**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. 03 OF 2023**

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 09.01.2023, passed in Crim. Appeal No. 141 of 2014 and Crim. Reference No. 114 2017).

Shahzad Ahmed Shah s/o Babu Walayat Shah, Pirzada by caste, r/o Lawat Gali Tehsil Authmuqam District Neelum, presently detained in Central Jail Rara.

… Convict-Appellant

***VERSUS***

State through Advocate-General of Azad Jammu and Kashmir, Muzaffarabad and another.

…Complainant-Respondents

**Appearances:**

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|---|---|
| For convict-Appellant: | Raja Shujaat Ali Khan, Advocate. |
| For the State: | Raja Mazhar Waheed Khan, Addl. Advocate-General. |
| For the Complainant: | Mr. Haroon Riaz Mughal, Advocate. |
| Date of hearing: | 27.06.2024 |

**JUDGMENT:**

***Raza Ali Khan, J*:-** The captioned appeal arises from the judgment of the Shariat Appellate Bench of the High Court (High Court), rendered on January 9, 2023, in Criminal Appeal No. 141 of 2014 and Criminal Reference No. 114 of 2017.

2. The detailed facts involved in the captioned appeal are that on July 28, 2011, the complainant, Manzoor Ahmed Shah, lodged a written report with the SHO of Police Station Lawat, District Neelum. In the report, he alleged that on the morning of July 28, 2011, at approximately 5:20 am, while he was at home, he heard the gunfire coming from the house of his brother, Farooq Shah, in Lawat Kundian. Promptly, he, along with his son Masood Shah, rushed toward his brother's house. On the way, they were joined by one Abdul Hameed. They observed Shehzad Ahmed, son of Babu Walayat Shah, armed with a 12-bore rifle fleeing the scene with an unknown accomplice, heading south through the maize fields adjacent to his brother's house. Upon reaching his brother's house, the complainant found Farooq Shah lying in a pool of blood. Upon inquiry, Farooq Shah's wife, Mst. Razia Bibi, recounted that earlier that morning, three stones had been pelted consecutively at their house. Responding to the disturbance, Farooq Shah went to the veranda, followed by her, who stood at the door. She witnessed Shehzad Ahmed standing in the maize field in front of their house, armed with a 12-bore rifle. Shehzad Ahmed fired at Farooq Shah, striking him in the chest and right shoulder, resulting into his immediate death. The motive for the murder was reportedly a dispute over a piece of land. Fifteen days prior

to the incident, Farooq Shah and his father had acknowledged an altercation with Shehzad Ahmed's mother regarding this piece of land. Harboring a grudge from this conflict, Shehzad Ahmed, with the alleged abetment of his accomplices, committed the murder of Farooq Shah.

3. Based on the complainant's report, FIR No. 14/2011 was registered at Police Station Lawat in the offenses under Sections 302 and 109 of the Azad Kashmir Penal Code (APC). The convict-appellant was subsequently arrested and investigated. During the investigation, the other individuals nominated in the FIR for abetment, were exonerated at the complainant's request. Upon completion of the investigation, a challan under Sections 173 of the Code of Criminal Procedure (Cr.PC) in the offence under Section 302 APC and Sections 13 of the Arms Act was presented in the Court of competent jurisdiction on October 21, 2011. Legal proceedings commenced and the convict-appellant was examined under Section 265-D, Cr.PC. He denied the allegations and claimed trial, prompting the prosecution to present evidence in support of its case. Out of the 25 witnesses listed in the calendar of witnesses in the challan report, the prosecution got recorded the testimonies of 24 witnesses. Following the presentation of the prosecution's evidence, the statement of the convict-appellant was recorded under Section 342, Cr.PC, wherein he again pleaded not guilty. He opted not to produce any defense evidence or record his statement on oath.

4. At the conclusion of the trial, the learned trial Court convicted the appellant and imposed the death penalty as ‘Tazir’ under Section 302(b) APC. Additionally, the convict-appellant was ordered to pay Rs. 200,000 as compensation to the legal heirs of the deceased, Farooq

Shah, pursuant to Section 544-A Cr.PC. The Court also sentenced the convict-appellant to three years' simple imprisonment for the offense under Section 13 AA, and in the event of non-payment of the compensation, the convict was ordered to undergo an additional three months of simple imprisonment, vide judgment dated November 19, 2014. Dissatisfied with the conviction, the convict-appellant appealed to the High Court. Concurrently, the trial Court sent a reference for confirmation of the death sentence awarded to the convict-appellant. The learned High Court, through its impugned judgment dated January 9, 2023, dismissed the appeal filed by the convict-appellant and answered the reference sent by the trial Court in affirmative.

5. Raja Shujaat Ali Khan, the learned Advocate for the convict-appellant, submitted that both the Courts below rendered the impugned judgments without duly considering the evidence on record. He contended that the trial Court's judgment is a result of a misreading and non-reading of the evidence, which the High Court wrongly affirmed. He argued that there were material contradictions in the witnesses' statements that warranted the exoneration of the convict-appellant, yet the trial Court unjustifiably awarded the death sentence. He highlighted that the surrounding circumstances indicate that it was a blind murder and the alleged eyewitness, Razia Bibi, who claimed to witness the occurrence, failed to specify the time when stones were pelted on her house. Given that in the months of June and July, the sun typically rises around 4:30 am, this omission casts doubt on her testimony. He further noted that many people reside near the crime scene, yet no independent witness from the locality was

cited and presented; only related and interested witnesses testified, whose testimonies cannot be reliably trusted. The learned Advocate emphasized that no FIR number was listed in the inquest report, which is a significant irregularity that undermines the case's veracity, as established in Malik Zaffar's case. He also pointed out that, according to the prosecution, the deceased was wearing a shalwar and undershirt (banyan) at the time of the occurrence, however, the serologist's report indicates that a full shirt (qameez) was also analyzed, further casting doubt on the prosecution's narrative. The Advocate mainly argued that, even if the trial Court believed that the convict-appellant was guilty, award of death penalty was unjustified, particularly with only one disputed eyewitness. Consequently, he asserted that the judgments of both; the trial Court and the High Court, are contrary to law, the facts, evidence and the record of the case. Therefore, he requested that the appeal be accepted, both judgments be set aside, and the convict-appellant be exonerated of the charges. In support of his contentions, the learned Advocate cited the following cases:

- Ghulam Mohy-ud-Din alias Haji Babu vs. The State [2014 SCMR 1034]
- Dilawar Hussain vs. The State [2013 SCMR 1582]
- Sikandar Hayat and another vs. The State and others [PLD 2020 SC 559]
- Mst. Safia Bano and another vs. Home Department Govt. of Punjab through Secretary and others [PLD 2021 SC 488]
- Abdul Haque vs. The State and another [PLD 1996 SC 1]

6. Mr. Haroon Riaz Mughal, the learned Advocate representing the complainant, vigorously rebutted the arguments put forth by the counsel for the convict-appellant. He contended that the convict-appellant failed

to substantiate any legal ground warranting this Court's intervention in the impugned judgment. He asserted that the prosecution successfully established its case against the convict-appellant beyond any doubt by presenting direct, circumstantial and corroborative evidence. In contrast, he argued that the defense failed to undermine the prosecution's narrative. Mr. Mughal emphasized that the incident occurred on July 28, 2011, at 5:20 am and the FIR was promptly lodged, detailing specific roles, eyewitnesses' names and the motive. He further highlighted that a 12-bore firearm and six crime empties were recovered from the convict-appellant, which substantiated the eyewitness accounts. Moreover, he stressed that the prosecution witnesses harbored no animosity toward the convict-appellant, thus negating any possibility of false implication. Addressing to the issue of witness statements, he acknowledged minor discrepancies but argued that such inconsistencies were natural and did not undermine the prosecution's cohesive case. He reiterated that the prosecution had conclusively proven the case against the convict-appellant with cogent and reliable evidence. Therefore, he asserted that the trial Court rightfully convicted the appellant and imposed the death penalty as ‘Tazir’, a decision he deemed legally sound and justified.

7. Raja Mazhar Waheed, the learned Additional Advocate-General representing the State, largely echoed the arguments put forth by Mr. Haroon Riaz Mughal, the Advocate for the complainant. He asserted that both; the trial Court and the High Court, had correctly passed the impugned judgments, which, in his view, do not warrant any intervention by this Court. He reiterated that the

prosecution had effectively presented a strong case against the convict-appellant, supported by direct, circumstantial and corroborative evidence. He emphasized that the defense had failed to discredit the prosecution's narrative or demonstrate any significant flaws in the case presented. Furthermore, he highlighted the promptness of FIR filing, the recovery of the 12-bore rifle and crime empties, and the absence of enmity between the prosecution witnesses and the convict-appellant. He dismissed minor discrepancies in witness statements as typical and inconsequential upon the overall integrity of the prosecution's case.

8. We have heard the learned Advocates for the parties and meticulously examined the record of the case. It is evident from the record that a case was registered against the convict-appellant for the offenses under Sections 302 and 109 APC. Following the completion of the investigation and subsequent trial proceedings, he was deemed guilty of the offenses and ultimately convicted by the Court of Competent Jurisdiction. Consequently, the convict-appellant was awarded the death penalty as Tazir under Section 302(b) APC. Additionally, he was ordered to pay Rs. 200,000 as compensation to the legal heirs of the deceased, Farooq Shah, under Section 544-A Cr.PC. For the offense under Section 13 of Arms Act, he was sentenced to three years' imprisonment, and in default of payment of the compensation, he was to further undergo three months' simple imprisonment, as per the judgment dated November 19, 2014. Upon appeal and reappraisal of evidence, the High Court dismissed the appeal filed by the convict-appellant and confirmed his death sentence. In this case, the prosecution produced 24 witnesses to

substantiate its claims, with the key witness being the wife of the victim, Razia Bibi, who allegedly was present with the victim at the time of the incident. Razia Bibi, the widow of the late Farooq Shah, serves as a pivotal eyewitness. Her presence at the crime scene is inherently credible, given her status as the victim's spouse. Witnessing the event firsthand, she accompanied her husband outside upon hearing stones pelting at their residence. There, she directly observed the convcit, Shahzad, discharging a 12-bore shotgun at Farooq Shah, inflicting lethal injuries to his right arm and chest, which led to his immediate demise. Razia Bibi’s testimony is vital, as she not only identifies the assailant but also provides a detailed account of the fatal shooting. She provided a detailed account of the incident occurred on July 28, 2011, at approximately 5:20 AM. In her testimony, she unequivocally identified the accused in the court. She stated that while she and her husband were asleep, they were awakened by the sound of stones intermittently hitting their roof. Her husband proceeded to the veranda to look into, and she followed closely behind him. Upon reaching the veranda, she witnessed Shahzad, the son of Babu Wilayat Shah, positioned in the maize field with a firearm aimed at her husband. Shahzad discharged the weapon, striking her husband in the right arm and the chest, resulting into his immediate death. Razia Bibi’s screams attracted the attention of Manzoor Shah, who promptly arrived at the scene with Abdul Hamid and Masood Shah. Despite their swift response, the convict-appellant managed to flee the scene. This testimony is critical, highlighting Razia Bibi’s direct observation of the event, her immediate identification of the assailant and her detailed description

of the sequence of actions leading to her husband's death. The complainant, also a witness in the case, corroborated Razia Bibi’s account. He affirmed the sequence of events as described by her and subsequently approached the police authorities to lodge the FIR. The witness's consistency in recounting the incident, along with his prompt action in reporting to the police, lends further credibility to the case against the convict-appellant.

9. Similarly, other prosecution witnesses, namely Masood Shah and Abdul Hameed, being post-occurrence witnesses, clearly deposed observing the convict fleeing with a 12-bore rifle and also described the color of his dress and shoes. Sakeena Bibi, another post-occurrence witness, stated in her testimony that she also saw the convict with a 12-bore rifle passing by her house. Likewise, other witnesses, Ishfaq son of Muhammad Shafi and Farooq, son of Haji Muhammad Sain, also saw the convict on the way while attacking Muhammad Ayub, the father of the deceased. These witnesses further corroborated that the convict met Ayub on the way and pointed his gun at him, stating, "It’s your turn now," indicating that he had already murdered Ayub's son. Ishfaq and Farooq intervened, contributing to saving Ayub's life from the convict.

10. The motive established by the prosecution was that there was a dispute over a piece of land amongst parties. Fifteen days prior to the incident, the father of the deceased and the deceased himself had abused the mother of the convict, fostering inimical feelings and grudge in his mind. This animosity allegedly led the convict to commit the murder of the victim. In this regard, Razia Bibi, the star witness, and Muhammad Ayub, the father of the deceased,

both narrated the same motive clearly in their statements. From the questions put to Razia Bibi during cross-examination, it appears there was an admitted dispute between the parties before the occurrence. The ocular account was further corroborated by the recovery of the weapon used in the offense from the possession of the convict-appellant and the crime empties from the scene of the occurrence.

11. The rest of the witnesses are either formal in nature or have played no vital role, therefore, their testimony need not to be discussed or reappraised.

12. During the course of arguments, Raja Shujaat Ali Khan, the learned Advocate for the convict-appellant, emphatically urged for the reduction of the sentence awarded to the convict-appellant on the following grounds:

I. According to the initial report, in addition to the convict, eight other individuals were accused of aiding and abetting the principal accused. However, these individuals were later on exonerated by the police, allegedly after the complainant party received financial incentives;
II. All the witnesses produced by the prosecution are interested and related ones. Despite the availability of independent witnesses from the locality, none was brought forward to testify; and,
III. The recovery memo was prepared in the presence of multiple witnesses, yet only one recovery witness was presented before the Court.

13. The learned Additional Advocate-General, present in the Court, was queried regarding the assertions made by the learned counsel for the convict-appellant, specifically concerning the presence of mitigating factors warranting a lesser punishment. He conceded that even the slightest mitigation can justify a reduction in punishment, but contended that no such factors are

available in the instant case. In response, the learned counsel for the complainant unequivocally stated that once the appellant's guilt has been established by the trial Court and affirmed by the High Court, following thorough appraisal and reappraisal of the evidence, there remains no occasion or justification for reducing the sentence from death to life imprisonment.

14. Since the learned counsel for the convict-appellant has confined his argument to the grounds mentioned earlier in this judgment for the reduction of the convict's sentence, it becomes crucial for us to address this pivotal issue. Despite the conceding statement made by him in court, upon thorough reappraisal of the evidence, we find no legitimate grounds to contest the perspective upheld by the High Court on the merits of the case.

15. Section 302(b) APC, provides only two sentences, one death sentence and the other imprisonment for life as 'Tazir'. In order to better appreciate the matter, provisions of section 302, APC are reproduced below for the facility of reference: -

> **"302. Punishment of Qatl-i-amd**---Whoever commits qatl-i-amd shall, subject to the provisions of this Chapter be ;
> (a) punished with death as qisas;
> (b) punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or
>
> (c) punished with imprisonment of either description for a term which may extend to twenty-five years' where according to the injunctions of Islam the punishment of qisas is not applicable;

After careful reading of the above penal clause of section 302 APC, it becomes debatable as to whether the normal penalty is death for offence of murder and be given preference invariably or the sentence of death and the life imprisonment are two alternative sentences as provided in clause (b) preceded by qualifying phrase " as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available".

16. Certainly, the interpretation and application of Section 302(b) APC underscores the critical discretion entrusted to the judiciary in sentencing for murder cases. While historically the death penalty has been viewed as the norm for murder offenses, the legislative inclusion of life imprisonment as an alternative sentence signifies an intent to provide judicial flexibility. This legislative intent, as seen in clause (b) of Section 302, APC, acknowledges that both; death and life imprisonment, are viable sentencing options, subject to the specifics of each case. In adherence to fundamental principles of Islamic jurisprudence on criminal law, which emphasize justice tempered with mercy—a divine attribute mirrored in judicial discretion on earth—judges are tasked with meticulous consideration and prudence in determining appropriate sentences. Factors influencing the choice between death and life imprisonment, can vary widely, necessitating a thorough examination of the facts and circumstances unique to each case. Thus, the judiciary's role in administering justice demands not only a keen understanding of legal principles but also a compassionate application of sentencing laws to ensure equitable outcomes tailored to the complexities of individual cases.

17. In the adjudication of murder cases, even a single mitigating circumstance holds significant weight and can compel a judge to opt for life imprisonment over the death penalty. While it's impractical to establish rigid guidelines due to the varying nature of case-specific details, it is imperative that judges discharge their duty with conscientious deliberation. When faced with the decision between death and life imprisonment, judges must apply profound judicial scrutiny to the unique facts and circumstances of each case. Should any doubt linger, albeit insufficient for an acquittal, it behooves the judiciary to exercise judicial caution and opt for the alternative sentence of life imprisonment. This precaution is crucial to prevent the irreversible consequences of executing an innocent person. Respecting human life takes precedence in the judicial process, necessitating a meticulous assessment of evidence, facts and circumstances surrounding each murder case. Such deliberation ensures that justice is served with both fairness and compassion, thereby upholding the sanctity of human life in accordance with legal and moral principles.

18. Albeit, while there exist numerous factors and mitigating circumstances that may argue against the imposition of the death penalty and instead advocate for life imprisonment, it is prudent to refrain from establishing rigid guidelines. Each case presents unique facts and circumstances, and the factors favoring a reduced sentence for an accused person will also vary. Therefore, specific guidelines cannot be universally applied. In future cases, where comprehensive assistance and thorough research are provided, this matter can be addressed appropriately. However, in any instance where even a single doubt or

ground arises, creating reasonable uncertainty in the mind of the Court or Judge regarding whether to impose the death penalty or life imprisonment, this constitutes sufficient reason to opt for the alternative course of awarding life imprisonment instead of the death sentence.

19. The Supreme Court of Pakistan, in its series of pronouncements, has dealt with identical proposition and a case almost having the same facts and circumstances came consideration of apex Court reported as *Muhammad Arshad and others vs. State*[1], relevant portion of which, is reproduced hereunder for better appreciation: -

> "10. We first take up the question of sentence of Arshad appellant under section 302, P.P.C. He has been awarded death sentence on the charge of murder which undoubtedly is a .Normal penalty for the offence of murder but in appropriate cases where some extenuating circumstances are available, the Courts have the discretion to award lesser punishment of imprisonment for life provided under section 302, P. P. C. Now, in the present case, there are circumstances forthcoming from the record which could be taken as extenuating/mitigating circumstances for the purpose of awarding lesser sentence but the learned Courts below have not duly attended to them when considering the question of sentence to be imposed on the appellant. It is an admitted position that there existed no background of any previous enmity or deep-rooted hostility between the appellant and the deceased. There was only a minor dispute between them regarding the demarcation of their adjacent plots which resulted in the unfortunate occurrence. It is also in evidence that the act of firing by Arshad appellant at the deceased was preceded by a dialogue between the accused and the deceased followed by scuffle/grappling between Afzal accused and

[1] [PLD 1996 SC 122]

> the deceased and the pelting of stones by the daughters of the deceased at Afzal accused who as a result sustained some injuries. It is also significant that Arshad appellant fired only one shot and did not repeat it. All these factors in our view cumulatively make out a case for mitigation of sentence. We, therefore, hold that the extreme penalty of death awarded to Arshad appellant was not called for and the lesser sentence of life imprisonment would meet the ends of justice."

In an other case reported as Dilawar Hussain vs. The State[2], wherein, the Supreme Court of Pakistan, while dealing with the identical proposition held as under:

> "9. The facts and circumstances in the instant case are not different from the case referred supra as the single fire was shot by the petitioner, as such, there is sufficient mitigation in order to alter death sentence into imprisonment for life. It has neither been the mandate of law nor the dictates of this Court as to what quantum of mitigation is required for awarding imprisonment for life rather even an iota towards the mitigation is sufficient to justify the lesser sentence. According to our estimation even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment as an abundant caution. In such circumstances, if the court is satisfied that there are certain reasons due to which death sentence is not warranted, the court has no other option but to impose second sentence of imprisonment for life while extending benefit of the extenuating circumstances to the convict in a just and fair manner. Even otherwise, it would be unjust, to impose double sentence on the petitioner for commission of one offence as by keeping the accused in death cell for a period of 18 years, the delay in the disposal of his case being not at all attributable to him, it will be against the principle of natural justice that he is hanged by neck. In this view of the matter, we are of the considered view that such extenuating circumstances do exist in the instant case for giving the benefit thereof to the petitioner. There

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[2] 2013 SCMR 1582]

> is no cavil to the proposition that the law itself i,e, clause (b) of section 302, P.P.C. Empowers the Court to inflict either death penalty or imprisonment for life in appropriate cases where the second type of sentence is otherwise justified. There is no doubt that the Court has the discretion to inflict death penalty without hesitation if the circumstances do permit like the victim had been done away with in a cold blooded, ghostly and brutal manner or roasted alive etc. And the Court should exercise its discretion very carefully and cautiously and not to ignore the gravity of the offence committed by the accused. So much so the Court has also to exercise discretion in the aforesaid manner where the circumstances of the case do exist for lesser punishment also keeping in view the value of the life and liberty of human being a most precious human right regarded by Article 9 of the Constitution of the Islamic Republic of Pakistan 1973 as a fundamental right."

Same like proposition has been dealt with in the case reported as Ghulam Mohy-ud-Din alias Haji Babu vs. The State[3], wherein, it has been held as under: -

> "14. Even in the un-amended provision of section 302, P.P.C., the punishment, provided for murder was death or imprisonment for life and the offender shall also be liable to fine. The change introduced by the law, commonly known as Qisas and Diyat Laws, amending section 302, P.P.C., the same has been divided into three parts i,e, (a), (b) and (c). In clause (b) the Legislature in its wisdom has added qualified words to clause (b) of section 302, P.P.C., which reads as follows:--
> "*(b) (shall be) punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available;* "
> 'After careful reading of the above penal clause of section 302, it becomes debatable as to whether the normal penalty is death for offence of murder and be given preference invariably or the sentence of death and the life imprisonment are two alternative sentences as provided in the amended

[3] [2014 SCMR 1034]

clause (b) preceded by qualifying phrase " as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available". This aspect of the matter has already been commented upon by this Court in the recent case of Hassan and others v. The State and others (PLD 2013 SC 793).

20. Albeit, in a chain of case-law the view held is that normal penalty is death sentence for murder, however, once the Legislature has , provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty is a normal one and shall ordinarily be awarded. If the intent of the Legislature was to take away the discretion of the Court, then it would A have omitted, from clause (b) of section 302, P.P.C. The alternative sentence of life imprisonment. In this view of the matter, we have no hesitation to hold that the two sentences are alternative to one another, however, awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case. There may be multiple factors to award the death sentence for the offence of murder and equal number of factors would be there not to award the same but instead a life imprisonment. It is a fundamental principle of Islamic Jurisprudence on criminal law to do justice with mercy4, being the attribute of Allah Almighty but on the earth the same has been delegated and bestowed upon the Judges, administering justice in criminal cases, therefore, extra degree of care and caution is required to be observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case/cases.

21. A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. If the Judge/Judges entertain some doubt, albeit not sufficient for

acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.

' Albeit, there are multiple factors and redeeming circumstances, which may be quoted, where awarding of death penalty would be unwarranted and instead life imprisonment would be appropriate sentence but we would avoid to lay down specific guidelines because facts and circumstances of each case differ from one another and also the redeeming features, benefiting an accused person in the matter of reduced sentence would also differ from one another, therefore, we would deal with this matter in any other appropriate case, where, if proper assistance is given and extensive research is made.

' In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternative course by awarding life imprisonment instead of death sentence.

22. In the present case a specific motive was set up in the F.I.R. At the time of reporting the crime by the complainant. He had alleged that ,there was a dispute between the parties over a `Khokha' (wooden stall), however, no independent corroboratory evidence on this point was furnished. Thus, the version, repeating the same stance at the trial, without any independent corroboratory evidence in this respect, would have no legal worth and judicial efficacy. It has been claimed that the dispute had led to civil litigation over the `Khokha' but no document from judicial record was furnished to the trial Court to show even to a little extent that indeed the dispute over a `Khokha' was a burning issue between the parties and they had already been battling for the same in the Civil Court. Thus, the motive part of the incident has remained absolutely unproved."

20. The Courts have observed an alarming trend where complainant parties, driven by various motives, often implicate innocent individuals or cast a wide net that ensnares both real culprits and innocents alike. This strategy not only maximizes the detriment and suffering inflicted upon the accused but also complicates the judicial process by exaggerating the manner and circumstances of the alleged crime. This prevalent phenomenon, particularly in certain regions, challenges the court's ability to ascertain the truth and distinguish between guilt and innocence with confidence. Witnesses, despite their oath to testify truthfully, frequently adhere rigidly to narratives crafted in FIRs or during investigative processes, disregarding their solemn commitment. This erosion of societal values and integrity poses a significant obstacle to the fair administration of justice. Consequently, judges are regularly confronted with complex scenarios where discerning the truth becomes increasingly daunting. It is against this backdrop that the judicial principle of "sifting the grains from the chaff" has been adopted, allowing judges to grant leniency to those whose culpability remains in doubt amid such convoluted circumstances. The judiciary faces an onerous responsibility in navigating these challenges. While courts lack the power to fundamentally alter societal mindset or ensure universal adherence to truthfulness throughout criminal investigations and trials, they can establish consistent standards to discourage baseless accusations that entangle innocent individuals. By adopting a uniform approach that discourages false and exaggerated charges, courts can incentivize a reconsideration of behaviors and attitudes within society. In fulfilling their duty to dispense justice, judges are tasked

with not only convicting those proven guilty beyond reasonable doubt but also safeguarding those whose involvement in criminal activities lacks clear and convincing evidence, adhering strictly to established legal standards and principles of evidence.

21. The situation canvassed above, come up in our mind, while perusing the record of the instant case, where initially eight persons were accused of aiding and abetting the principal convict but were later on exonerated under Section 169 Cr.PC, raises significant considerations. While the exoneration of these co-accused individuals does not directly exonerate the principal convict, it does highlight a potential mitigating factor for considering lesser punishment. In this context, if these co-accused individuals were initially implicated by the prosecution for aiding/abetting the principal convict, yet no evidence was presented implicating them at the scene of the crime or in any criminal activity associated with the murder, it suggests a possibility of their false implication. This aligns with broader concerns about false accusations and the tendency to implicate innocent individuals alongside actual culprits, often for financial gain or other motives. These circumstances reflect the principle of "sifting the grains from the chaff" in judicial decision-making, where the court must meticulously evaluate the evidence and avoid imposing the severe penalty, such as death, without clear and convincing proof of guilt. The availability of mitigating factors, such as the questionable involvement of exonerated co-accused and potential motives behind their implication, supports the argument against imposing the death penalty in this case. Therefore, while the exoneration of the co-accused does not directly absolve the principal

convict, it underscores the complexity of the case and the need for cautious judicial consideration. In light of these mitigating circumstances, imposing a lesser penalty than death, such as life imprisonment, would align with the principles of justice and fairness in criminal sentencing.

22. It is also to be mentioned here that, once the prosecution case was built up by the prosecution on the strength of pre-meditation and abatement, the same would have to be proved because the absence of premeditation is also regarded as a strong mitigating factor as it indicates that the alleged offense does not fall into the category of 'worst of the worst'. It is now settled principle of law that even if the absence of premeditation is the only mitigating factor that can be found in a case, should be considered strong enough to bar the application of death penalty. Our this view is fortified from the reported judgment of this Court tilted Syed Kamran Hussain Shah vs. State and another[4], wherein, it has been held as under: -

> "It is pertinent to mention that the absence of premeditation is regarded as a strong mitigating factor because it indicates that the alleged offence does not fall into the category of 'worst of the worst'. It is almost settled across the south Asian jurisdiction that even if the absence of premeditation is the only mitigating factor that can be found in a case, should be considered strong enough to bar the application of death penalty."

23. Furthermore, it has been the consistent view of the Courts that even an iota of mitigation is sufficient for awarding lesser punishment. The mitigation is basically a fact which goes in favour of the convict and it

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[4] [2022 SCR 365]

is recognized phenomena of law that every benefit which arises in favour of the accused must be extended to him. Our this view is fortified from the reported judgment of this Court titled Karamat Hussain vs. State and another[5], wherein, it has been held as under: -

> "14. After evaluating the evidence available on record, we are of the view that except the aforementioned mitigation the defnece failed to create any serious dent in the prosecution story. However, it may be observed here that in presence of the mitigation pointed out in the preceding paragraph, it is not safe to award the death sentence to the convict-appellant rather the life imprisonment which is also a legal and normal punishment provided by law, is sufficient to award to the convict to meet the ends of justice."

24. Regarding the other issues raised by the learned counsel for the convict-appellant concerning the presence of recovery witnesses and the reliance on interested and related witnesses, these have already been addressed in a precedent set by this Court in the case of *Syed Kamran Hussain* (supra). The pertinent excerpt from the judgment is provided below for clarity:

> "22. As regards to the plea of producing the witnesses being inter-se related instead of independent witnesses, it would be material to make it clear that it is not the relationship which makes one a witness of truth or otherwise. It is now a well settled principle of law that evidence of witness cannot be disturbed merely on his relationship with the parties. The evidence of a witness could not be disbelieved or discarded merely on the basis of relationship, unless and

[5] [2015 SCR 1007]

until it is proved that the witness was inimical towards the accused.

23. Here another aspect is worth-understanding that the term 'related' should not be confused with the term 'interested' because both are entirely distinct concepts. There is considerable distinction between the terms 'related and 'interested', because the interested witness need not necessarily, be a related but it is the person who has such a motive on account of enmity or any other consideration that due to such enmity or consideration, he has prepared himself to depose falsely. The term 'related' is positive in its meaning while the term 'interested' is negative in its meaning because the term 'interested' has a concept to gain favour for whom or what he/she is interested with. Although the burden is always upon the prosecution to prove truthfulness of a related witness but where the defense claims the witness as 'interested', burden shifts upon defense to establish that such witness had a motive on account of enmity or any other consideration which compelled him to depose falsely against the accused. In the case titled *Khizer Hayat vs. The State,* [2011 SCMR 429], wherein, the Supreme Court of Pakistan Court has formed the same view and held that: -

> *'The statement of the witness on account of being interested witness can only be discarded if it is proved that an interested witness has ulterior motive on account of enmity or any other consideration.'*

24. Now we would like to consider the plea of the defense that the provisions of section 103 of Cr.PC, have not been complied with at the time of recovery. The learned counsel for the appellant contended that the provisions of section are mandatory in nature and it was enjoined upon the investigating Officer to call for two independent, respectable witnesses of locality to effect the recovery from the accused convict-appellant. He further contended that there are two witnesses of recovery namely, Ahsan-ul-Haq and Malik Abdul Rasheed, but the

> testimony of Malik Abdul Rashid has been discarded and the other witness Ahsan-ul-Haq who is from the other village has been produced, therefore, the recovery is in violation of section 103 Cr.PC and cannot be relied upon for convicting the appellant. We have dispassionately considered the argument of the learned Advocate for the appellant. The record reveals that the recovery witnesses namely, Ahsan-ul-Haq is although from the other village but he is respectable in his locality. Even otherwise, it is not necessary in every case to cite the witnesses from the same locality. The provisions of section 103, Cr.PC are applicable in cases of search, but where the recoveries are made at the instance of the accused person there is no strict rule that such a recovery must be made according to the provisions contained in section 103, Cr.PC and the said provisions are strictly applicable."

25. In view of the above detailed discussion, while partly accepting the appeal, modifying the impugned judgment of the High Court, the conviction is hereby maintained, however, the death sentence as 'Tazir' awarded to the convict-appellant is altered into life imprisonment. The benefit of section 382-B, Cr.PC, shall remain available to the convict-appellant.

**JUDGE** **JUDGE**

Muzaffarabad:
08.07.2024