

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-85 of 2009.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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19.06.2017.

Mr. Karamullah Memon, Advocate for the appellant.  
Mr. Shahid Ahmed Shaikh, A.P.G.  
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At the outset, learned counsel for the appellant contends that appellant was awarded life imprisonment. As per jail-roll, appellant has remained in jail for 16 years, 06 months and 21 days without remission and he has earned remissions of 08 years, 02 months and 26 days; whereas only 01 year, 02 months and 13 days are remained to be served out. Appellant is very poor person and he accepted his case on humanitarian ground. Family members of the appellant were not in a position to pursue his case. Though, material contradictions are available in the evidence of prosecution witnesses but he will not press instant appeal if the sentence, awarded to the appellant, is reduced to the extent as already undergone.

2. Learned APG halfheartedly opposed the submissions made by learned counsel for appellant.

3. Conceptually punishment to an accused is awarded on the concept of retribution, deterrence or reformation hence Courts are required to examine the facts of each case *individually* while awarding conviction. *Prima facie*, the circumstances of the case are not falling within the terms "*excavating circumstances*" as well while considering the mitigating circumstance which is  *motive* , so set-up by prosecution, per prosecution case is that appellant under the influence of one Salloo Bheel committed offence who (Sallo Bheel)  *however* was acquitted hence  *prima facie* there was no motive for the present appellant to cause death of deceased Soomar. The perusal of the  *jail-roll* shows that appellant has almost completed his sentence and since  *plea* of his being poor is strongly pleaded. Thus, if all are viewed, keeping in view  *first* part of concept of punishment i.e  *retribution* plea of the appellant seems to be carrying weight. Accordingly, impugned conviction is altered to the extent as already undergone. Appellant shall be released forthwith if not required in any other custody case.

Appeal stands disposed of in the above terms.

JUDGE

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