JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, TURBAT BENCH AT QUETTA

Criminal Appeal No. (T) 11 of 2021
(ID-100307400401)

Shadiullah **VERSUS** The State

Under section 410, Cr. P.C

Murder Reference No. (T) 01 of 2021
(ID-100307400036)

The State **VERSUS** Shadiullah

Under section 374, Cr. P.C

JUDGMENT

Date of hearing: 12.04. 2023 Announced on: 27.04.2023

Appellant (Convict) by: Mr. Abdul Jalil Marwat, Advocate

Respondent (State) by: Ms. Noor Jahan Kahoor, Addl: Prosecutor General

Complainant by: Mr. Jam Saka Dashti, Advocate

NAZEER AHMED LANGOVE, J.- This appeal is directed against the judgment dated 20th January 2021, passed by the learned Sessions Judge, Mekran at Turbat in a murder case No.12/2020 (F.I.R. No.160/2020, P.S. City Turbat). The appellant (accused), Shadiullah, son of Sardar Khan, was convicted under section 302(b) P.P.C in Ta'zir for committing the murder of deceased Muhammad Hayat, son of Mirza, and sentenced to suffer the death penalty with compensation of Rs.10,00,000/- to the legal heirs of deceased as envisaged under section 544-A, Cr.P.C., in default, to further suffer simple imprisonment for six years.

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The learned Sessions Judge, Mekran at Turbat, has sent the Murder Reference No. (T) 01/2021 for confirmation of the sentence of death recorded against the appellant (convict).

2. Brief facts of the case are that on 13th August 2020, at about noon, the complainant Murad Muhammad was present on his duty on receiving telephonic information that an F.C. personnel made fire and committed the murder of his brother Muhammad Hayat (deceased) at Balochi Bazar Road, he rushed to the place of occurrence and found the dead body of his brother in pool of blood; his parents (PWs Mirza and Mst. Noor Bibi) present on the spot, informed that after a blast in the vicinity, two F.C. personnel came in their dates orchard, dragged Muhammad Hayat on the road, after that, their third fellow, accused Shadiullah (appellant) made fires with a rifle and committed his murder; hence, this case, vide F.I.R. No.160/2020 (Ex: P/11-A) of P.S. City Turbat.

3. The trial commenced after completing the investigation and submitting the challan (Ex: P/11-G).

To substantiate the accusation, the prosecution produced and examined as many as eleven (11) witnesses, namely;

PW-1 Murad Muhammad (complainant)
PW-2 Mirza (eye-witness)
PW-3 Abdul Hakeem
PW-4 Shakir Ali (eye-witness)
PW-5 Dr. Noor Zaman, Chief Medical Officer
PW-6 Waseem Ahmed Judicial Magistrate
PW-7 Abdul Ghani SI
PW-8 Shaukat Ali Constable
PW-9 Nadil Shah SI
PW-10 Mst. Noor Bibi (eye-witness), and

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PW-11 Noor Bakhsh IP (Investigation Officer)

The accused's statement was recorded under section 342, Cr.P.C., wherein he disputed the prosecution's case and pleaded his innocence; however, he did not opt to record his statement on Oath nor produced any witness in defence.

4. The learned trial court, after hearing the arguments and evaluating the evidence, found the appellant guilty, as such, convicted and sentenced him to capital punishment of death. Besides, the Murder Reference for confirmation of the death penalty awarded to the appellant; hence this appeal.

5. We have heard the learned counsel for the parties and gone through the record with their assistance.

6. Learned counsel for the appellant argued that the judgment impugned passed by the trial Court is contrary to law, facts, and principles of natural justice, as such, is not sustainable under the law and is liable to be reversed. He added that the judgment impugned passed by the trial Court is based on non-reading and misreading of the evidence and misapplication of the relevant provisions of the law; therefore, on this count as well, is not tenable under the law and is liable to be set aside. He urged that the trial Court erred in law by holding that the prosecution has succeeded to prove its case against the appellant beyond reasonable doubt by ignoring well-recognized principles of safe administration of criminal justice, wherein the Hon'ble Apex Court held time and again that the accused is a favourite child of law and is entitled to the benefit of even a slightest doubt while in the matter in hand case of the prosecution was abandoned with dents and doubts but lost sight of the trial Court. He criticized the

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judgment impugned on the ground that the trial Court failed to appreciate material illegalities on the part of the Police which were sufficient to make the case of prosecution doubtful, but this vital aspect also escaped notice of the trial Court which caused miscarriage of justice. He submitted written arguments, which were perused and taken on record.

The appellant's learned counsel placed reliance on a judgment titled Sabtain Haider v The State, dated 21st September 2022, passed by the Hon'ble Supreme Court of Pakistan. However, in our view, the facts and circumstances of the instant case are distinguishable from the referred judgment because, in that case, the question of sudden provocation was involved when the petitioner (of that case) had seen the deceased with his sister in an objectionable position, so the said crime was committed due to mental compulsion. Conversely, in the instant case, the appellant (convict) committed the brutal murder of an innocent young student without any fault or a slightest mistake on his part.

7. On the other hand, the learned Additional Prosecutor General, assisted by the complainant's learned counsel, strongly opposed the appeal by submitting that the judgment passed by the trial Court is based on proper appreciation of the evidence, no illegality or irregularity had been committed by the Police while investigating the matter. Similarly, the judgment impugned passed by the trial Court does not suffer from any material illegality or irregularity, or inherent defect. They urged that the learned counsel for the appellant failed to point out any specific illegality or irregularity either on the part of Police or prosecution witnesses or non-reading and misreading of

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evidence in the judgment impugned warranting interference by this Court. They added that since the appellant is involved in a coldblooded murder of an innocent and empty-handed student in front of his old age parents for no fault on his part, as such, he has rightly been convicted under section 302(b) of P.P.C. and sentenced for the normal penalty of death. Accordingly, they prayed for the dismissal of the appeal.

8. A careful perusal of the record with due diligence reflects that the instant case was registered with the history of a fateful incident that resulted in the unnatural death of deceased Muhammad Hayat, reportedly a student who came to support his poor and old age parents because the latter used to work in their dates Orchard themselves; on the fateful day of the incident, Muhammad Hayat had brought breakfast for his parents, who were busy in plucking dates. Meanwhile, a blast occurred in the vicinity targeting an F.C. vehicle; in response, two F.C. personnel came to the dates Orchard mentioned above and dragged Muhammad Hayat (deceased), a helpless, empty-handed poor young boy, on the nearby road and the appellant, their third fellow made as many as eight fires, even though his elder parents begged for his life. Still, the appellant (convict) had no mercy and killed their child in front of them, which was the worst use of power given by the State. Moreover, by his cruel act, the appellant deprived the old age parents' son, which is unforgivable.

As stated above, the appellant had committed the murder of Muhammad Hayat (deceased) in a ruthless, brutal, and grotesque manner, which resulted in intense and extreme indignation of the

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natives and shocked the collective consciousness of the society; therefore, he does not deserve any lenient view.

9. We are cognizant of the fact that principles for appreciation of evidence are that the prosecution must stand on its own legs and prove the case against the accused beyond reasonable doubt, that the judicial mind must be satisfied that the accused had committed the offence; that quality and not the quantity of evidence determine the culpability of the accused; that the accused cannot be held guilty on the strength of a weak piece of evidence; that conjectures, probabilities or presumptions cannot form the basis for holding the accused guilty, and the accused alone is entitled to the benefit of every reasonable doubt.

However, in the case at hand, we have observed that the F.I.R. had been lodged with great promptitude wherein the present appellant had been nominated as the sole perpetrator of the murder. In the F.I.R., specific allegations had been leveled against the appellant vis-à-vis causing specific injuries to the deceased, and those allegations had subsequently been substantiated and established through consistent statements made by three eye-witnesses, in whose presence the accused dragged the deceased from dates Orchard on the road and caused fires in the presence of natural witnesses. The motive, in this case, was barbaric hostility which had not been seriously doubted during the trial. Moreover, the medical evidence supported the ocular account furnished by the natural and consistent eye-witnesses. The appellant's physical custody and the weapon recovered from him were handed over to the local Police by F.C; moreover, in his statement under section 342, Cr.P.C., the appellant had not

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disputed his having been identified by the eye-witnesses in the identification parade. In these circumstances, the appellant's involvement in the murder had indeed been proved by the prosecution beyond reasonable doubt.

The variable plea of defence, including sudden provocation, advanced by the appellant, does not appeal to logic and reason. Further, he had failed to produce any witness in his defence who could enter the witness box and confirm the plea being advanced by the appellant. The provisions of Article 121 of the Qanun-e-Shahadat Order, 1984 clearly provide that in such a case, the Court was to presume the absence of circumstances supporting the plea of exercise of the right of private defence or sudden provocation being advanced by the appellant. Therefore, it was incumbent upon the appellant to establish the circumstances before the learned trial court through positive evidence, which he had utterly failed to do. The said plea had, thus, been unable to travel beyond a mere verbal assertion. In this view of the matter, it has not surprised us to learn that the plea of exercise of the right of private defence or sudden provocation advanced by the appellant was outrightly rejected.

10. Reappraisal of the evidence shows that the prosecution has succeeded in establishing its case against the appellant beyond reasonable doubt. PWs-2 & 10 (Mirza and Mst. Noor Bibi), parents of the deceased, and PW-4 Shakir Ali, third eye-witnesses of the incident, recorded their statements on Oath wherein they reiterated the contents of the application (Ex: P/1-A) on the basis whereof the F.I.R. (Ex: P/11-A) was registered. PWs Mirza and Mst Noor Bibi identified the appellant as the sole culprit. Testimony of the eye-witnesses

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named above was consistent on every material point about the nomination of the accused by assigning him the specific role of making fires as the sole culprit, date, time, and venue of occurrence, and their presence on the spot. Cross-examined at length, but nothing could be unearthed showing that either they were not present on the spot or not witnessed the incident themselves, nor they were found inimical towards the appellant; as such, there is no reason to discard straightforward, confidence-inspiring, tangible and consistent evidence furnished by them.

11. Ocular account furnished by the prosecution witnesses was in line with the medical view furnished by PW-5 Dr. Noor Zaman vide death certificate (Ex: P/5-A), wherein it has been mentioned that the deceased Muhammad Hayat died unnatural death by receiving multiple firearm injuries on his vital parts coupled with the recovery of Kalashnikov and empties, sent to F.S.L. vide report (Ex: P/11-F) wherein the expert opined that the same were fired with the weapon sent (Kalashnikov).

Fully supported by the confessional statement of the appellant (convict) recorded without any duress or coercion in a free atmosphere having ample corroboration from the ocular account, medical evidence, and the positive report of Fire Arm Expert; mere retraction by the appellant from his confessional statement by itself is not sufficient to affect its veracity.

PW-6 Waseem Ahmed, Judicial Magistrate, Tump at Turbat, an important prosecution witness, appeared before the learned trial court and recorded his statement on Oath; definitely, he was not under the influence of the Police, complainant, or someone else;

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supervised the proceedings of identification parade (Ex: P/6-D) and recorded the appellant's statement under section 164, Cr. P.C (Ex: P/6-H), wherein he also supported the prosecution's case regarding the appellant's confessional statement and the proceedings of the identification parade purely following the law; thus, there is no reason to disbelieve him without any reason.

12. Coming back to the merits, it was a painful and coldblooded murder of an innocent and empty-handed young student who came to help his old age parents but done to death without any reason or fault on his part; as such, no mitigating circumstance *sine qua non* for lesser punishment is available. Reliance is made on a case titled *Hamid Mehmood & another v. The State* (2013 SCMR 1314). Relevant observations therefrom are reproduced herein below:

> *"25. In the facts and circumstances of the case, the considerations pertaining to the Quantum of sentence have been examined. The reasons for the award of the death penalty far out weight the consideration for the award of a lesser sentence. The tender age of the minor, the brutal and heinous nature of the crime, and pre-mediation persuade us to agree with the sentence awarded by the learned trial Court as well as the learned High Court. The deterrent aspect of the sentence cannot be lost sight of either, as it was a crime of kidnapping for ransom of a minor, followed by murder. In such an eventuality, the normal sentence of death should be awarded, and the Court should neither hesitate nor search for labored pretexts to award a lesser sentence, as has been held by this Court in the case, reported as Muhammad Sharif (supra)".*

13. So far as motive for committing an offence is concerned, the motive is the State of mind of an accused, which can be formed even at the spur of the moment. Therefore, even the absence of motive is of no consequence because the motive is an impulse and desire that

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induces a criminal action on the part of the accused. It is distinguished from "intent," which is the design with which the act is done. Therefore, it can safely be concluded that the absence of motive is not helpful in the presence of unimpeachable ocular evidence.

Another important aspect is the Quantum of the sentence's connection to it. We want to define the word "sentence" (as per the penal law by Gour). The word sentence is defined in Law Lexicon as the term used in criminal law, is the appropriate word to denote the action, the action of the Court before, which the trial declaring the consequence to the convict of the fact thus ascertained, therefore, any consequence which flows after conviction can be looked upon as sentence. Consequently, disqualification would come within the expression sentence.

It is relevant to note that object of punishment is four folded:

(i) To serve as a deterrent to other persons who may be similarly inclined;

(ii) To be prevented;

(iii) To be reformative;

(iv) To be retributive.

Now, the vital elements to be considered for assessing the Quantum of a sentence are:

(a) Nature of the offence;

(b) Circumstances in which the crime was committed;

(c) Degree of deliberation shown by the offender;

(d) Provocation which the offender had received;

(e) Antecedents of the person to be sentenced;

(f) Age and character of the offender.

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14. By now, it is well settled that the normal sentence in a murder case is death. Therefore, while awarding the same, the Court is not obligated to record any reason. On the other hand, although, still, while awarding a lesser sentence, it has to record reasons, equally to prove an offence entailing extreme penalty of death, every possible care and caution has to be adopted; in this behalf, however, when an offence is proved, it has to be met with maximum sentence provided thereof, as such, when an offence is proved against an accused, the Court should never hesitate to award punishment for that offence, even if it is capital punishment. In this regard, it may be observed that in the instant case requirement of *'Tazir' is* fully available; therefore, to our perception, for awarding the death penalty to the appellant Shadiullah, the Court was not even bound to record any reasons because in such a case the Court is under legal obligation only if it awards lesser punishment. In forming this view, we are fortified by the judgment titled *Hamid Mahmood & another versus the State* (2013 SCMR 1314).

15. Because deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for the reformation of society. The concept of minor punishment in law attempts to reform a wrongdoer. However, in such cases where the accused, a responsible member of a Law enforcement agency, had committed a brutal murder of an innocent young man, no leniency should be shown to the culprit. The death sentence would deter society, so no other person would dare to commit murder. If, in any proven case lenient view is

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taken, then peace, tranquility, and harmony of society would be jeopardized, and vandalism would prevail.

The courts should not hesitate in awarding the maximum punishment in cases where it has been proved beyond any reasonable doubt that the accused was involved in the offence. Deterrence is a factor to be considered while awarding sentences because, unfortunately, such crimes in society, particularly at the hands of few criminal-minded elements amongst those responsible for maintaining law and order, have reached an alarming situation. The mental tendency towards the commission of a crime with impunity being a member of a law enforcement agency is increasing. Sense of fear in the mind of a criminal before barking upon its commission could only be taught when he is sure of the punishment provided by law, and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, a criminal would take undue advantage. Thus, sparing the accused with death sentence is causing a grave miscarriage of justice, and in order to restore its supremacy, the sentence of death should be imposed on the culprits where the case has been proved.

16. We are of the considered view that while dealing with the question of sentence, the approach of the Court should be dynamic. The Court has to find ways and means to guarantee complete dispensation of justice to all stakeholders of a criminal case, as most of them are unaware of the legal technicalities, flaws, and lacunas left in the investigation and defects in the conduct of their trials, only see

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the result announced by the Court and form an opinion about the prevailing system of administration of justice.

In this respect, reliance is placed on the judgment titled *Noor Muhammad v. The State* (1999 SCMR 2722); relevant observation therefrom is as under:

> *"... It may be observed that the normal sentence for an offence of murder is the death sentence. This is to be awarded as a matter of course except where the Court finds some mitigating circumstances which may warrant the imposition of a lesser sentence, namely imprisonment for life.*
>
> *It was further observed that;*
>
> *"...The people are losing faith in the dispensation of criminal justice by the ordinary Criminal Courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to society. Sentences awarded should be such which should act as a deterrent to the commission of offences."*

So far, the defence plea is concerned; it was not sustainable because, at some stage, the appellant (convict) introduced the story of an attack on the F.C. vehicle in the same vicinity. As a result, he lost his patience. While on the other hand, he denied his presence on the spot by pointing out irregularities in the proceedings of the identification parade and the process of physical remand to the appellant; such a variable stance is termed as hot and cold in the same breath. Moreover, the learned counsel stated that the concerned authorities had already compensated the deceased's family in terms of

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money and employment of class IV, which itself is an admission though implied.

17. The learned trial Court passed a well-reasoned and speaking judgment which does not suffer from any illegality or irregularity or misreading and non-reading of evidence, therefore, is not liable to be reversed even on reappraisal of evidence we could not form a contrary view with that of the trial Court, as such, the judgment impugned passed by the trial Court is not open to any exception hence is maintained, however, rectified to the extent of compensation provided under section 544, Cr.P.C., in case of default, shall further suffer simple imprisonment for "six months."

With the above rectification, the appeal filed by the appellant (accused), namely Shadiullah, son of Sardar Khan, is otherwise dismissed. As a result, the reference sent by the trial Court is answered in "Affirmative."

Order accordingly.

JUDGE

Quetta,
Announced today on:
27.04.2023 **JUDGE**

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