IN THE FEDERAL SHARIAT COURT
Appellate Jurisdiction)

PRESENT

MR. JUSTICE AGHA RAFIQ AHMED KHAN
MR. JUSTICE SYED AFZAL HAIDER

CRIMINAL REVISION NO. 12/I OF 2008

Gul Muhammad son of Mir Wali
r/o Khabal Pain, Tehsil Oghi, District Mansehra
.... Petitioner

....
Versus

1. Muhammad Ayub son of Abdur Rasool
   r/o Khabal Pain, Tehsil Oghi District Mansehra
2. The Stae

.... Respondents

Counsel for petitioner	...	Mr. Saeed Ahmed Awan and Qazi Shams-ud-Din, Advocates
Counsel for respondent	...	Mr.Ghulam Mustafa Khan Swati, Advocate
Counsel for the State	....	Mr. Muhammad Sharif Janjua, Advocate
FIR No. Date & Police Station	....	152, 29.6.1996 Oghi, Mansehra
Date of judgment of trial court	....	10.11.2008
Date of Institution	....	30.12.2008
Date of hearing	....	18.11.2009
Date of decision	....	**23.12.2009**

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JUDGMENT

SYED AFZAL HAIDER, Judge.- Muhammad Ayub respondent faced trial before Additional Sessions Judge, Mansehra at Oghi under sections a) 148/149 of the Pakistan Penal Code, b) sections 11/16 of Zina (Enforcement of Hudood) Ordinance VII of 1979, c) sections 506/149, d) sections 337-A II/149 and e) 344/149 of Pakistan Penal Code. The learned trial Court found the accused guilty on various counts with consequent sentences as under:-

i.	Under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979	03 years imprisonment with a fine of Rs.10,000/- and in default of payment of fine to further undergo one month S.I
ii.	Under section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979	05 years imprisonment with a fine of Rs.30,000/-. In default to suffer another term of three months S.I.
iii.	Under section 344 of the Pakistan Penal Code	01 years imprisonment with a fine of Rs.5,000/-. In default of payment of fine to suffer another period of 15 days S.I.

All the sentences were ordered to run concurrently with benefit of section 382-B of the Code of Criminal Procedure.

2. The petitioner Gul Muhammad complainant PW.4 through this Revision seeks enhancement in the award of the aforementioned sentences in the following terms:-

i. From 03 to 07 years imprisonment for the Offence under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and enhancement of fine from Rs.10,000/- to Rs.50,000/-;

ii. From 05 to 10 years imprisonment for the Offence under section 10(2) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and enhancement of fine from Rs. 30,000/- to Rs.100,000/-

iii. A direction that the fine be recovered from respondent accused as arrears of land revenue; and additionally

iv. That the sentences awarded to respondent convict be ordered to run consecutively and not concurrently.

PROSECUTION CASE

3. This revision petition arises out of a crime report lodged by complainant on 29.06.1996 with Police Station Oghi District Mansehra. The information laid before police was registered as FIR No.152/96 on

29.06.1996 at 13.30 hours regarding an incident of even date occurring at 9.00 a.m.

4. The brief description of the incident complained of and short the history of the case arising out of the crime report may be summed up as follows:-

i. That on 29.06.1996 complainant Gul Muhammad was in the mosque school Pattian during morning hours in connection with his teaching duties when his daughter came and informed him that her elder sister Mst. Sajida Bibi whose Nikah had been solemnized with one Abdul Hakim, was abducted on gun point by accused Fazal-ul-Rehman, Muhammad Ayub, Abdul Saleem, Gohar Rehman, Gulzaman and Khan Gul, when she went out of the house on some errand. Mst. Khadija, Khaista Jan and Bibi Haleema tried to intervene but accused resisted and caused lip injury to Mst. Khadija.

ii. The case was sent up for trial against all the accused. The present appellant along with Gulzaman accused was declared absconder. All the other accused faced trial in Hadd Case Number 14/2 and were acquitted vide judgment dated 29.01.2003.

5. Investigation of the case was conducted by Chanan Khan, ASI. He had received copy of FIR 152/96 Ex.PA when he was patrolling in the area in connection with investigation of a case under section 337-F,V.

He visited the place of occurrence, prepared site plan Ex.PB on the pointation of Mst. Haleema. He also recovered three 7MM rifle empties from different spots. He arrested accused Fazal-ur-Rehman and Gohar Rehman and produced them before Illaqa Magistrate on 04.07.1996. After completion of investigation he handed over the file to SHO for further proceedings. Report under section 173 of the Code of Criminal Procedure was submitted in the Court by local police requiring the accused to face trial.

CHRONOLOGY OF TRIALS

6. Initially the case was tried by Mr. Muhammad Farooq Sarwar, Additional Sessions Judge-I. Mansehra vide Hadd Case No.14/2 of 03.07.1997 against five accused persons present in court and two absconders (including Muhammad Ayub, respondent convict) under section 506/337-A (II)/148/149 of the Pakistan Penal Code read with section 11/16 of Zina (Enforcement of Hudood) Ordinance, 1979. All the accused facing trial were acquitted by the learned trial court vide his judgment dated 29.01.2003 but the trial of absconding accused was kept

pending. Muhammad Ayub respondent, then absconding accused, surrendered before the trial court after the conclusion of earlier trial Number 14/2 decided on 29.01.2003 whereafter the second trial commenced against him vide case file No.4/3 of 2004 wherein he was convicted and sentenced as noted above. The present revision seeks enhancement of various sentences awarded to respondent Muhammad Ayub during the second trial.

7. The learned trial court after receipt of report framed charges against accused Muhammad Ayub respondent on 18.11.2004 on five counts under sections 148/149 of Pakistan Penal Code, sections 11/16 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979, sections 506/149, 337-AII/149 and section 344/149 of the Pakistan Penal Code. The accused did not plead guilty and claimed trial.

PROSECUTION WITNESSES

8. The prosecution in order to prove its case produced 13 P.Ws at the trial. The gist of deposition of prosecution witnesses is as under:-

i. Ali Jan appeared at the trial as P.W.1. as a marginal witness of recovery memo Ex.PC through which the I.O. took into

possession three empties of 7MM. He also signed other recovery memos of different articles.

ii. P.W.2 Molvi Talibul Haq stated that he was "Pesh Imam" of village Khabal Paeen and had performed Nikah of Mst. Sajida PW.8 with Abdul Hakim son of Ali Akbar. He identified his signatures on the Nikahnama Ex.PW.2/1.

iii. P.W.3 Sardar Khan, Inspector stated that during the days of occurrence he was Station House Officer, incharge of Police Station Oghi. He had submitted supplementary challan against the accused.

iv. Gul Muhammad complainant appeared as P.W.4 to endorse the contents of his crime report Ex.PA.

v. Statement of Mst. Khadija d/o Gul Muhammad complainant was recorded as P.W.5. She supported the version of complainant.

vi. The evidence of P.W.6 Niaz Muhammad son of Gul Muhammad complainant and brother of Sajida PW.8 is all just heresay. He stated that he received information of the incident from his younger sister Haleema. He also stated that one and a half month after the incident one Inayat Khan of Village Yagpaize in Kala Dhaka sent a Barber of his village to their house with the information that Mst. Sajida had been recovered and she may be brought back to their house. He and Jamzore went to the house of Inayat Khan and from there Mst. Sajida, his sister was brought back.

vii. Chanan Khan, ASI appeared as P.W.7 to state about the part of investigation conducted by him in the case. The detail of his investigation has already been mentioned in an earlier paragraph of this judgment.

viii. Mst. Sajida Bibi abductee appeared as P.W.8. She gave the details and the manner of her abduction by the accused at gun point.

ix. Shams-ur-Rehman Khan, Inspector Anti Corruption, Mansehra appeared as P.W.9. He stated that on 17.08.1996, Mst. Sajida daughter of Gul Muhammad Khan abductee was produced before him. He prepared her recovery memo marked as Ex.PW.7/4. Thereafter he sent Mst. Sajida to women Medical Officer, Civil Hospital Oghi vide application Ex.PW.9/1. He recorded her statement under section 161 Cr.PC. On the following day he got recorded her statement under section 164 Cr.P.C. from the court of Judicial Magistrate, Oghi. After medical examination, the lady doctor handed over the swab taken by her during medical examination of the abductee to Banaris Khan Constable which were taken into possession by the Investigating Officer vide recovery memo Ex.PW.9/2 in the presence of marginal witnesses. The statements of marginal witnesses were also recorded. On 24.8.1996, he formally arrested accused Lal Khan when his pre-arrest bail was recalled by the court of Learned Additional Sessions Judge, Mansehra. The

accused were then sent to Judicial Lock up. On 18.8.1996, he sent the Swabs sealed into parcel No.3, through constable Shahzad to the Chemical Examiner, Peshawar for analysis and opinion. The original application was placed in the parcel whose carbon copy was placed on record as Ex.PW.9/3. It was in his hand writing. The copy of report of examiner was later on placed by the concerned SHO on the judicial file as Ex.PW.9/4.

x. Muhammad Mukhtiar Khan, Inspector appeared as PW.10 and deposed that he submitted supplementary report against the accused Muhammad Ayub.

xi. Munir Hussain, Inspector as PW.11 stated that he formally registered Crime report as FIR Ex.PA on receiving the complaint.

xii. Lady Dr. Tanveer Chaudhry appeared at the trial as PW.12 to state that on 17.8.1996 at 3.30 p.m. she medically examined Mst. Sajida and issued Medico-legal-report Ex.PW.12/1.

xiii. Mushtaq Ahmed, Constable No.100 appeared as PW.13 to state that he remained posted with PW Jaffar Shah, SHO and was thus in a position to identify his hand-writing and signature available on the report submitted by him in the Court under section 173 of the Code of Criminal Procedure.

THE DEFENCE PLEA

9. The learned trial court after close the prosecution evidence recorded statement of accused Muhammad Ayub under section 342 of the Code of Criminal Procedure wherein the accused stated that no independent witness had been produced against him. He claimed innocence. He did not opt to make statement on oath under section 340(2) of the Code of Criminal Procedure. He produced DW.1 Khalil-ur-Rehman in his defence. The learned trial court after completing codal formalities of the trial returned a verdict of guilt. The accused Muhammad Ayub, respondent was thus convicted and sentenced as noted in the opening paragraph of this judgment. Being dissatisfied with the quantum of punishment awarded by the learned trial court the petitioner Gul Muhammad has preferred the present revision petition against the accused for enhancement of sentences under different counts. The respondent in turn has challenged his conviction through Criminal Appeal No.125/I of 2008 which is linked with this Revision which will be considered independently on merit after the disposal of this Revision Petition for enhancement of sentence.

10. We have gone through the file. The evidence adduced by prosecution, statement of accused as well the statement of defence witness has been perused with the assistance of learned counsel for the contending parties. Arguments, advanced by learned counsel for the petitioner, the respondent convict and the State have been heard. Learned counsel for the petitioner has raised the following points.

POINTS URGED BY CONTENDING PARTIES.

i. That as many as five accused abducted a young girl Mst. Sajida PW.8 without any reason;

ii. That the abduction had been effected on gun point as abduction was not possible without show of force;

iii. That the abductee was removed to the tribal area which created hurdle in the recovery of victim;

iv. That the recovery of abductee took place only with the help of police;

v. That the accused Muhammad Ayub, respondent had absconded for a long time which fact established his guilt and lastly;

vi. Reliance was placed on the case of Muhammad Aslam vs. The State and another PLD 2006 Supreme Court 465 to assert that the quantum of sentence awarded to respondent was inadequate.

11. Learned counsel for the respondent convict while going through the evidence referred to certain portions of the statement of prosecution witness and claimed that there were serious contradictions which should have resulted in his acquittal. The conviction and sentence recorded in the impugned judgment, according to learned counsel for the respondent, merited interference in the facts and circumstances of the case. It was however pointed out to the learned counsel that ***contradictions*** and ***discrepancies*** are two separate things. Contradiction is that difference between the two or more statements, ideas or stories that make it impossible for both or all of them to be true. Contradiction is usually the negation of the prosecution whereas a discrepancy is a difference between things that should be the same. Discrepancy is lack of consistency. It connotes disagreement. Discrepancies as regards details of the incident is

not fatal but contradictions in the statements can result in rejection of evidence.

12. Learned counsel for the State supported the impugned judgment. He was of the view that neither a case for enhancement of sentence was made out nor did the accused merited acquittal.

OUR OBSERVATIONS

13. Our observations, after considering the factual and legal position of this case, are as follows:-

A. i. That originally five co-accused were tried under sections 506/337-A(II)/148-149 and 344 of the Pakistan Penal Code read with sections 11/16 of Ordinance VII of 1979 in the case file FIR number 152/96. Mst. Sajida had appeared as a witness in the first trial and given an eye-witness account of abduction and rape. But the learned trial court in the first trial found "that the prosecution has failed to prove its case beyond reasonable doubts against the accused facing trial and by extending benefit of doubt, accused are acquitted of the charges levelled against them." It is worth mentioning that the present petitioner did not challenge the judgment then delivered on 29.01.2003 whereby five accused earned acquittal. The judgment and the findings therein were tacitly accepted by the complainant party.

ii. That it is only in the second trial, resulting in conviction of respondent accused, that the petitioner has moved this court for enhancement of sentences alone;

iii. That the petitioner has accepted the conviction and sentence recorded by learned trial court under section 10(2) of Ordinance VII of 1979 though the prosecution case was directed throughout towards the offence falling within the mischief of Zina-bil-Jabr as contemplated by section 10(3) of Ordinance, VII of 1979.

iv. That since the petitioner has accepted the conviction recorded by learned trial court under section 10(2) ibid, as is clear from the fact that the revision is directed only for enhancement of sentence already recorded, then the petitioner may not be in a position to urge enhancement of sentence awarded by learned trial court under section 16 of Ordinance VII of 1979 and section 344 of the Pakistan Penal Code because section 10(2) contemplates Zina simplicitor liable to tazir. A man and woman are said to commit *Zina* if they willfully have sexual intercourse without being lawfully married to each other as per definition of Zina stipulated in section 4 of Ordinance VII of 1979. There is no element of force involved in such a consensual relationship. It therefore clearly means that petitioner admits that the offence of Zina was a consensual affair which may imply negation of enticing away or abduction of Mst. Sajida.

v. The question in this Revision revolved around the quantum of sentence awarded by learned trial court. Attention of learned counsel was invited repeatedly to address this court on the question whether the exercise of discretion by learned trial court in awarding the requisite sentence was

not Judicious? Was the exercise of jurisdiction fanciful or against the general judicial trend in awarding 05 years imprisonment in Zina-bil-Raza particularly when the female partner is not being convicted? The learned counsel was not able to cite a single precedent to show that the sentence awarded to the respondent was not legal or was inadequate to the extent that it has caused serious miscarriage of justice.

vi. Learned counsel however relied upon the case of Muhammad Aslam versus State and another PLD 2006 Supreme Court 465, to urge that the quantum of punishment was inadequate. But the facts of the case were different. In that case the abductee was a minor girl aged 12/13 years and she was subjected to Zina-bil-Jabr. The conviction in that case was recorded under section 10(3) and not 10(2) of Ordinance VII of 1979.

PRECEDENTS GOVERNING ENHANCED SENTENCE

B. Learned counsel for the petitioner was unable to cite violation of any principle of criminal law governing the award of punishment. The quantum of sentence is the discretion of trial court. Superior Courts loathe interference in cases even where the appellate/revisional court feels that had it tried the case it would have awarded another year or so in the sentence. Each case depends on its own circumstances. However it would be useful at this stage to refer to certain precedents on the question of quantum of sentence awarded by the trial court to see under what type of facts and circumstances punishment is enhanced. The following precedents will help us in identifying the principles governing enhancement of sentence or award of severe punishment.

i/ In the case of Uttam Singh Sochet Singh convicts vs. Emperor AIR 1938 Lahore 260 (262 C1), a Division Bench of the Lahore High Court held that the power to enhance sentence should be sparingly exercised by the High Court and sentences should be enhanced only in cases where the failure to enhance the sentence would lead to a serious miscarriage of justice. The mere fact that the High Court, had it keen trying the case, might have imposed capital sentence was not sufficient ground for enhancement.

ii. In the case of Muhammad Ishaque Khan and others Vs. The State and others PLD 1994 Supreme Court 259, it was held that punishment to be awarded to an accused person in a criminal case entirely depended on the strength and circumstances established against him by the prosecution in the case. It was further held that falseness of defence plea in a criminal case can neither relieve the prosecution of its burden to prove the case against the accused beyond all reasonable doubt nor can it lend support or strength to the prosecution case against the accused, much less to justify an enhanced punishment to the accused.

iii. In the case of Mowaz Khan versus Ghulam Shabbir and another reported as PLJ 1994 Supreme Court 549 it was held that where the real cause of murder was shrouded in mystery, courts have normally awarded lesser punishment under section 302 of the Pakistan Penal Code. In the case of Muhammad Yaseen and others versus Muhammad Shafique and others 1997 SCMR 1527 the conversion of Death sentence into life imprisonment was not interfered with because imprisonment for life was a

legal sentence and the motive was shrouded in mystery. See also the case of Abdul Aziz versus The State and others 1994 SCMR 35.

iv. In the case of Bacha Muhammad versus The State and another 2009 MLD 220 enhancement of sentence was not allowed because a) accused acted under the command of the acquitted accused, b) accused had made only one shot and; c) preceding the firing there was an altercation between parties.

v. In the case of Muhammad Yaqoob and others versus State and others 2009 SCMR 527 it was held that relationship interse of the accused would not be regarded as a mitigating circumstance but the sentence was not enhanced by Supreme Court because firing was attributed to all the accused and the injuries on deceased had collectively culminated in his death particularly when the occurrence had taken place about nine years back and the accused had already undergone the agony of a protracted trial.

vi. In the case of Nawaz and another versus The State and others 2003 YLR 2926, the sentence of imprisonment of life was converted into sentence of death in order to meet the ends of justice because a) the incident had been promptly reported to the police, b) medical evidence was not in serious conflict with oral version, c) the presence of complainant at the spot was established, d) complainant was an eye witness and had given an accurate account of the incident, e) complainant had no animus against the accused, f) crime empties found from the spot had been fired from the pistol recovered at the instance of accused, g) motive had been established on record and h) the accused had acted in a brutal manner while

committing cold-blooded murder of an un-armed youth of 20/21 years by firing many shots when he was on his way to the mosque along with his grand father to offer prayers.

vii. In the case of Muhammad Aslam versus The State and another PLD 2006 Supreme Court 465 the Apex Court on appeal enhanced the sentence from 7 to 14 years in a case where a victim, minor girl of 12/13 years was subjected to rape by two accused but they were acquitted and on appeal against acquittal the Federal Shariat Court awarded a sentence of seven years to the accused as the finding of acquittal was wholly unreasonable and perverse. The Supreme Court held that the quantum of sentence was to be determined by the trial or appellate Court in consideration of the (a) nature of offence, (b) the circumstances in which the offence was committed, (c) the gravity and degree of deliberation shown by the offender and such other factors appearing in the evidence. It was held that leniency in the matter of sentence in serious offences was against the object and wisdom of law. The concept of leniency in punishment it was further held, was to bring down an offender to reform himself and restrain from repeating the crime whereas the goal to be achieved in deterrent punishment was reduction in crime in society due to fear of law.

viii. In the case of Ghulam Sikandar and another versus Mamraz Khan and others PLD 1985 Supreme Court 11 (at page 26,27) enhancement of sentence was declined by the apex Court on the ground of the two Courts below had found material to award lesser of the two legal sentences and their approach was not painful to compel the Supreme Court

to interfere on that point. It was particularly so when even the question of motive and the commencement of occurrence was dependent upon the same inimical evidence and there was something more about the cause of unfortunate occurrence.

ix. In the case of Ghulam Abbas versus Mazhar Abbas and another PLD 1991 Supreme Court 1059, after a survey of a few cases it was held:

> " At the Supreme Court level and to an extent at High Court level also while upholding death sentence it was governed by different principles and manner of judicial exercise; the reversal to the lesser penalty or enhancement to death sentence, are governed by different principles. The latter principles partake of all those rules which have been tabulated from the mass of case-law in the case of Ghulam Sikandar versus Mamraz Khan and others (PLD 1985 SC 11). As in the case for enhancement of sentence where it depends upon the findings of fact or reversal thereof, ordinarily findings of fact would not be reversed. In matters like the present one for enhancement to death penalty (or for setting aside acquittal) unless amongst others there is either misreading or non-reading of evidence on a very substantial point and/or there has been a miscarriage of justice ordinarily there is no interference. One test to determine: whether, there has been miscarriage of justice

would be to answer a further question; there has been miscarriage of justice would be to answer a further question; whether, the view taken by the lower court on question of acquittal or reduction of sentence was impossible?

In this case none of the tests is satisfied. We in the light of the forgoing discussion are unable to agree with the view that wherever private revenge forms an element in the crime the same by itself should prevent the Court from doing justice in matter of sentence as was done in the case of Ajun Shah and scores of other cases. This petition, therefore, merits dismissal.

Before closing this order we would like to make two more remarks in the context of the subject under discussion. One, that is every case of sudden fight a definite element of revenge of graver or lesser intensity is involved. When it is grave it projects itself in the form of cruelty or unusual act which may also be accompanied by undue advantage. When the intensity is lesser there are no such elements in the conduct of the accused. In the former case the accused could lose the right to lesser offence under section 304, Part 1-PPC if the initial charge is of murder under section 302, PPC but in every such case the penalty of death is not always awarded. It has been ruled in a number of cases by the superior Courts that in case some of the conditions in the

exceptions to section 300, PPC are substantially satisfied but others are not then the least that the Court can do in such a difficult situation is that it may award lesser sentence but under the charge of murder, because, for acquittal from the charge and conviction for the lesser offence under section 304, Part 1, PPC., all the conditions of an exception must be satisfied.

Similar examples can be cited from the other exceptions under section 300, PPC exception I provides that culpable homicide shall not amount to murder if the offender while deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation..... Supposing in a given case the condition of suddenness is not established but that of the provocation being grave is satisfied the accused shall not be entitled to the benefit under the exception. He, if convicted under section 302,PPC might be given lesser sentence on account of one of the conditions of the exception having been satisfied. Similar example can be cited regarding exception No.2 which relates to exceeding the right of private defence. In a given case if the conditions of exception 2 are satisfied the offence shall be altered to section 304, Part 1, PPC but in case some of the conditions are satisfied and the others are not satisfied, while maintaining the conviction under section 302, PPC the sentence could be reduced to

the lesser penalty. These principles could apply mutatis mutandis to the cases of the present type as an element of revenge is inherent in all these exceptions".

For further reference: Waris Khan versus The State 2001 SCMR 387, Wahid versus The State PLD 2002 SC 62, Muhammad Tariq versus The State 2003 SCMR 531 and Muhammad Rafiq alias Titai versus The State PLD 1974 SC 65.

PRINCIPLES GOVERNING ENHANCED SENTENCE

14. In the light of various judicial ~~principles~~ precedents the following principles of criminal law governing the question of enhancement of punishment may be tabulated:-

i. The principle, as envisaged in section 75 of the Pakistan Penal Code, is that if the previous sentence borne by the accused had no effect on him, a more severe punishment should be awarded. But it does not follow as a right and inflexible rule that in all cases of previous convictions, an enhanced punishment should be awarded. It is a good rule of thumb but the circumstances of each case should be taken into account while inflicting punishment upon the accused. Public Prosecutor, Andhra Pradesh versus Palapati Ramakrishnaiah representing the Andhra State respondent AIR 1955 Andhra Pradesh 190.

ii. It is the duty of the prosecution to place before the trial court itself, under the provisions of the Code of Criminal Procedure, the relevant material relating to the previous conviction justifying an enhanced punishment under section 75 of the Pakistan Penal Code. If this is not done before the conclusion of trial that is no ground for asking the court of revision to enhance the sentence on the ground of previous conviction: Emperor versus Bashir Opposite Party AIR 1929 Allahabad 267.

iii. The opinion by the Revisional Court that if it had tried the offence it would have awarded a harsher sentence would not justify enhancement of sentence: Uttam Singh Sochit Singh Convicts vs. Emperor AIR 1938 Lahore 260.

iv. Quantum of sentence should be enhanced only in cases where the failure to enhance the sentence would lead to serious miscarriage of justice: Utam Singh Sochet Singh versus Emperor AIR 1938 Lahore 260.

v. Discretion to enhance sentence should be sparingly used: Uttam Singh case Supra AIR 1938 Lahore 260.

vi. Courts are reluctant to enhance sentences which are otherwise legal: Muhammad Yasin and Others versus Muhammad Shafique and Others 1997 SCMR 1527.

vii. Where the motive is shrouded in mystery sentence may not be enhanced: Muhammad Yaseen and Others versus Muhammad Shafique and Others 1997 SCMR 1527.

viii. The award of punishment to an accused person in a criminal case depends entirely on the strength and circumstances established against

him in the case by prosecution party: Muhammad Ishaque Khan and others versus The Sate and others PLD 1994 Supreme Court 259

ix. Unless it is shown that the exercise of discretion by the trial court in awarding sentence to the accused was neither judicious nor in consonance with the general practice, enhancement of sentence may not be resorted to: The State through Force Commander, Anti Narcotics Force, Quetta versus Abdul Qahir PLD 2002 Supreme Court 321.

x. Facts and circumstances of each case would determine whether enhancement of sentence would meet the ends of justice. Ghulam Abbas versus Mazhar Abbas and another PLD 1991 Supreme Court 1059.

xi. The conduct of accused during trial and or good behaviour in jail during the trial may be a good ground for not awarding severe punishment.

xii. Element of genuine repentance on the part of accused would entitle him to concession in the award of punishment. Reference Ayat 260 Sura 2 and may more verses of Holy Quran.

xiii. Poverty and lack of opportunities at the earlier stage of life to lead a moral life may be a consideration for the award of lesser sentence as visualized by Ayat 25 Sura 4 and Ayat 30 Sura 33 of Holy Quran.

xiv. The court notwithstanding anything contained in section 308 (i) of the Pakistan Penal Code, having regard to the facts and circumstances of the case, in addition to the punishment of Diyat may award punishment of either description for a term which can extend to 15 years as Taazir: Aamir Iqbal versus The State PLD 1999 Lahore 262.

xv. When Injuries have been caused by *lathis* and the circumstances do not show intention to kill the complainant and the Motive is not proved then the Conviction was altered from section 307 to section 308 Pakistan Penal Code. The amount of compensation alone was enhanced which was directed to be paid by the accused to the complainant: Muhammad Khan versus Sher Jang and others 2002 SCMR 606.

xvi. Where an accused person has not been able to get proper legal advice and he implicated himself blindly in the case, it constituted a mitigating circumstance in his favour. Very act of confession voluntarily made by the accused should ordinarily take his case out of ambit of severe punishment and bring it to an area of lesser punishment, this being an accepted norm in civilized world: Ex-spoy Liaquat Ali versus Federal Government and others PLD 2002 Lahore 210.

xvii. In the case of : M. Yasin versus M. Javed and 03 others reported as 2001 P.Cr.L.J 617 sentence awarded under section 326 of Pakistan Penal Code was not enhanced where the reasons advanced by the trial court were neither perverse nor arbitrary.

xviii. In the case of Wazir versus Sarju Bhar and others AIR 1928 Allahabad, 417(2) a Division Bench of the Court held that ordinarily the High Court should be loath to take action in the enhancement of punishment when the District authorities consider the sentence as sufficient; but there are occasions when the High Court has every right to enforce its own opinion which may be a contrary opinion to that of the district authorities.

xix. In the case of Emperor versus Ram Nath and others AIR 1935 Allahabad 989, a Division Bench of the Court held that the law does not suggest limitations upon the powers of Court to enhance sentence other than the limitation of maximum penalty. The High Court can enhance sentence upon maximum. The convict had admitted previous convictions. The Court followed 1920 Lahore 218=56 I.C.861=21 Cr.L.J 557.

xx. In the case of Subbayyan Muthukumaran versus State of Kerala and others AIR 1968 Kerala 330 the Division Bench enhanced the sentence because the trial court had prescribed below the minimum prescribed by law for the reasons that a) accused escaped without adequate punishment, b) it caused discriminations between persons found guilty of same offence and c) such a thing creates a feeling in the subordinate courts that they can with impunity disregard the statutory punishment and impose a punishment below the minimum prescribed for an offence.

xxi. In the case of Sarjug Rai and others versus State of Bihar AIR 1958 Supreme Court 127 it was held that sub section (1) of Section 439 of the Code, which also clothes the High Court with the powers of a Court of Appeal does not limit the power to enhance the sentence. The High Court can impose any sentence upto the maximum limit for a particular offence.

xxii. In the case of Bed Raj versus State of Uttar Pardesh AIR 1955 SC 778 it was held that though no limitation has been placed on the powers of the High Court to enhance a sentence it was nevertheless a judicial act, and like all judicial acts involving an exercise of discretion, must be exercised along all known judicial lines.

CONCLUSION

15. In the Light of principles governing enhancement of sentence/award of maximum punishment prescribed by law and the facts and circumstances available on record we are not persuaded to interfere in the quantum of punishment awarded by the learned trial court. As a consequence of this conclusion Criminal Revision No.12/I of 2008 is dismissed with the result that the connected Criminal Appeal No. 125/I of 2008 becomes a Single Bench matter which may be fixed in due course of time before any available Bench.

JUSTICE SYED AFZAL HAIDER

JUSTICE AGHA RAFIQ AHMAD KHAN
Chief Justice

Announced in open Court
at Islamabad on 23.12.2009.
UMAR DRAZ/

Fit for Reporting

JUSTICE SYED AFZAL HAIDER