

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Muhammad Mubeen Lakho,*

**Criminal Jail Appeal No.630 of 2019
Confirmation Case No.33 of 2019**

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| Appellant | Muhammad Shaukat S/o. Haji Muhammad Ramzan through Mr. Muhammad Qadir Asif Toor, Advocate |
| Respondent | The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General. |
| Date of hearing | 22.03.2021 |
| Date of Announcement | 29.03.2021 |

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Muhammad Shaukat in the instant appeal has assailed the judgment dated 30.09.2019 passed by Learned Additional Sessions Judge-VI, Karachi South in Sessions Case No.2868 of 2014 arising out of Crime No.550 of 2014 U/s. 302 PPC P.S. Boat Basin, Karachi whereby the appellant was convicted under Section 265-H (ii) Cr.P.C. for commission of offence punishable under Section 302 PPC and awarded death sentence subject to confirmation by this Court. He was also directed to pay a fine of Rs.300,000/- U/S. 544-A Cr.P.C. payable to the legal heirs of deceased and in default of payment he has to undergo simple imprisonment for one year more.

2. The brief facts of the prosecution case as stated in the FIR are that on 27.09.2014, SIP Muhammad Arif Khan posted at Boat Basin Police Station Karachi was busy in investigation and when he reached at Smart School situated at Plot No.D-121, Block-5, Clifton, Karachi he saw that dead body of chowkidar Ali Bux son of Muhammad Hasan aged about 27-28 years, was lying at the

reception of the school. Thereafter SIP Muhammad Arif Khan prepared report under section 174 Cr.P.C. on the pointation of maternal cousin of the deceased namely Lutaf Ali and Liaquat Ali and the dead body of deceased was sent to Jinnah Hospital through Chippa Ambulance to ascertain the cause of death and postmortem. Thereafter he obtained the postmortem report and cause of death from MLO Dr. Zaryan and handed over the dead body to legal heirs of deceased for burial.

3. After completion of the usual investigation charge sheet of the case was submitted before the concerned Judicial Magistrate who after taking cognizance sent the R&Ps of the case to the Court of District and Session Judge, Karachi South and on 15.09.2017 R&Ps of this case were received by the Court of Additional Sessions Judge-VI South, Karachi by way of transfer for disposal in accordance with law.

4. The prosecution in order to prove its case examined 06 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. The accused did not examine himself on oath or call any witness 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 30.09.2019, 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 18 years of age and was capable of reformation (b) that he was a first time offender (c) that he had a family to support for which 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 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. At this point it is worth mentioning that despite repeated efforts to serve the complainant he remained unserved as he had shifted to some unknown place and on the last date of hearing it had been adjourned with the direction that the appeal should proceed on the next date of hearing without fail and thus we have proceeded to decide this appeal.

8. Having gone through the evidence on record and the impugned judgment we are of the view 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 both oral and documentary evidence, the fact that the murder weapon was discovered on the pointation of the accused at a place which only he was aware of and most crucially CCTV footage which showed the accused carrying out the murder and CDR data linking the accused to the place of the murder on the given date and time. All the PW's were also consistent in their evidence and made no material contractions and had no 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 carry

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 such as 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.