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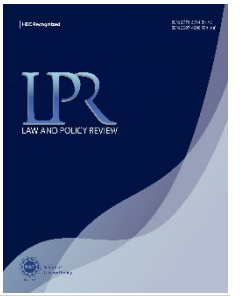

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Jurisprudence on Death Penalty: A Case Study of Justice Asif Saeed Khan Khosa's Judgments

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Abstract

The death penalty remains a contentious issue within the legal framework of many countries, including Pakistan. This paper aims to study the jurisprudence on the death penalty in Pakistan, focusing on the case study of Asif Saeed Khosa's judgments. The primary objective is to explore whether the frequency of death penalty can be reduced through judgments/judicial pronouncements. The answer is affirmative as 5.56% of the cases, in which death penalty was ultimately upheld; developing criminal jurisprudence aligns with international human rights law reducing death penalty in practice. Thus, the paper seeks to advance legal scholarship on the death penalty by conducting a thorough review of the relevant case laws, legal literature and especially the rulings of Justice Asif Saeed Khosa.

Keywords: appreciation of evidence, death penalty, sentence reduction

Introduction

The phrase "capital punishment", literally meaning, "punishment of the head", is derived from the Latin word *capitalis*, from *caput* (head). It is a kind of punishment that leads to the death of the convict and is granted to an offender of a heinous offence by a competent court of law upon the conviction of the heinous offence (Hood, 1998). It is also commonly referred to as the death penalty. In contemporary discourse, it is believed that the death sentence violates a person's fundamental right to life (Turley, 2009).

Following the 1992 Geneva Convention, the United Nations Economic and Social Council (ECOSOC) also worked to safeguard the right to life of those who are at death row. The council committed to protecting the rights of such individuals and declared that none of its members would carry out executions, even in cases involving the vilest of crimes (United Nations, 1997). In 1997, the UN High Commission for Human rights passed a

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resolution (E/CN.4/1997/60/Add.1) asserting that abolition of capital punishment enhances human dignity and protection of human rights.

This major shift took place with the idea that "states have no right to execute their citizens" (Bae, 2007). The trend became a global movement with the Rome Statute of the International Court of Criminal Justice. It became an obligation on the state to abolish such punishments through legislation and practices. While approximately 70 percent of countries have either legally abolished or ceased the practice of the death penalty, Pakistan remains an exception. The death penalty has not been abolished by Pakistan, but it did impose a moratorium on executions in 2008. After the tragic event at the APS (Army Public School), the government of Pakistan withdrew the moratorium after 7–8 years. After six months of the removal of the moratorium, executions of convicted persons increased dramatically and Pakistan became the third country with the highest ratio of executions (United Nations, 2015). The Human Rights Commission urged at that time that such executions would not create deterrence but rather compromise the basic rights of citizens and potentially fuel further violence and extremism. Consequently, it urged the government to revive the moratorium (United Nations, 2015).

Over the course of the past half-decade, the highest court in the land has developed a sophisticated legal doctrine via a multitude of verdicts, effectively reducing the range of applicability of capital punishment. A comprehensive investigation carried out by the Reprieve Foundation (2019) examined 310 judgments on capital punishment that were pronounced in a period 2010 to 2018. As a result of the analysis, a conclusion was drawn. The examination reveals that the Supreme Court of Pakistan is granting either acquittal or commutation in a substantial proportion (73%) of the cases pertaining to capital punishment that came before it. The rate of acquittal stands at 39%, implying that nearly 2 out of 5 individuals on death row in Pakistan have been subjected to erroneous verdicts and may have been wrongfully convicted. From the year 2015 to the terminus of 2018, there was a notable escalation to the extent of 83%. Notably, in the year 2018, which is the ultimate year on record, the Supreme Court upheld the death penalty in only 3% of its reported capital cases, with a staggering percentage of 97% of capital cases being overturned with the death sentence being either annulled or put under review (Reprieve, 2019). In 2017, Pakistan saw a 31% decrease in executions. In 2018, Supreme Court of

Pakistan affirmed death penalty in only 3% cases – a calculation based on its published judgments.

Statistics from Judgments of Justice Asif Saeed Khan Khosa

Ratio of Acquitted Cases

The proportion of cases resulting in acquittals relative to the total number of cases examined was determined to be 7:24. This finding suggests that, of the 72 cases scrutinized, 21 cases ended in acquittals.

Percentage of Acquitted Cases

The data analysis revealed that around 29.17% of the total cases investigated led to acquittals. This implies that, out of the 72 cases analyzed, 21 cases resulted in acquittals.

Ratio of Cases with Reduced Sentences

The ratio of cases receiving reduced sentences to the total number of cases examined was found to be 5:24. This indicates that, of the 72 cases studied, 15 cases were granted reduced sentences.

Percentage of Cases with Reduced Sentences

It was determined that approximately 20.83% of the total cases analyzed received reduced sentences. This indicates that, out of the 72 cases investigated, 15 cases were granted reduced sentences.

Ratio of Appeals against Acquittal

The ratio of appeals launched against acquittal that were not sustained was determined to be 0:11. Such a finding indicates that out of the 11 appeals scrutinized, none of them were upheld.

Percentage of Appeals against Acquittal

Upon conducting an analysis, it was ascertained that none of the appeals initiated against acquittal were sustained, which resulted in a 0% out of the total 11 appeals scrutinized. It means in 100% appeals the decisions of high courts pertaining to acquittals were maintained and not interfered with by the Supreme Court.

Ratio of Cases with Maintained Convictions

The proportion of cases in which the convictions were upheld, in relation to the total number of cases scrutinized, was found to be 1:3. This

implies that out of the 72 cases examined, 24 cases led to upheld convictions.

Percentage of Cases with Maintained Convictions

It was observed that approximately 33.33% of the total cases scrutinized resulted in upholding of convictions. This indicates that out of the 72 cases examined, 24 cases led to uphold convictions.

Ratio of Cases of the Death Sentence

In the examination of 72 cases, it was ascertained that four cases resulted in the retention of a death sentence. The ratio of 1:18 demonstrates that in every 18 cases investigated, one case culminated in the sustenance of the death penalty. The comparatively diminished ratio indicates that the perpetuation of the ultimate punishment was not a prevalent consequence within the cases scrutinized. This discovery underscores the momentous nature and extraordinary circumstances encompassing the cases that occasioned the imposition and maintenance of the ultimate penalty.

Percentage of Death Sentences Upheld

The present study investigated the percentage of cases in which the death sentence was upheld. Analysis of the data collected from 72 cases revealed that only 5.56% of the cases ended with the ultimate punishment being upheld. The relatively low percentage of maintained death sentences raises important questions about the efficacy of capital punishment within the criminal justice system of Pakistan.

According to an article published in the Express Tribune, Pakistan has one of the highest death penalty rates globally. However, the Supreme Court of Pakistan has developed jurisprudence through which the scope of the death penalty has been minimized (Hasnat, 2020). Understanding this jurisprudence's exposition is crucial if one is to comprehend the rationale behind the commuted sentences or the reversal of convictions, particularly the guidelines for the reappraisal of the evidence set forth by the Supreme Court, notably by Asif Saeed Khan Khosa. Hence, one of the primary objectives of this research is to analyze the jurisprudence developed by the honorable Justice ASK, to determine how the death penalty be averted through judicial pronouncements even if the legislative framework is not particularly obnoxious to capital punishment.

Ground of Acquittal in his Judgments

The exoneration of the defendant by the Supreme Court was predicated on various considerations, notwithstanding the fact that the High court had affirmed their capital punishment. In the subsequent passages, the study shall expound upon and scrutinize the diverse foundations or factors which culminated in the exoneration of the defendant, laid down in Khosa's judgments.

Burden of Proof

The established doctrine concerning the *onus probandi* necessitates no additional emphasis. It suffices to declare that within a national accusatorial legal system, the defendant enjoys the presumption of innocence until the prosecution establishes guilt beyond a reasonable doubt, and this primary burden of proof endures throughout the entire legal proceedings. This is based on doctrine held in case of Woolmington v. DPP (1935), it is patently clear that the burden of proof lies with the prosecution to demonstrate the culpability of the accused. Any semblance of reasonable doubt arise, whether emanating from the evidence provided by the prosecution or from the defense, concerning the intent of the accused in committing the alleged offense of murder, and in the absence of a successful prosecution, the accused is entitled to an acquittal.

Justice Asif Saeed Khan Khosa demonstrated instances where the accused have been acquitted, even in cases where the alleged incident took place within the defendant's residence. As the court held in Nasrullah alais Nasro v. The State (2017), that if the entire case presented by the prosecution is discredited or deemed entirely implausible, the accused cannot be convicted solely on the grounds of not providing an explanation regarding the circumstances surrounding the loss of life of their spouse or a vulnerable dependent. These rulings have effectively rendered moot the principle, which mandates the accused to elucidate the circumstances that culminated in the untimely demise of a vulnerable dependent residing with him.

Reliability Test

When the original evidence fails to meet the necessary standard of reliability, a state of "reliability void" ensues (Cheema, 2015). To fill this void, corroborative evidence is employed in order to bolster the credibility and trustworthiness of the original evidence. However, it is important to

note that corroboratory evidence is insufficient in transforming evidence that is intrinsically unreliable into one that is trustworthy. The Supreme Court recognized an insufficiency in reliability when the original evidence is not considered to be confidence-inspiring or is of doubtful character (Cheema, 2015). This principle is followed in cases of interested witness, chance witness, dying declaration, retracted confession and extra judicial confession. In instances of eyewitness, corroboration is always sought at least to confirm witness presence and the strength of his testimony. For this, the reliance is always placed on medical evidence, as it is expert and independent evidence.

Witness Credibility in the Light of Medical Evidence

In case of Nasurallah alais Nasro v. State (2017), the medical evidence contradicted the eye-witnesses insofar as (PW1) testified before the trial court that the deceased, had received a fire shot on her chest, while the medical evidence revealed that the firearm wound on the chest of the deceased was an exit wound. Similarly, (PW5) testified before the trial court that both shots fired by the appellant had hit deceased, but the medical evidence confirmed that only one fire shot had been received by the deceased, which had caused both an entry wound and an exit wound. So it means contradiction in ocular account and medical evidence later will be prevailed. The presence of eye witness is denied, as he failed to point out the direction of fire shot. More so, the presence at place of occurrence and hospital is tally with MLR, as in case Imtiaz alais Taj v. state (2018), the Medico-legal Certificate did not reveal that the persons providing eyewitness account were in the company of the deceased, resultantly court belied their statement, as they failed to prove their presence. The presence is substantiated, by the timely conducted post mortem examination. As in the case titled, Haroon Shafique v. The State (2018), an autopsy was performed around twelve hours after the demise of the individual. The court held that the findings of the medical examination reveals, considerable time had been consumed by the prosecution in order to secure eyewitness. The reason for their presence was invalidated due to an untimely conduct of the postmortem examination without any explanation. In light of aforementioned case laws, it would be accurate to assert that medical evidence is the only evidence upon which the veracity of a witness's account can be assessed.

Judicial Confession

Confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime (Madhana & Sreelatha, 2018). In Pakala Narayan Swami v. Emperor (1939) Lord Atkin observed "A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not in itself a confession"

Almost every confession is retracted; therefore, they must be corroborated for reliability. Independent corroboration must be of such nature which connect accused with the alleged occurrence as in the case Mir Zaman and 5 others v. State (2012) court held that mere recoveries in shape of cash amount and weapon from both the accused, do not connect them with alleged occurrence i.e. dacoity. In case Muhammad Ashraf v. State (2016), it was case of an unseen occurrence, confessed by accused but corroborated as articles were recovered at the pointation of the accused; however, it not relied as the recovery memo showed tampering on the date mentioned. Regarding the attribution of confession towards accused, court held; an application before the trial was considered sufficient to create doubt, more so stressing on the procedural informalities such as non-mentioning in record, removal of handcuffs prior to recording confession and presence of police inside the court room. It shows approach of court, how much stress is place on procedural formalities, instead of bringing the evidence together and appraises it. The evaluation of evidence is done separately in light of procedural formalities due to which reliance has not been made on such confession results in acquittal of accused.

Extra –judicial Confession

Regarding the purported extra-judicial confession made during the public gathering, the Supreme Court made an observation in Mst Asia BiBi v. State (2019) that it cannot be considered as concrete evidence due to its ambiguous nature and lack of corroboration. Extra-judicial confession, its scope, and reliability are subjects of great fragility that require utmost care and caution while relying on such evidence. Due to the ease with which it may be concocted, such confessions are always looked at with doubt and suspicion.

"Legal worth of extra judicial confession was almost equal to naught"

An extra-judicial admission may be deemed as substantiating the accusation if, initially, it appears to be genuine and subsequently receives reinforcement from other evidence that is unquestionably reliable. In another case Mohammad Ismail and others v. State (2017) SC held, the extra-judicial confession must be natural in essence but also not to be made jointly by accused as the same is inadmissible in evidence. In case Faisal Mehmood v. State (2016) the alleged admission of guilt by accused prosecution witness within the residence 'A', has proven inadequate in establishing the purpose of his (prosecution witness) visit to the aforementioned place. Moreover, the failure to promptly alert the authorities about the confession, which had taken place two to three days prior, remains bereft of justification. Furthermore, a discrepancy has arisen about arrest of the suspect, the testimony of the complainant, and the account provided by law enforcement pertaining to the arrest of the offender. Also "A" is not produced by the prosecution led to adverse presumption.

Identification Parade

The identification parade test is a valuable technique in criminal investigations, and if implemented correctly, it can be deemed admissible as corroborative evidence in a court of law (Sonthalia, 2021). One of the primary objectives of the identification parade test is to assess and reinforce the substantive evidence presented by the witness during the trial (Sonthalia, 2021). Justice Khosa in case Asfand yar v. State (2019), where appellant was sentenced to life imprisonment by Lahore High court had discussed the evidentiary value of IDP and also issued guideline for conducting IDP. In Para 17, the court held it is not substantive piece of evidence, having on independent value but it merely adds weight to other evidence. The main purpose is to dig out whether suspected person is the real accused or not.

> Identification proceedings are not the testimony of a witness but the testimony of the senses of the witness. It is essentially a test of his power of observation and perception, a test of his power to recognize strangers and a test of his memory. (para. 17)

Such abilities are subjective and vary from person to person; even a truthful witness may be mistaken in identifying the accused. It is far these reasons; Justice Munir said "*the evidence as to identification ought in each*

case, to be subjected to a close and careful scrutiny." In the aforementioned case, court laid down effective precautionary rules for IDP which basically determine its worth and value.

a) It should be held as earlier as possible, since memory tends to fade over time. Irrational delay in conducting IDP must be looked with suspicion.

b) At first instance, suspect must be produced before magistrate and he should not give custody to the police until IDP is held.

c) Prior to the production before magistrate, suspect must be warned to muffle his face.

d) IDP should not be held inside police station.

e) Magistrate should verify the time spend by accused in police custody, if any, he should mention it.

f) The recommended ratio between the accused individuals and the simulated representations is 1:9 or 10.

g) It is standard practice to perform individual identification lineups for each defendant.

h) Prior to contribution in IDP, witness should not be given opportunity to observe the suspected accused. After passing through it, witness must be placed somewhere to rule out the possibility of contact with other witnesses.

i) The magistrate has a duty to create a comprehensive list of all individuals, commonly known as 'dummies', who make up the lineup during the parade. This list ought to contain relevant information regarding the parentage, occupation, and addresses of these individuals.

j) The magistrate must record any objection of the accused regarding identification.

k) Witness who identifies the accused, magistrate must record the relation between accused and witness.

l) In case of failure to identify the accused, magistrate must record it.

Lastly, he must mention it in his report that what kind of pre caution has been taken by him. He will also give a certificate according to High Court rules.

Witness while the identification must specify the role, which played by the accused in the alleged occurrence. More so identification before trial court is not safe, as prior to this witness have number of opportunities to saw the accused. As it is not substantive piece of evidence, so failure to identify the accused is not always ruinous to the case of the prosecution.

In case titled Mir Zaman and 5 others v. State (2012), accused were charged for Dacoity, and murder but were not nominated in the initial report and not properly portrayed. One accused was identified in IDP by complainant without assigning him any role, complainant acknowledged before trial court that prior to IDP Police showed him all the accused. The natural witness (injured Eye witness) was not associated to identify the suspects. In light of such conditions, it can be posited that the test identification parade has been rendered devoid of any evidentiary worth. In case Gulfam and another v. State (2017) court stressed on the source of light, which High Court presumed that at medical store there must be a light in the medical store. Supreme Court held that "The courts below need to realize that presumptions have very little scope in criminal law unless such presumption is allowed by the law to be raised." Also, joint IDP is disapproved by courts.

Unnatural Behavior of Witness

The expression 'unnatural conduct of an eyewitness' lacks a generally accepted definition, hence making it subject to diverse interpretations contingent on contextual factors. Nonetheless, it typically indicates conduct or actions exhibited by an eyewitness that appear atypical, unconventional, or incongruent with prevailing norms in a particular scenario. This suggests that the conduct of the eyewitness may give rise to doubts about the accuracy or reliability of their testimony. In case titled Irshad Ahmad v. State (2011) where complainant and eye witness did not tried to stop the appellant/accused from attacking on the deceased even he did not possess firearm but a hatchet. This raises doubts about their presence at the place of occurrence. Similarly in case Nasrullah alais Nasro v. State (2017), non-transportation of the injured/deceased to the hospital by the complainant, even though the deceased was a relative, is an aberration from the usual behavior and creates serious apprehensions about his presence.

The witnesses, purported to have observed some of the accused individuals discarding deceased into a well on the ill-fated evening,

exhibited peculiar or anomalous behavior. As per their own admission, subsequent to witnessing the disposal of the dead bodies into the well, the aforementioned witnesses had retired to their respective house and slept throughout the night, upon their return to the relevant location on the following morning, the police officials had already arrived at the scene Muhammad ismail v. State (2017).

Non -Reliance on Recoveries

Though anything recovery at the pointation of accused is acceptable in evidence, but there are circumstances where court did not consider it. As in the Asad khan v. State (2017); the reported discovery of a hatchet from the possession of the accused during the investigation was considered implausible as the aforementioned axe was reportedly found in an unfenced area of land owned by a third party, and the investigating officer had admitted before the court that at the time of its discovery, the hatchet was not stained with blood.

In Faisal Mehmood v. State (2016) as per the Memorandum of Recovery, it was apparent that the recovery in question was made from a cattle shed belonging to the complainant. This indicates that the recovery was not made from the sole custody of the appellant. It is evident that the provision 103 of the Criminal procedure code (Cr.P.C.) was not adhered to in relation to the said recovery. Furthermore, it is noteworthy that after a period of approximately two years, it is scientifically implausible to determine the source of the blood due to the disintegration of human blood within a timeframe of three weeks. Court never relied on recovery if it is not made from the sole custody of accused. It has been held 103 Cr.P.C is mandatory in nature if impartial witness is not associated to the recovery proceedings aforementioned, then it is flagrant violation of the said section. Court, in the case of Muhammad Ashraf v. State (2016) discarded incriminatory articles as the date on the memo was tempered. In another case Abdu Jabbar alais Jabbri v. State (2017) court held such recovery of weapon is inconsequential as it has no matching report from fire arms expert. Also sending empties along with recovered weapon having no corroborative value, same in the case of non-recovery of empties from the spot. It also lost its value if the same is not put to the accused under section 342 Cr.P.C (Imtiaz alais Taj v. State, 2018).

Grounds for Reduction of Sentence

Motive

In case Nawab Ali v. State (2019) the inability of the prosecution to establish the alleged motive could potentially impact the sentencing determination and, under suitable circumstances, could lead to the commutation of a capital punishment to life imprisonment to ensure the proper dispensation of justice. As in case, Nadeem Ramzan v. State (2018) it was held that in light of the lack of substantiation for the purported motive, the true impetus behind the incident has remained enigmatic and, as a result, prudence must be exercised in regards to the imposition of capital punishment upon the accused. In the present case, the motive is established by the prosecution predominantly pertained to the co-accused, and the connection of the accused with the aforementioned motive was distant is mitigating factor.

On the Principle of Life Expectancy

The courts adhere to certain principles of practice with regards to the principle of expectancy of life as held in case of Hassan and others v. State (2013)

1. In situations where a convict sentenced to death on a murder charge experiences delays in the final disposition of a legal remedy, and the duration of their incarceration is shorter than that of a life imprisonment term, the courts have abandoned the principle of utilizing the expectancy of life for the purpose of reducing the death sentence to imprisonment for life.
2. In the event that the State or the complainant party endeavors to augment a sentence of life imprisonment to that of capital punishment and if the convict has already served their entire sentence of life imprisonment or has not yet been released from incarceration during the pendency of such recourse, the principle of expectancy of life remains pertinent to preclude the elevation of the sentence of life imprisonment to that of capital punishment.
3. Article 13(a) of the Constitution may not be directly applicable to the aforementioned scenario, albeit the essence of the aforementioned Article could be taken into account as an element, in conjunction with other factors such as life expectancy, as well as the particulars and

circumstances of the case, and the like. This consideration may lead to the decision of not augmenting the life imprisonment sentence to death, especially at a stage as advanced as the one mentioned.

4. In instances where a condemned individual who has been sentenced to capital punishment is subjected to a period of confinement that is equal to or exceeds the duration of a complete life imprisonment term while awaiting the adjudication of their appeal against their conviction and sentence of death, the concept of the life expectancy principle may be deemed a pertinent factor to be taken into account alongside other pertinent factors for the purpose of reducing their death sentence to one of life imprisonment.
5. The plea put forth was that, considering S.367(5), Cr P.C, "the normal sentence for a murder case is that of death". The validity of this claim rests upon Section 302(b), P.P.C., which unambiguously outlines two possible sentences: death or life imprisonment. This provision does not stipulate that either of these sentences ought to be considered the normal.
6. When an appellate or revisional court deliberates on the appropriateness of a sentence imposed on a convicted individual, the provisions of Section 367(5), Cr.P.C. cannot be invoked. The said provision is relevant only to the trial court. This interpretation is different from previous as in the case.

In the legal matter of Khalid Iqbal v. Mirza Khan and another (2015), the court has pronounced that a lengthy imprisonment exceeding 18 years in case of a death sentence may be grounds for commuting the sentence to life imprisonment. This may be applicable if there are other extenuating factors on record that suggest a reduction in the severity of the sentence.

On Opinion of Doctor

In this case, Naveed alais Needu and others v. State (2015), a person was killed in the occurrence, and two of the accused were sentenced to the death penalty as a result of the murder. The Supreme Court referred to the cross examination, in which Dr. stated it cannot be ruled out that all of the wounds suffered by the deceased can be caused by a single weapon, upon death sentence was commuted.

In another case, court held that the evidence presented by the Doctor is significant as it unequivocally demonstrates that the appellant's intention was not to commit murder but solely to perpetrate rape against the victim. The medical evidence conclusively established that the victim's death was not the result of rape but rather due to shock. Furthermore, it was determined that the cause of death was not asphyxia but rather pressure applied to the victim's neck, which may have been an attempt by the appellant to silence her rather than an intention to kill.

The imposition of capital punishment may typically be suspended in instances where it remains uncertain from the available documentation as to which of the offenders was responsible for inflicting the deadly wound upon the deceased, the assertion rendered by the physician in question indicates that the deceased did not incur any specific injury that is to be deemed fatal for life. The withholding of a sentence of death was predicated upon the lack of clarity regarding the culpability of a specific defendant in the causation of death.

Lack of Premeditation

As per the prosecution's own argument, the complainant party had traveled to the location of the incident where the accused party was already present. Therefore, it is plausible that the incident was not premeditated on the part of the accused party. Instead, it could have occurred when the parties, who were otherwise hostile towards each other, encountered each other by chance. The present case Hassan and others v. State (2013), is one in which the parties engaged in a confrontation that resulted in both parties resorting to firing. Court held that in cases where there is an absence of premeditated malice on the part of the accused party and where an incident occurs spontaneously, this Court, taking into account the specific circumstances of the case, typically approaches the matter of sentencing with a certain level of empathy and thoughtful consideration.

Non repetition of Fire

The present case, Muhammad Anwar v. State (2017) pertains to a singular discharge of a firearm, which was not subsequently repeated by the defendant. Court held; though the complainant was at the mercy of accused, despite this, fire was not repeated. It shows he have no clear intention or premeditation to commit murder.

Recovery of Unconnected Weapon

In the case Nadeem Ramzan v. State (2018) during course of investigation a dagger was recovered from the accused and took into possession by the police. It was accepted that the dagger found did not have traces of bloodstains, and therefore, was not related to the alleged occurrence. Moreover, in the absence of serologist's report, a mere recovery of a dagger does not connect the accused with the occurrence. Even in the case, Nawab Ali v. State (2019) in which recovery was affected in shape of the Kalashnikov (weapon of the offence) from the defendant during the investigation, did not hold any legal significance as per, as the Kalashnikov and empties recovered were sent to forensic laboratory on the same date. Though FSL report is positive but it can be easily fabricated.

Partial Compromise

The impact of partial compromise may not necessarily have any bearing on the conviction of an accused person in a case of Ta'zir. However, in certain circumstances, it may hold some relevance to the question of sentence as held in case Muhammad Amin v. State (2016).

Conclusion

The issue of the death penalty holds great significance, as evidenced by the multitude of international documents that address it. Pakistan, being a signatory to some of these documents, has implemented various laws, e.g. the Juvenile Act of 2018, which aim to decrease the utilization of the death penalty. Nevertheless, it is imperative to acknowledge that legislative measures are not the exclusive means of reducing the application of the death penalty; the judicial pronouncements of higher courts, as demonstrated by the approach of Justice Khosa, have also played a consequential role in its reduction. The judicial pronouncements of Justice Khosa have underscored the utmost significance of establishing guilt beyond a reasonable doubt and have meticulously scrutinized the credibility of evidentiary material proffered by the prosecution.

Overall, Justice Khosa's judgments are a testament to his dedication to justice, fairness, and the rights of the accused. His invaluable contributions to the legal field will continue to have a lasting impact on the criminal justice system in Pakistan.

Conflict of Interest

The author of the manuscript has no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

Data Availability Statement

The data associated with this study will be provided by the corresponding author upon request.

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References

Abdul Jabbar Alais Jabbri v. State, SCMR 1155. ___ (2017). https://tinyurl.com/y73nw79n

Asad Khan v. State, SC. 681. ___ (PLD 2017). https://sys.lhc.gov.pk/appjudgments/2021LHC2257.pdf

Asfand Yar Khan v. State, Criminal Appeal No. 259. ___ (SC 2018).

Bae, S. (2007). *When state no longer kills* (1st ed.). State University of New York Press.

Cheema, S. A. (2015). *Corroborating evidence in Pakistan: A mechanism to fill reliability vacuum*. Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2667365

Faisal Mehmood v. state, SCMR 2138. ___ (2016). https://tinyurl.com/4x43vv4h

Gulfam and others v. State, SCMR 1189. ___ (2017). https://tinyurl.com/2h8urfvr

Haroon Shafique v. State, SCMR 2118. ___ (2018).

Hasnat, M. (2020, October 11). In recent years, SC minimized scope of death penalty. *The Express Tribune*. https://tribune.com.pk/story/2267894/in-recent-years-sc-minimied-scope-of-death-penalty

Hassan and others v. State, SC 793. ___ (PLD 2013). https://tinyurl.com/mw7x8jff

Hood, R. (1998). *Capital punishment*. Encyclopedia Britannica. https://www.britannica.com/topic/capital-punishment

Imtiaz alais Taj v. State, SCMR 344. ___ (2018).

Irshad Ahmad v. State, SCMR 1190. ___ (2011).

Khalid Iqbal v. Mirza Khan and another, SC 50. ___ (PLD 2015).

Madhana, B., & Sreelatha, A. (2018). A study on confession under Indian evidence act 1872. *International Journal of Pure and Applied Mathematics*, *120*, 183–195.

Mir zaman and 5 others v. State, SCMR 580. ___ (2012).

Mst Asia BiBi v. State, SC. 64. ___ (PLD 2019). https://www.supremecourt.gov.pk/downloads_judgements/crl.a._36_2023.pdf

Muhammad Anwar v. State, SCMR 781. ___ (2017). https://www.supremecourt.gov.pk/downloads_judgements/c.a._781_2017.pdf

Muhammad Amin v. State, SCMR 116. ___ (2016). https://tinyurl.com/3ze3dew9

Muhammad Ashraf v. State, SCMR 1617. ___ (2016). https://tinyurl.com/2s4k4rhe

Muhammad Ismail v. State, SCMR 898. ___ (2017). https://tinyurl.com/ye89yy7d

Nadeem Ramzan v. State, SCMR 149. ___ (2018).

Nasurallah alais Nasro v. State, SCMR 724. ___ (2017). https://tinyurl.com/mr39v3fw

Naveed alais Needu and others v. State, SCMR 1464. __ (2015).

Nawab Ali v. State, SCMR 2009. ___ (2019).

Pakala Narayan vs. Emperor, 41 BOMLR 428. __. (1939). https://indiankanoon.org/doc/516808/

Reprieve. (2019). *The Pakistan capital punishment study: A study of the capital jurisprudence of the Supreme Court of Pakistan*.

https://reprieve.org/wp-content/uploads/sites/2/2019/04/Pakistan-Capital-Punishment-Study.pdf

Sonthalia, S. (2021). *Test identification parade as a tool to better criminal justice administration*. Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3861072

Turley, J. (2009). *Killing history: The effect of slavery and WWII on the death penalty in America and Europe* [Global thesis, University of Washington]. UW Tacoma Digital Commons. https://digitalcommons.tacoma.uw.edu/gh_theses/3/

United Nations. (1997). *Safeguards guaranteeing protection of the rights of those facing the death penalty*. United Nations Digital Library. https://digitallibrary.un.org/record/222533

United Nations. (2015, June 11). *Pakistan: Mass executions, particularly of juvenile offenders: Alarming rate of execution*. https://www.ohchr.org/en/press-releases/2015/06/pakistan-mass-executions-particularly-juvenile-offenders-serve-neither

Woolmington v. DPP, UKHL 1. ___ (1935).