

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.D- 172 of 2019.  
[Confirmation case No.48 of 2019]

Present.  
Mr. Justice Naimatullah Phulpoto.  
Justice Mrs. Rashida Asad.

Date of hearing: 25.08.2021.  
Date of judgment: 08.09.2021.

Appellant: Sajjan son of Allah Warayo by caste Rind through Mrs. Razia Ali Zaman Khan Patoli, Advocate.

The State: through Mr. Shewak Rathore, Deputy Prosecutor General, Sindh.

## J U D G M E N T

**NAIMATULLAH PHULPOTO, J:-** This is an appeal against judgment dated 19.09.2019 passed by learned Additional Sessions Judge, Sehwan in Sessions case No.52 of 2018, by which appellant Sajjan has been convicted for offence under Sections 302(b) PPC as Tazir and sentenced to death. Appellant has been ordered to pay the fine of Rs.2,00,000/- (Two Lac). In case of default thereof, he has been ordered to suffer SI for six (06) months more. Appellant has also been convicted for offence under section 324 PPC, to suffer RI for ten (10) years and to pay fine of Rs.50,000/- (Fifty thousand) and in case of default thereof, he has been ordered to suffer SI for three (03) months more. For offence under section 337-F(ii) PPC for causing injury to PW Aijaz, to suffer RI for two (02) years and to pay Daman amounting to Rs.10,000/- (Ten thousand) for injuries

No.1 to 3, total Rs.30,000/- (Thirty Thousand) to be paid to injured Aijaz. For offence under section 337-F(iv) PPC to suffer R.I for three (03) years and to pay Daman amounting to Rs.10,000/- (Ten Thousand) to be paid to injured Aijaz. For offence under section 334 PPC to suffer RI for seven (07) years and to pay Arsh of Rs.50,000/-, to be paid to injured Aijaz. In case of failure to pay Daman and Arsh, the appellant shall be kept in jail until the same amount is paid by him. If Daman and Arsh amount is recovered, the same shall be handed over to injured Aijaz. The case against proclaimed offenders namely Allah Warayo, Dildar and Gul Bahar has been kept on dormant file. Trial court has made reference to this court for confirmation of death sentence as required under section 374 Cr.P.C.

2. Prosecution story, in brief, is that Complainant SIP Mazhar Ali Naich lodged FIR at Police Station Jhangara on behalf of State, stating therein that on 12.12.2017, they were available on their duty at P.S Jhangara. At about 1930 hours, appellant / accused Sajjan son of Allah Warayo Rind came at P.S and narrated the facts that Aijaz son of Mirza is his relative; appellant had suspected that said Aijaz has developed illicit relations with his wife Mst. Husna (now deceased). It is further stated that appellant restrained Aijaz Ali from visiting his house. On 12.12.2017 at noon time, appellant alongwith his father Allah Warayo and brothers Dildar and Gul Bahar were working in their land and after completing work in their land, returned home at sun-set time. When appellant entered into house, it was 7-00 p.m. He saw that Aijaz was sitting with his wife in the house. Appellant asked Aijaz as to why he has come to his house despite his objection but he remained mum. Thereafter, appellant stated before the Investigation Officer that he went out of control. His father Allah Warayo caught hold Aijaz from his arm and brother Gul Bahar caught hold the wife of appellant from her arm. Thereafter, appellant took knife from the house and cut the neck of his wife with intention to kill her. It is further stated that Dildar, the brother of appellant cut the neck of Aijaz with intention to kill him. As soon as incident was narrated by appellant to the

SHO, he took him into police custody and recorded entry No.9 in the relevant register at 1950 hours. SHO left Police Station alongwith his subordinate staff and reached at the house of accused where Ganhwar (father of deceased lady) and Mst. Parri (mother of deceased lady) met SHO at 2030 hours, who shown the dead body of Mst. Husna to the SHO as well as Aijaz who was lying in serious condition in the house of accused near the Kitchen. SHO immediately referred injured Aijaz to Taluka Hospital, Sehwan for treatment and dead body of Mst. Husna to Taluka Hospital, Sehwan for conducting postmortem examination and report. After postmortem examination the dead body was handed over to her father Ganhwar Khan. SHO asked Ganhwar, the father of deceased lady to lodge the FIR, he replied to the SHO that same would be recoded by him after consultation. According to SHO, the father of deceased lady did not come at Police Station and FIR was lodged by him on behalf of the State against the appellant and others.

It was recorded against the accused on 13.12.2017 at 1500 hours vide crime No.20/2017 for offences U/Ss 302, 324, 311, 34 PPC at P.S. Jhangara.

3. During investigation, appellant / accused was arrested on 13.12.2017 and was produced before the Civil Judge & Judicial Magistrate, Sehwan where his confessional statement was recorded. On the conclusion of usual investigation, challan was submitted against appellant / accused for offences under Sections 302, 324, 311, 337-F(ii), 337-F(iv), 334, 34 P.P.C. Remaining accused were shown as absconders. Proceedings u/s 87 and 88 Cr.P.C were concluded against them.

4. Trial Court framed charge against appellant for offences under Sections 302, 324, 311, 34 P.P.C. Appellant pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined in all nine (09) witnesses. Thereafter, prosecution side was closed.

6. Trial court recorded the statement of accused Sajjaan under Section 342 Cr.P.C at Ex.17. All the incriminating evidence was put to accused and he denied the same. Appellant raised plea that his confessional statement was neither true nor voluntarily and further raised plea that his wife has been murdered by someone else who entered into compromise with father of the deceased and he has been falsely implicated in this case. Appellant did not lead any evidence in defence and declined to give statement on Oath.

7. On analysis of the entire evidence, learned trial court found the appellant / accused guilty and he was sentenced to death in the manner mentioned above. Trial court has made Reference to this court for confirmation of death sentence or otherwise as required u/s 374 Cr.P.C.

8. We have heard Mrs. Razia Ali Zaman Khan, learned counsel for appellant, Mr. Shewak Rathore, Deputy Prosecutor General Sindh and scanned entire evidence available on record.

9. Mrs. Razia Ali Zaman, learned counsel for the appellant argued that the prosecution story appears to be doubtful. It is argued that injured Aijaz had not seen the appellant while committing the murder of Mst. Husna. It is further argued that PW Ganhwar Khan, the father of deceased lady was present in the house at the time of alleged incident as to why he did not lodge FIR of the incident promptly. Learned counsel further argued that as per the evidence of PWs Ganhwar Khan and Aijaz they did not see the actual incident. Lastly, it is argued that the movie as set up in the FIR, has not been established by prosecution at trial, it is mitigating circumstance to reduce the sentence of death to imprisonment for life. Learned defence counsel has placed reliance upon the cases reported as GHULAM MOHY-UD-DIN alias HAJI BABU and others v. The STATE (2014 SCMR 1034) and Mst. NAZIA ANWAR v. The STATE and others (2018 SCMR 911).

10. On the other hand, Mr. Shewak Rathore, learned D.P.G mainly argued that prosecution has succeeded to prove its` case against the

appellant; that the appellant had made confession before Civil Judge & Judicial Magistrate which was found by the trial court true and voluntarily; that ocular evidence is corroborated by medical evidence and reports of experts were positive. However, learned D.P.G frankly stated that motive as set up by prosecution in FIR has not been proved at trial, but argued that motive immaterial in this case. He therefore, prayed for dismissal of appeal.

11. As regards to the un-natural death of Mst. Husna is concerned, prosecution has examined lady Doctor Arooma, SAIMS Sehwan, who has deposed that on 12.12.2017, she was posted as WMO at Taluka Hospital, Sehwan. SHO P.S Jhangara referred dead body of Mst. Husna to the hospital for postmortem examination and report. Postmortem examination was started at 10-00 p.m and finished at 11-30 p.m. Doctor examined deceased Mst. Husna and found following injuries on her person:

1. An incised wound measuring 11 cm x 6 cm x bone exposed (Cervical vertebrae) present mid of neck up to left side of neck trachea esophagus and vessels of neck has been cut of, there was superficial custom (cervical vertebrae).
2. An incised wound measuring 2.5 cm x 2 cm x muscle deep present on just opposite the lobules of left ear.

Postmortem report has also been produced in evidence at Ex.13/B.

Injured was also examined by Doctor Noor Muhammad and following injuries were found on his person:-

1. Incised wound present on in front of neck above 9 hyoid bone measurement about 17 x 2.5 cm with deep structure cutting neck involving skin subcutaneous tissue, strap muscle, partial anterior cuts in the 5<sup>th</sup>, 6<sup>th</sup> trachea rings, isthmas portion of thyroid gland, right submendible gland, veins and vessels.
2. Incised wound present on in front of neck and below of hyoid bone measurement about 10 x 2 cm in deep structure cutting neck involving skin, subcutaneous tissue strap muscle partial anterior cuts in the 5<sup>th</sup>, 6<sup>th</sup> tracheal rings, isthmas portion of thyroid gland right submendible gland, veins and vessels.
3. Multiple incised wound present on right side of neck with 6 in number measurement 2 x 3 cm on deep structure, cutting subcutaneous tissue, strap muscle veins and vessels.

4. Multiple incised would present on left hand 4 in number with measurement 1.5 x 1 cm with muscle deep and expose bone.
5. Multiple incised would present on right side of hand 3 in number present on middle index finger and thumb measurement 1 x 0.5 cm with muscle deep.

Both the doctors were cross examined at length but nothing favourable to the appellant / accused came on record. Lady doctor in her opinion has stated that deceased Mst. Husna died of injuries caused by sharp cutting weapon. Doctor Noor Muhammad has opined that injured Aijaz received injuries by means of sharp cutting weapon. Trial court has recorded finding that Mst. Husna died her un-natural death as described by Doctor and injured Aijaz received injuries by means of sharp cutting weapon. Finding of the trial court in our considered view, requires no interference by this court.

12. Now the question arises as to who committed the murder of Mst. Husna and caused injuries to PW Aijaz on 12.12.2017 at 1900 hours in the house of appellant as alleged by prosecution? In order to prove this crucial issue, the prosecution has examined a number of witnesses.

PW-2 Aijaz is the injured and star witness of the case. He testified that accused Sajjan is his relative. Deceased Mst. Husna was the wife of appellant who was the maternal cousin of above named PW. On 12.12.2017, present incident had taken place. On the said date, he was working at Bricks-Kiln. Accused Sajjan came to him at Bricks-Klin situated in Village Punhoon Panhwar. Appellant took PW Aijaz to his house where appellant served him meals. Brothers of accused Dildar and Gul Bahar as well as his father Allah Warayo were also present at that time; accused Sajjan disclosed that PW Aijaz had developed illicit relations with his wife Mst. Husna. PW-2 Aijaz denied the allegation. In the meanwhile, he deposed that brother of PW-2 namely Ali Hassan attracted on the noise, whose house is situated near the house of accused Sajjan. He has further deposed that accused Allah Warayo, Gul Bahar and Dildar (proclaimed

offenders) caught hold of him and accused Sajjan caused him knife blows at his neck thereafter he went unconscious, thereafter appellant killed his wife. Police came to the place of incident; he was taken to the hospital.

PW-1 Ghanwar is the star witness and father of deceased lady Mst. Husna. He has deposed that present incident occurred on 12.12.2017 at 7-00 p.m. On the same day he was present at his house and heard cries from the house of Sajjan. He alongwith his wife Mst. Pari went to the house of Sajjan and saw that his daughter Husna and one Aijaz lying injured in the house. Thereafter, police came to the place of wardat, his daughter succumbed to the injuries while Aijaz was alive. Police took dead body of Mst. Husna to the hospital for postmortem examination and report. Ganhwar, the father of deceased has further deposed that he came to know through some sources that his daughter Husna has been killed by accused Sajjan and injuries have been caused by him to injured Aijaz. He clearly stated that he had not witnessed the incident.

PW-3 Ali Hassan has deposed that PW / injured Aijaz is his brother. Accused Sajjan is his relative. Deceased Husna was wife of accused Sajjan who was his maternal cousin. On 12.12.2017, the present incident had taken place in the house of appellant. He further deposed that accused Sajjan and Gul Bahar had taken his brother Aijaz from the Bricks-Klin to the house in village Punhoon Panhwar. He reached there and saw accused Gul Bahar, Dildar, Sajjan and Allah Warayo were sitting in the house. One Ali Gul, uncle of accused Sajjan was sitting in the house of PW-3. On inquiry, Ali Gul told PW Ali Hassan that his brother Aijaz would be killed by accused Sajjan and others. On hearing this information, PW Ali Hassan went to the house of accused Sajjan and inquired him about the reason of killing his brother Aijaz. It is stated that accused Sajjan pushed Ali Hassan out of the house then caused knife blows to Aijaz and committed murder of wife.

SHO Mazhar Ali (PW-5) had lodged FIR of the incident, on behalf of the State and deposed that on 12.12.2017, he was present at police station Jhangara. On the same date at about 7-30 p.m, accused Sajjan appeared at police station and stated that he has committed the murder of his wife Mst. Husna and caused injuries to his relative Aijaz as accused suspected that his wife had developed illicit relations with Aijaz. Appellant / accused was taken into custody and FIR of the incident was lodged against appellant and others on behalf of the State vide crime No. 20/2017 for offence U/Ss 302, 324, 311, 34 PPC. Investigation officer has further stated that he had produced the accused before the concerned Magistrate for recording his confession, collected evidence, on the conclusion of evidence submitted challan against appellant / accused, remaining accused were shown as absconders.

PW-4 ASI Muhammad Usman has deposed that on 12.12.2017 he was posted as ASI at Police Station Jhangara. On the same date at about 1930 hours accused Sajjan appeared at police station and stated that he has committed the murder of his wife and caused injuries to one Aijaz Rind as he suspected that his wife had developed illicit relations with Aijaz Rind. SHO made such entry in record; proceeded to the place of incident and found Mst. Husna lying dead; her dead body was referred to hospital for postmortem examination and report; injured Aijaz was also referred to hospital.

PW-8 Beero alias Muhammad Sharif has been examined as Tapedar of Deh and Tapa Naar-Pir-Aari. He had inspected the place of wardat situated at the house of accused and prepared such sketch and produce it before the trial court at Ex.14/C to 14/E.

PW-9 Mr. Muhammad Qabil, Civil Judge & Judicial Magistrate has deposed that on 18.12.2017 SHO / IO of crime No. 20/2017 registered at P.S. Jhangara for offence u/s 302, 324, 311, 34 PPC produced before him accused Sajjan for recording his confessional statement. Handcuffs of the



accused were removed. Accused was informed that he was before the Magistrate and was not bound to make the confessional statement, if he makes it, the same could be used against him. According to Magistrate, time for reflection was given to accused. After completing the formalities and necessary warnings, Magistrate was satisfied that accused was voluntarily prepared for recording his confessional statement and it was true. Then, he recorded it and produced in evidence at Ex.15/B.

13. After hearing learned counsel for the parties and scrutiny of the evidence we have come to the conclusion that prosecution has proved its` case against the appellant / accused beyond any shadow of doubt for the reasons that PW-2 Aijaz who is injured witness has clearly deposed that appellant is his relative and deceased was his maternal cousin. On the day of incident, he was working at Bricks-Klin, accused Sajjan came to him and brought him to his house situated in village Punhoon Panhwar where meals were also served to him. At that time, accused Sajjan was accompanied by his brothers Dildar, Gul Bahar and father Allah Warayo. Accused Sajjan disclosed that PW Aijaz had developed illicit relations with his wife and he would kill him. In the meanwhile, brother of PW Aijaz namely Ali Hassan heard noise from the house of accused Sajjan and came over there. Thereafter, accused Sajjan caused knife injuries to Aijaz Ali on his neck and he presumed that Aijaz Ali had expired then, he started killing Mst. Husna and Aijaz Ali had heard the cries of Mst. Husna in the injured condition and then he went unconscious. PW-1 Ganhwar who is the father of deceased Mst. Husna has deposed that on 12.12.2017 at 7-00 p.m he was present at his house situated near the house of accused Sajjan. He heard cries of his daughter from the house of appellant, went there alongwith his wife Mst. Pari and found the daughter Husna lying dead and one Aijaz had sustained the injuries. PW Ali Hassan had deposed that injured Aijaz is his brother. Present incident had taken place on 12.12.2017. On the said date, he was present at Jhangara. Accused Sajjan and Gul Bahar had taken his brother Aijaz from Bricks-

Klin and brought him to home. He reached at the home of accused Sajjan and saw accused Sajjan, his brothers and father were present there. One Ali Gul, uncle of accused Sajjan was sitting in the house of Ali Hassan and narrated that Sajjan would kill Aijaz as he has suspected Aijaz to be on illicit relations with his wife. He then went to the house of accused Sajjan and inquired him as to why he was killing his brother Aijaz but appellant pushed him out from the house and caused knife blows to his brother Aijaz and committed the murder of his wife Mst. Husna. PW-5 Mazhar Ali SHO / IO had recorded FIR on behalf of the State when appellant had appeared at police station and admitted the commission of offence. After arrest of the accused, IO inspected the place of wardat, found the dead body of Mst. Husna so also Aijaz lying injured at home. Knife was also lying near the dead body of Mst. Husna, it was secured by him. Blood stained earth, knife and clothes of the deceased were also secured in presence of mashirs and sent to the chemical examiner, the reports were positive. I.O had also produced accused Sajjan before the concerned Magistrate where confessional statement of accused was recorded. It is the matter of record that occurrence had taken place in the house of appellant / accused Sajjan. Appellant in his statement recorded u/s 342 Cr.P.C could not explain the murder of his wife; mere his denial is not sufficient. Evidence of injured Aijaz, father of Mst. Husna namely Ganhwar, brother of PW Aijaz namely Ali Hassan is confidence inspiring. Statements of these witnesses qua, the date, time and manner of the occurrence are identical. Although they were cross examined at length but nothing detrimental to the salient features of the prosecution was detected from the cross examination conducted by the defence counsel. Confession of the accused appears to be true and voluntarily. Delay of six days in recording the confessional statement, would not sufficient to disbelieve it for the reasons that there was no evidence that it was obtained under duress or coercion. Concerned Civil Judge & Judicial Magistrate recorded the confessional statement of accused after observing all the legal formalities and provided sufficient time to accused

for reflection. It is settled law that retracted confession could legally be taken into consideration against the maker of that confession. If the confession is found true and voluntarily then there was no need at all to look into for further corroboration. Reliance is placed upon the case of Muslim Shah v. The State (PLD 2005 Supreme Court 168). As we have already held that the prosecution had proved the case against appellant.

14. As regards to the motive, admittedly both the parties are related to each other. It is the case of prosecution that appellant had seen PW Aijaz while sitting in the house of appellant. Admittedly, Mst. Husna and PW Aijaz were not found in objectionable condition. PW No.3 Ali Hassan has deposed that PW Aijaz was working at Bricks-Klin on the day of incident, he was brought to home by appellant and meal was served. It clearly shows that relations between appellant and PW Aijaz were cordial and were on visiting terms. Therefore, motive as alleged by the prosecution in FIR has not been established at trial. Acceptance of ground of mere suspicion of illicit relations (Karo Kari) to kill them would amount to give to the members of the society an unfettered license to kill any person they like. No one can be allowed to take the law in his hands. Learned advocate for the appellant has lastly argued that the matter of sentence in this case requires judicial care and caution as motive has not been proved and it is prayed that the death sentence awarded to the appellant may be converted into life. The quantum of sentence of appellant has engaged our serious attention and we have looked on this aspect of the case from different angles. Investigation Officer had also failed to interrogate / investigate about the motive as set up in the FIR. Not a single witness had seen the appellant while committing the murder of his wife Mst. Husna. Appellant in his confessional statement has also not stated that he had seen PW Aijaz with his wife in physical contact with each other. PW Aijaz has deposed that at the time of incident, appellant declared him on illicit relations with his wife and caused knife blows at neck, he went unconscious and heard cries of Mst. Husna. PW Ali Hassan and Ganhwar

had also not witnessed the actual incident but their evidence is relevant and reliable. This is a case which fully attracts the rule of `Res gestae`. There is also another circumstance as to why father of deceased Mst. Husna remained calm, even FIR was not lodged by him. Such circumstances of the case have put us to a caution in the matter of appellant's sentence. Whole prosecution evidence is silent on these aspects of the case. We have no hesitation to hold that real cause of occurrence was shrouded in mystery and was completely suppressed by both the parties. Where the prosecution asserted a motive but failed to prove the same then failure on the part of prosecution may re-act against the sentence of death passed against the appellant on the charge of murder. As observed above, the motive as set up in FIR has not been proved at trial. **“What happened prior to the scene of occurrence or what prompted the appellant to take away the life his wife Mst. Husna.”** Rightly, reliance has been placed upon the case of GHULAM MURTAZA v. The STATE (2021 SCMR 149). The relevant para is reproduced hereunder:-

***“4. We have observed that there is lack of motive in the case in hand and what happened prior to the scene of occurrence or what prompted the appellant to take away the life of the deceased-Mst. Saima Bibi are the circumstances which have rightly been considered by the Courts below as mitigating circumstances and thus, the appellant has rightly been dealt with by the Courts below.”***

At the cost repetition, it is mentioned that none had seen the appellant while committing the murder of his wife in the house but there is huge evidence as discussed above which clearly shows that appellant had committed the murder of his wife in the house and attempted to commit murder of PW Aijaz. It squarely constitutes “proof beyond doubt” admitting no hypothesis other than appellant's guilt. Father of Mst. Husna was also present at the door of the appellant when he committed the murder of his daughter but neither he rescued her daughter nor lodged FIR of the incident. PW Ali Hassan, brother of injured Aijaz was also present at the time of incident. He had also not lodged FIR to the police station.

Prosecution had failed to prove the motive at trial. These are the mitigating circumstances in this case. Above mitigating circumstances and infirmities are sufficient to adopt the alter course by awarding life imprisonment instead of death sentence as held in the case of GHULAM MOHY-UD-DIN alias HAJI BABU and others v. The STATE (2014 SCMR 1034). Relevant portion is reproduced as under:-

***“20. Albeit, in a chain of case-law the view held is that normal penalty is death sentence for murder, however, once the Legislature has provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty is a normal one and shall ordinarily be awarded. If the intent of the Legislature was to take away the discretion of the Court, then it would have omitted from clause (b) of section 302, P.P.C. the alternative sentence of life imprisonment. In this view of the matter, we have no hesitation to hold that the two sentences are alternative to one another, however, awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case. There may be multiple factors to award the death sentence for the offence of murder and equal number of factors would be there not to award the same but instead a life imprisonment. It is a fundamental principle of Islamic Jurisprudence on criminal law to do justice with mercy, being the attribute of Allah Almighty but on the earth the same has been delegated and bestowed upon the Judges, administering justice in criminal cases, therefore, extra degree of care and caution is required to be observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case/cases.***

***21. A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. If the Judge/Judges entertain some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.”***

15. We have already discussed that both the parties were related to each other. Deceased Mst. Husna was maternal cousin of PW Aijaz and PW Ali Hassan was on visiting terms with appellant and their relations were cordial. According to PW Ali Hassan, the brother of injured PW Aijaz, on the day of incident PW Aijaz was working at Bricks-Klin and he was

brought at home by the appellant which clearly shows that relations between the parties were quite normal. Evidence of PW Ali Hassan is reproduced as under:-

***“I am shown as eye witness of the incident. PW/injured is my brother. Accused Sajjan is known to me who is my relative. Deceased Husna was wife of accused Sajjan, who was my Masat. On 12.12.2017, this incident had taken place. On said date I was present in Jhangara. Accused Sajjan and Gul Bahar had taken my brother Aijaz from Bricks Clin and came at the house of accused Sajjan in village Punhoon Panhwar. I reached there. I saw accused Gul Bahar, Dildar, Sajjan and Allah Warayo and so also my brother Aijaz and Mst. Husna were present there. One Ali Gul, uncle of accused Sajjan was sitting in my house near the house of accused Sajjan. I went to my house and inquired from Ali Gul who disclosed that my brother Aijaz would be killed by accused Sajjan and others. I then went to the house of accused Sajjan and inquired about reason of killing of my brother Aijaz with Holy Quran who then pushed me and then I left the house of accused Sajjan. In my absence my brother Aijaz was caused knife blow by accused. I heard cries of my brother Aijaz. I also heard that accused were saying that they were going to kill Mst. Husna as they killed my brother Aijaz. I went away. Then police had come. I heard that Mst. Husna had been killed while my brother Aijaz is in injured condition taken away at hospital by the police. My statement was recorded by police. Accused Sajjan present in the Court is same.”***

16. We have no hesitation to hold that the two sentences u/s 302(b) PPC are alternative to one another, however, awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case. There may be multiple factors to award the death sentence for the offence of murder and equal number of factors would be there not to award the same but instead a life imprisonment. Therefore, looking to the circumstances of this case, as discussed above, extra degree of care and caution is observed by us while determining the quantum of sentence.

17. For the above stated reasons / mitigating circumstances maintaining the death sentence would be unwarranted in the peculiar circumstances of this case and life imprisonment would be the appropriate imprisonment.

18. For what has been discussed above, conclusion regarding guilt of appellant, on own independent analysis, have been found by us legally

sound and thus, calls for no interference by this Court. Consequently, instant Criminal Jail Appeal No.D-172 of 2019 is dismissed to the extent of appellant`s conviction for offence u/s 302(b) PPC but the same is partly allowed to the extent of his sentence of death which is reduced to imprisonment for life. However, for offence u/s 302(b) PPC, the fine of Rs.200,000/- (Rupees two lac) is converted to compensation in terms of Section 544-A Cr.P.C, to be paid to the legal heirs of deceased. In case of default thereof, appellant shall suffer SI for six months more. So far conviction and sentences for other offences awarded by the trial court are concerned, the same shall remain intact subject to above slight modification. Appellant shall be entitled to benefit of Section 382-B Cr.P.C. Confirmation Reference No. 48 of 2019 made by trial Court for confirmation of death sentence is answered in **NEGATIVE** and death sentence is **NOT CONFIRMED**.

19. In the view of above, Criminal Jail Appeal No.D-172 of 2019 and Confirmation Reference No.48 of 2019 are disposed of in the above terms.

JUDGE

JUDGE

Tufail