

Death Sentence Converted to Life
by Consent ~~to~~ with mitigating factors

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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

CRIMINAL JAIL APPEAL NO.698 OF 2021.

CONFIRMATION CASE NO.16 OF 2021

Appellant	Naeem Akhtar s/o Saleem Akhtar through Mr. Moula Bux Bhutto, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Judgment	31.08.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Naeem Akhtar son of Saleem Akhtar was tried in the Court of VI Additional District & Sessions Judge Karachi West in Sessions Case No.1895/2018 pursuant to FIR No.294 of 2018 u/s 302 registered at PS Ittehad Town, Karachi and vide judgment dated 30.11.2021 appellant was convicted u/s. 302 PPC and sentenced to death subject to confirmation by this Court.

2. The brief facts of the prosecution case as per F.I.R. are that on 31.08.2018 SIP Muhammad Amin of police station Ittehad Town recorded the statement under Section 154 Cr.P.C. of complainant namely Munahsir son of Sadiq wherein he stated that he is residing at House No.690, Sector 9-B near Farooq-e-Azam Masjid, Baldia Town, Karachi and her sister namely Kehkashan who is residing at House situated at Sector 9-B, near Pakistan Church more, Baldia Town, Karachi has two sons and two daughters. On 31.08.2018 the complainant went to Qazi Hospital, Baldia Town, Karachi where his nephew (bhatija) namely Asad informed him through phone call that Naeem has cut the throat/neck of Kehkashan and his nieces (Bhanji) namely Maleeha, aged about 16 years, has received injury of sharp thing in his hand and his sister has been brought to Civil Hospital. The complainant reached at Civil Hospital and his sister's neck was cut from the front side and her dead body was lying on stretcher

wherefrom doctors referred the dead body to Jinnah Hospital where police officer conducted the proceedings and the complainant has received dead body. Hence the instant FIR lodged

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 09 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.11.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions of the appellant stated that he did not press the appeal on merit as the appellant accepted his guilt and only sought a reduction in sentence from the death penalty to life imprisonment based on the following mitigating factors:-

- i) The prosecution had not asserted and proved any motive for the murder.
- ii) The crime was not carried out in a particularly brutal manner.
- iii) The appellant has four children to support.
- iv) That the appellant had admitted his guilt and shown genuine remorse.

8. Based on the above mitigating factors, the learned Addl. P.G. had no objection to a reduction in sentence from death penalty to life imprisonment. The complainant Munahsir also present in Court stated

that he based on the mitigating factors raised by the appellant which had been explained to him by learned Addl. Prosecutor General had no objection to a reduction in sentence of the appellant from death penalty to life imprisonment.

9. We have gone through the evidence/record and note that PW-2 Maliha, daughter of the appellant was an eye witness to this incident whose evidence we find to be reliable, trustworthy and confidence inspiring who fully implicated the appellant in the offence; that the murder weapon was also recovered on the pointation of the appellant from the same house in which he murdered the deceased who was his wife and was living in the same house with at that time; that the medical evidence supports the ocular evidence and as such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and uphold his conviction.

10. However with regard to sentencing based on the mitigating factors mentioned above and in particular no objection given by the learned Addl. P.G. and the complainant in person we note that the mitigating factors raised by the appellant have been held by the superior courts to justify a reduction in sentence from death penalty to life imprisonment.

11. Under these circumstances, we hereby whilst maintaining the conviction of the appellant reduce his sentence from the death penalty to life imprisonment. The appellant shall have the benefit of Section 382-B Cr.P.C. and any other remission applicable under the law.

12. The confirmation reference is answered in negative and the instant appeal stands disposed of in the above terms.

MAK/PS

JUDGE
31/08/2022

JUDGE 31/08/22