

**IN THE HIGH COURT OF SINDH, KARACHI**

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Mubeen Lakho,*

**Criminal Appeal No.664 of 2019**

**Confirmation Case No.35 of 2019**

<b>Appellant</b>	Jabbar Ali son of Hakim Ali through Mr. Abdul Khursheed Khan, Advocate
<b>Respondent</b>	The State through Mr. Mohammad Iqbal Awan, Deputy Prosecutor General.
<b>Date of Hearing</b>	24-03-2021
<b>Date of Announcement</b>	30-03-2021

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Jabbar Ali has assailed the impugned judgment dated 16.10.2019 passed by Learned Model Criminal Trial Court / Additional Sessions Judge Malir, Karachi in Sessions Case No.613 of 2018 arising out of Crime No.125 of 2018 under Section 302 PPC registered at PS Ibrahim Hyderi, Karachi whereby the appellant was convicted, and sentenced as under:-

“For causing murder of Mst. Raheema d/o Muhammad Qasim to death as Tazir under section 302(b) P.P.C. subject to confirmation by this court. To pay fine of rupees 02 million to the legal heirs of the deceased under section 54-A Cr.P.C. in case of failure to pay such fine, he shall further undergo simple imprisonment of 06 months”

2. The brief facts of the prosecution case as per FIR are that on 01.04.2018 in between 1200 to 0200 hours, inside a house situated at Ali Akbar Shah Goth, Ibrahim Hyderi, Karachi the present accused had committed Qatl-e-Amd of his wife Mst. Raheema daughter of Muhammad Qasim by throttling her, hence the instant FIR was registered.

3. During investigation, present accused Jabbar Ali was found involved in this crime, he was booked and on completion of investigation I.O. submitted report against accused which was accepted by learned trial court, who sent up



the case to the Model Criminal Trial Court/ Addl. Sessions Judge, Malir Karachi. The charge was framed against the accused to which he pleaded not guilty and claimed trial of the case.

4. The prosecution in order to prove its case examined 08 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed false implication. The accused did not examine himself on oath or call any DW in support of his defense case. After 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 conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court dated 16.10.2019, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. After the reading out of the evidence and the impugned judgment learned counsel for the appellant candidly conceded that the prosecution had proved the charge against the appellant beyond a reasonable doubt and the appellant on instructions did not want to challenge his conviction or argue his appeal on merits but instead only requested that his sentence be reduced from the death penalty to one of Imprisonment for life based on the following mitigating circumstances (a) that he was a young man of only 24 years of age and was capable of reformation (b) that he was a first time offender (c) that he had a family to support which included 2 minor children (one boy and one girl) aged 6 and 3 years respectively for whom he was the sole bread winner (d) that the prosecution had failed to prove any motive for the murder (e) that by not contesting his conviction the appellant had shown genuine remorse and (f) that the attack on the deceased had not been particularly brutal.

7. Learned DPG, who was also acting on behalf of the complainant, based on the mitigating circumstances put forward by the appellant raised no objection to a reduction in sentence from the death penalty to life imprisonment.

8. Having gone through the evidence on record and the impugned judgment we find that the prosecution has proved its case against the appellant beyond a reasonable doubt in respect of the offence for which he was charged based on his



retracted confession which we find to be made in accordance with the law, made voluntarily and truthful which fully ties in with the prosecution case/evidence and which we find admissible and rely upon the same which is corroborated by the medical evidence and the evidence of the other PW's. All the PW's were also consistent in their evidence and made no material contractions and had no proven enmity with the appellant and as such had no reason to falsely implicate him in this case and thus the only issue before us is one of sentencing.

9. We note that sentencing is at the discretion of the court and is not a mechanical exercise. In exercising its discretion the court should consider numerous factors such as the minimum and maximum sentence which can be imposed on conviction, the role of the accused, the gravity of the offence, the amount of loss caused, whether the accused shows any kind of remorse, whether the accused is capable of reformation, the age of the appellant, the health of the appellant, his conduct in jail and how long he has already spent in jail etc. In this respect reliance is placed on **Muhammed Juman V State** (2018 SCMR 318) which held as under at P322;

*"Inflicting conviction and imposing sentence is not a mechanical exercise but it is onerous responsibility to inflict, fair, reasonable and adequate sentence, commensurate with gravity and or severity of crime, looking at the motive, attending and or mitigating circumstances that provoked or instigated commission of crime and it involves conscious application of mind. No mathematical formula, standard or yard stick could be prescribed or set out to inflict conviction and sentence, such factors vary from case to case and while undertaking such exercise Court must keep in light provisions contained in Chapters-III and IV of the P.P.C. Unfortunately, no sentencing guideline is laid down in Pakistan, though Courts have set out certain parameters in many cases as to what is mitigating and or aggravating circumstances that may warrant alteration and or varying in conviction and or sentence within the parameters provided under the charging or penal provision".*

10. We find the mitigating factors made out by the appellant do justify a reduction in sentence from the death penalty to the alternate sentence of life imprisonment keeping in view that this was a case of circumstantial evidence where extreme care and caution must be exercised.

11. Thus, whilst taking into consideration the arguments/mitigating factors justifying a reduction in sentence of the appellant we by exercising our judicial discretion under S.423 Cr.PC maintain the appellant's conviction but modify the sentence of the appellant only to the extent that his death penalty is reduced to

life imprisonment and all other punishments (if any) like payment of compensation will remain in place.

12. The appeal stands dismissed **except** as modified above in terms of sentencing with the confirmation reference being answered in the negative.

MAK/PS