

Gilty plea S.265 (E) CrPc

S36

BY BAILIFF / POST / FAX

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No. S – 34 of 2014

Original

MOHAMMAD SALEH
SON OF ABDUL HAKEEM @ CHABBAR TALPUR,
CONFINED IN CENTRAL PRISON & CORRECTIONAL FACILITY
HYDERABAD

=====

APPELLANT

VERSUS

=====

THE STATE

RESPONDENT

Sessions Case No.13/2013
Crime No. 93/2012,
U/S 302 , 34 PPC
P.S JHOL.

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL JAIL APPEAL NO. S-34 OF 2014
MUHAMMAD SALLEH V/S THE STATE

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

COMPOSITION OF BENCH

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA

(S.B.)

Date of last hearing (heard/reserved): 12-12-2023

Decided on: 19-12-2023

(a) Judgment approved for reporting YES

KfL

C E R T I F I C A T E

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

- NOTE:
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.
 - (iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Jail Appeal No.S-34 of 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

12.12.2023.

Mr. Shahid Ahmed Shaikh, Addl. Prosecutor General, Sindh.

Learned counsel for the appellant was called absent without intimation on the last four (04) dates of hearing. Same is the position today. Since a question of law is involved, I have heard learned A.P.G, who has assisted this Court in respect of this matter. Reserved for judgment.

Hafiz Fahad

Guilty plea S. 265(E) Cr.P.C.

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Criminal Jail Appeal No. S- 34 of 2014

MUHAMMAD SALLEH

Versus

THE STATE

Appellant : Muhammad Salleh	None present without intimation despite repeated attempts.
Respondent : The State	Through Mr. Shahid Ahmed Shaikh, Addl. Prosecutor General, Sindh.
Complainant.	None present.
Date of hearing	12.12.2023
Date of judgment	19.12.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This Criminal Jail Appeal is directed against the judgment dated 28.09.2013, passed by the learned 2nd Additional Sessions Judge, Sanghar, in Sessions Case No. 13 of 2013 (re: The State versus Muhammad Salleh and others), emanating from Crime No.93 of 2012, registered at Police Station Jhol, under section 302, 34 PPC, whereby the appellant Muhammad Salleh on account of pleading guilty to the charge has been convicted u/s 302(b) PPC as Ta'zir and sentenced to suffer imprisonment for life for committing the murder of deceased Ali Murad. He was also directed to pay Rs.5,00,000/- (Rupees Five Lac) as compensation to the legal heirs of deceased as provided u/s 544-A Cr.P.C; and, in case of non-payment of said compensation, the appellant shall further undergo S.I for 02 years more. The benefit of Section 382-B Cr.P.C was also

extended to the appellant. However, co-accused Shakoor has been declared proclaimed offender therefore, his case was kept on dormant file, while co-accused PC Gul Muhammad was facing trial at the time of passing of impugned judgment, therefore, his case was pending.

2. The facts of the prosecution case as mentioned in the FIR are as under:-

*"On 13.11.2012 at 1415 hours, complainant Javed Ahmed lodged FIR, alleging therein that his brother Ali Murad aged about 35 years, who is married, used to reside with him. One namely Kirar Talpur, who was previously residing in their village had shifted and now he is residing in Jhol town in Ward No.7, with home and his relatives, complainant has visiting terms. At night time at about 09:00 hours, complainant and his brothers namely Ali Murad and Khalid Hussain were sitting in the "Otaq", meanwhile complainant's elder brother informed him that he has been invited by Kirar Talpur for feast and he asked to drop him there, to whom complainant dropped in the street of "Kirar"s house on Motorcycle at about 10:00 hours in Jhol town. Thereafter he saw that his brother was entered in the house of "Kirar" and then complainant returned back. In early morning time, at about 04:00 a.m, complainant's brother Ali Murad called him on phone and asked to pick him through vehicle, as such, complainant took the car of his uncle Ishaque and along with his brother Khalid Hussain and cousin Abdul Jabbar conjointly went to pick Ali Murad and when they reached at about 0500 hours, near the houses of Gul Hassan Shar at Chock, meanwhile, they have heard the noise from Eastern side, as such, they turned to their car and they saw on the light of car that three persons were beating to Ali Murad and they have identified them as Gul Muhammad son of Abdullah Talpur having hatchet, **Muhammad Salleh** son of Chibhar Talpur and Shakoor s/o Abdul Sattar Talpur, both having daggers and then complainant and his witnesses got down from the vehicle and ask as to why beating his brother, whereof Muhammad Salleh replied that they have earlier prevented him (Ali Murad) from visiting the house of "Kirar" and why again he came last night on their invitation and by saying so Gul Muhammad has inflected sharp side hatchet blow above eye row / front side of face with intention to commit his murder, as such, he fell down on the ground and then Shakoor and Muhammad Salleh inflected on one dagger blow with intention to commit his murder on front side towards left side. They rushed there by making hakals, thereafter, all three accused ran away along with hatchet and daggers towards northern side in streets. Thereafter, they saw that Ali Murad had received injury in front side of his face, one injury on his supper side of heart and one injury in waist, blood was oozing and he was breathing on spot and then succumbed to the injuries. Thereafter, complainant informed to his cousin Nisar Ahmed, who was in Sanghar and came after some time and then he informed him about the incident. Thereafter, complainant leaving his brother went to at police station and lodged F.I.R."(bold added)*

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed the charge against the appellants, to which the

present appellant Muhammad Salleh voluntarily pleaded guilty to the charge vide his plea at Exh.10, as such, he was issued show cause notice at Exh.11. However, in reply to the show cause notice, the appellant Muhammad Salleh again pleaded guilty and expressed his full involvement in the commission of offence.

4. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record and considering the guilty plea of the appellant convicted and sentenced the appellant as stated earlier in this judgment. The appellant has filed this appeal against his conviction as he was victimized on account of his political participation and as such it appears that he is claiming that his guilty plea was not made voluntarily.

5. It is noted that despite so many intimations given to the learned counsel for the appellants, he has preferred to remain absent. As such, on 27.11.2023, the appellant was asked through Superintendent Central Prison Hyderabad as to whether he intends to proceed with this case through his existing counsel, wishes to engage a new counsel or services of a counsel be provided to him on State expenses. However, on the last date of hearing i.e. 06.12.2023, the appellant has submitted his reply wherein he stated that he wants to remain with his existing counsel, as such, the matter was kept for hearing for 12.12.2023 and for which intimation notice was also issued to Mr. Muhammad Saleem Laghari, learned counsel for the appellant, but he was called absent without intimation therefore, I have decided this appeal with the assistance of learned A.P.G keeping in view that the appeal is over 10 years old and requires expeditious disposal.

6. The issue before me is the legal question of whether based on the particular facts and circumstances of the case, the record and the relevant law the guilty plea of the appellant should be maintained and his appeal be dismissed or whether there are any defects committed by the trial court in accepting the guilty plea of the appellant which would justify the case being remanded to the concerned trial court for a *de-novo* hearing.

7. Learned Addl. P.G submitted that under S.265 (D) Cr.PC the charge is framed by the trial court, as in this case, if there are sufficient grounds for proceeding with the case. According to him the most important section for the purposes of this appeal was S.265 (E) Cr.PC where the court could convict the appellant on a guilty plea in its *discretion* which was the key word in the section. Thus, the court had to satisfy itself that the guilty plea was voluntarily made and had some nexus with the actual evidence. In his view this was a capital case as it carried a sentence of more than 10 years and in such cases the trial court had to exercise particular caution. He was of the view that insufficient caution had been taken by the trial court in this respect and as such the case should be remanded for a de novo trial. In support of his contentions he placed reliance on the cases of **Shafique Ahmed alias Shahjee versus The State** [PLD 2006 Karachi 377], **Allah Ditta versus The State** [2011 P.Cr.L.J 167], **Nasir Mehmood and another versus The State** [2015 SCMR 423] and, **Muhammad Ismail versus The State** [2017 SCMR 713].

8. I have heard learned APG who was assisting the court on the legal question mentioned above, considered the record and the relevant law including the case law cited at the bar.

9. My starting point is S.265 (E) Cr.PC which is set out below for ease of reference;

265-E. Plea. (1) The charge shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

*(2) If the accused pleads guilty, the Court shall record the plead, and may in its **discretion** convict him thereon (bold added).*

10. The language used in S.265 (E) Cr.PC makes it clear that an accused can either plead guilty or not guilty to the charge. Hence as a matter of law any accused can plead guilty for an offence for which he is charged if he so desires. The important part of the above section, as rightly pointed out by learned APG, is that the trial court can accept the guilty plea in its *discretion* which in my view means that the court cannot simply accept the guilty plea at face value but has to make some inquiries to see whether the guilty plea has been voluntarily,

made and whether any nexus can be found with the evidence on record to indicate the genuineness/correctness of the guilty plea. If so found the court can proceed to convict and sentence the accused on his guilty plea.

11. In this case the appellant plead guilty to the charge on 18.07.2013 which is set out below for ease of reference.

Crime No.93/2012
U/Ss.302, 34 PPC
Police Station Jhol

CHARGE

I, Ghulam Mustafa Leghari, 2nd Additional Sessions Judge, Sanghar, do hereby charge you,

1. Muhammad Salleh son of Chibhar Talpur,
2. P.C, Gul Muhammad son of Abdullah Talpur

As under:-

That, you on or about 13.11.2012 at 0500 hours, in early morning time near the "sewerage guttar" ward No.7, Jhol town, Taluka Sinjhor, you both accused along with your accomplice (Shakoor declared proclaimed offender) in-furtherance of your common intention duly armed with hatchet and dagger committed Qatl-e-Amd of Ali Murad aged about 35 years., the brother of complainant Javed Ahmed Mangrio, by means of inflecting sharp cutting weapon viz. dagger and hatchet, hence you have thereby committed offences punishable under sections 302, 34 PPC, within the cognizance of this Court,

And I hereby direct you that you be tried by this Court on the above said charge

Given under my hand and seal of the Court, this 18th Day of July, 2013 (bold added)

Sd/--
(Ghulam Mustafa Leghari)
2nd Additional Sessions Judge,
Sanghar

12. From the record the trial court did not immediately accept the guilty plea of the appellant at face value but instead immediately after the appellant plead guilty gave a show cause notice to the appellant to in effect explain why he was pleading guilty which is set out below for ease of reference:

To,

Accused Muhammad Salleh son of Chibhar Talpur,
R/o Village Ward No.1, Jhol Town Taluka Sanjhor

Subject: Show Cause Notice under Section 265-E(2) Cr.P.C

Whereas, in open Court today viz. 18.07.2013 while framing charge in S.C No.13/2013. The State v. Muhammad Salleh & others, Crime

No.93 of 2012, under Sections 302, 34 PPC of Police Station Jhol, you have voluntarily pleaded guilty of the offence regarding commission of murder of Ali Murad, brother of complainant Javed Ahmed Mangrio R/o village Gul Hassan Serwal Taluka Sinjhor.

You are, hereby directed to show-cause and to explain your position in writing on 23.07.2013 at 08:30 a.m. clarifying therein that you have not been pressurized by anyone to plead guilty of the offence or even induced by anyone to make admission regarding commission of said offence.

You are further informed that your above admission will be used against you and you would be convicted on the plea of your guilt.

Given under my hand and seal of the Court on this 18th day of July, 2013. (bold added)

Sd/---
(Ghulam Mustafa Leghari)
2nd Additional Sessions Judge,
Sanghar

13. On 23.07.2013 **five days after** the appellant received the show cause notice he made his reply to the show cause notice which is set out below for ease of reference.

Crime No.93/2012
U/Ss.302, 34 PPC
Police Station Jhol

Subject: Reply to Show Cause notice UI/S: 265-E(2) Cr.P.C.

Reference: Your Honour's Office No.481/2013 dated 18.07.2013

Honorable Sir,

In obedience of your honour's above cited show cause notice, with profound respect, it is submitted that victim / deceased Ali Murad in the above case had got illicit terms with my cousin the wife of Kirar, for which I admonished the deceased, but he never refrained.

That, prior to the incident about 4/5 days, I again admonished the deceased, but instead of refraining from his bad activities he challenged me that you are not Nekmard or so brave to restrain me, which further annoyed me, therefore I got behind the deceased to commit his assassination for that I got a chance on 13.11.2012 at about 2330 hours, when the above deceased entered in the house of my cousin in absence of her husband Kirar, I also entered behind him and attacked upon him with a dagger and done him to death at the spot, then took his dead body to throw in a nearby pond, but the dogs available over there did not allow me to go forward. Leaving / throwing the dead body there, I thereafter appeared at P.S Jhol voluntarily and surrendered myself. The place of arrest shown by police viz. Dargah Juman Jati is incorrect.

That, after arrest I was produced before Civil / Family Judge / J.M Sanghar for obtaining remand, where I also pleaded guilty

voluntarily but my such statement was not got recorded by the concerned police.

That, I myself have committed the above murder, co-accused have malafidely been involved to extort money from them.

That, neither I have been pressurized to plead guilty of the offence or even induced to make admission regarding commission of above offence, but on the contrary I have given the above statement voluntarily.

That, the above is submitted in the interest of justice.

Sanghar

Dated: 23.07.2013

Sd/-
Accused

Sd/--
Advocate for accused

14. This reply sets out the reasons as to why the appellant was pleading guilty which ties in with the FIR and charge and other evidence on record. The reply to show cause notice was signed both by the appellant and his lawyer and thus it was made under legal advice after 5 days of receipt of the show cause notice which gave him sufficient reflection time. It also clearly states that *neither I have been pressurized to plead guilty of the offence or even induced to make admission regarding commission of above offence, but on the contrary I have given the above statement voluntarily.* Additionally in the show cause notice the appellant was cautioned that if he plead guilty it would lead to his conviction and as such the appellant was well aware of the consequences of his reply to the show cause notice.

15. Thus I find that the trial court did exercise its discretion in deciding whether or not to accept the guilty plea of the appellant and after satisfying itself that the plea was genuine and was made voluntarily and not under any duress/influence the trial court accepted the guilty plea as reproduced as para's 4, 5 and 6 of the Impugned judgment dated 28.09.2013 which are set out below for ease of reference:

"Documents as required under section 265-C Cr.P.C, were supplied to accused Muhammad Salleh and PC, Gul Muhammad on receipt at Ex.6. Afterwards, formal charge against both accused was framed at Ex.8, to which accused PC, Gul Muhammad pleaded not guilty and claimed trial, vide his plea at Ex.9, while accused Muhammad Salleh, pleaded guilty voluntarily, vide his plea recorded at Ex.10. Thereafter, accused Muhammad Salleh was served with show Cause Notice, copy thereof

kept on record at Ex.11. In reply of show cause notice, submitted by accused Muhammad Salleh through his counsel, (Ex.12), accused again pleaded guilty and expressed his fully involvement in the commission of offence by saying that "deceased Ali Murad in the above case had got illicit terms with his cousin, the wife of Kirar, for which he admonished the deceased, but he never refrained prior to the incident about 4/5 days he again admonished the deceased, but instead of refraining from his bad activities he challenged him by saying that he is not so nek mard or brave to restrain him, which further annoyed him, therefore, he got behind the deceased to commit his assassination for that he got a chance on 13.11.2012 at about 2330 hours, when the above deceased entered in the house of his cousin in absence of her husband Kirar, he also entered behind him and attacked upon him with a dagger and done him to death at the spot.

The weapon so used in the commission of offence by the accused Muhammad Salleh has been received by the police during the course of investigation. The Medical Officer Dr. Lashkar Ali in his autopsy report has clearly shown the injuries sustained by means of sharp cutting instrument.

In reply of show cause notice accused Muhammad Salleh has further admitted that he has neither been pressurized to make admission nor induced by anyone. It appears that the admission of guilt of accused Muhammad Salleh is without any force, fear, inducement and pressure. The surrounding circumstances of the case reflects that accused Muhammad Salleh has committed the murder of deceased on account of "Gairat" and particularly in these situations a person losing his normal temporal. At present the mental condition of accused is normal and he properly understands the questions put to him. Keeping in view the circumstances of case and post mortem report of deceased Ali Murad couple with plea of guilt, it is proved that on 13.11.2012 accused Muhammad Salleh has committed brutal murder of Ali Murad and in my view conviction under section 302(b) Pakistan Penal Code, for Life Imprisonment will meet the ends of justice. Consequently, accused Muhammad Salleh is convicted and sentenced to suffer Imprisonment for Life and he is also directed to pay compensation of Rs.500,000/- [Rupees Five Hundred Thousands] payable to the legal heirs of deceased in case of his failure thereto, he shall suffer further rigorous imprisonment for two years more. All the sentences shall run concurrently. Record shows that accused Muhammad Salleh is in custody since 22.11.2012. He is given benefit of Section 382-B Cr.P.C. His period of detention will be adjusted towards sentences awarded to him."

16. **Notably** the impugned judgment was handed down over two months after the appellant gave his reply to show cause notice yet the appellant never retracted from his guilty plea during this period **and even after his conviction** on his plea of guilty of which he was fully aware he did not filed his appeal that his plea was not voluntarily for a further 6 months until after his conviction. No explanation had been given for such delay.

17. I have considered the case law cited by the learned APG and find that it is distinguishable from the particular facts and

circumstances and the record of the instant case where the court fully exercised its discretion as alluded to above in putting the guilty plea in juxta position with the facts of the case and other evidence on record and took steps to ensure that the guilty plea was made voluntarily without any duress, influence or coercion. Admittedly this is a murder case which attracted the death penalty for which extra caution is required **but it is to be noted that the appellant had legal advice before making the reply to show cause notice and both he and his lawyer have signed the reply whereby he admitted his guilt and the reasons why he murdered the deceased and thus the appellant would have been fully aware of the consequences of his reply as he was even cautioned that if he plead guilty he would be convicted of the charge.**

18. I have also borne in mind the separation of powers between the legislature, the executive and the judiciary. Namely, it is for the legislature to make law and the courts only to interpret the law if it is ambiguous or in violation of the Constitution. In this case the legislature through Section 265 (E) Cr.PC has in unambiguous terms given an accused the right to plead guilty to a charge if he so chooses and by adding the word accepting the plea at the courts *discretion* has ensured that the guilty plea is genuine and in effect safe guards against people making guilty pleas to, for example, protect others or if they were coerced into doing so. If the court was to interfere in every case where a guilty plea was made by an accused and the court took steps to ensure that it was made voluntarily and was genuine as in this case and thereby correctly exercised its discretion the court would virtually be making Section S.265 (E) Cr.PC redundant which cannot be done especially as the section it is not in violation of the Constitution.

19. In most common law jurisdictions the accused is asked in a criminal case whether he pleads guilty or not guilty to the charge and if a guilty plea is entered the court seldom considers the genuineness of the plea but rather ensures that the accused is mentally well and had a counsel to advise him and then proceeds to sentencing based on the various sentencing guidelines/mitigating factors one of which might be the plea of guilty which saved the valuable time of the Court.

20. It might be in some cases based on their own particular facts and circumstances and record that the court did not exercise its discretion properly by taking steps to ensure that the guilty plea was genuine and voluntary and which might lead to the case being remanded. However no such defects were found in this case as discussed above and no indication of any mental illness of the appellant at the time of making the guilty plea or reply to show cause notice has come on record. There has been no violation of Article 10 (A) as the guilty plea is provided under the law and all necessary steps were taken in this case to ensure that it was voluntary and genuine and the rights of the accused were safeguarded.

21. Furthermore the court must be cautious in remanding such cases where accused has plead guilty to the charge unless there are cogent reasons. This is because an accused may genuinely plead guilty and perhaps receive a lesser sentence and later discover that his co-accused having similar roles who plead not guilty were acquitted after a full dressed trial and as such might be encouraged to claim that his guilty plea was not voluntary and seek a remand and then rely on the case of his acquitted co-accused to ensure his own acquittal which in my view would not meet the ends of justice and cause some chaos within the judicial system and effect the efficient and effective administration of the criminal justice system. This case is over 10 years old and who is to say that any witnesses are even alive or traceable which would now benefit the appellant and even if a retrial took place after 10 years and he was convicted it would take even longer for his appeal to reach the high court which would not be to his advantage.

22. Having found the guilty plea to be voluntary and genuine the question arises whether the appellant can appeal against his conviction at all. The answer is found in S.412 Cr.PC which is set out below for ease of reference:

"412. No appeal in certain cases when accused pleads guilty. Notwithstanding anything hereinabove contained, where an accused person has pleaded guilty and has been convicted by a (High Court) a Court of Sessions or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence".(bold added)

23. On pleas of guilty, as in this case, an appeal under S.412 Cr.PC will only lie as to *the extent or legality of the sentence*.

24. In this case the charge was of murder under S.302 (b) PPC which the appellant pleads guilty to. The only mandated sentence under the law for a conviction for murder under Section 302 (b) PPC is either death or life if there are grounds recognized under the law to reduce the sentence from death to life. In this case the death sentence was not handed down to the appellant and instead he was awarded a life sentence. Perhaps the lesser sentence was handed down to the appellant on account of his guilty plea which saving the time of the court. In any event however the court has no power to reduce his sentence to less than that of life imprisonment which has already been awarded to him.

25. Thus, for the reasons mentioned above, the appeal is dismissed. A copy of this Judgment shall be sent to the appellant who is in jail for his information.

Hafiz Fahad