
BENEFIT OF DOUBT IN SENTENCING





RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI

SUBJECT: CRIMINAL LAW

DATE: 21ND AUGUST 2024.

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QUERY: HOW DOES DOUBT IN THE PROSECUTION'S EVIDENCE, INSUFFICIENT FOR ACQUITTAL, INFLUENCE SENTENCING IN CASES ENTAILING VARIABLE PUNISHMENT?

RESEARCH MEMO

The concept of “*benefit of doubt in sentencing*” is a well-established principle in Pakistani jurisprudence. This concept that *where the quality of evidence though sufficient for conviction but does not meet the threshold for the recording of death penalty* has commented upon by the Supreme Court in case of “*Ghulam Mohy-Ud-Din alias Haji Babu and others vs. the State*” (2014 S C M R 1034) in the following manner:-

*“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.*

In case *ISRAR ALI vs THE STATE* (2007 S C M R 525) [Shariat Appellate Jurisdiction] the Supreme Court has also addressed the issue of granting the benefit of doubt to a convict in sentencing, as under:-

*“It was also admitted by him in cross-examination that he did not state before the Investigating Officer in his statement Exh.D.C. that the parcel containing crime empty was handed over to Khadim Hussain P.W.4. He also admitted that he did not send crime empty to expert till 1-12-1999. Khadim Hussain P.W.4 stated in examination-in-chief that he received parcel containing empty bullet on 3-11-1999 from Muhammad Akhtar P.W.14. He handed over to Muhammad Ramzan for onward transmission in the office of Forensic Science Laboratory. P.W.16 Khalid Rauf arrested appellant on 5-12-1999. He also got recovered the pistol from him on his pointation. Thereafter he had handed over pistol to P.W.4 Khadim Hussain. **This type of recovery of crime empty does not provide strong corroboration qua the***

*prosecution version. Similarly photographs do not corroborate the prosecution version. P.W.9 Syed Ashiq Hussain stated in his examination-in-chief that he along with his companions reached at the spot and saw that bleeding was oozing from the head of his son Adnan Shah. This fact was not in consonance with the medical report otherwise medical evidence alone cannot be corroborative evidence as the injuries cannot speak of their authorship. See Machia and others' case PLD 1976 SC 695. It is a settled law that last seen evidence is a weak type of circumstantial evidence. See Naqibullah's case PLD 1978 SC 21, Rehmat alias Rehman alias Waryam alias Badshaw's case. PLD 1977 SC 515 and Fazal Elahi's case PLD 1953 FC 214. The appellant/convict had taken a specific plea that he was involved in a case on account of sectarian terrorism. This brings us to the question of sentence more particularly that appellant/convict to whom death has been awarded, since in criminal cases, the question of sentence demands the utmost care on the part of the Court dealing with the life and the liberties of the people and that the accused persons are also entitled to extenuating benefit of doubt on the question of sentence. We have examined this question in the light of all the circumstances surrounding the guilt. **We find mitigating/extenuating circumstance in favour of the appellant for lesser penalty in as much as, the prosecution had failed to connect the convict with the circumstances of photographs recovered from the spot and the photographs recovered from the bag of the convict because there was no photograph of the deceased in the said photographs as mentioned above. Photograph of one Hafeez was found who was not associated by the police in the investigation. The benefit of doubt can be pressed also in matter of sentence as law laid down by this Court in Mst. Bevi's case 1980 SCMR 859.***

This concept is rooted in the of Mst. BEVI vs GHULAM SHABBIR AND ANOTHER (1980 SCMR 859). For ready reference, the relevant paragraph of the judgment is reproduced as under:-

“The question of sentence undoubtedly present a complex problem. On the one hand the prosecution asserted a definite motive for Ghulam Shabbir respondent to murder the deceased--either as a hired assassin or without payment a mere obligation on the asking of Ghulam Abbas acquitted accused. The failure of this part of the prosecution cast even (if the acquittal of Ghulam Abbas is considered to be on benefit of doubt) can be pressed in service by Ghulam Shabbir when considering the question of sentence. On the other hand, if the assumed motive- ii kept in view his guilty of an unprovoked cruel act of murder. **It has been held in some cases that the principle underlying the concept of benefit of doubt can in addition to the consideration of question of guilt or otherwise, be pressed also in matter of sentence.** As a definite motive was asserted against the respondent and the same has failed, keeping in view all the circumstances of this case, it would not be necessary to impose the capita' punishment. Therefore while finding him guilty; under section 302, P. P. C. he is sentenced to transportation for life should be awarded as compensation. The deceased adult belonging to rural society. Keeping in view of life of an healthy young person in the rural society, and also the nature of the crime committed, a fine of Rs. 25,000 out of which Rs. 20,000 shall be awarded as compensation to the heirs of the deceased, would meet the ends of justice. Order accordingly. In default of payment of fine, the

respondent shall suffer rigorous imprisonment for 4 years. Proceedings shall be commenced for recovery of that part of the fine, which is to be awarded as compensation, as soon as possible, in accordance with law.”

In this regard, the case titled as *"Mir Muhammad alias Miro v. The State"* (2009 SCMR 1188) may also be referred wherein the Hon'ble Supreme Court of Pakistan has held as under:-

*"9. It will not be out of place to emphasize that in criminal cases, the question of quantum of sentence requires utmost care and caution on the part of the Courts, as such decisions restrict the life and liberties of the people. Indeed the accused persons are also **entitled to extenuating benefit of doubt to the extent of quantum of sentence.**"*

In another case titled as *"Muhammad Riaz and another v. The State and another"* (2007 SCMR 1413) decided by the Hon'ble Supreme Court of Pakistan, it was held as follows:-

"No doubt normal penalty for an act of commission of Qatl-i-Amd provided under the law is death but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence because no hard and fast rule can be applied in each and every case."

These cases have established that when the Court harbors some doubt, albeit not sufficient for acquittal, judicial caution must be exercised in favor of awarding a lesser sentence, such as life imprisonment, rather than the death penalty. The mother judgment rendered in case of *Mst. Bevi vs. Ghulam Shabbir and Another* (1980 SCMR 859) laid down the precedent that the benefit of doubt should be extended not only in determining guilt but also in the matter of sentencing. Subsequent cases, including *Mir Muhammad alias Miro v. The State* (2009 SCMR 1188) and *Muhammad Riaz and another v. The State and another* (2007 SCMR 1413), have reaffirmed this approach, highlighting the necessity of exercising utmost care and caution in sentencing decisions. These judgments have been mostly relied by the High Courts, awarding sentences in cases entailing variable punishment such as capital punishment and life imprisonment.