

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Mohammad Karim Khan Agha

Cr. Spl. ATA. Appeal No.D-24 of 2005.

Muhammad Ali

Vs.

The State.

Appellant : Muhammad Ali	Through Syed Tarique Ahmed Shah, Advocate
Respondent : The State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General.
Date of hearing	17.05.2017.
Date of judgment	31.05.2017.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This appeal is directed against the judgment dated 24.02.2005 passed by learned Judge, Anti Terrorism Court Hyderabad & Mirpurkhas Division at Hyderabad, in Special Case No.28 of 2001, arising out of Crime No.21/2001, registered at Police Station Ladiun District Thatta, under section 302, 377 PPC, 12 EHO and Section 7 of ATA, 1997, whereby the appellant has been convicted under the above referred sections and sentenced to suffer imprisonment for life and to pay the fine of Rs. one lac. The fine if realized shall be given to the legal heirs of the deceased. In default of payment of fine the accused was ordered to suffer RI for one year more (the impugned judgment). Benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 08th July 2001 accused person noted above had taken away the boy of four years of age namely Abbas Ali son of Muhammad Usman Zangejo and got him one toffee from the shop of PW-3 Ahmed and thereafter he had kidnapped the victim boy Abbas Ali with intention to commit un-natural lust upon him and thereby committed the carnal intercourse against the order of nature upon the victim and thereafter the accused allegedly caused murder intentionally and deliberately of victim Abbas Ali and then he had burnt the dead body of the victim. The accused during the course of investigation had voluntarily produced a cap of the deceased victim and his handkerchief together with the pieces of burnt clothes of the deceased before the police. It is also the case of the prosecution that the above act of the accused had caused sense of terrorism, tension, fear and insecurity amongst the people of the locality. FIR was lodged against the accused and accused was finally challaned by the police after usual investigation.

3. Trial court framed charge against accused at Ex.6 u/s 302 PPC r/w section 6(2) (a) punishable u/s 7(a) Anti-Terrorism Amendment Ordinance 2001, u/s 377 PPC r/w section 12 EHO and Section 6/7 of ATA 1997, to which accused pleaded not guilty and claimed trial. At the trial prosecution examined 09 witnesses in order to prove its case against the accused.

4. Statement of accused was recorded u/s 342 Cr.P.C. at Ex.18 in which he has denied the prosecution allegations and claimed his innocence. He further stated that he has been implicated in this case falsely due to enmity of his father with the complainant. Accused did not lead evidence in defence and declined to give statement on oath.

5. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above. Hence this appeal.

6. We do not consider it necessary to discuss the evidence in this case as the appellant is not challenging the merits of the case but

instead has sought his release on the basis that he has undergone more than 15 years imprisonment of his life sentence.

7. Syed Tarique Ahmed Shah, learned advocate for appellant contended that since the appellant had undergone more than 15 years of his substantive sentence of life imprisonment (which usually is considered to be 25 years under S.140 of the Pakistan Prison Rules 1978) he was entitled to be released. In support of his contentions, he placed reliance of the case of **Bashir Ahmed v. State** (PLD 2002 Supreme Court 775), S.140 of the Pakistan Prison Rules 1978 and the jail role provided by the office of the superintendent central prison Hyderabad dated 15-05-2017 in respect of the appellant's time spent in jail on account of his conviction for the aforesaid offenses.

8. Syed Meeral Shah Bukhari, learned APG while supporting the impugned judgment has conceded that if as a matter of law the appellant is entitled to such relief then he has no objection to the remission of the sentence of the appellant

9. We have considered the contentions of the parties, the relevant record and the relevant law.

10. The first issue is whether as a matter of law in a case such as this where a convict has served more than 15 years (excluding remission) of his substantive sentence of life imprisonment he may be released.

11. In the case of **Gamoon V State** (SBLR 2012 679) it was indicated by a single Bench of this Court that in such circumstances it was legally permissible for this court to remit a sentence in the following terms at P.699 Para 15 which is reproduced as under for ease of reference:

"15. According to Rule 140 of Pakistan Prison Rules 1978, it is clear that imprisonment for life means twenty five years rigorous imprisonment and every lifer prisoner shall undergo a minimum of fifteen years substantive imprisonment. For the convenience, Rule 140 of Pakistan Prison Rules 1978 is reproduced as under:-

"Rule 140---(i) Imprisonment for life will mean twenty-five years' rigorous imprisonment and every lifer prisoner shall

undergo a minimum of fifteen years substantive imprisonment.

(ii) The case of all prisoners sentenced to imprisonment for life shall be referred to Government, through the Inspector General after they have served fifteen years substantive imprisonment for consideration with reference to section 401 of the Code of Criminal Procedure.

(iii) The cases of all prisoners sentenced to cumulative period of imprisonment aggregating twenty-five years or more shall be submitted to Government, through the Inspector General, when they have served fifteen years substantive sentence for orders of the Government."

16. Since, the portion of substantive sentence served by the appellants was less than fifteen years, therefore, keeping in view Rule 140 of Pakistan Prison Rules 1978, I was not inclined to order the release of the appellants on the sentence already undergone and re-fixed the matter for hearing and called upon the learned advocates to argue the case on merits."

12. We have also observed that such relief was also granted by a DB of this court in unreported Cr. Appeal No.D209/2006 in the case of **Qadir V State** dated 21-04-2017 in which one of us was a member (Naimatullah Phulpoto J) and as such remission of sentence is permissible by this Court if an appellant has served 15 years of his substantive sentence.

13. The next issue is whether the appellant has as a matter of fact served out more than 15 years of his substantive sentence in connection with his sentence of life imprisonment in connection with the aforesaid offenses for which he was convicted.

14. In this respect the jail role provided by the office of the superintendent central prison Hyderabad dated 15-05-2017 clearly specifies that the appellant has served 16 years imprisonment (excluding remission up to 15-05-2017). (This period excludes, according to the jail role 5 years 5 months and 22 days worth of remission which if considered would leave his unexpired portion of his sentence yet to be served at 4 years 6 months and 8 days). In any event he has served more than 15 years of his substantive sentence (excluding remission) and thus would qualify to be released from jail.

15. We have however observed that the appellant was sentenced to suffer imprisonment for life **and to pay the fine of Rs. one lac.** The fine if realized shall be given to the legal heirs of the deceased. **In default of payment of fine the accused was ordered to suffer RI for one year more.**

16. This would mean that the appellant would have to undergo a further year of imprisonment. In our view however the imprisonment ought to have been for a further period of 6 months SI instead of one year in default of the payment of fine and thus in this respect we modify the judgment (although even without such modification since the appellant has under gone 16 years in jail he would still have qualified for the remission) and find that since the appellant has served over 15 years of his substantive sentence as proven by the jail role we consider that it would meet the ends of justice if the remainder of his sentence was remitted and thus we hereby remit the remainder of the appellants sentence and order his immediate release, based on the sentence already undergone, from jail in this case unless he is wanted in any other case.

17. The appeal is disposed of in the above terms.

Hyderabad:
Dated:31.05.2017