

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

**Present:**

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE AMIN-UD-DIN KHAN

**Criminal Petitions No. 35-Q/2017 to 37-Q/2017**

(On appeal from the judgment dated 5.6.2017 passed by the High Court of Balochistan, Quetta in CrI.A.No.107/2014 and M.R.No.3/2014 and CrI. Acquittal Appeal No.122/2014).

Abdul Wasay ...In CrI.P.35-Q/17

Abdul Shakoor ...In CrI.P.36-Q/17

Abdul Shakoor & another ...In CrI.P.37-Q/17

**...Petitioners**

**VERSUS**

The State ...In CrI.P.35-Q/17

Abdul Wasay & another ...In CrI.P.36-Q/17

Abdul Hadi & others ...In CrI.P.37-Q/17

**...Respondents**

For the Petitioners: Mr. Liaqut Ali Tareen, ASC  
(In Cr.P.35-Q/17) Syed Rifaqat Hussain Shah, AOR

For the Petitioners: Mr. Zahoor-ul-Haq Chishti, ASC  
(In Cr.P.36-Q & 37-Q/17) Mr. Mehmood A. Sheikh, AOR

For State: Syed Baqir Shah, ASC (State Counsel)  
(In all cases)

For the Complainant: Mr. Zahoor-ul-Haq Chishti, ASC  
(In Cr.P.35-Q/17) Mr. Mehmood A. Sheikh, AOR

Date of Hearing: 19.2.2021

**ORDER**

**MAZHAR ALAM KHAN MIANKHEL, J-.**

**Criminal Petition No. 35-Q of 2017**

The Petitioner-convict was booked in case FIR No.22/2012 dated 18<sup>th</sup> May, 2012 registered under Sections 302, 147,148,149 of the Pakistan Penal Code (PPC) and under Section 337-A,D,F, of the

Q&D Ordinance, Police Station, City-Chaman, District Killa Abdullah at Chaman alongwith his co-accused for the murder/*qatl-e-amd* of Najeebullah son of Abdul Shakoor and causing knife blows to the complainant-Abdul Shakoor and his brother Abdul Wadood. After investigation and a regular trial the Petitioner was convicted under Section 302 sub-Section (ii) of Q&D (as was described in the *Qisas and Diyat Ordinance*) and sentenced to death as *Tazir* and further to pay a compensation of Rs.200,000/- (two lac) under Section 544-A of Code of Criminal Procedure (Cr.P.C.) to the legal heirs of the deceased and in default thereof to further suffer one year S.I. The conviction of the Petitioner was also maintained in appeal by the High Court of Balochistan, Quetta vide its Judgment dated 5<sup>th</sup> June, 2017, however, his sentence of death was modified to life imprisonment and benefit under Section 382-B Cr.P.C. was also extended to him. Compensation under Section 544-A Cr.P.C. and sentence in default thereof was ordered to be maintained. The Petitioner through instant petition has sought grant of leave to appeal by this Court against the impugned Judgment dated 5<sup>th</sup> June, 2017.

2. We have heard the learned counsel for Petitioner and the learned State Counsel assisted by learned counsel for the complainant. Perusal of the record reveals that the complainant alongwith his brother Abdul Wadood while going to *Bazar* on 18<sup>th</sup> May, 2012 for buying household articles were attacked by the Petitioner alongwith his co-accused at 8.00 AM in the vicinity of Police Station/*Thana*, '*Levies Chaman*' District *Killa Abdullah* and the said matter was also reported vide FIR No.84/2012. The complainant received injuries. The complainant was being taken to hospital by his brother Abdul Wadood and his son Najeebullah. When

they reached outside the main gate of civil hospital *Chaman*, the accused party including the Petitioner once again attacked them. The Petitioner gave repeated *churri blows* to Najeebullah who succumbed to the injuries at the spot, whereas the complainant and his brother Abdul Wadood received stab wound injuries at the hands of Abdul Rashid co-accused. Perusal of the record further reflects that the patrolling police reached at the spot during the occurrence and the Petitioner alongwith his acquitted co-accused Abdul Rashid, Abdul Hadi and Syed Ali were arrested at the spot alongwith their respective weapons of offence i.e. '*Churri*' (P-7) and '*Chaqu*' (P-9). The same were taken into custody by the investigating officer vide recovery memo (Ex-P-5). PW-5 has not only confirmed the arrest of the accused at the spot but has also confirmed the recovery of their respective above noted weapons of offence. We have noted that it is a promptly lodged report and the Petitioner alongwith his co-accused were arrested at the spot. The case of the prosecution is fully supported by the two injured PWs namely Abdul Shakoor (PW-1) and Abdul Wadood (PW-2); Dr. Rafiullah appeared as PW-6 who confirmed the death of the deceased, Najeebullah by issuing the MLC (Ex-P-6). *(In this area, postmortems normally are not conducted for the reasons best known to the local administration as well as people of the locality)*. The MLC issued by the Doctor fully supports the story of the prosecution regarding murder of Najeebullah (deceased). The trial Court and the High Court after proper appraisal of the evidence have recorded conviction of the Petitioner. We have also gone through the entire evidence and the material available on the record with the assistance of the learned counsel for the parties and found nothing to interfere with the conviction recorded by the courts below. Since the motive alleged by the prosecution was not proved, so, the benefit to that

extent i.e. conversion of death sentence to life imprisonment has already been extended to the Petitioner in his appeal before the High Court. The Petitioner simply denied the commission of offence but he was also unable to give plausible explanation regarding his innocence in his statement under Section 340(2) Cr.P.C., rather he has admitted his arrest in the hospital but with a different narration but that too was not established.

3. The Petitioner alone has been charged for committing murder of the deceased Najeebullah, whereas the other co-accused have been charged for causing injuries to Complainant (PW-1) and Abdul Wadood (PW-2). The prosecution has fully proved its case against the Petitioner.

We after proper appraisal of evidence see no merits in this petition which is dismissed and leave refused.

**Criminal Petition No. 36-Q/2017:**

Since the death sentence awarded to the *convict - Abdul Wasay/Respondent No.1* was converted to life imprisonment for want of proof of motive, alleged by the prosecution, so by considering the same as a mitigating circumstance, sentence awarded to the Petitioner was modified. The learned counsel for the complainant was unable to convince us for taking yet another view of the matter for enhancement of sentence of *convict, Abdul Wasay/Respondent No.1*; hence, this petition being meritless is dismissed and leave refused.

**Criminal Petition No. 37-Q/2017:**

Respondent No. 3/Abdul Rashid, accused was charged for causing knife blows to the complainant and Abdul Wadood but no medical evidence of the said injuries from proper source was brought

on the record. The investigation officer produced their medical certificates but the same were not considered and relied upon by the trial court to record his conviction. Yet another aspect of the case was also helpful in his acquittal as the complainant had also received injuries in the earlier round of occurrence (separately reported vide FIR No.84/2012 of the same date) and in absence of specific medical report, it was difficult for the trial court to determine the injuries to have been inflicted in the present occurrence, whereas Respondent No. 1 and 2/ Abdul Hadi and Syed Ali co-accused were charged for giving kicks and fists blows to the complainant party, but the prosecution has failed to prove the case against them, hence this petition, too, being meritless, is dismissed as such and leave refused.

We have observed that there exist some confusion and misconception of law regarding Chapter-XVI ("*Offences Affecting the Human Body*") of the Pakistan Penal Code, 1860 ("PPC") and the Code of Criminal Procedure, 1898 ("Cr.P.C.") in the legal and judicial system in the Province of Balochistan, dealing with the matters noted above as they still use the repealed provisions of law. For the first time, the provisions relating to *Qisas* and *Diyat* were introduced in PPC and Cr.P.C. by the Criminal Law (Second Amendment) Ordinance, 1990 (Ordinance VII of 1990) commonly known as *Qisas & Diyat* Ordinance. This Ordinance though was repealed by a subsequent Ordinance, i.e. the Criminal Law (Second Amendment) Ordinance, 1991 (Ordinance I of 1991) but the same provisions were also re-enacted in the PPC and Cr.P.C. through the same Ordinance. This process of repeal and re-enactment continued till Ordinance CXIII of 1996 and finally before expiry of Ordinance CXIII of 1996, the provisions of law relating to *Qisas and Diyat* were permanently made

part and parcel of Pakistan Penal Code, 1860 (PPC) and Code of Criminal Procedure, 1898 (Cr.P.C.) vide Criminal Law (Amendment) Act, 1997 (Act II of 1997). The Chapter XVI was accordingly made part of Pakistan Penal Code (PPC) applicable throughout Pakistan. Mentioning of such offences under any of such Ordinances (being repealed one) instead of PPC/Cr.P.C. is not only unlawful but a grave misconception of law. All the concerned Departments i.e. LAW and PROSECUTION; (i) Secretary, Ministry of Law & Justice, Govt. of Pakistan, Islamabad; (ii) Secretary, Law and Parliamentary Affairs Department, Govt. of Balochistan, Quetta; and (iii) Secretary, Prosecution Department, Govt. of Balochistan, Quetta and the Courts should rectify this mistake and should also be vigilant in this regard in future. Copies of this Order be accordingly sent to all the concerned.

Judge

Judge

Islamabad,  
19<sup>th</sup> February, 2021  
Sarfraz /-  
'APPROVED FOR REPORTING'