

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D-25 of 2020

Confirmation Case No.11 of 2020

Present

Mr. Justice Muhammad IqbalKalhoro

Mr. Justice Muhammad SaleemJessar

Date of hearing: 01.11.2022

Date of decision: 01.11.2022

Appellant: Sono through Raja Jawad Ali Saahar advocate.

Complainant: Nemo.

The State: Through Mr. ShawakRathore, Deputy Prosecutor General, Sindh.

JUDGMENT

MUHAMMAD IQBALKALHORO, J:- Appellant Sonostood a trial in Sessions Case No.206 of 2019, arising out of Crime No.12/2019, PS Jhangara, District Jamshoro u/s 302, 114, 34 PPC for murdering Ahmed by making a straight fire with a gun on his right side of chest,alongwith co-accusedat barren lands of WaderoGul Hassan Kachhar, DehKachhi, TalukaSehwanon 06.07.2019 at 0800 hours, and has been convicted vide impugned judgment dated27.02.2020 by learned Additional Sessions JudgeSehwanin the terms as stated below.

“I, therefore, convict accused Sono under section 265-H(2) Cr.P.C., for the commission of offence under section 302(b) PPC and sentence him to death, subject to confirmation of Honourable High Court of Sindh, Circuit Court, Hyderabad and to pay fine of Rs.2,00,000/- (Two Lac). In case of default to pay fine, the accused shall suffer S.I. for six months more.”

2. Aggrieved by said judgment, he has filed instant appeal. Learned defence counsel after arguing at some length has submitted that he would not press this appeal on merits, if sentence of the appellant is altered from death penalty to imprisonment for life as this is a case of a single shotonly to the deceased without any repetition by appellant. In support of his submission, he has relied upon 2017 SCMR 2024.

Learned DPG has not opposed his request in view of ratio laid down in the aforesaid case.

3. We have heard the parties and perused material available on record. In the trial, prosecution has examined six witnesses including complainant, Medical Officer, Tapedar, Investigation Officer, Mashir etc. and has produced through them all the relevant documents: FIR, post-mortem report, relevant entries, etc. When such evidence was put to the appellant u/s 342 CrPC for his explanation, he has simply denied it without however examining himself on oath or leading any evidence in defence.

4. Complainant, who happens to be father of deceased in his evidence (Ex.6) has described the whole incident as narrated by him in FIR that on 06.07.2019 over previous dispute, appellant Sono armed with aDBBL gun alongwith co-accused Ismail, Abbas and Shabir armed with lathis accosted Ahmed (deceased) while he was grazing cattle by jungle side. And on instigation of co-accused Shabir, appellant Sonomade a direct fire from his gun upon deceased Ahmed hitting right side of chest resulting in his death on spot. He informed the police accordingly and alongwith police shifted the dead body to hospital for post-mortem. On the same day he appeared at Police Station and registered FIR.

5. Talib Hussain, PW-2, (Ex.7), an eye witness, in his evidence has supported the complainant. He was with the deceased at the time of incident and has, in detail, described the role played by appellant: that he was armed with a DBBL gun and fired upon Ahmed and then went away with cattle. In their cross-examination, lengthy albeit, nothing substantial favorable to appellant over main features of the incident has come on record. Medical Officer, PW-3 (Ex.8) has verified the injury on the person of deceased and has opined that Ahmed expired due to shock and hemorrhage, rupturing of right lung of the chest, and right chamber of heart caused by external injury No.1, sufficient to cause instantaneous death. Tapedar PW-4 (Ex.9) had visited the site in presence of complainant and prepared its sketch which has also been produced in the trial. Wazir, PW-5, (Ex.10), Mashir, in his evidence has deposed that on 06.07.2019 police inspected dead body of deceased Ahmed at the place of incident in his presence and prepared such memo. He has also

confirmed recovery of one empty shell of 12 bore cartridge, and crime weapon on pointation of the appellant.

6. Investigation Officer, examined as PW-6 (Ex.12), has confirmed inspecting place of incident, recording statements of witnesses and arresting accused on 16.07.2019. He has further affirmed that appellant had led the police, in presence of Mashirs, to a place in jungle: Chingiani Nain, and took out a DDBL gun from bunch of *lai* bushes. He has also stated in clear words that he had sealed the crime weapon and sent it for lab report. And as a result of such recovery he had registered a separate FIR bearing Crime No.14 of 2019 u/s 25 (a) Sindh Arms Act, 2013 at P.S. Jhangara. The record further shows that in the investigation, blood stained earth and one empty shell from the spot were also collected by the I.O. regarding which positive reports of chemical examiner (Ex.12/W& 12/U) are available on record. All these pieces of evidence are parts of the prosecution case.

7. From a perusal of entire evidence available on record, it becomes quite clear that prosecution has been able to prove the case against appellant beyond a reasonable doubt. Evidence of eye witnesses, Medico-Legal Officer, Mashirs and Investigating Officer supports such features of the case relevant to the role performed by them in the case. They have in fact complemented each other qua prosecution's version of the incident and nothing is left out of sight clouding the slightest part in the story. During cross-examination of witnesses, no material contradiction has come on record which may create a doubt over veracity of prosecution story. A reading of the ocular account furnished by the eye-witnesses confirms the culpability of the appellant in the offence he has been charged with. The defence has failed to bring on record any material which may be considered to have prompted the complainant to implicate the appellant falsely in the murder of son by substituting the real culprit. When the entire evidence was put to the appellant for his explanation, he has simply pleaded his innocence.

8. We therefore, find no illegality in the impugned judgment as far as declaration of guilt/conviction of the appellant is concerned. Notwithstanding, the motive alleged by the prosecution is that complainant had earlier gone to accused party for compromise of dispute between appellant and one Dilsher. The burden to prove the motive part of the story was upon the prosecution but record of the case reveals that

the same though alleged in FIR has not been proved. So mere alleging a motive would not be sufficient to accept and rely upon the same. The law in this regard is much settled by now that absence of motive or absence of proof of the same would be a sufficient mitigating circumstance to determine the quantum of sentence. More so, this is a case of a single fire-shot upon the deceased by the appellant without any effort on his part to repeat it, although the deceased was at his mercy, nor it i.e. repeating the act of fire or any such attempt by the appellant has been alleged by the eye witnesses. We, therefore, are of the view that this is not a fit case of capital punishment, and this appears to be the reason why learned DPG has not opposed alteration of sentence of the appellant.

9. Consequently, while following dictum laid down in the case of Fayyaz alias Fiazi versus The State (Supra), we maintain conviction of the appellant u/s 302(b) PPC, but alter his sentence of death and reduce it to imprisonment for life. Rs.200,000/- to be paid by appellant as fine is converted into compensation u/s 544-C CrPC as Section 302(b) PPC does not stipulate any provision of fine, its default shall expose appellant to further SI for six months, however, benefit of Section 382-B CrPC is extended to him. With such modification in the quantum of sentence of appellant Sono s/o Akhtiar, Criminal Appeal No.D-25/2020 is dismissed. Consequently, death reference is hereby replied in negative and accordingly disposed of.

JUDGE

J U D G E

Irfan Ali