The State (2021 SCMR 470). In these cases, 'Jappah' was attributed to the petitioners/accused of the said cases while fatal blows were attributed to another co-accused. This Court found force in the submission of the petitioners of the said cases that their case is distinguishable from that of co-accused acquitted them of the charges while accepting their appeals. In Zarin Shah and 2 others vs. The State (1974 SCMR 376) it was held that:

"The case of Zahir Shah appears to be little different. It is alleged against him that he caught hold of the deceased and Zarin Shah stabbed him. The part attributed to him is little doubtful because in the circumstances of the present case, only one person could have caused the fatal injury. On the face of present case, it is doubtful that Zahir Shah had caught hold of the deceased. He is entitled to benefit of doubt. We would, therefore, accept his appeal"

Hence, on these grounds, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt against the accused Muhammad Ramzan alias Jani. We, therefore, by extending the benefit of doubt to him acquit him from the charges levelled against him and set aside the judgments of the Trial Court as well as the High Court in this regard to the extent of his convictions and sentences. He may be released forthwith, if not required to be incarcerated in any other case. His Jail Petition No.549 of 2023 thus is converted into an appeal and allowed.

11. Apropos the case of Ahsin Ali, the accusation levelled against him was that he inflicted hatchet blows on the head of the deceased, Muhammad Amjad and that the hatchet recovered was bloodstained. The contradiction pointed out by learned counsel for the petitioners that in the post-mortem report, which, although attributes the cause of death to severe head injuries however does not specify the nature of the weapon used — whether it was a hatchet, a Danda, or any other incriminating object is not significant because the prosecution

witnesses have not stated that Ahsin Ali petitioner used the right side of the hatchet. The lacerated wounds mentioned in the postmortem report of the deceased can be caused with the wrong side of the hatchet and as such there is no material contradiction between the ocular account and medical evidence of the prosecution. Ahsin Ali petitioner was caught red handed at the spot by PWs while carrying a bloodstained hatchet. The evidence of the prosecution eye-witnesses to his extent is confidence, inspiring and trustworthy. The prosecution has proved its case to the extent of Ahsin Ali petitioner beyond the shadow of any doubt.

However, the most important factor which has arisen in the matter is with regard to the motive. The prosecution, in our view, was not able to bring home its case on this aspect. As per prosecution case the accused persons came to the Farm House of the deceased for dacoity on the instigation of one Ghulam Nasrani, but the same proved to be incorrect. No looted money, article or hens were recovered from the possession of Ahsin Ali petitioner or his co-accused. No witness has stated that he had seen the accused while attempting to loot any article from the poultry shed of the deceased. Neither the Addl. PG nor the counsel for the complainant were able to explain this angle of the matter.

12. It is a settled principle of law that while awarding death sentence and convicting an accused motive has to be given prime importance since without there being an unshattered motive proven by the prosecution, death sentence cannot be awarded, rather in such cases death sentences are usually converted into sentences for life imprisonment. In the instant matter, as noted above, the aspect of proving motive to the hilt, in our view, is missing. Therefore, awarding death sentence or confirming the same would not only be harsh but also uncalled for, when admittedly no material has come on the record with regard to prove the alleged motive. It is not determinable in this case that as to what

had actually happened immediately prior to the occurrence which resulted into present unfortunate incident. Likewise, if the motive of robbery punishable under section 393 PPC is not proved then offence of trespass punishable under section 449 PPC in order to loot any article from the poultry shed of the deceased is also not proved. In the case reported as Arshad Beg vs. The State (2017 SCMR 1727) as per Paragraph No.6, which reads as follows:

"In view of the above, since there was no previous enmity between the parties and a vague motive set up by the complainant could not be proved at the trial, therefore, taking it as a mitigating circumstance, we partly allow this appeal. While maintaining conviction of the appellant under section 302(b), P.P.C. his sentence of death is altered to imprisonment for life. The amount of compensation and the sentence of six months simple imprisonment in default thereof as ordered by the learned courts below are maintained. Benefit of section 382-B. Code of Criminal Procedure is also extended to the appellant".

Reference is also made in the case of Allah Wasaya and another vs. The State (2017 SCMR 1797), where a similar view was taken.

13. 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.

20. In light of above, we do not find any merit in this Criminal Petition No. 476-L of 2018, which is accordingly dismissed, and leave to appeal is refused."

14. In view of what has been stated above, we convert the Jail Petition No.389 of 2023 into an appeal and partly allow the same. The sentence awarded to Ahsin Ali under section 302(b) PPC is modified from death to life imprisonment. It may not be out of place to mention that the compensation and the imprisonment in default of payment, as ordered by the Trial Court and the High Court however, are hereby upheld. The convictions and sentences of Ahsin Ali awarded under sections 393 and 449 PPC are hereby set aside and he is acquitted of the charges levelled thereunder by extending benefit of doubt in his favour. His conviction, however, under section 302(b) PPC, with the abovementioned modification in his sentence alongwith compensation and imprisonment in default thereof are upheld and the instant appeal in this regard is dismissed.

15. These are the reasons for our short order dated 22.04.2025, which is reproduced below:

"For the reasons to be recorded later, Jail Petition No.389 of 2023 is converted into an appeal and is partly allowed inasmuch as the sentence of death awarded to the appellant under section 302(b) of PPC by the trial court and later upheld by the High Court is modified to that of imprisonment for life. However, the compensation ordered by the trial court and upheld by the High Court as well as the imprisonment required to be undergone in default thereof, are maintained. The

conviction and sentence of the appellant under sections 393 and 449 of the PPC are hereby set aside and he is acquitted of the charge framed thereunder by extending the benefit of doubt in his favour. However, his conviction under section 302(b), the compensation and imprisonment in default thereof are upheld and the appeal to that extent is dismissed.

2. Jail Petition No.549/2023 is converted into an appeal and the same is allowed. Consequently, the appellant Muhammad Ramzan alias Jani is acquitted of the charge framed against him by extending the benefit of doubt in his favour. The judgments of the trial court and the High Court to his extent are set aside. In case the appellant is not required to be incarcerated in any other case, then he shall forthwith be released."

Judge

Judge

Judge

ISLAMABAD
07.05.2025
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"Approved for Reporting"