

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa  
Mr. Justice Maqbool Baqar  
Mr. Justice Mazhar Alam Khan Miankhel

**Criminal Appeal No. 436 of 2017**

(Against the judgment dated 03.04.2010 passed by the Lahore High Court, Bahawalpur Bench, Bahawalpur in Criminal Appeal No. 294-J of 2010 and Murder Reference No. 29 of 2010)

***Muhammad Qasim***

*...Appellant*

***versus***

***The State***

*...Respondent*

For the appellant: Mr. Ansar Nawaz Mirza, ASC

For the State: Mr. Muhammad Jaffar, Deputy  
Prosecutor-General, Punjab

Date of hearing: 27.09.2018

**JUDGMENT**

**Asif Saeed Khan Khosa, J.:** Muhammad Qasim appellant and another had allegedly murdered two persons namely Meer Muhammad and Mst. Qaim Khatoon, a sister-in-law of the appellant, at about 06.00 P.M. on 27.07.2008 in an open filed in village Bakhsanabad in the area of Police Station Bhong, District Rahim Yar Khan in the backdrop of a motive based upon a suspicion of illicit relations between the two deceased. With the said allegations the appellant and his co-accused were booked in case FIR No. 118 registered at the above mentioned Police Station during the same evening and after a regular trial the appellant's co-accused was acquitted by the trial court whereas the appellant

was convicted on two counts of an offence under section 302(b), PPC and was sentenced to death on each count and to pay compensation. The appellant challenged his convictions and sentences before the High Court through an appeal which was dismissed to the extent of his convictions on both the counts of the charge under section 302(b), PPC but the same was partly allowed to the extent of his sentences of death which were reduced by the High Court to imprisonment for life on each count. Hence, the present appeal by leave of this Court granted on 18.09.2017.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. The case in hand is a case of double murder committed in broad daylight and an FIR in respect of the same had been lodged with sufficient promptitude wherein the appellant had been nominated as the principal perpetrator of the murders in issue. The ocular account of the alleged occurrence had been furnished before the trial court by Naseer Ahmed complainant (PW1) and Nazir Ahmed (PW2) who were both sons of Meer Muhammad deceased. The said eyewitnesses had advanced a reasonable explanation for their presence at the place of occurrence at the relevant time and had made consistent statements before the trial court which statements had inspired confidence of both the courts below. In the circumstances of the case it was unlikely for the said sons of the deceased to substitute their father's killer. The medical evidence had provided sufficient support to the ocular account furnished by the above mentioned eyewitnesses. The motive set up by the prosecution was based upon a suspicion of illicit relations between the two deceased and that backdrop had been admitted by the appellant also through his statement recorded under section 342, Cr.P.C. During the investigation four crime-empties had been secured from the place of occurrence which had subsequently been found to be wedded with a pistol recovered from the appellant's custody. In his statement recorded under section

342, Cr.P.C. the appellant had admitted killing both the deceased and had maintained that he had committed the said murders under the impulse of grave and sudden provocation and on account of *Ghairat* after finding the two deceased in a compromising position in the relevant field. The circumstances of this case go a long way in supporting the said stance of the appellant inasmuch as according to the FIR as well as the statements of the eyewitnesses produced by the prosecution there was an on-going suspicion regarding illicit relations between the two deceased; the place of occurrence was a field belonging to the appellant's family; and there was no habitat situated anywhere close to the said field. It was alleged by the prosecution that at the relevant time Mst. Qaim Khatoon deceased had been dragged to the place of occurrence so as to give the incident a colour of the two deceased having been found in a compromising position but the circumstances of the case did not support that theory. It has already been mentioned above that according to the site-plan of the place of occurrence there was no habitat situated anywhere close to the place of occurrence and no dragging marks either on the ground or on the body of the said deceased had been found during the post-mortem examination. The High Court had noticed in the impugned judgment passed by it that the parents of the female deceased had not pursued the case against the present appellant which hinted at a possibility of the appellant's version being true. The High Court had further observed that there was no conventional enmity between the parties and, thus, the only reason why the appellant could have committed the murders in issue was nothing but his having seen the two deceased together in an amorous pursuit.

4. The discussion made above leads us to an inescapable conclusion that the case in hand was indeed a case of grave and sudden provocation which could possibly attract the provisions of section 302(c), PPC as declared by this Court in the case of *Zahid Rehman v. The State* (PLD 2015 SC 77). The learned Deputy Prosecutor-General, Punjab appearing for the State has, however,

pointed out that in terms of the first proviso to section 302(c), PPC the case in hand was a case of murders committed in the name or on the pretext of honour and, thus, it was to be treated as a case attracting the provisions of sections 302(a) or 302(b), PPC and not those of section 302(c), PPC. We have attended to this aspect of the matter with care and have found that the words “in the name or on the pretext of honour” used in the first proviso to section 302(c), PPC are not without any significance or meaning. The said words indicate that a murder committed “in the name or on the pretext of honour” has to be a calculated murder committed with premeditation in the background of honour whereas the words used in the context of grave and sudden provocation in Exception 1 to the erstwhile section 300, PPC were “deprived of the power of self-control”. Such words used in Exception 1 to the erstwhile section 300, PPC catered for a situation which was not premeditated and had developed suddenly leading to grave provocation depriving a person of the power of self-control. Such different phraseology used by the legislature in these distinct provisions clearly indicates catering for different situations and, therefore, the words “in the name or on the pretext of honour” ought not to be mixed or confused with grave and sudden provocation leading to depriving of the power of self-control. This distinction between honour and grave and sudden provocation was clearly recognized by this Court in the case of *Muhammad Ameer v. The State* (PLD 2006 SC 283) and the same is manifestly attracted to the facts of the present case as well. It has already been found by us above that the case in hand was a case of grave and sudden provocation and honour only provided a backdrop to the same.

5. For what has been discussed above this appeal is partly allowed, the convictions and sentences of the appellant are set aside and they are substituted by his conviction on two counts of an offence under section 302(c), PPC with a sentence of rigorous imprisonment for twenty (20) years on each count and to pay a sum of Rs. 1,00,000/- (Rupees one hundred thousand only) to the heirs of each deceased by way of compensation under section

544-A, Cr.P.C. or in default of payment thereof to undergo simple imprisonment for six months on each count. The sentences of imprisonment passed against the appellant shall run concurrently to each other and the benefit under section 382-B, Cr.P.C. shall be extended to him. This appeal is disposed of in these terms.

Judge

Judge

Judge

Islamabad

27.09.2018

Approved for reporting.

*Arif*