

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

**Criminal Appeal No.D-94 of 2019
Criminal Jail Appeal No.D-102 of 2019
Confirmation Case No.12 of 2019.**

Present

**Mr. Justice Muhammad IqbalKalhoro
Mr. Justice Amjad Ali Sahito.**

Date of hearing: 04.10.2022

Date of decision: 04.10.2022

Appellant: Asad Ali alias Mando through Mr. Nisar Ahmed
S. Chandio, advocate.

Complainant: Nemo.

The State: Through Mr. Nazar Muhammad Memon,
Additional Prosecutor General, Sindh.

JUDGMENT

MUHAMMAD IQBALKALHORO, J:- Appellant, Asad Ali alias Mando stood a trial in Sessions Case No.491 of 2016, arising out of Crime No.24/2016, PS Airport Nawashah u/s 302, 504, 34 PPC for murdering Shahzad Ali by causing him a dagger blow on left side of his chest alongwith his brother Mir Chandio, a co-accused, since absconder, who allegedly held the deceased to facilitate him, in a street of Muhalla Gharibabad Nawabshah on 09.05.2016 1400 hours, and has been convicted vide impugned judgment dated 29.05.2019 by learned 1st Additional Sessions Judge/Model Criminal Trial Court Shaheed Benazirabad in the terms as stated below.

“Accused Asad @ Mando is convicted u/s 265 H(ii) Cr. PC for offence punishable u/s 302(b) CrPC. He is sentenced to death and shall be hanged by neck till he is dead. The accused / convict is directed to pay compensation to the tune of Rs.two hundred thousand only (Rs.200,000/-) to the legal heirs / walis of deceased Shahzad Ali Dayo, failing which the convict shall undergo further simple imprisonment of six months.”

2. Aggrieved by said judgment, he has filed instant appeal. We have heard learned counsel for appellant and learned Additional

Prosecutor General Sindh for the State. Learned defence counsel after arguing at some length has submitted that he would not press these appeals on merits, if sentence of the appellant is altered from death penalty to imprisonment for life as this is a case of a single blow to deceased without any repetition by appellant. To bring home his point, he has relied upon 2017 SCMR 2024. Learned APG has not opposed his request in view of ratio laid down in the aforesaid case.

3. We have considered statements of the parties and perused material available on record. In the trial, prosecution has examined seven 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.9) has described the whole incident as narrated by him in FIR that he was present in his house on the fateful day when at about 02 pm, hearing screams coming from house of Yaseen Pirzado, he rushed to the spot and saw appellant inflicting a dagger blow to his son on left side of his chest, facilitated by his brother Mir Chandio who was holding his son from his arms. He shifted the injured to hospital but he expired. Then he informed the police through mobile phone which reached the hospital and after necessary formalities including post-mortem of the deceased, he first led the police to the place where incident had taken place and next day appeared at Police Station for registration of FIR.

5. Amjad Ali, PW-5, (Ex.10/E), brother of deceased, in his evidence has supported the complainant. He was with the deceased at the time of incident and has, in detail, harped on the role played by appellant: that he was armed with a dagger and inflicted its blow to his brother on his chest. He has vouched for arrival of complainant, his father, at the spot, having been attracted on screams. They both have identified the appellant, already known to them, and the weapon he was armed with and the exact local of injury: the chest of the deceased. In their cross-examination, lengthy albeit, nothing beneficial to appellant over these main facts has come on record.

6. Medico-Legal Officer, PW-1 (Ex.6) has verified the injury in his deposition and has confirmed that profuse bleeding from the injury causing shock and cardiorespiratory failure had ultimately led to death of the deceased. Investigation Officer, examined as PW-2 (Ex.7), has confirmed inspecting place of incident, recording statements of witnesses and arresting accused on 13.05.2016. Further that as a result of interrogation appellant had led the police, in presence of Mashirs, to his house and produced the dagger from iron box which was blood stained. He has also stated in clear words that he had sealed the dagger and sent it for lab report and as a result of such recovery had registered a separate FIR bearing Crime No.26 of 2016 u/s 23 (1) (a) & 25 Sindh Arms Act, 2013 at P.S. Airport Nawabshah. (It is pertinent to mention here that appellant has been convicted and sentenced in the said crime by learned trial Court vide judgment dated 29.05.2019 for three years which has not been challenged by the appellant). The record further shows that in the investigation, blood stained earth from the spot was also collected by the I.O. regarding which positive report of chemical examiner (Ex.7/E) is available on record. Tapedar PW-3 (Ex.8) had visited place of incident in presence of complainant and prepared its sketch which has also been produced in the trial. All these pieces of evidence are parts of the prosecution case.

7. When we take a holistic view of entire evidence available, it becomes clear that prosecution has been able to prove the case against appellant beyond a reasonable doubt. Evidence of eye witness, Medico-Legal Officer, Mashirs and Investigating Officer support each other on salient features of the case. They have complemented each other's version 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. Further, 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 his son by substituting the real culprit. When the entire evidence was put to the appellant for his explanation, he has simply pleaded his innocence and in support has filed certain copies of newspapers to show that an unknown accused and not him had committed murder of the deceased. The newspaper cuttings/clippings, not even otherwise reliable under the law, do not

show appellant is innocent, and cannot be given effect over overwhelming evidence brought by prosecution against the appellant.

8. We therefore, find no illegality in the impugned judgment as far as declaration of guilt/conviction of the appellant is concerned. Nonetheless, we are of the view that this is a case of a single dagger blow to 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 by the appellant has been alleged by the eye witnesses. The motive part of the story that there was a dispute over mobile phone between the deceased and appellant, alleged by the prosecution has whithered into oblivion: has not been proved. We, therefore, are of the view that this is not a case of capital punishment, and this appears to be the reason why learned APG has not opposed alteration of sentence of the appellant.

9. Consequently, while following dictum laid down in the case of Fayyaz alias Fiazzi 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. The amount of compensation Rs.200,000/- payable to the legal heirs of deceased and sentence of default on its non-payment ordered by learned trial Court is maintained with benefit of Section 382-B CrPC extended to him. With such modification in the quantum of sentence of appellant Asad Ali @ Mando, these appeals are dismissed. Consequently, death reference is hereby replied in negative and accordingly disposed of.

10. All the appeals are disposed of accordingly.

JUDGE

J U D G E