

126/23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Ijaz ul Ahsan
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar

(AFR)
Criminal Petition No.476-L of 2018 and
Jail Petition No.337 of 2018

Against the judgment dated 30.03.2018
passed by Lahore High Court, Lahore, in
Crl.A.No.1274/2015 and M.R.No.270/2015

Muhammad Yasin

(Cr.P. 476-L/18)

Mudassar

(J.P. 337/18)

...Petitioners

Versus

The State, etc.

...Respondents

For the Petitioners:
(Cr.P.476-L/18)

Mr. Khawar Mahmood Khatana, ASC
(also for the complainant in J.P. 337/18)
(via video link from Lahore)

(J.P.337/18)

Ch. Nazir Ahmad Kamboh, ASC

For the State:

Mr. M. Irfan Zia, DPG, Pb.

Date of Hearing:

01.11.2023

ORDER

Ijaz ul Ahsan, J.

Jail Petition No.337 of 2018: Through this Jail Petition No. 337 of 2018, the Petitioner (Mudassar) impugns the judgment dated 30.03.2018 (the "**Impugned Judgment**"), rendered in Criminal Appeal No. 1274/2015 and Murder Reference No. 270/2015, by the learned Lahore High Court.

2. The Petitioner was indicted in case FIR No. 167 of 2011 dated 09.05.2011, for the offences under Section 302(b) of the Pakistan Penal Code, 1860 (the "**PPC**") read with Sections 148 and 149 of the PPC, registered at Police Station Ellah Abad, District Kasur. After regular trial, he was convicted under Section 302(b) PPC as *Tazir* and sentenced to death and to pay compensation

under Section 544-A of Code of Criminal Procedure, 1898 (the "**CrPC**") to the tune of Rs. 200,000/- by the Additional Sessions Judge Chunian, Kasur, *vide* judgment dated 19.06.2015. In the appeal filed by the said Petitioner, the High Court, while maintaining his conviction under Section 302(b) of PPC, altered his sentence to imprisonment for life and dismissed the appeal *vide* the Impugned Judgment. Hence, this jail petition.

3. Briefly stated facts of the case are that the allegation against the Petitioner was that he had shot the deceased/victim (Muhammad Arif) in the face, which broke his upper tooth, and the bullet went through his skull. The occurrence took place on 09.05.2011 at 8 PM, which was reported on the same day at 10:15 PM. The distance between the Police Station and the place of occurrence was 7 kilometres. Although there was a delay of about two hours and fifteen minutes between the occurrence and the lodging of FIR, the High Court had held that since the victim was injured, he was taken to the hospital, which would have taken some time. Therefore, the delay (if any) was sufficiently explained. The Petitioner went through the trial and after recording of evidence, the trial court sentenced him to death under Section 302(b) PPC as *Tazir* and to pay compensation under Section 544-A of Cr.P.C. to the tune of Rs.200,000/- *vide* judgment dated 19.06.2015. In the Criminal Appeal and Murder Reference filed before the High Court, the High Court converted the penalty of death of the petitioner to that of imprisonment for life for the reason that the motive, according to the High Court, was not proved and the recovery of the crime weapon was inconsequential.

4. The learned counsel for the Petitioner submits that there were contradictions between the ocular testimony and the medical evidence. He submits that the Petitioner had wrongly been implicated in the crime and he was innocent. He has taken us through the evidence of the witnesses, who had testified to the ocular account as well as the medical record. He, therefore, submits that the Petitioner was wrongly convicted and sentenced and is liable to be acquitted.

5. The learned Deputy Prosecutor General Punjab defended the Impugned Judgment. He maintains that there was no

contradiction between the ocular testimony and the medical evidence. He submits that the prosecution witnesses were examined in considerable detail, but, their testimony could not be discredited. He further maintains that it is a clear case warranting conviction, which had correctly and lawfully been done by the trial court and as upheld by the High Court.

6. We have heard learned counsel for the parties as well as learned Deputy Prosecutor General, Punjab, and with their assistance carefully examine the record. We find that there was no deliberate delay in reporting the matter to the police. The passage of time between the occurrence was sufficiently explained as the victim was injured and taken to the hospital where he succumbed to his injuries. The ocular account of three eyewitnesses remained consistent throughout and confidence inspiring on each and every material point. There is no prior enmity between the parties and the medical evidence fully corroborated the ocular account. The lower fora, therefore, correctly came to the conclusion that there was sufficient and adequate incriminating evidence on the record against the accused and the conviction was rightly upheld by the High Court. On reexamination of the record with the assistance of learned counsel, we also arrived at the same conclusion. The operative part of the High Court's judgment is follows:

[14]. From the above circumstances, we are of the considered view that even if the evidence of motive and recovery of 30 bore pistol (P.3) at the instance of appellant is excluded from consideration, there is *sufficient incriminating evidence* on record against him in the form of straightforward and confidence inspiring ocular account furnished by Muhammad Yasin complainant (PW.1), Qadir Bakhsh (PW.2) and Muhammad Ali (PW.3) fully supported by the medical evidence furnished by Dr Ehtisham-ud-Din (PW.11) to maintain conviction of Mudassar (appellant) under Section 302(b) PPC which is accordingly maintained. However, it is *not* a case of capital punishment because of the reasons: (i) *motive set up by the prosecution has not been believed by us*; and (ii) *the recovery of 30 bore pistol (P.3) at the instance of appellant is inconsequential.*

7. We find ourselves in agreement with the reasons given and conclusions drawn by the High Court which require no interference. Accordingly, we do not find any reason, basis or

justification to take a different view. Consequently, we do not find any merit in this jail petition, the same is accordingly dismissed. Leave declined.

Criminal Petition No.476-L of 2018:

8. Through this criminal petition for leave to appeal, the Petitioner (Muhammad Yasin) impugns the judgment dated 30.03.2018, passed by the Lahore High Court in Criminal Appeal No. 1274/2015 and Murder Reference No. 270/2015, whereby while maintaining conviction of the accused, namely, Mudassar (Respondent No. 2), under Section 302(b) PPC, altered his sentence to imprisonment for life. Hence, this criminal petition for enhancement of sentence of the accused is filed before this Court.

9. Having heard the learned counsel for the parties as well as learned Deputy Prosecutor General, Punjab, and with their assistance we have carefully examined the record. We do not find any perversity, illegality or jurisdictional defect in the findings of the learned High Court that may require interference by this Court. As stated above, the High Court has correctly concluded that the motive is not proved by the prosecution and the recovery of the crime weapon was inconsequential.

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.¹ 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.**

¹ 2011 SCMR 593, 2011 SCMR 1165, 2012 SCMR 267, 2013 SCMR 1602, 2014 SCMR 1464, 2014 SCMR 1658, 2017 SCMR 148, 2017 SCMR 2041, 2017 SCMR 2048, 2018 SCMR 21, 2018 SCMR 149, 2018 SCMR 911, & 2022 SCMR 1608.

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 & Another v. the State & 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 articles² of the ICCPR, including the aforementioned Article 6. However, the said reservations were subsequently withdrawn by the Federal Government except for the Articles 3 & 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

² Articles 3, 6, 7, 12, 13, 18, 19, 25 and 40 of the ICCPR.

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 & 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.

ISLAMABAD,
01.11.2023,
Kehar Khan Hyder, LC/-

QAD
25/11/23

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Not approved for reporting

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