

**IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Shariat Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE KHAWAJA M. NASIM  
MR. JUSTICE RAZA ALI KHAN

**CRIMINAL APPEAL NO. 07 OF 2023**

[On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 13.02.2023, passed in Crim. Appeal No. 75/2017 (new) and Reference No. 72/2017 (new)].

Khawaja Nisar Ahmed son of Khawaja Gulzar, caste Khawaja, r/o Authmuqam, Tehsil Authmaqam, District Neelum.

... Convict-Appellant

**VERSUS**

1. The State, through Police Station Authmuqam, District Neelum.
2. Sharafat Mir s/o Sharaiz Mir, cast Mir, R/o Tehjian, Tehsil Sharda, District Neelum (complainant).
3. Advocate General of Azad Jammu and Kashmir, Muzaffarabad.

...Complainant-Respondents

**Appearances:**

For the Convict-Appellant:	Syed Hazoor Imam Kazmi, Advocate. (Written arguments)
For the State:	Raja Mazhar Waheed, Addl. Advocate-General. (Written arguments)
For the Complainant:	Nemo.
Date of hearing:	04.03.2024

**JUDGMENT:**

**Raza Ali Khan, J:-** The captioned appeal arises from the judgment of the Shariat Appellate Bench of the High Court (*hereinafter to be referred as High Court*) dated 13.02.2023, passed in Crim. Appeals No. 125/2014, (new) 75/2017 (old) and Reference No.126/2014, (new) 72/2017 (old).

2. The pertinent details regarding the titled appeal are as follows: -

Sharafat Mir, son of Sheraz Mir, filed a written report at City Police Station Authmuqam on March 11, 2013, at 08:00 PM. In the report, he alleged that he is resident of village Tehjian and nearabout 13/14 years ago, his sister, Mst. Shakeela Bibi, entered into matrimony with Kh. Nisar Ahmed, son of Kh. Gulzar Ahmed, resident of Tangath Authmuqam. From this wedlock, three daughters;

Iqra Nisar (aged 11/12 years) Uzma Nisar (aged 9/10 years), and Sobia Nisar (aged 6/7 years) were born. On the intervening night of March 7/8, 2013, at 10:00 PM, Mst. Shakeela Bibi and her daughters were in their house at Tangath Authmuqam when the fire erupted and engulfed the entire house and burnt the mother and three innocent daughters to ashes. The complainant, who was away at Rawalpindi in connection with personal engagements, returned home upon hearing the tragic news. Nisar Ahmed (accused) claimed the fire erupted accidentally, whereas the complainant alleged that Nisar Ahmed (accused) had previously extended threats of divorce or harm against his sister and had physically assaulted her. Subsequent investigation, uncovered that the fir incident was not accidental rather a premeditated murder orchestrated by Nisar Ahmed (accused). The motive behind the crime was Nisar Ahmed's desire to marry Mst. Asia Bibi, his sister-in-law, which was impeded by his existing marriage to Mst. Shakeela Bibi (deceased). To remove this obstacle, Nisar Ahmed (deceased) committed the murder of Mst. Shakeela Bibi and her three innocent daughters. Consequently, a case was registered against Nisar Ahmed (deceased) at Police Station City Authmuqam under Sections 302/436-APC. On May 30,

2013, the convict-appellant was examined under Section 265-D, Cr.P.C, where he denied the charges. Following the presentation of evidence, including testimony from 30 witnesses, the trial proceeded. Subsequently, he opted to present evidence in his defense and got his statement recorded under Section 340(2) Cr.P.C, produced witnesses Riaz Ahmed, Gulzar Ahmed, Ghulam Murtaza, Kh. Basharat, Tahir Gulzar apart from his own statement.

3. Following the trial and careful consideration of arguments from both parties, the District Criminal Court Neelum found the convict-appellant culpable. He was convicted and sentenced to death under Section 302(b) APC and ten years' rigorous imprisonment along with a fine of Rs.100,000/- under Section 436, APC. In default of payment of fine, he was ordered to undergo simple imprisonment. Additionally, he was ordered to pay Rs.10,00,000/- as compensation to the legal heirs of the deceased under Section 544-A Cr.PC. The convict-appellant was also granted benefit of Section 382-B Cr.PC, Dissatisfied with the conviction and sentence, the convict-appellant lodged an appeal to the High Court seeking overturn of the decision. Additionally, the District Criminal Court Neelum, sent a reference to the High Court for confirmation of the death sentence imposed on the

convict-appellant. Following due process, the High Court while dismissing the appeal, upheld the conviction and confirmed the death penalty.

4. On the request of the learned counsel for the convict-appellant and with the consent of the learned counsel for the complainant/respondents, by order dated 04.03.2024, the learned Advocates representing the parties were directed to submit their written arguments, which they have done so. Syed Hazoor Imam Kazmi, the learned Advocate representing the convict-appellant, stated in the written submissions that the judgments rendered by the lower Courts are at odd with law, the facts, and the case record therefore, should be nullified. He contended that during the purported incident, the complainant falsely asserted to be residing at Rawalpindi. The Station House Officer (SHO) of Police Station Authmuqam, in collusion with Muhammad Farooq ASI, fabricated a false narrative to incriminate the convict-appellant in the alleged crime. He asserted that the motive attributed to the convict-appellant, intending to marry his real sister-in-law, Mst. Asia Bibi, was a fabrication concocted by Muhammad Farooq ASI, who is a close relative of the complainant and was serving as ASI at the same police station at the time. Additionally, it was stated

that the evidence presented by the convict-appellant was not adequately considered by the District Criminal Court Neelum, and conviction of the appellant was based on assumptions and conjecture. It was claimed that the High Court failed to address the legal points raised by the convict-appellant and unjustly upheld the conviction, rendering the judgment null and void. Moreover, the High Court purportedly neglected to properly review the written arguments, including the testimony of Mst. Asia Bibi, who stated that she was induced by the complainant to get her statement recorded under Section 164, Cr.PC, and that she was pressurized during her Court testimony which was disregarded by the High Court. The learned Advocate also expressed concerns about the procedural irregularities, including the convict-appellant's alleged physical torture by Farooq ASI during police custody, his statements before the Magistrate as well as highly questionable evidence presented by a correspondent of SAMA T.V. News Channel. It was asserted that the prosecution's assertions concerning the acquisition and utilization of petrol in the commission of crime lacked foundation as evidenced by inconsistencies in the evidence and witness testimonies. He further asserted that the recovery/seizure memos and chemical examination reports had been tampered with and

the absence of a chemical laboratory in Athmuqam casts serious doubts in the validity of the evidence. At conclusion, a prayer for acceptance of appeal and the reversal of the judgments of both the courts below has been made. In support of submissions, the learned Advocate placed reliance on the cases reported as *Abdul Aziz vs. The State* [2006 MLD 674], *Nazeer Ahmed vs. The State* [2003 YLR 2339], *Ghous Bux vs. Saleem and others* [2017 PCr.LJ 836], *Muhammad Sharif vs. The State* [1975 PCr.LJ 889], *Muhammad Israr vs. The State* [2002 P Cr.LJ 1072], *Murtaza and others vs. The State and others* [1996 PCr.LJ 358] *Jermy Frankel, General Manager, Avari Hotel, Lahore vs. The State* [2003 PCr.LJ 75], *Binyameen Nasir alias Papoo vs. The State* [1994 PCr.LJ 1475], *Imran Saeed vs. The State* [2001 PCr.LJ 1365], *Jan Alam vs. The State and another* [2004 PCr.LJ 68], *Muhmmad Parveaz vs. The State* [1995 MLD 1519], *Liaqat Bahadur and others vs. The State* [PLD 1987 FSC 43], *Nasrullah vs. State and another* [PLJ 2011 Cr.C, (Lahore) 148], *Ahmad Sher and another vs. State* [PLJ 1995 FSC 109] and *Ch. Muhammad Younas Arvi and others vs. Abdul Aziz Chaudhary and others* [2011 SCR 50].

5. Mir Tanveer Hussain, the learned Advocate representing respondent No.2, despite the Court's order, did not submit the written arguments.

6. Raja Mazhar Waheed, the learned Additional Advocate General representing the State, has submitted written arguments asserting therein that both the impugned judgments of the High Court as well as of District Criminal Court Neelum are in full consonance with law and the facts of the case, thereby requiring no intervention by this Court. He contended that the prosecution case is supported by compelling evidence, with the witnesses corroboration of the narrative outlined in the FIR. He asserted that the convict-appellant is culpable of the crime, and this conclusion is reinforced by recovery of the material used in the offence. Additionally, he highlighted the supporting evidence provided by medical and postmortem reports, alongside the Chemical Examiner's report, which further bolsters the prosecution's case, therefore, the trial Court as well as the learned High Court did not commit any legal errors in their judgments, and the punishment imposed on the appellant aligns with law. He maintained that the findings of both the Courts below are well-reasoned, comprehensive and grounded in robust testimony, as the prosecution effectively proved the



occurrence through compelling evidence. He further asserted that the prosecution witnesses remained consistent in their testimony, neither altering the narrative outlined in the FIR nor making any contradictory statements, thus justifying the dismissal of the appellant's appeal. Furthermore, he highlighted that the convict-appellant and his father, Kh. Gulzar, initially attributed the fire to a short circuit of electricity but later on implicated some other individuals during the Court proceedings, thus, this inconsistency of the Statements coupled with the evidence presented by the prosecution witnesses, firmly established the convict-appellant's involvement in the commission of alleged offence. He concluded by asserting that the convict-appellant has failed to identify any legal irregularity or deficiency in the judgments of the lower Courts, rendering the appeal untenable and warranting its dismissal.

7. After careful consideration of the written arguments presented by the learned counsel for the parties and a thorough review of the available case record, it is evident that the complainant, Sharafat Mir, son of Sheeraz Mir, lodged a written report at Police Station City Authmuqam on 11.03.2013, at 08:00 PM, alleging that his sister, Mst. Shakeela Bibi, was married to Kh. Nisar Ahmed

approximately 13/14 years ago at Tangath Authmuqam. Unfortunately, in the intervening night between 7/8.03.2013 at 10:00 PM, Mst. Shakeela Bibi and her three daughters perished in a fire incident in their house at Tangath Authmuqam. Initially, it was presumed that the fire erupted accidentally, but further investigation revealed that Mst. Shakeela Bibi and her daughters were deliberately set on fire at home in result of premeditation plan. The motive alleged behind the crime was the desire of Kh. Nisar Ahmed (convict) husband of Mst. Shakeela Bibi and father of the victim daughters, to marry his sister-in-law, Mst. Asia Bibi, which was thwarted by his existing marriage to Mst. Shakeela Bibi. Consequently, a case was registered against Kh. Nisar Ahmed (convict-appellant) for commission of the the offences under Sections 302 and 436, APC at Police Station, City Authmuqam. The police, after thorough investigation presented the report under section 173, Cr.PC in the District Criminal Court, Authmuqam. The trial Court examined the convict-appellant under section 265-D, Cr.PC on 30.05.2013, who denied the guilt, whereupon the prosecution was asked to produce evidence. During the course of trial, the prosecution produced as many as 30 witnesses in support of its case. After recording witnesses' testimonies, the trial

Court also examined the convict-appellant under section 342, Cr.PC, who again denied the guilt and opted to produce defence evidence. The District Criminal Court, Neelum, upon conclusion of the trial, found the convict-appellant guilty of the alleged offences, convicted and sentenced him to death under Section 302(b) APC and ten years' rigorous imprisonment along with a fine of Rs.100,000/- for the offence under Section 436-APC. Additionally, the convict was ordered to pay Rs.10,00,000/- as compensation to the legal heirs of the deceased under Section 544-A Cr.PC. Dissatisfied, the convict-appellant lodged an appeal before the High Court and attempted to overturn the decision. Simultaneously, the District Criminal Court Neelum, sent a reference for confirmation of death sentence. However, following the due proceedings, the High Court upheld the judgment of the lower Court by dismissing the appeal whereas, the reference for confirmation of death sentence was affirmed.

8. Before heading towards the merits of the case, it is pertinent to mention here that while evaluating circumstantial evidence, several principles are commonly applied to assess its reliability and significance. Here are some key principles:

- Look for other evidence or facts that support or corroborate the circumstantial evidence. Multiple pieces of circumstantial evidence that independently point to the same conclusion can strengthen its reliability.
- Evaluate whether the circumstantial evidence is consistent with other known facts or evidence in the case. Inconsistencies or contradictions may weaken the credibility of the circumstantial evidence.
- Assess the logical inferences that can be drawn from the circumstantial evidence. While circumstantial evidence may not directly prove a fact, it can support reasonable inferences or conclusions when considered in context.
- Consider whether the circumstantial evidence suggests a motive, opportunity, or means for the alleged behavior or event. These factors can help to establish a plausible explanation for the circumstances.
- Evaluate whether the circumstantial evidence excludes reasonable alternative explanations. If the circumstances can be reasonably explained in multiple ways, the strength of the circumstantial evidence may be diminished.
- Consider the cumulative effect of all the circumstantial evidence in the case. Even if individual pieces of circumstantial evidence may seem weak on their own, collectively they may paint a more compelling picture.

- Assess the broader context in which the circumstantial evidence arises, including the surrounding circumstances, background information, and relevant factors. Context can provide important insights into the significance of the circumstantial evidence.
- Evaluate the independence and reliability of the sources of circumstantial evidence. Factors such as witness credibility, documentation quality, and forensic analysis can affect the reliability of circumstantial evidence.

By applying these principles systematically, the strength and significance of circumstantial evidence can be assessed in a fair and objective manner.

9. Since both; the trial Court and the High Court, have sentenced the convict-appellant, to death, thus, it is imperative, considering the seriousness of the case, for us to meticulously re-examine the evidence presented, even though re-appraisal is not typically within the purview of this Court. First and foremost, we will address the confessional statement of the convict-appellant, which was recorded under Section 164 Cr.PC before the Magistrate/Extra Assistant Commissioner, Authmuqam. The statement is reproduced below for a thorough understanding: -

"ملزم نے اپنے بیان زیر دفعہ 164 ض ف میں بیان کیا کہ اس نے قبل ازیں 16/17 سال قبل اپنی چچا زاد آسیہ دختر خاقان ساکن اٹھمقام سے شادی کی تھی جس سے اس کے دو بیٹے ہیں۔ 13/14 سال قبل متوفیہ شکیلہ بی بی دختر شیراز سے دوستی ہونے پر اس سے دوسری شادی کر دی اور پہلی بیوی کو طلاق دے دی اپنی دوسری بیوی شکیلہ بی بی کی بہن آسیہ بی بی دختر شیراز میر کے جوان ہونے پر اس میں دلچسپی لینے لگا اور تیسری شادی کی خواہش کا اظہار کیا اور یہ بھی اظہار کیا کہ وہ شکیلہ بی بی کو طلاق دے گا۔ اس دوران آسیہ دختر شیراز میر کا جو بھی رشتہ آتا اس سے انکار کروا دیتا۔ شکیلہ بی بی کی موجودگی میں اس کی بہن آسیہ سے ملزم کی شادی ممکن نہ تھی تو اس نے شکیلہ کے قتل کا پروگرام بنایا جس سے آسیہ بی بی نے منع کیا۔ لیکن ملزم نے شکیلہ بی بی کو راستے سے ہٹانے کے لیے منصوبہ بنایا کہ شکیلہ و تینوں بیٹیوں اقرار عظمیٰ، ثوبیہ کو مکان میں جلا دیا جائے تا کہ کسی کو شک بھی نہ ہو معاوضہ بھی مل جائے۔ اور سسرال والے ہمدری میں آسیہ کا رشتہ بھی دے دیں گئے۔ اس منصوبہ پر عمل کرنے کے لیے 06.03.2013 کو ملک شرافت میڈیکل سٹور والے سے نیند اور درد کی گولیاں لیں اور اسی روز کنڈل شاہی پٹرول پمپ سے 20 لیٹر پٹرول خرید کر بذریعہ ٹیکسی گھر لایا جسے منیر ڈرائیور چلا رہا تھا۔ اور دیگر سواریاں بھی تھیں۔ اور اپنی بیوی کو بتایا کہ تجھیاں Chain saw کے لیئے پٹرول لایا ہے۔ اگلے روز 07.03.2013 کو اپنی بیوی اور تینوں بیٹیوں کو لکڑی لانے کے لیے جنگل لے گیا تا کہ وہ تھک جائیں اور رات کو نیند کی گولیاں کھلانے کا جواز پیدا ہو جو اس نے رات کے کھانے کے بعد ایک ایک گولی نیند کی بچیوں کو کھلائی اور دو گولیاں بیوی شکیلہ بی بی متوفیہ کو کھلائیں۔ اور ڈیڑھ گھنٹہ گزرنے کے بعد جب وہ سو گئیں تو مکان کے اندر موجود بستروں اور دیگر سامان کے علاوہ اپنی بیوی اور بیٹیوں کی چار پائیوں کے نیچے اور فرش پر پٹرول چھڑک کر آگ لگا دی۔ اور دروازہ بند کر کے دور جا کر شور شروع کر دیا جب لوگ آئے تو بیوی اور بچیاں جل کر فوت ہو گئی تھیں جنہوں نے لاشیں نکالیں۔ ملزم نے اظہار کیا کہ اس سے بڑا گناہ ہوا ہے اور غلطی ہوئی ہے۔"

10. In the aforementioned confession, the convict unequivocally admitted without any reservation that approximately 16/17 years ago, he married to his cousin Asia, the daughter of Khaqan, resident of Authmuqam, with whom he fathered two sons. About 13/14 years ago, after developing a bond with Mst. Shakeela Bibi, d/o Sheeraz, he entered into matrimony with her and divorced his first wife. The convict-appellant openly expressed his desire for Asia Bibi, Shakeela Bibi's younger sister, contemplating a third marriage and intending to divorce Shakeela Bibi. However,

realizing the impossibility of marrying Asia Bibi in presence of wedlock with Shakeela Bibi, he schemed to eliminate her along-with three daughters, Iqra, Uzma and Sobia. According to his account, on 06.03.2013, he procured sleeping and painkiller pills from Malik Sharafat's Medical Store and also got 20 liters petrol from Kundal Shahi petrol pump, which he transported via taxi driven by Munir (PW). On the subsequent day, i.e. on 07.03.2013, he accompanied his wife and three daughters to the jungle to collect firewood to exhaust them physically. Following dinner, he administered one sleeping pill to each of his daughters and two to wife; Shakeela Bibi. Once they have drifted into slumber after one and half hour, he poured out petrol under the beds and the surroundings furniture and later on set them at fire. After securing the door, he raised the clamor outside. By the time people of vicinity arrived, his wife and daughters had already perished in blaze. The convict confessed to perpetrate a grave sin and acknowledged his error in tampering with the bodies.

11. Besides the statement of the convict-appellant, the statement of Mst. Asia Bibi was also recorded under section 164, Cr.PC before the Magistrate/ Extra Assistant Commissioner Neelum, who corroborated the aforementioned account in the following manner: -

"ملزم تجہیاں ٹرک پر ڈرائیوری کرتا رہا۔ دن کو کام پر جاتا تھا اور رات کو مظہرہ کے والدین کے گھر آجاتا مظہرہ مذکور کو بہنوئی سمجھ کر اخلاق سے پیش آتی اور خدمت کرتی تھی۔ 5/4 سال پہلے گرمیوں کے موسم میں والدین بہک چلے گئے گھر میں چھوٹا بھائی تھا تو ایک دن خواجہ نثار کام پر نہ گیا کہنے لگا اسے بخار ہے مظہرہ نے مذکور کے لیے چائے بنا کر دی تو خواجہ نثار نے مظہرہ کو بازو سے پکڑ لیا اور کہنے لگا کہ چار پائی پر بیٹھ جاؤ مظہرہ بیٹھ گئی تو مذکور نے مظہرہ سے کہا کہ وہ مظہرہ سے بہت پیار کرتا ہے اور مظہرہ اسے بہت اچھی لگتی ہے۔ اس لئیے وہ مظہرہ سے شادی کرنے کا خواہش مند ہے تو مظہرہ نے خواجہ نثار کو کہا کہ تم میرے بہنوئی اور بڑے بھائی ہو یہ کیسے ممکن ہو سکتا ہے تمہارے نکاح میں مظہرہ کی حقیقی ہمشیرہ ہے۔ خواجہ نثار نے مظہرہ سے کہا کہ وہ شکیلہ کو طلاق دے کر تمہارے ساتھ شادی کرے گا۔ درمیانی عرصہ میں مظہرہ کے والدین کو یہ بتا کر کہ شکیلہ بیمار ہے بچوں کی دیکھ بھال کے لئیے مظہرہ کو ٹنگا ٹھ لایا۔ یہاں لا کر بھی مظہرہ کو شادی پر آمادہ کرنے کی کوشش کرتا رہا۔ مظہرہ کے رشتوں سے انکار کرواتا رہا۔ جب مشکور ولد شفیع جو قریبی رشتہ دار ہے نے مظہرہ کے رشتے کے لیے زیادہ کوشش کی اور مظہرہ کے والدین کو مجبور کیا تو خواجہ نثار مظہرہ کے والدین کے گھر وقوعہ سے کچھ دن قبل آیا اور مظہرہ کو علیحدہ کر کے بتایا کہ کسی صورت رشتہ کی ہاں نہ کرنی ہے وہ خود مظہرہ کے ساتھ شادی کرے گا۔ مظہرہ نے دوبارہ کہا کہ حقیقی ہمشیرہ کی موجودگی میں ایسا ممکن نہ ہے۔ لہذا وہ ساتھ ہو کر مظہرہ کا رشتہ مشکور کے ساتھ طے کروائے۔ اس پر خواجہ نثار نے مظہرہ کو دھمکی دی کہ وہ شکیلہ کو جس طرح ممکن ہوا راستے سے ہٹا کر مظہرہ سے شادی کرے گا۔ اس کے بعد خواجہ نثار اٹھمقام چلا آیا اور مورخہ 08.03.2013 کو اطلاع ملی کہ شکیلہ بی بی ہمشیرہ اور تین بیٹیاں اقراء عظمیٰ، ثویبہ ٹنگا ٹھ اپنے مکان میں جل کر راکھ ہو گئی ہیں۔ اس پر مظہرہ کے والدین اور برادران اٹھمقام اُنے حالات واقعات سے پتہ چلا کہ ملزم خواجہ نثار نے محض مظہرہ کو حاصل کرنے کے لیے راستے کی رکاوٹ شکیلہ بی بی کو جلا کر قتل کر دیا ہے۔ اور ساتھ تین بیٹیوں کو بھی جلا ڈالا تا کہ شک نہ ہو۔"

12. The statement of Mst. Asis Bibi clearly aligns with the confessional statement recorded by the convict-appellant. According to her testimony, during the summer season when her parents were not at home, the convict-appellant forcibly caught hold of her arm and professed his strong affections, expressing desire to marry her due to being very attractive. However, she declined his proposal, citing her sister's existing marriage with him. Initially the convict-appellant assured her that he would divorce Mst. Shakeela Bibi and marry her however, when another



relative Shafee pursued a proposal for Asia Bibi 's hand for marriage, the convict-appellant visited Asia Bibi's parents shortly before the incident. He warned her not to enter into any relationship and rowed to marry herself. When Asia Bibi rejected his advances, the convict-appellant threatened that he will marry her by eliminating Mst. Shakeela Bibi as soon as possible. Subsequently, he carried out the horrific act of burning Mst. Shakeela Bibi and her three daughters merely to pursue his desire to marry Asia Bibi.

13. In addition to the aforementioned statements under section 164, Cr.PC, the prosecution presented 30 witnesses listed in the calendar of challan whose statements were recorded before the Court. The complainant in the case, Mr. Sharafat Mir, (pw.1) who is also real brother of the deceased, Mst. Shakeela Bibi, testified that the incident occurred on March 7, 2013, when he was in Rawalpindi; upon returning, he discovered that a fire erupted in his sister's house. Upon further investigation, it was revealed that the convict-appellant had deliberately set the house on fire, resulting into the tragic deaths of three children and his wife MSt. Shakeela. He further asserted that the motive behind the incident was allegedly convict's desire to marry the complainant's younger sister, seeking vengeance against the family. Upon

knowing about the incident, the complainant initially returned home and subsequently filed a report at the police station. Later on, Deputy Superintendent Police (DSP), both the convict and complainant, revisited the scene of occurrence where the convict-appellant, confessed to various aspects of the crime including disclosing of the location where he had hidden the medicines, and admission of procuring the petrol to fuel the fire. Moreover, the convict revealed the specific spot where he had stored the petrol and the gallon used, which was recovered from the mentioned location with burn marks. The convict also confessed to disposing of the lighter used to ignite the fire near the house, which was subsequently retrieved from nearby wheat field and handed over to the DSP. Following these revelations, the DSP arranged for the confiscation of the mentioned items and prepared a seizure memo, obtaining signatures from witnesses Abdul Qayum Butt and Mir Gul Bahar.

14. Another witness, Muhammad Murtaza stated in his testimony that he worked at Kundal Shahi filling station and was operating the Nozzle as Salesperson. He claimed familiarity with the convict and recalled encountering him at the petrol pump when the convict requested for petrol for his chainsaw. The convict, carrying a plastic gallon

containing approximately twenty liters petrol purchased the same from Murtaza, and paid him Rs. 2080/- in return. Subsequently, Murtaza proceeded to the office of the petrol pump whereupon the convict-appellant departed in a car towards Authmuqam.

15. Another prosecution witness Sharafat Ali, who runs a pharmacy business in Authmuqam Bazar, testified that he runs a medical pharmacy in the main market of Authmuqam; He stated that on March, 06, 2013, the convict visited his medical store in the main market of Authmuqam, and disclosed that he drives a car and suffers from insomnia and headaches, seeking medication for relief from both conditions. Specifically, the convict requested for sleeping pills (*Valium and Ativan*) from him. However, Sharafat Ali informed the convict that he does not stock such pills due to their high addictive nature and classification as narcotics, instead, he provided an alternate medication for headache relief, charging thirty rupees, and also sold five tablets of an antidepressant. Sharafat Ali witness, later heard about the incident where a fire broke out resulting in the death of four individuals.

16. Additionally, the driver of the car, who transported the convict-appellant towards the

Authmuqam, appeared before the Court and got his statement recorded. He stated that upon reaching the Kundal Shahi petrol pump, the convict-appellant was found standing there. The convict inquired about transportation to Authmuqam Bazar, to which the driver confirmed. The convict then informed driver that he had petrol gallon with him and requested for transportation. The Driver agreed and during journey, another passenger Atif son of Muhammad Hameed, resident of Kasrian, began smoking a cigarette in the car, upon noticing this, the convict-appellant advised against smoking due to the presence of petrol in the gallon, Atif then asked for the purpose of the petrol, to which the convict explained that it was intended for use in a chainsaw for construction work on his house.

17. The witnesses, Abdul Qayyum Butt and Meer Gulzar, the witnesses of the seizure of medicine tablets as indicated in the seizure memo stated that a torn empty wrapper of *Exhale* tablets, from which five tablets were recovered, and one wrapper of *Panadol* tablets, from which two tablets were recovered, along with eight tablets, were seized. The investigating Officer also chalked out a map showing the location of the seized tablets which is part of the record. Mir Gulzar, son of Sardar Muhammad Iqbal a

resident of Tehjyan, also testified other seizures in his Court statement, including the lighter used to ignite the fire, the burnt gallon and tablet wrappers. The witnesses affirmed the authenticity of the seized items in their presence. Furthermore, the witness mentioned in the statement that immediately after the incident, the tablets were found behind the wall removed by the convict. Additionally, the witness confirmed the extraction of gasoline from the soil by the convict. There was no mention of the absence of Abdul Qayyum Butt and Meer Gulzar, at the time of recovery and there was no objection or doubt regarding the authenticity of the seizures or the parcels. Moreover, there was also no cross-examination regarding the authenticity of the parcels or their absence at the scene, even the convict's father, in his statement, affirms the presence of the recovery witnesses, Abdul Qayyum Butt and Meer Gulzar at the place of occurrence during the seizure.

18. According to the death report Ex-PG to Ex-PA, following the exhumation, the dead bodies were retrieved, and a medical team conducted thorough postmortem examination. The police meticulously investigated the dead bodies and sought expert guidance from the medical team. The Post-mortem examination was conducted on the

completely burnt bodies presented as EX-PR and EX-RC confirming the cause of death as burns. Regarding the sleep-inducing pills, the medical team deemed it imperative to procure the chemical examination report. Furthermore, through a formal written request EX-PQ, the investigating officer DSP Authmuqam sought clarification from the medical officer at Neelum regarding the *Exhale* and *Panadol* tablets. The Medical expert was queried about *Exhale* tablets whether the same are having the sleep-inducing and tranquilizing effect and for what purpose these pills are being typically used. In response, medical officer Neelum gave his opinion vide letter EXP-QA, stating therein that item No.1 comprises Tab Panadol 500 mg, 8 each, totaling 8 tablets utilized as: Painkiller and antipyretic, whereas, item No. 2 consists of a Blister of Hollow Pack of 5 Tablets, and each tablet is having strength of 0.25mg being used as Anti-depressant and for inducing sleep Tranquilizer (Sleep induction). The medical officer's opinion suggests that both, *Exhale and Panadol* tablets have the potential to varying degree. Dr. Ziaur Rahman, the Medical Officer, prosecution witness No. 27, appeared before the Court, and verified the report EXP-QA on the back of written report EX-PQ and also noted that Dr. Ashraf's counter signature is also present on this report. Dr. Zia-ur-Rehman testified

that the *Exhale* tabs are primarily prescribed for tranquility and sleep, with their effects varying person to person while moderate dosage may induce sleep in individual unfamiliar with medication, a higher dosage, such as 4 mg could render the unconsciousness. Dr. Ziaur Rahman reiterated in his statement that these tablets indeed have the capacity to induce tranquility and sleep and even a moderate dose with a higher amount potentially may lead to unconsciousness. Notably, in this case, each of the child was administered one pill with juice, and deceased Mst. Shakeela Bibi was administered two tablets, according to Dr. Ziaur Rahman, expert opinion, indicating the likelihood of induced sleep.

19. In addition, Doctor Haseena Kousar, from Basic Health Unit (BHU) City Muzaffarabad testified that she is a medical officer and has served as a medico-legal officer. She mentioned collaborating with other doctors conducting postmortems including Dr. Nasir Sheikh in conducting postmortems on the dead bodies. After completing the postmortem examination, she affirmed the sending of required documents and sample for further analysis. She identified the postmortem report from Ex-PR to Ex-RC along-with the accompanying signatures and confirmed the cause of death of all victims. Her analysis indicates that the

burn wounds occurred prior to death corroborating the findings of the report regarding homicide. Additionally, she expressed her expert opinion that each of the four victims had been administered intoxicating drugs before their demise, however, she clarified that determination of the exact quantity administered was challenging as it was based on the individual's body response. She noted that some individuals can experience sleep induction even with medication like Panadol. This testimony further validates the authenticity of the postmortem report and supports the assertion of drug-induced sleep as a contributing factor in the victim's death.

20. Dr. Muhammad Ashraf, the prosecution witness, DMS, from District Headquarters Hospital Neelum, was initially not included in the list of witnesses in the calendar of challan, however, during the trial, the prosecution filed an application before the trial Court to summon the aforesaid witness, which was granted by the trial Court. On 24.02.2014, Dr. Ashraf was summoned, who appeared in the Court on 28.02.2014, to provide his testimony. He stated that the police sought his expertise regarding the potential sleep-inducing effects of the pills like *Exhale* and *Panadol*. Dr. M. Ashraf, subsequently, submitted separate reports on this matter. According to his report, *Exhale*



tablets may not directly induce sleep, but they can enhance drowsiness while the tablet Panadol is primarily used for fever and pain relief. Dr. M. Ashraf also confirmed that he along-with other doctors jointly examined the pills. Additionally, he affirmed that the observed effects of the pills were consistent with his report, corroborating the findings of all three doctors involved. Moreover, the Chemical Examiner Punjab Forensic Science Agency provided a post-analysis report, confirming the presence of Bromezepam and Lorazepam in the substances sent for examination. These substances found in *Exhale* and *Panadol* pills are tranquilizers known to induce sleep. The Chemical Examiner's report, containing the result and conclusions is reproduced below for a more comprehensive understanding: -

"Result and Conclusion Stomach content in item /#01 Contains Lorazepam and bromezepam. \*.Stomach content in item #02 Contains 0.019 mg/L. Lorazepam and 0.063 mg /L bromezepam. \*Liver in item #03 contains 0.05 mg/Kg bromezepam. \*Stomach content in item #04 contains 0.00013mg/L. romezepam"

Besides, the confirmation of the effects of *Exhale* and *Panadol* pills by the witnesses, Abdul Qayyum Butt and Mir Gulbar, along-with DSP Headquarter lend further credence to the prosecution account. Dr. Haseena Kousar, Dr. Ziaur Rahman and Dr. Muhammad Ashraf also

testified the same. The post-analysis report provided by the Chemical Examiner Punjab Forensic Science Agency, analyzing substances obtained from the postmortem, bolsters the prosecution's position and validates the entire process from acquiring pills from the medical store upto administering them to the victims. Furthermore, the statement and testimony of Malik Sharafat Hussain, owner of the medical store, pw. 6, corroborates the prosecution's narrative and the chain of events.

21. Asia Bibi, daughter of Shiraz Mir, not only recorded her statement under section 164, Cr.PC, but also testified in Court. She is a star prosecution witness, asserting that the convict, her brother-in-law desired to marry her, despite being married with her sister. However, Islamic Law prohibits simultaneous marriage of two sisters. Allegedly, in pursuit of marrying Asia Bibi, the convict set Mst. Shakeela Bibi and her children on fire. Asia Bibi's comprehensive statement, part of the record, along-with her testimony under section 164 Cr.PC, supports this assertion. In her testimony in Court, she reiterated the details of her earlier statement recorded under section 164 Cr.PC emphasizing the relational dynamics with the convict. She remained resolute in her stance. Additionally, during her examination, she asserted that her statement to the

police was voluntary and not coerced by any external influence. She revealed that the convict had allegedly pressured her to kill his wife and children, causing her to feel threatened. The revelation was not born out of suspicion rather out of genuine concern for her safety. Asia Bibi explicitly stated that the convict had extended threats to her and sworn in on the Quran that he himself committed the murder, thus, Asia Bibi not only reaffirmed her earlier statement but also provided further elaboration with clarity, coherence and credibility during her testimony, elucidating the sequence of events in a sequential manner.

22. Aziz ul Hassan, son of Mohibullah, pw. 18 testified before the Court. He recounted accompanying the convict and the police towards the scene of the incident on 16.03.2013. His first action was to recover the drugs from behind the house followed by the retrieval of gallon and the lighter from scene. Additionally, he mentioned in his statement that the deceased Mst. Shakeela Bibi remained crying out to him alleging that the convict Kh. Nisar had beaten her and the children and had also committed acts of violence. She also informed the witness that previously, the convict only subjected violence against her but now he has also brutally abused the children. In his testimony, he also stated that the victim, Mst. Shakeela Bibi had confided

him about the illicit affair between the convict and her sister-in-law Asia. Mst. Shakeela Bibi disclosed that the convict, Nisar harbored intentions of marrying her sister, thus representing the late Mst. Shakeela Bibi, this witness attested to the convict's brutality towards Mst. Shakeela Bibi and the children highlighting his desire to wed Asia as expressed by Mst. Shakeela Bibi. While the witness denied the convict's any explicit threat to Mst Shakeela Bibi's life by the convict. He underscored Mst. Shakeela Bibi's apprehensions regarding violence against the children and neglect of financial support and convict's aspirations for a relationship and marriage with Asia, thereby, corroborating the prosecution account.

23. Ameeruddin Mughal, the representative of the Samaa TV, was also enlisted as prosecution witness in the case. He appeared before the Court and affirmed in his association with the media specifically with Samaa TV. He state that upon information that a house fire incident took place in Authmuqam where four individual were burnt, he took notice. Subsequently, it emerged two days later that the fire was not accidental rather it was deliberately set by the head of the household. He was in Muzaffarabad, however, he endeavored to travel to Authmuqam personally to ascertain the details. The colleagues at

Samma TV. also provided information regarding the incident. On 20.03.2013, he received information that a team of doctors was heading for the exhumation and postmortem. On the same day, he went to Authmuqam where he witnessed the exhumation of graves of the four deceased individuals. Subsequently he approached Assistant Superintendent Police (ASP) and expressed his desire to meet the convict-appellant to understand his stance. He then listened to convict's position which he recorded in the form of a CD report. According to the convict's statement he confessed that he set his wife and children at fire intending to eliminate the doubts because he wanted to marry his sister-in-law. The convict disclosed that he procured petrol and pills for that purpose. He admitted that he set fire to his shirt and threw it inside the house. This recorded confession presented as Article P-11 serves as Extra Judicial Confession and further bolsters the prosecution's case.

24. The convict-appellant presented evidence in his defense during the proceedings. In addition to his sworn testimony, five other witnesses - Riaz Ahmed, Gulzar Ahmed, Ghulam Murtaza, Khawaja Besharat, and Tahir Gulzar - appeared before the Court and provided testimony in support of the convict-appellant's defense. In his own

testimony, the appellant admitted that he had been taken to the crime scene by the police after his arrest. He acknowledged the production of a CD during his arrest, which was later submitted as evidence in Court. He deposed that the CD was made under duress. The convict-appellant also conceded that the police had confiscated various items, including yellow petrol, a lighter, medicines, a telephone and a tape recorder but asserted that these items were planted by another individual named Nazeer. He mentioned the involvement of a driver named Munir, a prosecution witness, whom he claimed not to know, while acknowledging his acquaintance with witness Atif Hamid, who was in the taxi before the incident. Furthermore, the appellant admitted that witness Sharafat had entrusted him with the petrol and stated that there was no animosity between him and the police. He also acknowledged the events surrounding the police operation, including the transportation of petrol in the taxi and the presence of witness Atif Hamid. However, the testimony of defense witness Khwaja Riaz Ahmed was found to be inconsequential, as it merely mentioned hearing about the incident after a social engagement. Similarly, Gulzar Ahmed, the appellant's father, confirmed his presence during the police investigation and supported the seizure of

various items from the convict-appellant. He also stated that local residents had identified and handed over the convict-appellant to the police, corroborating the confiscation of the petrol cane and lighter. Additionally, he affirmed that the fire was not accidental and that the deaths of the victims were intentional, contrary to initial reports suggesting an electricity short circuit. During cross-examination, Gulzar Ahmed reiterated the non-accidental nature of the fire and the deaths of the victims. The testimony of other defense witnesses echoed similar sentiments, ultimately aligning with the evidence put forth by the prosecution. Consequently, it became apparent that the convict-appellant himself confessed to his involvement in the incident, establishing his intent to marry his sister-in-law by administering sleeping pills to his family and setting the house at fire.

25. The prosecution version has been fully substantiated by the evidence presented. Prosecution witness No. 1, Sharafat Mir, who affirmed the stance of the prosecution regarding entirety of the prosecution' case, spanning from the filing of FIR to occurrence of the incident itself, corroborates the acts of confiscation and parceling. Witnesses No. 2, 3 and others although are siblings of the complainant and relatives of Mst. Shakeela Bibi (deceased),

but they are natural witnesses. However, the convict's father has also conceded in his statement that local individuals did not endorse the confiscations at the scene of the incident and instead signatures were obtained from the brothers of Mst. Shakeela Bibi and others, as well as Uzma, Iqra, and Sobia's relatives. Witness No. 6, Sharafat Hussain is the proprietor of a medical store, where the convict procured medicines which fact is supported by medical and laboratory analysis. Witnesses No. 7 to 9, who accompanied the convict, affirmed his actions of procuring petrol and transporting it to the house. Witness No. 10, Murtaza Sheikh, is a resident of Khambandi and works as a salesperson at Kundal Shahdi Petrol Pump, where the convict bought petrol and then travelled towards the incident site in a taxi. This witness is also impartial and a natural witness like witnesses No. 6 to 9. Witnesses No. 11 to 13 are those who arrived at the scene immediately after the incident and tried to extinguish the fire and save the convict. However, they could only manage- to retrieve the corpses and during this time, they also detailed the convict's post-incident behavior indicating that he did not attempt to extinguish the fire, retrieve the bodies, or save the deceased. Witness No. 19, Ameeruddin Muhgal, is a witness to the Extra Judicial Confession and a well-known



journalist representative of Samaa TV. He arranged for the CD of the convict's confession for his TV channel and presented it as evidence in Court and aired it on Samaa TV. Witness No. 20, the Patwari of the area/halqa, testified about the map of the incident site. Witnesses No. 21, Khwaja Muhammad Sultan, a duty magistrate of the tehsil and No. 22, Sikandar Khan, Deputy Superintendent of Electricity, provided expert opinions on technical matters. Witness No. 21, Raja Azim Khan, Magistrate/Assistant Commissioner is the witness of statements of the convict and Asia Bibi recorded under section 164, Cr.PC. All these witnesses provided detailed testimonies regarding their respective matters. Witnesses No. 24 and 25, police officers responsible for handing over parcels or witnesses, testified regarding chemical analysis. They confirmed their testimonies regarding the prosecution's stance. Witnesses No. 26 to 29, including Dr. Haseena Kosar and Dr. Ziaur Rahman, besides the requested witness Dr. Muhammad Ashraf, confirmed the medical examination, expert opinion on sleeping pills, postmortem report, and all the exhibited medical evidence and documents. Inspecting officers Witnesses No. 28 and 29 provided detailed testimonies regarding inspection matters and confirmed the legality of the action of inspection without any doubt, providing solid

verbal testimony and documentary evidence including technical testimonies and expert opinions. Witness No. 30 testified regarding the arrangement and completion of the challan.

26. In the present case, the prosecution has effectively presented a compelling case against the convict-appellant, leaving no room for doubt. A coherent sequence of events, typically of circumstantial evidence, has been meticulously woven together by the prosecution. The alleged motive has been substantiated and the method and execution of the crime have been convincingly demonstrated. The convict's actions, including procuring petrol from Kundal Shahi Petrol pump and purchasing medicines from the Medical Store before administering them to the victims, have been established through reliable evidence. Additionally, the recovery of the petrol gallon and medicines at the convict's instance further solidifies the prosecution's narrative. In light of these compelling evidences, the learned trial Court, after thorough examination of the case record and the evidence presented by the prosecution, has rightfully imposed the death sentence on the convict-appellant. The sentencing reflects a just and appropriate response to the gravity of the crime committed.

27. Once the court has conclusively established beyond any doubt the guilt of the accused who committed horrific act of murdering innocent human being including children, leniency should not be entertained in the dispensation of justice. The severity of the crime demands a corresponding punishment that reflects the enormity of the wrongdoing. Each innocent life taken unjustly represents an irreparable loss to society making it imperative that justice is served without compromise. The court's duty lies not only in upholding the rule of law but also in ensuring that the victims and their families receive the closure and vindication they deserve. Therefore, when the guilt of the accused is fully proven, it becomes the moral and legal obligation of the court to administer a just and fitting punishment, holding the perpetrator accountable for his reprehensible actions.

28. Before concluding, it is essential to address the egregious and abhorrent actions of the convict, who, in his capacity as a husband and father, committed a premeditated and barbaric act of murder. By deliberately setting fire to his own house, the convict callously extinguished the life of his wife and three innocent daughters, an act of unspeakable brutality and defies comprehension. The sheer depravity of the convict's

actions cannot be overlooked. To willfully and deliberately snuff out the lives of four family members, is an affront to the most basic principles of humanity. This act of violence, marked by its calculated cruelty and utter disregard for human life, stands as a chilling testament to the depths of depravity to which some individuals can sink.

29. In considering the culpability of the convict, it is imperative that this Court does not waver in its commitment to justice. The gravity of the offense demands a resolute and unwavering response that unequivocally condemns such acts of savagery and ensures that the responsible is held to account for his actions. It is a fundamental tenet of justice that those who commit heinous crimes must face the full consequences of their actions. To allow the convict to escape unpunished would be a gross miscarriage of justice, a betrayal of the trust placed in the legal system to uphold the rule of law and protect the innocent. Therefore, it is the duty of this court to ensure that the convict is held accountable for his crimes. The severity of his actions demands nothing less than the harshest possible punishment, a punishment that reflects the enormity of the harm he has caused to serve as a deterrent to others who might contemplate similar acts of violence. In reaching our verdict, we must be guided by

the principles of justice and fairness. We must consider not only the legal aspects of the case but also its broader moral implications. The lives that were lost in this senseless act of violence can never be restored but by delivering a just and proportionate verdict, we can at least honor their memory and send a clear message that such atrocities will not be tolerated in our society.

30. The case law referred to and relied upon by the learned counsel for the convict-appellant having distinguishable facts and circumstances, is not attracted to the case in hand. It is well established legal principle that each case must be adjudicated on its unique circumstances. Verdicts rendered in criminal cases should be limited to the specific facts presented in the case at hand and cannot be universally applied to all cases.

31. It may be pertinent to mention here that the major portion of compensation is payable to the convict who falls in the category of legal heir of the deceased apart from the legal heirs of Mst. Shakeela Bibi, thus, the payment of compensation be adjusted strictly in accordance with the Islamic law of Inheritance and if not deposited, shall, as ordered by the trial Court, be recovered through arrears of the land revenue and the authorities

concerned while recovering the compensation shall keep in mind this fact.

32. In view of the above, the judgment passed by the High Court is upheld. Consequently, this appeal, having no merit, stands dismissed.

**JUDGE**

**JUDGE**

Muzaffarabad,  
03.04.2024