IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Revision Application No.D-123 of 2019

Date	Order with signature of Judge

Present;
Mr. Justice Khadim Hussain Tunio,
Mr. Justice Ali Haider 'Ada'.

Applicant
Waseem Abbas Khoja: Through Mr. Khan Muhammad SangiAdvocate.

The State : Through Mr. Zulfiqar Ali Jatoi, Addl.P.G. Sindh.

Criminal Jail Appeal No.S-280 of 2019

Appellant
Muhammad Riaz Ansari : Through Mr. BadaruddinMemon, associate of Mr. Shabir Ali Bozdar, Advocate.

The State : Through Mr. Zulfiqar Ali Jatoi, Addl.P.G. Sindh.

Date of hearing. **15.4.2025**

Date of decision. **07.5.2025**

J U D G M E N T

Ali Haider 'Ada',J- Criminal Revision No. D-123 of 2019 was filed by the applicant/complainant against the judgment dated 31st October 2019, delivered by the learned 1st Additional Sessions Judge, Sukkur (the Trial Court), in Sessions Case No. 594 of 2013 (Re: The State v Muhammad Riaz), arising from Crime No. 124 of 2013, registered at Police Station A-Section, Sukkur. Through this judgment, the accused, Muhammad Riaz (the appellant), was convicted under Section 324 of the PPC and sentenced

to ten years' rigorous imprisonment and a fine of Rs. 100,000; in default of payment, he was to serve an additional one month of simple imprisonment. Additionally, the appellant was convicted under Section 337-C of the PPC and sentenced to ten years' imprisonment as Ta'zir, and under Section 337-F(ii) of the PPC, sentenced to three years' imprisonment as Ta'zir, with the benefit of Section 382-B of the Cr.P.C. The appellant, Muhammad Riaz, challenged his conviction and sentence through Criminal Appeal No. S-280 of 2019. Although both proceedings arose from the same crime number, the Criminal Revision was filed by the complainant seeking an enhancement of the sentence from the awarded punishment to the death penalty, while the appellant sought acquittal from his conviction and sentence. On 26th August 2020, this Court issued an order directing that both matters be heard together.

2. The prosecution's case is that on 07.09.2013, construction work on the complainant's house was underway when the complainant's father, Hussain Ali, visited the site to inspect it. At approximately 09:00, the accused (the appellant), a vegetable cart vendor, attacked Hussain Ali with a knife upon seeing him. The incident was witnessed by the complainant and his brother, Kashif Ali. As a result of the assault, Hussain Ali collapsed, and upon noticing the complainant's group, the accused fled. Hussain Ali, having sustained serious injuries to his chest, both sides of his ribs, and his right foot, was immediately taken for medical treatment. After obtaining a medical treatment letter, the complainant approached the relevant police station and lodged an FIR on 8th September 2013, stating that the appellant committed the offence without any apparent reason. Subsequently, Hussain Ali was hospitalized and later transferred to Aga Khan Hospital, Karachi, for further treatment. However, he died on 19th January 2014. A death certificate was issued by Fatimiyah Hospital, Karachi.

3. During the course of investigation, the appellant was arrested on 10-09-2013. It is alleged by the prosecution that, on 16-09-2013, a knife was recovered at the instance of the appellant. Upon completion of the investigation, the accused was sent up for trial. As the offence was exclusively triable by the Court of Sessions, the matter was accordingly referred by the Magistrate having jurisdiction to the Sessions Court, where it was subsequently entrusted to the learned trial court for disposal.

4. The police papers were supplied to the appellant and the charge was initially framed under Sections 324, 337-F(ii), and 337-D, PPC on 24-02-2014. However, during the course of trial, the injured was died, so, the charge was altered to an offence under Section 302 PPC on 14-04-2016.

5. The prosecution, in support of its case, first examined PW Waseem Abbas, the complainant, who produced a copy of the FIR, the verification report of the death certificate, the death certificate itself, and relevant medical documents. Thereafter, PW Muhammad Kashif was examined, who produced the memo of injury, the site inspection memo, and the memo of recovery of the knife. The prosecution next examined Dr. Shahid Iqbal, the medical officer who had examined the injured; during his testimony, he produced the final medical certificate and the medical treatment letter. Subsequently, Sub-Inspector Muhammad Saeed, the Investigating Officer, was examined, and he produced the relevant entries from the Roznamcha, the memo of arrest, the chemical examiner's report, and a supplementary statement recorded from the complainant. Lastly, the prosecution examined ASI Qutub Ali Shah, the author of the FIR. After the completion of the oral and documentary evidence, the learned State Counsel submitted a statement formally closing the prosecution's case.

6. The statement of the appellant was recorded as provided under Section 342, Cr.P.C., wherein the appellant denied the allegations and prayed for justice. He neither opted to be examined on oath under Section 340(2), Cr.P.C., nor produced any defence witness. Thereafter, after hearing the arguments of the learned counsel for both parties as well as the

learned State Counsel, the learned trial court passed the judgment, which has been impugned by both parties through the filing of a Criminal Revision and a Criminal Appeal.

7. Counsel for the complainant/applicant, in support of the revision application, argued that the injured had succumbed to his injuries and that the learned trial court had framed the charge under Section 302 of the PPC. However, it was contended that the trial court erred in delivering the judgment by not convicting the appellant under Section 302 of the PPC. Learned counsel further argued that there were no significant discrepancies in the prosecution's evidence and that the appellant's culpability was proven. It was asserted that the death penalty should have been imposed, as the medical evidence corroborated the eyewitness account. In support of these arguments, counsel relied on the case of ***Abdur Rehman v The State (1998 SCMR 1778)*** and referred to Modi's Medical Jurisprudence and Toxicology concerning the medico-legal aspects of wounds and the examination of injured persons. Finally, counsel requested that the revision petition be granted.

8. On the other hand, the learned Additional Prosecutor General supported the impugned judgment on the ground that the medical evidence demonstrated that the injured died on 19-01-2014, whereas the alleged incident had taken place on 07-09-2013. It was emphasized that after a considerable lapse of almost four months, the injured passed away due to cardio-respiratory failure. Furthermore, the medical documents exhibited before the learned trial court during evidence did not establish that the injuries sustained at the time of the incident remained continuous and were the direct cause of death. The medical evidence is completely silent in this regard. It was also highlighted that the medical documents reflect that the injured was discharged from hospitals multiple times and had shown signs of improvement. Thus, the complainant's attempt to link the initial injuries directly to the subsequent death is not supported by any credible evidence. Therefore, the learned trial court rightly awarded the conviction and sentence to the appellant.Meanwhile, the learned counsel,

an associate of Mr. Shabbir Ali Bozdar, appearing on behalf of the appellant, contended that the impugned judgmenthas already been challenged by the appellant through a separate appeal. Regarding the present Criminal Revision seeking enhancement of the sentence, it was argued that no major grounds have been established to justify enhancement; thus, the revision petition is liable to be dismissed.

9. Heard arguments and perused the material available on record.

10. This Criminal Revision application primarily relies on the medical documents cited by counsel for the complainant. To reach a just verdict, it is essential to carefully examine the prosecution's case in light of these medical records. The record indicates that on 7.09.2013, the injured sustained injuries, and on 8.09.2013, he was referred to Aga Khan University Hospital (AKU Hospital), Karachi. Hospital records reveal that upon admission on 8th September 2013, the Surgery Department initially diagnosed a kidney injury. It was noted that he arrived at AKU Hospital with a stab wound and had undergone an exploratory laparotomy elsewhere. During his hospital stay, the injured was monitored, with gradual improvement observed; his creatinine levels improved, and he was reported to be doing well, with his diet successfully progressed. No significant abnormalities were identified on ultrasound examination, and both kidneys were noted to have returned to normal size. The injured was discharged periodically. Further medical records show that on 2.10.2013, a clinical examination found the injured to be within normal limits, and on 3.10.2013, he was discharged again in stable condition. Subsequently, on 9.01.2014 the injured was admitted with complaints of vomiting. A CT scan of the abdomen was conducted, which showed no obstruction. He was discharged on 15.01.2014. Ultimately, the injured died on 19.01.2014. The death certificate issued by Fatimiyah Hospital, Karachi, recorded the cause of death as cardio-respiratory failure.

11. Thus, according to the medical documents relied upon by the complainant, there is no indication that the injured succumbed solely due

to the continuation or complications of the injuries initially sustained. The entire medical evidence is silent on any direct nexus between the injuries and the eventual death. Rather, the medical record showed an entirely different picture from that alleged by the prosecution. In view of this, it cannot be safely concluded that the death of the injured was a direct consequence of the injuries received at the time of the incident.

12. So far as Medical jurisprudence is concerned, reference must be made to the "Medico-Legal Aspects of Wounds" as discussed in Modi's Medical Jurisprudence and Toxicology, 26th Edition. In this chapter, the classification of injuries as simple, grievous, or dangerous to life is clearly defined with expression that the Medical Officer, issuing the certificate must specifically mention whether the injury falls within the category of simple, grievous, or dangerous to life. However, in the instant case, the Medical Officer remained completely silent on this crucial aspect. Furthermore, as per the said chapter, it has been evaluated that

> *"It must be remembered that mere stay in hospital for 20 days does not constitutes a grievous hurt as some doctors and lawyers are inclined to believe. It must be proved that during that period the injured man was in severe bodily pain or unable to follow his ordinary pursuits. Danger to life should be imminent before the injuries are designated dangerous to life, such injuries are extensive and implicate important structures or organs so that they may prove fatal in the absence of surgical acid. For instance a compound fracture of skull, a wound of a large artery or rupture of some internal organ, such as the spleen should be considered dangerous to life. There is fine distinction in the degree of body injury between the dangerous to life and likely to cause death which is another type of bodily injury which is sufficient in the ordinary course of nature to cause death, however the injuries which prove fatal remotely by inter current disease such as tetanus and erysipelas should not be considered dangerous."*

13. In this case, the principles of medical jurisprudence are notably absent. The injured survived for over four months after the alleged incident and was repeatedly discharged from hospital in a stable condition. Furthermore, no post-mortem examination was conducted, despite its essential purpose of establishing the cause of death. In the absence of a post-mortem, significant doubt arises as to whether the injured died as a result of the injuries sustained. While the non-performance of a post-mortem is not necessarily fatal to the prosecution's

case, this is only true where convincing evidence establishes that death was the immediate result of the injuries. In this instance, however, given the considerable time lapse between the incident and the death, a post-mortem examination would have been crucial in determining the actual cause of death. Additionally, the death certificate issued by the hospital clearly states that the cause of death was cardio-respiratory failure. Therefore, relying solely on the complainant's verbal assertions, without corroborative medical or documentary evidence, is insufficient to establish that the death resulted exclusively from the injuries allegedly inflicted.

14. In Modi's Medical Jurisprudence and Toxicology, the chapter on causes of death from wounds classifies them into immediate and remote causes. Immediate causes include haemorrhage, which can lead to shock and death, particularly from injuries to large blood vessels; injury to vital organs such as the brain, heart, or lungs, which are typically fatal; and shock, resulting from blood loss, respiratory, or circulatory issues. Shock may manifest immediately or after some time. If the individual was in a state of great excitement or mental preoccupation at the time of injury, shock may also result from exhaustion caused by multiple minor injuries, which individually may be slight but collectively significant.

15. Further, remote or indirect causes of death from injuries include inflammation of internal organs, septic infection of wounds, gangrene due to severe crushing and blood vessel tearing, thrombosis and embolism(obstruction of an artery, typically by a clot of blood or an air bubble)from prolonged bed rest, and infective diseases that arise as complications, further Fat embolism, air/gas embolism, supervening diseases resulting from traumatic lesions, neglect of the injured person, and complications arising from surgical operations are all classified as indirect or remote causes of death.Since all aforementioned essential aspects are glaringly absent from the record, and there is no material available to establish that the death of the injured was the direct result of the continuation of the injuries or that he succumbed thereto.

16. It is well established that the High Court, while exercising its revisional jurisdiction, is empowered to examine the correctness, legality, or propriety of any finding, sentence, or order passed by subordinate courts. However, the power to enhance a sentence is to be exercised sparingly and only in cases where there is a manifest miscarriage of justice. Such enhancement requires the presence of clear, cogent, and convincing evidence, elements that are conspicuously absent in the present case. In matters involving enhancement, the prosecution must establish: (i) a direct and immediate causal connection between the injuries inflicted and the death of the victim; (ii) that the injuries were so severe as to inevitably result in death; (iii) medical evidence, including post-mortem reports or expert opinion, conclusively linking the injuries to the cause of death; and (iv) an unbroken chain of events connecting the assault to the fatality. In the instant matter, all these critical components are either lacking or insufficiently substantiated, thereby rendering any enhancement of sentence unjustified.

17. Thus, in view of the foregoing facts, when there are no cogent reasons available in the prosecution case to justify the enhancement of sentence and the prosecution has also failed to demonstrate any compelling circumstances warranting enhancement of the punishment. Therefore, any attempt to seek enhancement of sentence in the given situation appears to be unjustified and improperand does not call for the invocation of the Revisional jurisdiction of this Court for enhancement of the sentence.Reliance is placed on the judgments in ***Muhammad Akhtar and others Vs. The State (2025 SCMR 45), Sohail Akhtar and another Vs. The State and another (2024 SCMR 67),*** and ***Chatto Khan Suhandro Vs. Ghulam Nabi Suhandro and others (2023 MLD 772)***, wherein the Honourable Apex Court and this Court, while addressing the issue of sentence for enhancement, declined to enhance the sentence.

18. As the appellant has challenged the validity of the judgment and sought acquittal, any findings on the judgment may affect the parties' cases, particularly since the judgment remains under consideration

through the appeal. We therefore limit our consideration to the matter of enhancing the sentence. In light of the foregoing, there are no compelling reasons in the prosecution's case to justify an enhancement of the sentence, and the prosecution has failed to demonstrate any circumstances warranting such an increase. Consequently, seeking an enhancement of the sentence in these circumstances appears unjustified and inappropriate, and does not warrant invoking the revisional jurisdiction of this Court. Accordingly, Criminal Revision Application No. D-123 of 2019 is dismissed. Criminal Jail Appeal No. S-280 of 2019, filed by the appellant against his conviction, is detached from the aforementioned Criminal Revision. The office is directed to schedule Criminal Jail Appeal No. S-280 of 2019 before a Single Bench of this Court, as per the roster.

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