2014 S C M R 1034

[Supreme Court of Pakistan]

Present: Asif Saeed Khan Khosa, Gulzar Ahmed and Dost Muhammad Khan, JJ

Criminal Appeal No.413 of 2003

GHULAM MOHY-UD-DIN alias HAJI BABU and others---Appellants

Versus

The STATE---Respondent

Criminal Appeal No.414 of 2003

Haji MUHAMMAD SADIQ---Appellant

Versus

LIAQUAT ALI and others---Respondents

Criminal Appeals Nos.413 and 414 of 2003, decided on 18th February, 2014.

(On appeal from the judgment dated 29-10-2001 passed by the Lahore High Court, Lahore in Criminal Appeal No.202 of 1996 and Criminal Revision 245 of 1996 and Murder Reference No.379 of 1998)

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

----S. 302(b)---Qatl-e-amd---Sentence---Death sentence or imprisonment for life---Alternative sentences---Scope---Once the legislature had provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty was the normal penalty and should ordinarily be awarded---If the intent of the legislature was to take away the discretion of the court, then it would have omitted from S. 302(b), P.P.C. the alternative sentence of life imprisonment--- Sentence of death and life imprisonment were alternative to one another, however, awarding one or the other sentence essentially depended upon the facts and circumstances of each case.

Hassan and others v. The State and others PLD 2013 SC 793 ref.

(b) Islamic jurisprudence---

----Crime and punishment---Extra degree of care and caution---Justice with mercy---Scope---Fundamental principles of Islamic jurisprudence on criminal law was to do

justice with mercy, being the attribute of Allah Almighty---On earth such attribute had been delegated and bestowed upon the Judges, administering justice in criminal cases, therefore, extra degree of care and caution was required to be observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case/cases.

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

----S. 302(b)---Qatl-e-amd---Sentence---Death sentence or imprisonment for life---Single mitigating circumstance---Sufficient to award life imprisonment instead of death penalty--- 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---If a single doubt or ground was available, creating reasonable doubt in the mind of court/Judge to award either death penalty or life imprisonment, it would be sufficient circumstance to adopt alternative course by awarding life imprisonment instead of death sentence---No clear guideline, in such regard could be laid down because facts and circumstances of one case differed from the other, however, it became 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 entertained 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---Better to respect human life, as far as possible, rather than to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.

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

----Ss. 302(b) & 34---Qatl-e-amd---Common intention---Reappraisal of evidence---Sentence, reduction in---Mitigating circumstances---Motive alleged for murder too feeble or remaining unproved---Effect---Sufficient to reduce death sentence to life imprisonment---Accused and co-accused were alleged to have inflicted dagger blows to the deceased during the occurrence---Trial Court convicted accused and co-accused under Ss. 302(b) & 34, P.P.C. and sentenced them to death as Ta'zir on two counts---High Court confirmed death sentence awarded by Trial Court---Validity---Specific motive was set up in the F.I.R. to the effect that there was a dispute between the parties over a 'Khokha' (wooden stall), however, no independent corroboratory evidence on such point was furnished---Complainant claimed that the dispute over the stall led to civil litigation but no document from judicial record was furnished before the Trial Court to show that the dispute over the stall was a burning issue between the parties and they had already been battling for the same in the civil court--- Motive part of the incident, therefore, remained absolutely unproved---Even if motive set up in the F.I.R. did lay with the accused and co-accused, it was not of such degree and magnitude to take lives of two persons, moreso, when the same remained shrouded in mystery---Sentence of death awarded to the accused and co-accused was not warranted in law as the motive, besides being too feeble, had not been established---Such fact certainly served as a mitigating circumstance, where normal penalty of death was not to be awarded but sentence of life imprisonment was more appropriate---Besides accused and co-accused remained behind bars as under-trial prisoners for about two years and

they had also spent almost 16 years in death-cells---Conviction of accused and co-accused under S. 302(b), P.P.C. was maintained in circumstances, however their sentences of death were reduced to life imprisonment---Appeal was disposed of accordingly.

Muwaz Khan v. Ghulam Shabbir and The State 1995 SCMR 1007 ref.

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

----S. 302(b)---Qatl-e-amd---Sentence---Prisoner on death row---Reduction of death sentence to life imprisonment---Scope---Accused remained in jail as under-trial prisoner for about two years and also spent almost 16 years in death cell---Effect---Highly desirable and legally appropriate to reduce sentence of such accused from death to life imprisonment---Illustration.
Dilawar Hussain v. The State 2013 SCMR 1582 and Hassan and others v. The State and others PLD 2013 SC 793 ref.

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

----Ss. 302(b) & 34---Constitution of Pakistan, Art. 185---Criminal Procedure Code (V of 1898), S. 417---Qatl-e-amd---Common intention---Appeal against acquittal---Reappraisal of evidence---Benefit of doubt---Accused was alleged to have inflicted dagger blows to the deceased during the occurrence--- Trial Court convicted accused under Ss.302(b) & 34, P.P.C. and sentenced him to death---High Court acquitted the accused of the charge of murder by extending him benefit of doubt--- Validity---Accused had been extended the benefit of doubt by way of abundant caution, not only because he surrendered to the police without any delay and at the very outset pleaded innocence but also because no recovery of alleged crime weapon was effected from him---Accused had not been attributed for causing fatal injuries to any one of the deceased---Once accused had earned the benefit of acquittal, he was not liable to be sent back to prison after a period of 18 years had passed, as such a course would defeat the ends of justice---Appeal against acquittal of accused was dismissed accordingly.

Syed Zahid Hussain Bukhari, Advocate Supreme Court for Appellants (in Criminal Appeal No.413 of 2003).

Ahmed Raza Gillani, Additional P.-G. (Pb.) for the State (in Criminal Appeal No.413 of 2003).

Syed Zulfiqar Abbas Naqvi, Advocate Supreme Court for Appellant (in Criminal Appeal No.414 of 2003).

Raja Ghazanfar Ali Khan, Advocate Supreme Court for Private Respondents (in Criminal Appeal No.414 of 2003).

Ahmed Raza Gillani, Additional P.-G. (Pb.) for the State (in Criminal Appeal No.414 of 2003).

Date of hearing: 18th February, 2014.

JUDGMENT

DOST MUHAMMAD KHAN, J.---This single judgment shall decide both the above titled appeals because the same have arisen out of a common judgment rendered by the Lahore High Court, Lahore in Criminal Appeal No.202 of 1996, Criminal Revision No.245 of 1996 and Murder Reference No.379 of 1996; also because the same are the result of a single judgment given by the learned trial Judge, thus, the exercise of reappraisal of the same evidence is to be carried out to reach at a proper conclusion.

2. Precise but relevant facts leading to the present tragedy are that on 25-8-1994 at about 8-00 p.m., complainant Muhammad Sadiq (P.W.6) was present in his sugarcane crushing machine, installed in his shop, opposite thereof was the shop of Muhammad Ayub, deceased, who along with his brother Abid Hussain deceased, was present there and were busy in chatting, when in the meanwhile appellants (i) Ghulam Mohay-ud-Din @ Babu, (ii) Ahmad @ Muhammad Ahmad (iii) Amanat Ali, (iv) Liaqat Ali (v) Allau-ud -Din and (vi) Nehal-ud-Din and (vii) Amin-ud-Din, armed with daggers, hatchets and butcher-knives reached there, raising 'Lalkara' that Muhammad Ayub and Abid Hussain would not be spared. Ghulam Mohay-ud-Din appellant inflicted a dagger blow on the right shoulder of Muhammad Ayub deceased, repeating two more blows with dagger, landing on the right side of deceased's chest. Appellant No.2, Ahmad @ Muhammad Ahmad also inflicted dagger blow on the posterior side of head of deceased Abid Hussain, causing him injury on the back of his neck and other on his shoulder. Similarly, Liaqat Ali (respondent No.4 in cross Criminal Appeal No.414 of 2003) inflicted two injuries with dagger on deceased Muhammad Ayub, one in the abdomen and other on his forehead, while third injury was caused to him on his buttock. Amanat Ali (respondent No.3 in cross appeal) gave hatchet blow on the left side of Muhammad Ayub deceased and left arm, while third blow was given on the upper part of the back of his chest. Allau-ud -Din, Nehal-ud-Din and Amin-ud-Din [respondents (v), (vi) and (vii) in cross appeal filed-by the complainant], while brandishing butcher knives, warned the people not to come near them. All the accused then decamped from the spot. The complainant Haji Muhammad Sadiq (P.W.6), Muhammad Yasin (P.W.7) and Muhammad Rafique (not produced), witnessed the crime. The complainant with the help of P.Ws. and others, took both the injured to Nishter Hospital, Multan but both succumbed to the injuries there.

3. Motive, for the crime was alleged to be a dispute and litigation between the parties over a Khokha (wooden stall).

4. Report of the crime was made in Police Station 'Lohari Gate' at 10-00 p.m. which was registered at serial No.200/94 under sections 302/148/149, P.P.C. During inspection of the crime site, blood of the two deceased was secured from two places vide Memos Exh.PD and Exh.PF.

5. The three appellants, namely, (i) Ghulam Mohay-ud-Din @ Babu, (ii) Ahmad @ Muhammad Ahmad and (iii) Amanat Ali were arrested on 2-9-1994, while the rest of the accused were arrested on 5-9-1994.

6. While, under interrogation in police custody, the alleged crime daggers were respectively recovered from Ghulam Mohay-ud-Din, [Exh.P.1, vide memo Exh.PB] and from Ahmad [Exh.P.2, vide memo Exh.PC], whereas crime hatchet, [Exh.P.3, vide memo Exh.PD] was recovered from Amanat Ali on 6-9-1994. All these crime weapons were stated having blood stains.

7. At the conclusion of investigation, charge-sheet was filed before the learned Additional Sessions Judge/trial Court, whereas, nine P.Ws., in all, were produced, including the two eye -witnesses namely, Haji Muhammad Sadiq (P.W.6) and Muhammad Yasin (P.W.7).

8. During the autopsy, conducted by Dr. Shahid Hussain Magasi (P.W.8) on the dead-body of Abid Hussain, he found following injuries on the body:--

(i) An incised wound 5 cm x 2 cm on the right scapular region, penetrating into thorax.

(ii) Incised wound 7 cm x 1/2 cm on the back in the mid line and on left scapular region. The wound was skin deep.

(iii) An incised wound 4 cm x 1 cm on the upper part of left buttock. The wound was 8 cm deep cutting the major blood vessels.

(iv) Incised wound 4 cm x 1 cm in "L" shape, skin deep on left palm.

In the opinion of Medical Officer, all the injuries were ante-mortem, having been caused with sharp edged weapon, while cause of death was shown haemorrhage.

9. During autopsy on the dead-body of Muhammad Ayub deceased, the Medical Officer noted the following injuries:--

(i) An incised wound 3-1/2 cm x 1-1/2 cm on the front of right chest, 2 cm from right nipple. The wound was muscle deep.

(ii) An incised wound 2-1/2 cm x 1 cm on the front of right chest 1-1/2 cm from right nipple.

(iii) A lacerated wound 4 cm x 1 cm on the right side of forehead, wound was scalp deep, 2 cm from right eyebrow.

(iv) An incised wound 5 cm x 1-1/2 cm on right forearm 10 cm from right wrist. The wound was muscle deep.

(v) An incised wound 4 cm x 1-1/2 cm on left groin 4 cm deep major blood vessels were cut underneath.

(vi) An incised wound 6 cm x 3 cm on back of left forearm cutting underlying bone (Ulna) just above wrist joint.

(vii) An incised wound 2 cm x 1 cm on left forearm, 3 cm from left wrist joint. The wound was muscle deep.

(viii) An incised wound 5 cm x 3 cm on the inner side of left leg just below left knee joint, with partial cutting of under lying bone (tibia).

All the injuries were ante-mortem. Injury No.3 was caused with blunt weapon whereas rest of the wounds were caused by sharp edged weapon. All the injuries collectively were sufficient to cause death in ordinary course of nature.

10. 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.

11. The two eye-witnesses, namely, Haji Muhammad Sadiq (P.W.6) and Muhammad Yasin (P.W.7) have given ocular testimony. Both are shopkeepers of the close vicinity to the crime spot. To great extent, they have justified their presence at the crime site, on the fateful day albeit. Judged from different angles, it appears to us that they have not told the whole truth and have exaggerated the account of occurrence to some extent. For this reason, both, the learned trial Court and the Lahore High Court in succession, have made efforts to remove the chaff from the grains. Learned trial Judge, at the conclusion of the trial, convicted the appellants (i) Ghulam Mohay-ud-Din @ Babu, (ii) Ahmad @ Muhammad Ahmad, (iii) Liaqat Ali and (iv) Amanat Ali under section 302(b)/34, P.P.C. on two counts for committing murder of Muhammad Ayub and Abid Hussain and each one was sentenced to death as Ta'zir on two counts. All the four convicts were directed to pay Rs.50,000, each, to the legal heirs of the deceased or in default thereof, to suffer six months' R.I. each, while rest of the three co-accused namely, Allau -ud-Din, Nehal-ud-Din and Amin-ud-Din were acquitted, extending them benefit of doubt.

12. On appeal, after reappraisal of the evidence, a Division Bench of the Lahore High Court, Lahore confirmed the death sentence of appellants Ghulam Mohay-ud-Din @ Babu and Ahmad @ Muhammad Ahmad, along with the Murder Reference. However, death sentence awarded to Amanat Ali and Liaqat Ali was not confirmed, instead, Amanat Ali co-accused was sentenced to undergo 14 years' R.I on two counts and to pay Diyat on two counts to the legal heirs of both the deceased, mentioned above. Whereas, to the extent of Liaqat Ali convict, appeal was allowed and he was acquitted of the charge.

13. Feeling aggrieved from the judgment of the Lahore High Court, Lahore, appellants (i) Ghulam Mohay-ud-Din @ Babu (ii) Ahmad @ Muhammad Ahmad and (iii) Amanat Ali have questioned the legality of their conviction and sentences through Criminal Appeal No. 413 of 2003 with leave of the Court, while Criminal Appeal No.414 of 2003 has been filed by Haji Muhammad Sadiq, complainant, with leave of the Court, with the prayer to set aside the acquittal of Liaqat Ali, respondent No.1; to set aside the order of reduction of sentence of Amanat Ali, respondent No.2, from death to 14 years' R.I and to pay Diyat to the legal heirs of the two deceased and to

convert the same into death penalty on two counts, by restoring the judgment of the learned trial Judge.

14. We have heard the learned ASCs and the learned Additional Prosecutor-General, Punjab and have gone through the judgment of the High Court and that of the trial Court as well as the evidence available on record.

15. After briefly arguing the case on merits, learned Advocate Supreme Court for the appellants, Ghulam Mohay-ud-Din, etc., laid considerable stress on reduction of the death sentence, awarded to the two appellants on the following grounds:--

(i) That the motive alleged/set up in the F.I.R. was never established at any stage through any convincing and cogent evidence, which must serve as mitigating circumstance;

(ii) that the appellants were arrested on 2-9-1994 and were finally sentenced to death along with two co-accused by the learned trial Court vide judgment dated 30-6-1996 and for the last almost 18 years, they are lying in the Death-Cells;

(iii) that once the motive part of the incident has disappeared/not proved, the possibility that the incident was the result of sudden flare-up, could not be excluded altogether from consideration; and

(iv) that the implication of three co-accused in the crime was found to be false, both by the trial Court and the High Court, in addition to the 4th co-accused, who was acquitted at appeal stage, therefore, as was contended, the benefit of doubt shall go to the appellants, even in the matter of quantum of sentence.

16. The learned Additional Prosecutor-General, Punjab was candid in conceding that the death sentence awarded to the two appellants was not warranted in law, keeping in view the facts and circumstances of the case, thus, he was of the view that the sentence is liable to be reduced.

17. On the other hand, learned Advocate Supreme Court for the complainant/respondent [appellant in cross Criminal Appeal No.414 of 2003], however, vehemently contested the above arguments. He was of the view that once the guilt of the appellants has been established and believed by the trial Court as well as by the High Court, after proper appraisal and reappraisal of the evidence, then there was no occasion or room, left out for the reduction of the two appellants' sentence from death to life imprisonment. He further argued with vehemence that all the accused had come to the spot duly armed with lethal weapons and jointly attacked the two deceased with common intention, causing both of them fatal injuries through daggers, hatchet and butcher knives, therefore, the case of one or other accused could not be sliced away, nor it can be distinguished on any factual and legal premises from that of the three appellants. Thus, he further contended that the acquittal of Liaqat Ali respondent and altering/reducing the sentence of Amanat Ali respondent from death to 14 years' R.I. have got no sanction of law in view of the well settled principle that liability of each one of the accused for the purpose of awarding sentences was one and the same,

hence, the impugned judgment of the Lahore High Court is liable to be reversed to that extent, as in his view, the same suffers from patent error of law.

18. As the learned Advocate Supreme Court has confined his submission to reduction of the sentence of the two appellants, on the grounds mentioned in the earlier part of this judgment, therefore, we have to determine this question of vital importance as on merits of the case, besides the conceding statement by him at the bar, we after careful reappraisal of the evidence have no legitimate cause to take exception to the view held by the High Court.

19. 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 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 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.

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.

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

"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).

In the present case too, the motive set up in the F.I.R. was not of that degree and magnitude, if at all it did lay with the appellants, to take lives of two persons, more so, when the same has shrouded in mystery.

24. In the given circumstances, we are of the firm view that learned Courts below, particularly, the Lahore High Court did not adhere to this vital aspect of the case, rather the same went unnoticed, hence, the sentence of death awarded to the two appellants, mentioned above, was not warranted in law as the motive, beside being too feeble, has not been established. This fact certainly serves as a mitigating circumstance, where normal penalty of death was not to be awarded but proper legal sentence of life imprisonment was more appropriate, thus, omission on the part of the Lahore High Court and the trial Court has caused miscarriage of justice, therefore, the death sentence awarded to the two appellants, in our view, is not sustainable in the eyes of law.

25. Apart from the above, it is a matter of record that the two appellants have remained behind the bars as under-trial prisoners for about two years and they have also spent almost 16 years in Death-Cells of the prison in highly restless and painful condition and mental torture because the sword of death was hanging over their heads day and night during such a long period. On this account too, it is highly desirable and legally deemed appropriate to reduce their sentence from death to life imprisonment.

26. In the case of Dilawar Hussain v. The State (2013 SCMR 1582) similar view was held and even a Review Petition of the condemned prisoner was allowed on the ground that he had spent 18 years in the prison, both as an under-trial prisoner as well as after conviction when death sentence was awarded, which was even upheld by this Court. The consideration, which prevailed with this Court by reducing the sentence, was almost the same as held above, albeit the scope of review before the Supreme Court is too narrow as compared to appeal filed with the leave of the Court. Majority view is in favour of reduction of sentence while in some rare cases contrary view has been taken by this Court and that too where cruelty or brutality was the attending element in committing the murder or where element of terrorism was visible or proved in perpetrating the crime. Thus, the view held in Dilawar Hussain's case (ibid) being very close and nearer to judicial reasons, must prevail and shall hold the field, particularly in the circumstances of the present case.

This Court in the case of Hassan and others v. The State and others (PLD 2013 SC 793) held somewhat similar view founded on the principle that when a convict sentenced to death, undergoes a period of custody equal to or more than a term of

imprisonment for life during pendency of his legal remedy against his conviction and sentence of death, then keeping in view the principle of expectancy of life, it would be appropriate to reduce his sentence from death to life imprisonment. This view was based on the principle laid down in Dilawar Hussain's case (supra). It was further held that section 302(b), P.P.C. provides only two sentences, one death sentence and the other imprisonment for life for the offence of murder. Both the sentences are alternative to each other, therefore, to impose death or to maintain it, after the convict had undergone imprisonment for life or equal to it, would defeat the clear intent of the Legislature, as for one and the same crime the convict would suffer twin sentences i.e. death and life imprisonment. Thus, considering the long detention of the convict as extenuating circumstance, the sentence of death was reduced to life imprisonment. It was further held that contrary view, expressed by a Bench of less numerical strength, albeit given later, shall not prevail but the larger Bench's decision on this law point, given earlier, shall hold the field.

27. Although, no hard and fast rule can be laid down through a sweeping opinion however, it has been judicially noticed that in majority of cases, a tendency is gaining momentum on the part of the complainant party of implicating innocent person or innocents are implicated along with the real culprits by throwing the net wider to put the other side to maximum loss, pain and torture. Not only this but also the manner and mode of occurrence is exaggerated making it difficult for the court of law to reach at just and correct conclusion that who is guilty and who is innocent in a particular case. This phenomenon is consistently prevalent in certain parts of the country. The witnesses at the trial while under oath to tell the truth do not respect the oath so taken and repeat the same story, set up in the F.I.R. or during the course of investigation. The declining credentials, values and virtues of the society in this regard is indeed a disturbing point for proper administration of justice by the Judges, as ordinarily they are confronted with such a complexed situation. It was in this backdrop that the theory of 'sifting of grains from the chaff' was introduced by the Judges to extend benefit to those about whom they were doubtful of being involved in the crime. This duty of the courts is becoming onerous day by day due to the above phenomenon. The courts do not posses magical powers to transform the mindset of the society and to put them on the right path to tell the truth at all phases of criminal investigation, inquiry and trial, particularly in heinous crimes like murder. However, if a uniform yardstick is adopted by the courts discouraging such charge where innocent persons are involved or mixed up with the guilty one, it will soon bear the fruit and people would be made to re-think about their approach and mind set not to level false and exaggerated charge against innocent persons. In this backdrop, the obligation of the Judges while administering justice has become manifold because they are supposed not to let free those who are established guilty for a crime/crimes and to let free those whose involvement therein is not well established according to the well defined and well embedded standards of legal proof and per law of evidence. In this regard, this Court has since long laid down certain parameters and guiding principles, wherein in a given case, the witnesses are found to have falsely implicated one or the other accused, then they are ordinarily not to be relied upon with regard to the other co-accused, unless their testimony/evidence is amply corroborated through strong independent corroboratory evidence of unimpeachable nature qua the other co-accused.

28. Accordingly, for the reasons stated above, we partly allow Criminal Appeal No.413 of 2013 titled Ghulam Mohy-ud-Din v. The State and others, while maintaining conviction of appellants Ghulam Mohy-ud-Din @ Haji Babu and Ahmad @ Muhammad Ahmad under section 302(b), P.P.C., however, their sentence/sentences of death are reduced to life imprisonment. They are also extended the benefit of section 382-B, Cr.P.C. The said appeal is, however, dismissed to the extent of Amanat Ali appellant as having not been pressed.

29. So far as cross Criminal Appeal No.414 of 2003, filed by Haji Muhammad Sadiq (complainant) for the enhancement of sentence of Amanat Ali respondent No.2 therein is concerned, as on account of undergoing the sentence, he has been released from the prison and when we have already held in the preceding paragraph that appeal to the extent of his conviction and sentence has become infructuous, therefore, at this stage, we have no legitimate reason to enhance his sentence, as it will in no manner secure the ends of justice. Moreover, the Lahore High Court, Lahore, in the impugned judgment has given very sound, cogent and plausible reasons while awarding respondent Amanat Ali, the lessor sentence, distinguishing his role attributed to him in the crime, which is not open to exception on any legal and factual premises.

30. Similarly, the impugned judgment of the Lahore High Court, acquitting Liaqat Ali, respondent is upheld as in support of the acquittal judgment with his regard, sound, convincing and cogent reasons have been given, which are not open to exception, as he has been extended the benefit of doubt by way of abundant caution, not only because he surrendered to the police without any delay and at the very outset had pleaded innocence but also because no recovery of alleged crime weapon was effected from him and once he has earned the benefit of acquittal, after passing of such a long time, is not liable to be sent back to prison after a period of 18 years has passed, as such a course would defeat the ends of justice. More over, he has not been attributed of causing fatal injuries to any one of the two deceased. As such, Criminal Appeal No.414 of 2003 is dismissed.

31. Accordingly, the above titled appeals are decided in the above terms.

32. The surety bonds, if any, executed by the private respondents namely Amanat Ali and Liaqat Ali as well as their sureties, have come to an end and they are discharged from such liability.

MWA/G-2/SC Order accordingly.

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