

P L D 2001 Supreme Court 465

Present: Sh. Riaz Ahmed, Mian Muhammad Ajmal and Javed Iqbal, JJ

MUHAMMAD ILYAS and another---Appellants

versus

MUHAMMAD SUFIAN and another---Respondents

Criminal Appeals Nos.65 and 66 of 1998, decided on 30th January, 2001.

(On appeal from the judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi, dated 1-4-1997 passed in Criminal Appeal NO. 11 of 1993 and Murder Reference No.41 of 1993).

(a) Penal Code (XLV of 1860)---

---S. 302---Constitution of Pakistan (1973), Art. 185(3)---Leave to appeal was granted to the complainant by the Supreme Court to consider the contention that the accused, in circumstances, did not deserve lesser sentence as he was a mature man of 35 years and not a young person who could be influenced to commit the crime at the asking of an elder---Re-appraisal of evidence was also to be done in the case.

(b) Penal Code (XLV of 1860)---

---S. 302---Appraisal of evidence---Doctrine of influence ---Application--Influence exerted 'by father on son of mature age---Whether mitigating circumstances---Sentence, enhancement of---Ocular version was worthy of credence and confidence inspiring and was supported by medical evidence--Statements of eye-witnesses could not be disbelieved on account of their relationship with the deceased and relationship inter se---Parties were living amicably in the same vicinity for the last so many years---No serious enmity was alleged against the eye-witnesses---Accused according to prosecution had committed the murder under the influence or direction of his father who had been insulted by the deceased a few days back prior to the occurrence---Such direction given by the father under the given circumstances did not constitute a mitigating circumstance (net to award normal penalty of death to accused)---Accused had inflicted successive "Chhuri" blows on the vital parts of the body of the deceased in a brutal and callous manner who succumbed to the injuries---No blanket authority for commission of brutal, gruesome and wanton murder could be granted to grown-up and elderly persons under the garb of influence of elders including the father as it could lead to drastic consequences and there would be no end to merciless killings---Accused admittedly was more than 35 years of age at the time of occurrence and did not deserve any clemency in the absence of any mitigating circumstances which were not available in the case---Conviction of accused was upheld in the circumstances, judgment of High Court whereby sentence of death of accused was altered to imprisonment for life was set aside and the order of Trial Court awarding death sentence to accused was restored---Appeal was disposed of accordingly.

1985 SCMR 477; Abdur Rashid v. Umid Ali PLD 1975 SC 227; Jahan Khan v. State PLD 1959 SC (Pak.) 488; Niaz v. State PLD 1960 SC 387; Nazir and others v. State PLD 1962 SC 269; Muhammad Ismail v. Khushi Muhammad and 7 others PLD 1974 SC 27; Iqbal alias Bhala v. State 1994 SCMR 1; Talib Hussain v.State 1995 SCMR 1776; Muhammad Sharif v. Muhammad Javed PLD 1976 SC 452; The State v. Rab Nawaz and another PLD 1974 SC 87; Abdus Sattar v. Muhammad Anwar and 6 others, PLD 1974 SC 266; Asadullah v. Muhammad Ali and 5 others PLD 1971 SC 541 and Mst. Nuran v. Nura and another PLD 1975 SC 174; Zafar v. State 1999 SCMR X028 and Noor Muhammad v. State 1999 SCMR 2722 ref.

(c) Penal Code (XLV of 1860)---

---S. 302---Appreciation of evidence---Interested witnesses, corroboration of---Courts although as a rule of prudence have more often-than not insisted on independent corroboration before placing reliance on the testimony of interested witnesses, yet it is not an inflexible rule to be rigidly and unexceptionally applied---Witnesses related to the deceased might be otherwise quite natural furnishing direct evidence of a convincing nature unless reasons to believe exist that they

have an animus against the accused and are giving a rather distorted or exaggerated account which does not inspire confidence---Even uncorroborated testimony of such witnesses may be implicitly relied upon of course in the context of other relevant circumstances of each case.

Abdur Rashid v. Umid Ali PLD 1975 SC 227; Jahan Khan v. State PLD 1959 SC (Pak,) 488; Niaz v. State PLD 1960 SC 387; Nazir and others v. State PLD 1962 SC 269; Muhammad Ismail v. Khushi Muhammad and 7 others PLD 1974 SC 27 and Iqbal alias Bhala v. State 1994 SCMR I ref

(d) Penal Code (XLV of 1860)---

---S. 302---Sentence---Mitigating circumstances---Influence of elders--Doctrine of influence of elders is always considered a relevant factor and often constitutes mitigating circumstance qua tender age of the accused and due to immaturity of mind, but the doctrine of influence cannot be made applicable to a person who is about 35 years of age and is fully mature.

(e) Penal, Code (XLV of 1860)---

---S. 302---Sentence of death, commutation of---Sentence of death which is normal sentence in a murder case should not be altered on the basis of flimsy grounds.

Nuran v. Nura PLD 1975 SC 174 and Muhammad Sharif v. Muhammad Javed PLD 1976 SC 452 ref.

(f) Penal Code (XLV of 1860)---

---S. 302---Sentence---Mitigating circumstances---Principle of proportionality is not to be lost sight of while considering reasons as mitigating circumstances---Principles.

It has to be kept in mind while considering reasons as mitigating circumstances that the principle of proportionality is not lost sight of. If a person is slapped, the aggrieved person or a close relative of the aggrieved person does not get the right to come back after a week duly armed with the specific intention of killing and commits a cold-blooded murder. The person who had slapped him a week back cannot take a plea in the trial for reduction of sentence that this was natural reaction to the slap given to him or to his close relative a week back by the deceased. There should be, at least, some semblance of proportion between the injury or insult given by the deceased and the "reaction" by the accused in killing the deceased and then the question of time lag between the so-called provocation and the reaction in the form of cold-blooded murder is also relevant. There is always a distinction of degree between a fight which leads to a murder on the spur of the moment or within a short time and a case where there is considerable time lag between the so-called provocation and the so-called reaction in the form of murder. In the first category of case, perhaps it might be possible to advance the argument that a case for lesser sentence is made out subject to proportionality between "provocation" and "reaction" but in the other category of cases without there being other mitigating circumstances, no case would be made out for awarding the lesser sentence.

The normal sentence for an offence of murder is death sentence. This is to be awarded as a matter of course except where the Court finds some mitigating circumstances which may warrant imposition of lesser sentence namely imprisonment for life.

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 realise that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences.

Zafar v. State 1999 SCMR 2028 ref.

Rab Nawaz Noon, Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for Appellant (in Criminal Appeal.65 of 1998).

Arshad Ali Chaudhry, Advocate Supreme Court for Respondent and for Appellant in Criminal Appeal No.66 of 1998).

Dil Muhammad Tarar, Advocate Supreme Court for the State.

Date of hearing; 16th January, 2001.