

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah, Khalil-ur-Rehman Ramday and Falak Sher, JJ

Syed HAMID MUKHTAR SHAH Petitioner

Versus

MUHAMMAD AZAM and 2 others---Respondents

Criminal Petition No. 489 of 2003, decided on 7th December, 2004.

(On appeal from the judgment dated 8-10-2003 of the Lahore High Court, Rawalpindi Bench, Rawalpindi, passed in Criminal Appeal No.210 of 1997).

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

---Ss.302(b) & 337-F(ii)---Constitution of Pakistan (1973), Art.185--Conversion of normal penalty of death awarded to- accused by the Trial Court into sentence of imprisonment for life by the High Court--Validity---Two persons, in the present case, had been accused of committing murder of the deceased---Record showed that the co-accused was admittedly , empty-handed at the time of occurrence and . had not been burdened with any injury either to the deceased or even to the complainant of the said occurrence---Held, since there was no doubt about the assailant who had fired the fatal shot, therefore, there was no question of any benefit being extended to the accused who stood specifically saddled with the fatal injury---Where a fire-arm was aimed at the chest of the victim and. caused fatal injuries on the said vital area then non-repetition of the said act was hardly of any consequence in the matter of determining the quantum of punishment deserved by the assailant---Supreme Court converted the petition into appeal to the extent of complainant and decision of High Court directing reduction of sentence of death awarded to the accused to a punishment of imprisonment for life was set aside and accused was awarded a sentence of death under S.302(b), P.P.C., as ordered by the Trial Court.

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

---S.302(b)---Murder---Sentence---Circumstances where normal penalty of death sentence be awarded stated:---

Insufficiency of motive or motive being shrouded in mystery could not be considered as circumstances justifying non-awarding of the normal penalty of death to a murderer or to reduce the sentence of death to a lesser punishment.

Even where the occurrence resulting in a murder had taken place at the spur of the moment and even where only one shot had been fired and same had not been repeated, the only penalty deserved by the killer was the normal punishment of, death prescribed for the said offence.

Inadequacy of weakness of the alleged motive or where motive had not been proved, an assailant if found guilty of causing the murder of another, did not deserve any leniency and. the only punishment awardable in such-like circumstances would be the sentence of death.

Saeed Akhtar and others v. The State 2000 SCMR 383; Arshad Ali alias Achhu v. The State 2002 SCMR 1806 and Hameed Khan's case 2002 SCMR 1155 ref.

Sardar Muhammad Ishaq Khan, Senior Advocate Supreme Court with Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

Shaukat Aziz Siddiqui, Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record (absent) for Respondent No.1.

Majeed-ur-Rehman Siddiqui, Advocate Supreme Court with Ch. Akhtar Ali, Advocate-on-Record for Respondent No.2.

Date of hearing: 7th December, 2004.