THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Present;
Justice Tasneem Sultana
Justice Suresh Kumar

Criminal Revision Application No. D- 72 of 2019
a/w Crl. Jail Appeal No.S- 105 of 2019

Applicant	**:**	Muhammad Ismail Dahar, through Mr. Rukhsar Ahmed Junejo, Advocate
Respondent No.1	:	Moula Bux Dahar, Through M/s Achar Khan Gabol and Ghulam Ali Bozdar, Advocates, who file vakalatnama today.
Respondents 2 to 4:		Ali Sher and 02 others (Nemo)
Respondent No.5	:	The State through Mr. Aftab Ahmed Shar, Additional PG for the State
Date of Hearing	**:**	**12.11.2026**
Date of judgment	**:**	**12.11.2026.**

J U D G M E NT

TASNEEM SULTANA, J.— Through this Criminal Revision Application under sections 435 and 439, Cr.P.C., the applicant seeks enhancement of the sentence awarded to respondents Moula Bux, Ali Sher, Manthar and Hafeezullah from imprisonment for life to death. The respondents were convicted and sentenced vide judgment dated 26.06.2019, passed by the learned Additional Sessions Judge, Moro, in Sessions Case No.379 of 2009, arising out of Crime No.302 of 2009, registered at Police Station Moro. Through the impugned judgment, the learned trial Court awarded imprisonment for life on two counts, besides compensation and sentences for the other offences.

2. Briefly, the prosecution case is that on 14.09.2009, complainant Muhammad Ismail, his father Muhammad Ibrahim, his cousin Khuda Bux, his minor son Muhammad Shakeel, and witnesses Ghulam Mustafa and Nishan Ali were returning from New Jatoi on two motorcycles. The complainant and the two witnesses stopped near Thorha Mori, while Muhammad Ibrahim, Khuda Bux and Muhammad Shakeel proceeded ahead. At about 4:30 p.m., six armed persons allegedly emerged from the sugarcane crop and intercepted them. Ali Ahmed and Shadi Khan were attributed firing upon Muhammad Ibrahim; Moula Bux and Hafeezullah upon Khuda Bux; and Manthar and Ali Sher upon Muhammad Shakeel. All three victims sustained firearm injuries and died at the spot. The occurrence was attributed to a dispute over matrimonial affairs. The FIR was registered at 6:30 p.m. on the same day. Upon

conclusion of the trial, the learned trial Court, through judgment dated 18.06.2016, sentenced Moula Bux to death and Ali Sher, Manthar and Hafeezullah to imprisonment for life. In the appeals and confirmation reference arising from that judgment, this Court, vide judgment dated 10.04.2019, set aside the conviction and sentence and remanded the matter with directions to record the appellants' statements under section 342, Cr.P.C., afresh and rewrite the judgment after hearing learned counsel for the parties. Thereafter, the learned trial Court recorded fresh statements of the respondents, examined the defence witnesses produced by them and passed the impugned judgment.

3. Learned counsel for the applicant contends that the prosecution established its case through the ocular account, medical evidence and recovery; that three persons, including a minor child, were killed in a deliberate armed attack; that specific firing roles were attributed to the respondents; that the recovery of the Kalashnikov from Moula Bux was supported by a positive ballistic report; that Moula Bux had previously been sentenced to death on the same prosecution evidence; and that the circumstances relied upon by the learned trial Court did not justify the award of imprisonment for life.

4. Learned Additional Prosecutor General submits that, prima facie, a case for issuance of notice to show cause why the sentences should not be enhanced is made out; that the evidence of the medical officer and the Tapedar was already available when the case was decided earlier; that the matter was remanded with directions to record statements under section 342, Cr.P.C., and rewrite the judgment; and that the learned trial Court exceeded the scope of the remand by awarding imprisonment for life to Moula Bux instead of the death sentence previously awarded to him. In support of his submissions, he relies upon *Abdul Rauf alias Kala and another v. The State and others* (2026 SCMR 1272) and *Khuda Bakhsh v. The State* (**2026 SCMR 1532**).

5. Conversely, learned counsel appearing for respondent Moula Bux opposes enhancement and submits that the names of respondents Ali Sher, Manthar and Hafeezullah were placed in column No.2 of the report under section 173, Cr.P.C., by the investigating officer; that the learned Judicial Magistrate accepted the challan and took cognizance, whereas those respondents were subsequently joined upon the complainant's application under section 193, Cr.P.C.; that the medical officer stated in cross-examination that the injuries were caused by pellets and not bullets; that the alleged matrimonial motive was not proved; that the crime empties were sent for forensic examination after a delay of about thirty-four days and after recovery of the weapon from Moula Bux; that P.C. Fida Hussain, whom learned counsel identifies as the official responsible for dispatching the weapon, was not examined; that the Tapedar's evidence did not establish the positions attributed to the accused and the

complainant; and that the delay in registration of the FIR and the infirmities in the prosecution evidence do not warrant enhancement. He refers to the authorities reported as 2020 SCMR 305, 2019 SCMR 1306, 2016 SCMR 2073 and 2017 SCMR 524.

6. Heard. Record perused.

7. The appeal against the respondents' conviction is pending. The record is, therefore, being examined only to the extent necessary to determine whether the sentence awarded warrants enhancement. The observations made for this purpose do not constitute a determination of the correctness of the conviction or of the grounds raised in the pending appeal.

8. Section 302(b), P.P.C., provides for death or imprisonment for life as punishment for the offence. The finding of guilt does not, by itself, dispense with the separate consideration required for determining the appropriate sentence. Consequently, proof of the charge cannot, on its own, furnish a ground for enhancement. The question in the present proceedings is whether sufficient grounds have been shown to warrant interference with the discretion exercised in awarding imprisonment for life.

9. In *Riffat Hussain and another v. Mst. Zahida Bibi and others* (2026 SCMR 1139), the Honourable Supreme Court separately considered Criminal Petition No.1487 of 2020, through which enhancement of sentence was sought. Having considered the nature of the occurrence, the role attributed to the respondent and the reasons for awarding imprisonment for life, the Honourable Supreme Court declined enhancement, observing:

> "The discretion exercised by the learned High Court in this regard does not appear to be arbitrary or perverse so as to warrant interference by this Court. Therefore, leave is refused and the petition is dismissed."

10. In *Fida Hussain alias Saboo v. The State* (**2025 SCMR 993**), the Honourable Supreme Court set aside enhancement from imprisonment for life to death and restored the sentence awarded by the trial Court, observing:

> "There must be a gross misreading or non-reading of evidence or there must exist some substantial point or it must clearly appear to be a case of miscarriage of justice so as to justify interference. The power to enhance a sentence already awarded by a trial court should be sparingly exercised and the sentence should be enhanced only if the failure to do so would lead to a grave and serious miscarriage of justice. This Court has emphasized that the mere fact that the court considering enhancement of the sentence may have imposed a

> harsher sentence would not be a sufficient reason for exercising the power to enhance an awarded sentence."

The judgment reaffirmed the principle stated in *Haji Muhammad Ilahi and others v. Muhammad Altaf alias Tedi and others* (**2011 SCMR 513**).

11. In *Azhar Hussain v. The State and others* (**2022 SCMR 1907**), the Honourable Supreme Court maintained the conviction on the basis of the ocular account supported by medical evidence, while upholding the conversion of the sentence of death into imprisonment for life upon consideration of non-recovery of the weapon and failure to prove motive. The complainant's petition seeking enhancement was also dismissed. The authority illustrates that circumstances insufficient to disturb a conviction may nevertheless remain relevant to the choice of sentence.

12. The learned Additional Prosecutor General submits that the learned trial Court exceeded the scope of the remand by awarding imprisonment for life to Moula Bux. However, the judgment dated 10.04.2019 expressly set aside both the conviction and sentence. The learned trial Court was thus required to pass a fresh judgment, including a determination of the appropriate sentence. It was not directed to retain the punishment previously awarded to Moula Bux. The question is, therefore, whether the sentence imposed through the impugned judgment warrants interference on its own merits, rather than whether it differs from the sentence contained in the judgment that had been set aside.

13. The prosecution attributed the occurrence to a matrimonial dispute. The FIR refers to such a dispute with Ali Ahmed Dahar and his party. The complainant and Ghulam Mustafa gave particulars concerning the marriage of Moula Bux's sister and the suspicion allegedly entertained against the complainant's side. The learned trial Court treated matrimonial enmity as established. However, examination of the fresh statements recorded under section 342, Cr.P.C., dated 15.05.2019, reveals that the alleged motive was not put to any of the four respondents for explanation. The general question as to why the witnesses had deposed against them did not confront them with the alleged marriage or the resentment said to have arisen from it. The alleged motive cannot, therefore, be relied upon against the respondents as a ground for enhancing their sentences.

14. In *Qaddan and others v. The State* (**2017 SCMR 148**), the Honourable Supreme Court held that the alleged motive, having not been put to the accused during their examination under section 342, Cr.P.C., could not be considered against them. That circumstance, together with the other factors appearing in the case, supported reduction of the sentences of death to imprisonment for life.

15. As regards Ali Sher, Manthar and Hafeezullah, no weapon was recovered from them. Non-recovery, taken alone, does not displace the specific firing roles attributed to them. For the question of sentence, however, non-recovery must be considered together with the exclusion of the alleged motive from consideration. Considered together, these circumstances do not warrant enhancement of their sentences to death.

16. In the case of Moula Bux, a Kalashnikov was allegedly recovered at his instance, and the ballistic report connected thirty-nine crime empties with that weapon. The crime empties were secured on 14.09.2009; Moula Bux was arrested on 24.09.2009; and the weapon was allegedly recovered on 28.09.2009. The examination report refers to the forwarding letter dated 05.10.2009 and records receipt of the articles on 17.10.2009. Thus, the crime empties were forwarded after the arrest of Moula Bux and recovery of the weapon, and were received by the laboratory more than a month after their collection.

17. In *Sohail Akhtar and another v. The State and another* (**2024 SCMR 67**), the Honourable Supreme Court observed:

> "…….The High Court through the impugned judgment has rightly termed the recovery as inconsequential keeping in view the fact that crime empties secured from the place of occurrence were dispatched to the Forensic Science Laboratory after arrest of the petitioner and altered the penalty of death into imprisonment for life, a sentence justified in the circumstances of the case."

The petition seeking enhancement was consequently dismissed.

18. The investigating officer admitted that he had not made an entry of the Kalashnikov in Form XIX, although he stated that the weapon had been kept in the strong room before being sent to the ballistic expert. The report records that the seals were intact upon receipt. That circumstance supports the condition of the parcels when received, but does not answer the omission concerning the record of custody before transmission. The missing entry does not itself establish tampering. For the limited purpose of enhancement, however, it must be considered together with the forwarding of the crime empties after the weapon had come into police possession. In light of *Sohail Akhtar* (supra), these circumstances require caution in treating the positive report as a ground for substituting death for imprisonment for life. Considered with the exclusion of the alleged motive from consideration, they do not justify enhancement of Moula Bux's sentence to death.

19. The authorities relied upon by the learned Additional Prosecutor General have also been considered. In *Abdul Rauf alias Kala* (supra), the Honourable Supreme Court emphasized the gravity of the offence, proportionality and the circumstances of

the particular case, and explained that the existence of mitigating factors does not invariably bar the death sentence. In *Khuda Bakhsh* (supra), the Court maintained the death sentence for deliberate multiple murders, including that of a minor child, upon finding that the circumstances did not justify the lesser punishment. The nature of the occurrence must be assessed together with the circumstances relevant to the sentence of each respondent.

20. In view of the above facts and circumstances, this Court, in exercise of its revisional jurisdiction, finds no justification for interference with the sentences awarded by the learned trial Court. Consequently, the instant Criminal Revision Application is dismissed. The pending appeal against conviction shall be decided on its own merits, uninfluenced by any observation made in this judgment.

21. In **Crl. Jail Appeal No.S- 105 of 2019**, learned Additional Prosecutor General and learned counsel for the appellants pointed out that Appellant No.1 Moula Bux had been released before completing fifteen years of substantive imprisonment. The jail roll was accordingly summoned, which reflects that he was released on 03.04.2024 after undergoing fourteen years, six months and six days of substantive imprisonment, including the undertrial period, with remission of eleven years and twenty-four days. In view thereof, a show-cause notice was ordered to be issued to the Senior Superintendent, Central Prison and Correctional Facility, Sukkur, to explain the basis of his release. The Senior Superintendent has sought time to submit his reply. Three days' time is allowed. The explanation regarding the respondent's release shall be considered separately upon receipt of the reply. This Crl. Jail Appeal to be fixed before the Single Bench, as per roster.

Office to place signed copy of this order in the connected captioned matter.

JUDGE

JUDGE

Ahmed