
Mitigating Circumstances in murder cases





RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE SHOUKAT ALI RAKHSHANI
 SUBJECT: CRIMINAL LAW
 DATE: 02ND AUGUST 2024.
 BY: NOOR BAKHSH MENGAL RESEARCH OFFICER

QUERY: *What would be mitigating circumstances to be considered while awarding punishment in Murder Cases?*

RESEARCH MEMO

Question No. 1. What would be mitigating circumstances to be considered while awarding punishment in Murder Cases?

In reply of the query, it is humbly submitted that the legislatures have given discretion to the Courts while awarding **sentence under section 302(b) PPC** as 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. 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, if 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.¹ Whenever the real cause of murder is shrouded in mystery, is unknown or is concealed, the Courts have normally awarded the lesser punishments under section 302, P.P.C. as a matter of abundant caution.² In case titled **Farhan Ahmed Versus The State 2022 Y L R 1085 [Sindh]** Appellant has committed murder of his wife, while awarding the sentence the court has observed as *"It is evident that relation between wife and husband were before sleep on the night of incident. Prosecution has not brought on record that what happened prior to the scene of occurrence or what prompted the appellant to take away the life of his, wife at night time"* *"When motive is shrouded in mystery; that it has not been brought on record what happened/prompted the appellant just prior to incident to commit murder of his wife and that the confession of accused was also not recorded in accordance with the settled principles of law are the mitigating circumstances. A single mitigating circumstance would be sufficient to put on guard the Judge not to award the penalty of death but life Imprisonment"* Similarly in case titled **SAJJAN---Appellant Versus The STATE---Respondent 2023 Y L R 461 [Sindh (Hyderabad Bench)]** while allowing the appeal of the appellant partly to the extent of sentence of death reduced to imprisonment for life the court has observed as *"it is mentioned that none had seen the appellant while committing the murder of his wife in the house but there is huge evidence as discussed above which clearly shows that appellant had committed the murder of his wife in the house and attempted to commit murder of PW Aijaz. It squarely constitutes "proof beyond doubt" admitting no hypothesis other than appellant's guilt. Father of Mst. Husna was also present at the door of the appellant when he committed the murder of his daughter but neither he rescued her daughter nor lodged FIR of the incident. PW Ali Hassan, brother of injured Aijaz was also present at the time of incident. He had also not lodged FIR to the police station. Prosecution had failed to prove the motive at trial. These are the mitigating circumstances in this case. Above mitigating circumstances and infirmities are sufficient to adopt the alter course by awarding life imprisonment instead of death sentence as held in the case of Ghulam Mohy-ud-Din alias Haji Babu and others v. The State (2014 SCMR 1034). Similarly in case titled **Ghaffar Ali Versus The***

¹ 2014 S C M R 1034

² 1995 SCMR 1007

State And Others 2021 S C M R 354 the Honorable Supreme Court of Pakistan while hearing the appeal has observed as “*we observe that occurrence took place suddenly at the spur of the moment after a quarrel between complainant an Aamir and petitioner fired indiscriminately. This could be a ground for mitigation and the High Court rightly extended such benefit to the petitioner by altering the sentence of death on three counts to imprisonment for life on three counts.*” **Simerly in case titled Muhammad Yasin And Another Versus The State And Others 2024 S C M R 128** It has been observed that “*It is a well-settled proposition of the law that in the absence of premeditation to commit murder where motive is not proved by the prosecution, the same may be considered as the mitigating factor in order to reduce the quantum of sentence in cases involving the capital punishment.*”

The relevant paras of the precedents regarding the query are given below for easy reference.

➤ **GHULAM MOHY-UD-DIN alias HAJI BABU and others---Appellants Versus The STATE---Respondent 2014 S C M R 1034 [Supreme Court of Pakistan]**

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 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 mercy, 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.

23. In the case of Mawaz Khan v. Ghulam Shabbir and the State (1995 SCMR 1007), while determining the proper quantum of sentence, this Court in para-9 of the judgment held as follows:-

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"9. Adverting to the question of sentence raised by the learned counsel for Mawaz Khan, we find that Abdullah Khan (P.W.9) and Muhammad Akhtar (P.W.10) have deposed about the motive but they were not present when the incident of motive took place. The circumstance of chopping of nose and cutting the ear of the deceased will show that the act of the accused of killing the deceased was somewhat provoked. So the real motive for the crime remains shrouded in mystery. The question of benefit of reasonable doubt is necessarily to be determined not only while deciding the question of guilt of an accused person but also while considering the question of sentence, particularly in a murder case, because there is a wide difference between the two alternative sentences-death or imprisonment for life. Benefit of reasonable doubt in respect of the real cause of the occurrence was thus available to the accused. Needless to add that whenever the real cause of murder is shrouded in mystery, is unknown or is concealed, the Courts have normally awarded the lesser punishments under section 302, P.P.C. as a matter of abundant caution. (Underlining is ours).

➤ **FARHAN AHMED---Appellant Versus The STATE---Respondent 2022 Y L R 1085 [Sindh]**

25. Appellant has committed murder of his wife, the provisions of sections 306, 307 and 308, P.P.C. would only attract in the cases of Qatl-i-Amd liable to Qisas under section 302(a), P.P.C. and not in the cases in which sentence for Qatl-i-Amd had been awarded as Tazir under section 302(b) & (c), P.P.C. as held in the case of Muhammad Akram v. The State (2003 SCMR 855).

26. As regards to the sentence of appellant is concerned, there are mitigating circumstances. Admittedly there was no direct evidence in this case and the motive of the incident has remained shrouded in mystery. Evidence of P.W-03 Fayyaz Nabi is also material, who has stated as under:

"On 24.10.2013, this incident took place at 1.00/1.15 a.m. On the night of incident we all the family members were sleeping then we heard commotions and voice of doors....."

27. It is evident that relation between wife and husband were before sleep on the night of incident. Prosecution has not brought on record that what happened prior to the scene of occurrence or what prompted the appellant to take away the life of his, wife at night time. The Honorable Supreme Court in the case of Ghulam Murtaza v. The State (2021 SCMR 149), has held as under:

"4. We have observed that there is lack of motive in the case in hand and what happened prior to the scene of occurrence or what prompted the appellant to take away the life of the deceased-Mst. Saima Bibi are the circumstances which have rightly been considered by the Courts below as mitigating circumstances and thus, the appellant has rightly been dealt with by the Courts below."

28. In the above stated circumstances, when motive is shrouded in mystery; that it has not been brought on record what happened/prompted the appellant just prior to incident to commit murder of his wife and that the confession of accused was also not recorded in accordance with the settled principles of law are the mitigating circumstances. A single mitigating circumstance would be sufficient to put on guard the Judge not to award the penalty of death but life Imprisonment. In the case of Ghulam Mohyuddin v. State (2014 SCMR 1034), it is held as under:

"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.

➤ **SAJJAN---Appellant Versus The STATE---Respondent 2023 Y L R 461 [Sindh (Hyderabad Bench)]**

14. As regards to the motive, admittedly both the parties are related to each other. It is the case of prosecution that appellant had seen PW Aijaz while sitting in the house of appellant.

Admittedly, Mst. Husna and PW Aijaz were not found in objectionable condition. PW No.3 Ali Hassan has deposed that PW Aijaz was working at Bricks-Klin on the day of incident, he was brought to home by appellant and meal was served. It clearly shows that relations between appellant and PW Aijaz were cordial and were on visiting terms. Therefore, motive as alleged by the prosecution in FIR has not been established at trial. Acceptance of ground of mere suspicion of illicit relations (Karo Kari) to kill them would amount to give to the members of the society an unfettered license to kill any person they like. No one can be allowed to take the law in his hands. Learned advocate for the appellant has lastly argued that the matter of sentence in this case requires judicial care and caution as motive has not been proved and it is prayed that the death sentence awarded to the appellant may be converted into life. The quantum of sentence of appellant has engaged our serious attention and we have looked on this aspect of the case from different angles. Investigation Officer had also failed to interrogate / investigate about the motive as set up in the FIR. Not a single witness had seen the appellant while committing the murder of his wife Mst. Husna. Appellant in his confessional statement has also not stated that he had seen PW Aijaz with his wife in physical contact with each other. PW Aijaz has deposed that at the time of incident, appellant declared him on illicit relations with his wife and caused knife blows at neck, he went unconscious and heard cries of Mst. Husna. PW Ali Hassan and Ganhwar had also not witnessed the actual incident but their evidence is relevant and reliable. This is a case which fully attracts the rule of 'Res gestae'. There is also another circumstance as to why father of deceased Mst. Husna remained calm, even FIR was not lodged by him. Such circumstances of the case have put us to a caution in the matter of appellant's sentence. **Whole prosecution evidence is silent on these aspects of the case. We have no hesitation to hold that real cause of occurrence was shrouded in mystery and was completely suppressed by both the parties. Where the prosecution asserted a motive but failed to prove the same then failure on the part of prosecution may re-act against the sentence of death passed against the appellant on the charge of murder.** As observed above, the motive as set up in FIR has not been proved at trial. "What happened prior to the scene of occurrence or what prompted the appellant to take away the life his wife Mst. Husna." Rightly, reliance has been placed upon the case of Ghulam Murtaza v. The State (2021 SCMR 149). The relevant para is reproduced hereunder:-

"4. We have observed that there is lack of motive in the case in hand and what happened prior to the scene of occurrence or what prompted the appellant to take away the life of the deceased-Mst. Saima Bibi are the circumstances which have rightly been considered by the Courts below as mitigating circumstances and thus, the appellant has rightly been dealt with by the Courts below."

At the cost repetition, it is mentioned that none had seen the appellant while committing the murder of his wife in the house but there is huge evidence as discussed above which clearly shows that appellant had committed the murder of his wife in the house and attempted to commit murder of PW Aijaz. It squarely constitutes "proof beyond doubt" admitting no hypothesis other than appellant's guilt. Father of Mst. Husna was also present at the door of the appellant when he committed the murder of his daughter but neither he rescued her daughter nor lodged FIR of the incident. PW Ali Hassan, brother of injured Aijaz was also present at the time of incident. He had also not lodged FIR to the police station. Prosecution had failed to prove the motive at trial. These are the mitigating circumstances in this case. Above mitigating circumstances and infirmities are sufficient to adopt the alter course by awarding life imprisonment instead of death sentence as held in the case of Ghulam Mohy-ud-Din alias Haji Babu and others v. The State (2014 SCMR 1034).

➤ **GHAFFAR ALI---Petitioner Versus The STATE and another---Respondents 2021 S C M R 354 [Supreme Court of Pakistan]**

6. The stance of both the witnesses remained the same but during cross-examination they disclosed that as wife of the petitioner was not invited hence a quarrel took place. Although this was not a valid reason for mitigation of the sentence **but we observe that occurrence took place suddenly at the spur of the moment after a quarrel between complainant an Aamir and petitioner fired indiscriminately. This could be a ground for mitigation and the High Court rightly extended such benefit to the petitioner by altering the sentence of death on three counts to imprisonment for life on three counts.** We observe that High Court had withheld the benefit of section 382-B of the Cr.P.C. which was against the mandate of the said

provision, hence the benefit of section 382-B, Cr.P.C. is extended to the petitioner. With the above modification, this petition is dismissed and leave to appeal is declined.

➤ **MUHAMMAD YASIN and another---Petitioners Versus The STATE and others Respondents 2024 S C M R 128 [Supreme Court of Pakistan]**

10. It is a well-settled proposition of the law that in the absence of premeditation to commit murder where motive is not proved by the prosecution, the same may be considered as the mitigating factor in order to reduce the quantum of sentence in cases involving the capital punishment.¹ In *Iftikhar Mehmood and another v. Qaiser Iftikhar and others* (2011 SCMR 1165), this Court has held as:

[6]. We agree with the proposition that motive is not sine qua non for the proof of commission of the crime and at time motive is not known to any other person other than the deceased or the accused person which never surfaced on the record. However, it cannot be denied that motive is always very relevant to determine the quantum of sentence that might be awarded to a person against whom charge of murder is proved.

7. There is always a motive behind the commission of any crime. If a person commits theft or commits the offence of Haraaba/robbery, the motive and the object is to procure money. In case of sex related offences, the motive is to satisfy the sexual lust and so on and so forth; however, the gravity of motive differs from offence to offence and from case to case. There can be an immediate motive for the commission of a crime or an old motive for taking some revenge; there can be a small motive or a bigger one. In any case, motive is always relevant for the commission of crime. It is "reason" for which an accused person takes the law into his hands and commits the crime. Motive is in fact the foundation of the structure which ultimately culminates into the accomplishment of the crime. When motive is so basic and relevant for the commission of the crime, it would definitely have bearing in every case while determining the quantum of sentence.

11. In *Zeeshan Afzal alias Shani and another v. The State and another* (2013 SCMR 1602), this Court has held as:

[13]. ... It has been repeatedly held by this Court that if motive is not alleged or is not proved, normally the sentence of death is converted into imprisonment for life.

12. Moreover, the state of Pakistan is signatory to the International Covenant on Civil and Political Rights (the "ICCPR") and the same is ratified by the Federal Government in 2010. Article 6 of the ICCPR states as:

[1]. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

➤ **MUHAMMAD SHOBAN---Appellant Versus The STATE---Respondent 2022 S C M R 1608 [Supreme Court of Pakistan]**

4.Yes! The only aspect of the case which goes in favour of the appellant is the motive part of the case. The motive alleged by the prosecution is of illicit relations of the appellant with the sister-in-law (Saali) of the deceased and the alleged words of reprimand by the deceased to the appellant and Shafaqat Ali alias Mithu his co-accused in the evening of a day before the occurrence. The burden to prove the motive part of the occurrence was upon the prosecution but record of the case would reveal that the same though alleged in the FIR but has not been proved. So mere alleging a motive would not be sufficient to accept and rely upon the same. The law of the land in this regard is much settled by now that absence of motive or absence of proof of the same would be a sufficient mitigating circumstance to determine the quantum of sentence. We can lay hands on some of the latest judgments of this court for a matter of reference i.e. *Mst. Nazia Anwar v. The State* (2018 SCMR 911), *Nadeem Ramzan v. The State* (2018 SCMR 149), *Haq Nawaz v. The State* (2018 SCMR 21), *Ghulam Muhammad v. State* (2017 SCMR 2048), *Saif Ullah v. State* (2017 SCMR 2041), *Waris Ali v. The State* (2017 SCMR 1572). So keeping in view the above discussion, we are of the considered view that the prosecution has utterly failed to prove the motive so alleged in the

FIR, benefit of which for the purpose of quantum of sentence in this case will have to go to the appellant and the appellant in the given circumstances, cannot be awarded major penalty of death.

➤ **Mst. NAZIA ANWAR---Appellant Versus The STATE and others---Respondents 2018 S C M R 911 [Supreme Court of Pakistan]**

4..The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran alias Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148). After going through the entire record of the case from cover to cover and after attending to different aspects of this case I have found that although it is proved beyond doubt that the appellant was responsible for the murder of the deceased yet the story of the prosecution has many inherent obscurities ingrained therein. It is intriguing as to why the appellant would bring her four months old baby-boy to the spot and put the baby-boy on the floor and then start belabouring the deceased with a dagger in order to kill her. I have, thus, entertained no manner of doubt that the real cause of occurrence was something different which had been completely suppressed by both the parties to the case and that *real cause of occurrence had remained shrouded in mystery*. Such circumstances of this case have put me to caution in the matter of the appellant's sentence and in the peculiar circumstances of the case I have decided to withhold the sentence of death passed against the appellant.
