

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Sardar Tariq Masood

JAIL PETITION NO.499 OF 2015

(On appeal against the judgment dated 8.09.2015 passed by the Lahore High Court, Lahore, in Criminal Appeal No.300-J/2013 and Murder Reference No.138/2011)

Muhammad Abbas *Petitioner*

Versus

The State *Respondent*

For the Petitioner : Mr. Tariq Mehmood Butt, ASC

For the State : Mirza Muhammad Usman, DPG

Date of hearing : 24.08.2020

ORDER

QAZI FAEZ ISA, J.

Criminal Miscellaneous Application No. 1636 of 2015: This jail petition has been filed with a delay of 57 days. For the reasons mentioned in the application, the delay is condoned and the petition is entertained for hearing.

Jail Petition No. 499 of 2015: On 20 February 2020 Mr. Tariq Mehmood Butt, learned Advocate of the Supreme Court, was appointed to represent the petitioner at State expense, as the petitioner was imprisoned and unrepresented.

2. Muhammad Asghar, the complainant, reported to the police that his sister was killed by her husband, the petitioner. The crime was witnessed by Muhammad Asghar (PW-9) and a neighbor Shahadat (PW-10). The crime was stated to have been committed at 1 am on 17 May 2009 and FIR No. 210 was registered at 5.50 am at Police Station Baraghar, District Nankana Sahib. The petitioner was tried by the learned Sessions Judge, Nankana Sahib and was convicted for the *qatl-i-*

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amd (murder) of his wife Mst. Saima Bibi (**‘the deceased’**) under Section 302(b) of the Pakistan Penal Code (**‘PPC’**) and sentenced to death. He was also directed to pay compensation of fifty thousand rupees to the legal heirs of the deceased and in default of payment to undergo six months simple imprisonment. Murder Reference, to confirm the death sentence, was submitted to the Lahore High Court, Lahore and the petitioner appealed his conviction and sentence. The learned judges of the High Court upheld the conviction of the petitioner but reduced his sentence of death to one of imprisonment for life because the petitioner had fired only once upon the deceased.

3. The learned Mr. Butt states that there is a contradiction in the testimonies of the eyewitnesses, namely, Muhammad Asghar (PW-9) and Shahadat (PW-10) with regard to the time when the police had arrived at the crime scene. He further contends that the deceased was a woman of bad character and the petitioner having seen her in the company of a man, was provoked and under grave and sudden provocation, had shot her once. He submits that such circumstances bring the petitioner’s case within the ambit of section 302(c) PPC and merits a lesser sentence. And, as the petitioner has remained imprisoned for eleven years and three months this period is sufficient punishment for the crime.

4. The learned Deputy Prosecutor General Punjab (**‘DPG’**) opposes the conversion of the conviction of the petitioner from section 302(b) to section 302(c) PPC. He refers to the petitioner’s statement in Court under section 342 of the Code of Criminal Procedure (**‘the Code’**) wherein he had admitted, *‘I myself produced weapon of offence before the police’* and that, *‘I had killed deceased due to Ghairat’*. The learned DPG states that the petitioner did not produce any evidence with regard to his wife being *‘a woman of bad character’* and also did not elect to testify on oath under section 340(2) of the Code. The learned DPG submits that the petitioner could not have been provoked by grave and sudden provocation since he had not seen or found his wife in a compromising position and three hours had elapsed since he had been seen in the company of the said man. Even if, for the sake of argument alone, it be accepted that the deceased was a woman of bad character it still did not entitle the petitioner to kill her as he could have divorced her, the learned DPG says concluding his submissions.

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5. We have heard the learned counsel and with their assistance examined the documents on record. The case against the petitioner was established by the testimony of two eyewitnesses, namely, Muhammad Asghar (PW-9) and Shahadat (PW-10). The contradiction mentioned by Mr. Butt, the learned counsel representing the petitioner, with regard to the time of the arrival of police is neither significant nor material. The crime took place in the dead of night and if there is a discrepancy as to the time when the police arrived, it is understandable as witnesses are not expected to keep an eye on the watch when faced with the shock of a killing they had witnessed. As regards the plea of the deceased allegedly being a woman of bad character there is nothing on record to suggest this. The petitioner also did not lead evidence to establish this nor repeated this allegation by opting to testify on oath under section 340(2) of the Code, undoubtedly, to avoid being cross-examined. Moreover, if the petitioner's statement under section 342 of the Code (which is not on oath and regarding which the petitioner cannot be cross-examined) is accepted in its entirety then too it does not make out a case of grave and sudden provocation, as demonstrated by the following extract therefrom:

'Q. Why this case and why the PWS deposed against you?

Ans. In fact Mst. Saima Bibi deceased was a woman of bad character. Prior to marriage with me, she was married with Shehzad cousin of complainant and said Shehzad divorced her due to her bad character. When Saima Bibi was married with me. She did not leave the said bad practice. I time and again made number of complaints to complainant and father of complainant about bad character of Saima Bibi deceased. Said Saima Bibi often left the house without my permission and did not return throughout the day. Complainant and father of complainant also attempted to reprimand Saima Bibi to leave the immoral life. On the day of occurrence at about 10.00 P.M I was coming back to my house on tractor and saw Saima Bibi deceased while going alongwith a stranger on the way. I brought back Saima deceased to my house, whereas said stranger fled away. I tried my level best and reprimanded Saima Bibi to leave immoral life, but she did not agree for the same. I could not control my patience and temperament and killed Saima Bibi my wife due to her bad character. I myself appeared before the police and told the whole story to the I.O. PWS were not present at the time of occurrence and deposed against me due to their close relationship with deceased.

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Q. Have you anything to say?

Ans. I had killed deceased due to *Ghairat*.

Q. Will you produce evidence in defence?

Ans. No.

Q. Will you appear on oath as required U/S 340(2) Cr.P.C.?

Ans. No.'

What the petitioner's section 342 statement discloses is that he was familiar with the deceased's character, yet he elected to marry her but realized that she had not reformed. The petitioner had seen his wife on the fateful day with a stranger but did not note any impropriety in her conduct or that of the man she was with. If what is alleged by the petitioner is accepted to be true then too it will not bring his case within the ambit of section 302(c) PPC before the proviso was added to it (discussed below).

6. In the case of *Ali Muhammad v The State*¹ (**the Ali Muhammad case**) this Court had held that cases under section 302(c) PPC were those which were covered by the five listed *Exceptions* to the erstwhile section 300 PPC². *Exception 1* to the erstwhile section 300 stipulated that, '*culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation...*'. However, *grave and sudden provocation* is not to be considered subjectively, that is by accepting what was the state of mind of the offender, which in the present case was a mere suspicion, but is a question of fact to be determined by objective criteria as the *Explanation to Exception 1*, stipulates: '*Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact*' [emphasis added]. In this case the petitioner had merely seen his wife in the company of a man, without observing indecent or even improper behaviour on either of their parts, thus there was no *fact* to amount to *grave and sudden provocation*.

¹ PLD 1996 Supreme Court 274.

² Ibid, pages 290-291.

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7. In the case of *Faiz v State*³ (**the Faiz case**), which was decided by five learned judges⁴ of this Court, it was determined how to consider the accused's statement recorded under section 342 of the Code, a statement which is not on oath and on which the accused is not cross-examined. This Court considered all earlier decisions and held, that:

In *Balmakund*⁵ case a reference to Full Bench of the High Court became necessary because the Judges hearing the case found the exculpatory part of the statement of the accused to be so unworthy of belief that no Court could act upon them. The Full Bench noted that during the last one hundred years the following two rules of criminal jurisdiction have been consistently observed without any attempt to engraft as exception:

- (a) where there is other evidence a portion of the confession may, in the light of that evidence, be rejected while acting upon the remainder with the other evidence.
- (b) where there is no other evidence, the Court cannot accept the inculpatory element and reject the exculpatory element as inherently incredible.

In the light of *Rahim Bux*⁶ also it was held that where the conviction is based entirely on the statement of the accused then that statement should be taken into consideration in its entirety

9. The above view is based on sound reason. The accused is questioned only on matters found incriminating against him in the evidence. His reply or narration is not tested or completed either by cross-examining him or by putting him further questions.⁷

In the present case the conviction of the petitioner was not based on his statement alone. Two eyewitnesses had seen him commit the murder, both of whom were subjected to cross-examination but maintained what they had seen and remained consistent with one another (save the minor discrepancy noted, and addressed, above). The eyewitnesses' testimony that the petitioner had fired on the deceased with a pistol, was further supported by the postmortem report (exhibits PE and PE/1) which showed where the bullet had hit the body. Dr. Najma Perveen (PW-7) had performed the postmortem of the deceased and had testified that, 'Hole

³ 1983 SCMR 76.

⁴ Judgment was authored by Shafi-ur-Rehamn, J.

⁵ AIR 1931 Allahabad 1.

⁶ PLD 1952 Federal Court 1.

⁷ 1983 SCMR 76, 79-80.

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marks were available on the Kameez' which corresponded with the entry and exit wounds and confirmed what the witnesses had stated. During the postmortem, 'A fetus about 12 to 14 weeks' was also discovered by the doctor, who was not cross-examined by the petitioner and his counsel, despite having been provided an opportunity to do so. The petitioner had also not disowned the paternity of the fetus in his section 342 statement. Therefore, the present case came within category (a) of the *Faiz* case and as such the petitioner's attempt to provide a justification for the killing is inconsequential.

8. There is another aspect to this case. The law specifically states that under no circumstances can a killing *in the name or under the pretext of honour* be brought within the ambit of section 302(c) PPC. A proviso was added after clause (c) of section 302 in the year 2005⁸ to this effect. This proviso was then replaced by another proviso in the year 2016⁹ which when read with the definition of *fasad-fil-arz*¹⁰ reiterated that killing *in the name or under the pretext of honour* cannot be brought within the ambit of section 302(c) PPC. Section 302 PPC, both the said provisos and the definition of *fasad-fil-arz* are reproduced hereunder:

302. Punishment of *qatl-i-amd*.- Whoever, commits *qatl-i-amd* shall, subject to the provisions of this Chapter be-

- (a) punished with death as *qisas*;
- (b) 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; or
- (c) punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the injunctions of Islam the punishment of *qisas* is not applicable.

Proviso added in the year 2005:

Provided that nothing in this clause shall apply to the offence of *qatl-i-amd* if **committed in the name or on the pretext of honour** and the same shall fall within

⁸ Section 3 of the Criminal Law (Amendment) Act, 2004 (Act No. I of 2005) published in the Gazette of Pakistan, Extraordinary, Part I, on 10 January 2005.

⁹ Section 3 of the Criminal Law (Amendment) (Offences in the Name or on pretext of Honour) Act, 2016 (Act No. XLIII of 2016) published in the Gazette of Pakistan, Extraordinary, Part I, on 21 October 2016.

¹⁰ Section 2 of the Criminal Law (Amendment) (Offences in the Name or on pretext of Honour) Act, 2016 (Act No. XLIII of 2016) published in the Gazette of Pakistan, Extraordinary, Part I, on 21 October 2016.

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the ambit of clause (a) or clause (b), as the case may be. [emphasis added]

The above proviso was substituted with the following proviso in the year 2016:

Provided that nothing in clause (c) shall apply where the principle of *fasad-fil-arz* is attracted and in such cases only clause (a) or clause (b) shall apply.

The definition of *fasad-fil-arz* was also introduced in the year 2016 in section 299(ee) PPC, as under:

(ee) **“*fasad-fil-arz*”** includes the past conduct of the offender or whether he has any previous conviction or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience or if the offender is considered a potential danger to the community or if the offence has been **committed in the name or on the pretext of honour**. [emphasis added]

The aforesaid definition of *fasad-fil-arz* includes offences, ‘*committed in the name or on the pretext of honour*’. Therefore, while substituting the said proviso its effect was retained by the 2016 proviso. The crime in this case was committed in the year 2011, at a time when the proviso existed. Therefore, the murder committed by the petitioner, which he states he had committed in the name of honour (*ghairat*), cannot be brought within the ambit of section 302(c) PPC, even if any of the *Exceptions* to the erstwhile section 300 PPC were attracted.

9. We would be failing in our duty if we do not mention the case of *Muhammad Qasim v State*¹¹ (**‘the Muhammad Qasim case’**) wherein a three-member Bench of this Court decided an appeal in which the appellant had killed his sister-in-law and her alleged paramour. The Court observed that, ‘*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’*” (as stated by the appellant in his statement recorded under section 342 of the Code). The Court held, that¹²:

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), P.P.C. 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

¹¹ PLD 2018 Supreme Court 840.

¹² Ibid, page 844 per Asif Khan Saeed Khosa, J.

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the provisions of sections 302(a) or 302(b), P.P.C. and not those of section 302(c), P.P.C. 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), P.P.C. 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, P.P.C. were “deprived of the power of self-control”. Such words used in Exception I to the erstwhile section 300, P.P.C. 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.

This judgment effectively created another exception to the erstwhile section 300 PPC, that is if an offender kills in the name or pretext of *honour* the crime comes within the ambit of section 302(c) PPC attracting a lesser punishment. The judgment says that this was done by following the *Muhammad Ameer v State*¹³ (**‘the Muhammad Ameer case’**). However, in the *Muhammad Ameer* case the conviction of the offender, who had killed in the name of *honour*, was upheld under section 302(b) PPC and the submission, ‘*that it was a case of lesser punishment under section 302(c), P.P.C.*’ was rejected. In the *Muhammad Ameer* case the crime had also been committed before the insertion of the proviso; the proviso which specifically excluded murders committed in the name or on the pretext of *honour* to be treated as crimes under section 302(c) PPC.

10. The case of *Ali Ahmad v State*¹⁴ (**‘the Ali Ahmad case’**) may also be mentioned because it was also a case of a killing on account of *honour*; the accused killed his sister and her paramour when he had found them

¹³ PLD 2006 Supreme Court 283.

¹⁴ PLD 2020 Supreme Court 201.

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in a compromising position. The Trial Court convicted the accused under section 302(c) PPC and sentenced him to ten years rigorous imprisonment. However, the High Court substituted his conviction and convicted him under section 302(b) PPC and increased his sentence to imprisonment for life. But, this Court accepted the appeal and restored the conviction under section 302(c) PPC, however, increased the ten years rigorous imprisonment imposed by the Trial Court to fifteen years rigorous imprisonment. In the *Ali Ahmad* case this Court found that, '*the prosecution has failed to prove the case against the appellant beyond reasonable doubt, on the basis of its evidence*'¹⁵ and relied on the offender's own statement under section 342 of the Code to convict him. Therefore, the *Ali Ahmad* case came under category (b) mentioned in the *Faiz* case, that is, '*where there is no other evidence, the Court cannot accept the inculpatory element and reject the exculpatory element as inherently incredible*'. Therefore, this case is distinguishable.

11. In the *Muhammad Qasim* case the *Explanation to Exception 1* had also not been considered. The said *Explanation* provided, that, '*Whether the provocation was grave and sudden ... is a question of fact*'. An accused simply asserting that he had been gravely and suddenly provoked would not suffice. The proviso to section 302(c) PPC had been inserted to attend to the menace of *honour* killings. The 'Statement of Objects and Reasons'¹⁶ introducing the Bill noted and was concerned with the large number of *honour* killings in Pakistan and the need to address, '*the loopholes and lacunae in the existing laws is essential in order to prevent these crimes from being repeatedly committed. The Bill is designed to achieve the said objective*' which concerns were not considered in the *Muhammad Qasim* case.

12. Another provision which escaped the attention of the learned Judges in the *Muhammad Qasim* case was section 338-F of the PPC, which is reproduced hereunder:

In the interpretation and application of the provisions of this Chapter, and in respect of matters ancillary or akin thereto,

¹⁵ Ibid, page 219X per Mansoor Ali Shah, J.

¹⁶ *Statement of Objects and Reasons*, by Senator Farhatullah Babar, Member-in-Charge, introducing the Bill to enact the law 'called the Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act, 2016'.

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the Court shall be guided by the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

The referred to 'Chapter' is Chapter XVI of the PPC which is titled 'Of Offences Affecting the Human Body' and includes section 302 PPC.

13. For Muslims the Holy Qur'an is the word of God. Killing a person is abhorrent and a grave sin¹⁷. The Holy Qur'an also does not mandate the punishment of death for the offence of adultery¹⁸. If the petitioner suspected his wife of infidelity he should have followed the path prescribed by the Holy Qur'an and the law of Pakistan to resolve the matter. As mandated by Almighty Allah the petitioner should have sworn an oath four times that he speaks the truth and on the fifth invoke the curse of Almighty Allah on himself and his wife too should have sworn an oath four times and on the fifth invoke Almighty Allah's wrath upon herself, and if she did so the matter would have stood resolved. The translation of the said verses is reproduced¹⁹:

And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth;

And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie.

But it would avert the punishment from the wife, if she bears witness four times (with an oath) By Allah, that (her husband) is telling a lie;

And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth.

If it were not for Allah's grace and mercy on you, and that Allah is Oft-Returning, full of Wisdom - (you would be ruined indeed).

The aforesaid Qura'nic methodology is referred to as *li'an* and is also contained in section 14 of the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance, 1979²⁰. However, by appointing himself as the adjudicator the petitioner took his wife's life, life which is sacred²¹. In doing so the

¹⁷ Holy Qur'an, *surah An-Nisa* (4) verse 93 and *surah Al-Maidah* (5) verse 32.

¹⁸ Holy Qur'an, *surah An-Nisa* (4) verse 15 and *surah An-Nur* (24) verse 2.

¹⁹ Holy Qur'an, *surah An-Nur* (24) verses 6 to 10.

²⁰ Published in the Gazette of Pakistan, Extraordinary, Part I, on 9 February 1979.

²¹ Holy Qur'an, *surah Al-An'am* (6) verse 151.

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petitioner arrogantly denied Almighty Allah's commandment and the law. Almighty's wrath is upon '*... those who reject Our verses and treat them with arrogance, they are companions of the Fire, to dwell therein forever*'²².

14. With regard to an allegation made by a husband against his wife the aforesaid methodology (*li'an*) is prescribed, however, in all other cases Almighty Allah stipulates a very high standard of proof to sustain a charge of adultery which is by producing four witnesses, failing which he is to be flogged; '*And those who accuse "muh'sanat" (married or honourable women) and produce not four witnesses flog them*'²³. It is thus clear that such allegations must not be made lightly and on the basis of mere suspicion. '*Woe to every scandalmonger and slanderer*'²⁴. Making a false allegation of adultery is an offence under section 496C PPC and also constitutes an offence of *qazf* under the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance, 1979²⁵. The offence of murder and the offences of false allegation of adultery are separate and distinct offences. The woman or the girl who is killed in the name or pretext of honour has no chance to redeem her honour. She is deprived of both her life and reputation.

15. The petitioner who professes to be a Muslim did not follow the methodology commanded by Almighty Allah and the law of Pakistan to resolve his suspicions about his wife. The petitioner then couched his criminal and un-Islamic conduct by stating he became enraged to see his wife in the company of a man and on account of his *ghairat* he killed her. Almighty Allah loves those who amongst others restrain their anger²⁶. To become enraged is not an admirable trait nor is *ghairat*. The word *ghairat* nor the Arabic *ghairatun* is used in the Holy Qur'an. The Holy Qur'an also does not permit killing on the ground of adultery, let alone on the ground of *ghairat* (*ghairatun* in Arabic), nor prescribes a lesser punishment for such killings. The law of Pakistan also does not permit this. It is inappropriate to interpret Chapter XVI of the PPC, which includes section 302 PPC, by disregarding the requirements of Section 338-F PPC, which necessitates seeking guidance from the Holy Qur'an and Sunnah. Reference may also be made to Article 227 of the

²² Holy Qur'an, *surah Al-A'raf* (7) verse 36.

²³ Holy Qur'an, *surah An-Nur* (24) verse 4.

²⁴ Holy Qur'an, *surah Al-Humazah* (104) verse 1.

²⁵ Published in the Gazette of Pakistan, Extraordinary, Part I, on 9 February 1979.

²⁶ Holy Qur'an, *surah Al-Imran* (3) verse 134.

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Constitution of the Islamic Republic of Pakistan (**‘the Constitution’**) which mandates that, ‘*All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur’an and Sunnah*’.

16. Pakistan has one of the highest, if not the highest per capita *honour* killings in the world and predominantly the victims are women. By stating that murder was committed on the pretext of *ghairat* (*honour*) the murderer hopes to provide some justification for the crime. It may also elevate the murderer’s social status with those not familiar with what Almighty Allah Commands in the Holy Qur’an. This is unfortunate, more so because there is no *honour* in such killings. Parliament was rightly concerned with the prevalence of such killings and enacted legislation to dissuade, if not stop such crimes. It did so by ensuring that offenders do not avail of the benefit of section 302(c) PPC, for which the maximum punishment is twenty-five years imprisonment but which does not prescribe a minimum punishment. Parliament specifically stipulated that such crimes attract clause (a) or clause (b) of section 302 PPC, for which the punishment is either death or imprisonment for life. However, the *Muhammad Qasim* case relied on certain obiter observations in the *Muhammad Ameer* case and after creating another exception to the erstwhile section 300 PPC this exception was applied to bring the offender’s case within the ambit of section 302(c) PPC, even though the *Muhammad Ameer* case had held that an *honour* crime did not come within the ambit of section 302(c) PPC. The language of the proviso read with the definition of *fasad-fil-arz* is clear. If for the sake of argument it is assumed that there was some ambiguity in the proviso, the *statement and objectives* introducing it had it removed. The provisos (the one inserted in the year 2005 or the one in year 2016) did not intend to nor created another exception for one who kills *in the name or pretext of honour* in the erstwhile section 300 PPC, nor did it state that such crimes came within the ambit of section 302(c) PPC; on the contrary it said the opposite.

17. It may be clarified that we have relied on the law with regard to statement of the accused recorded under section 342 as expounded by this Court in the *Faiz* case, which was a judgment by a five-member Bench, and not on the *Muhammad Qasim* case, a judgment which was by

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a three-member Bench. We have also not relied on the obiter observations of another three-member Bench in *Muhammad Ameer* case. In the *Muhammad Qasim* case the mandatory requirement to seek guidance from the Holy Qur'an and Sunnah, stipulated in 338-F PPC, was not done, therefore, *Muhammad Qasim* can not be categorized as having decided *a question of law or is based upon or enunciates a principle of law*²⁷.

18. It needs restating that killing is never honourable. And, a murder should not be categorized as such. It will help deter such killings if the term *ghairat* is not used to describe them. It is also inaccurate to translate *ghairat* into English as *honour*. The word *ghairat* does not have an exact English equivalent. A more accurate translation of the trait of *ghairat* would be 'arrogance' and the one with such trait is an 'arrogant' person. Almighty Allah tells us that Hell is the abode of the arrogant (*mutakabirina*)²⁸. *'Those who disdained to worship Him (Allah) and were proud (takbaru) He (Allah) will punish them with a painful torment*²⁹. And, *'those who reject Our verses and treat them with arrogance, they are companions of the Fire, to dwell therein forever*³⁰.

19. Extremism and violence has permeated through Pakistani society and it has been brutalized. Not enough is done to ensure that crimes against women do not take place. Respect and language play an important role to bring about a positive change in society and using terminology such as *ghairat* or *honour* is not helpful. The Constitution mandates, that *'tolerance and social justice, as enunciated by Islam, shall be fully observed*³¹. Almighty Allah commends humility³², loves kindness³³ and calls upon his slaves to overlook human faults and cultivate gracious forgiveness³⁴. One of the Principles of Policy set out in the Constitution requires that, *'Steps shall be taken to ensure full participation of women in all spheres of national life*³⁵. Therefore, adverse

²⁷ Article 189 of the Constitution of the Islamic Republic of Pakistan.

²⁸ Holy Qur'an, *surah An-Nahl* (16) verse 29 and *surah Az-Zumar* (39) verse 72.

²⁹ Al Qur'an, *surah An-Nisa* (4) verse 173.

³⁰ Al Qur'an, *surah Al-A'raf* (7) verse 36.

³¹ Preamble and Objectives Resolution of the Constitution of the Islamic Republic of Pakistan which is required to be given 'effect' to (per Article 2A).

³² Holy Qur'an, *surah Al-A'raf* (7) verse 94.

³³ Holy Qur'an, *surah Al-Ma'idah* (5) verse 13.

³⁴ Holy Qur'an, *surah Al-Hijr* (15) verse 85.

³⁵ Article 34 of the Constitution of the Islamic Republic of Pakistan.

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assumptions, as made in the present case, cannot be permitted. Another Principle is that, *'The State shall protect the marriage, the family, the mother and the child'*³⁶. When women and girls are not protected but rather killed in the name or on the pretext of honour the family is destroyed.

20. In the present case the learned Sessions Judge, after considering the testimony and other evidence on record, had determined that the petitioner had killed his wife. The petitioner's conviction was upheld by the learned Judges of the High Court but they reduced his sentence of death to one of imprisonment for life. The two concurrent findings of guilt against the petitioner are supported by evidence on record which we have also independently examined. The High Court reduced the petitioner's sentence to imprisonment for life, which was the lesser one of the two prescribed punishments. There is no reason justifying the grant of leave, which is declined, and, consequently, the petition is dismissed.

Judge

Judge

Bench-II
Islamabad
24 August 2020
(Atif)

Approved for Reporting

³⁶ Article 35 of the Constitution of the Islamic Republic of Pakistan.