

IN THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Crl. Appeal No. D – 106 of 2009.

[Confirmation Case No.04 of 2009]

Before;

Mr. Justice Muhammad Iqbal Mahar

Mr. Justice Irshad Ali Shah

Appellant: Shafi Muhammad son of Muhammad Rahim Dars,
through Badal Gahoti Advocate

Respondent: The State, through Mr. Shevak Rathore, D.P.G

Date of hearing: 20-08-2019.

Date of decision: 20-08-2019.

J U D G M E N T

IRSHAD ALI SHAH, J; It is the case of prosecution that the appellant and co-accused Sobdar in furtherance of their common intention committed Qatl-e-amd of Shah Muhammad Shah by causing him hatchet injuries, they were booked and reported upon and on conclusion of the trial co-accused Sobdar was convicted and sentenced to undergo imprisonment for life with fine of rupees one lac payable to the legal heirs of deceased with benefit of section 382-B Cr.P.C, while appellant was sentenced to death with fine of rupees one lac payable to the legal heirs of the deceased and then made a reference with this court for confirmation of death sentence awarded to the appellant.

2. Both, the appellant and co-accused Sobdar filed separate appeals against the conviction and sentence awarded to them. It is said that co-

accused Sobdar has died now. If it is so, then his appeal on account of his death is liable to be abated. Be that as it may, the appeal preferred by the appellant and reference made by the learned trial court for confirmation of death sentence now are being disposed of through instant judgment.

3. At the very outset, it was stated by learned counsel for the appellant that he would not press the disposal of instant appeal on merit, if the death sentence awarded to the appellant is modified into imprisonment for life with reduction of compensation by taking into consideration the mitigating circumstance of the case.

4. Learned A.P.G for the State has recorded no objection for modification of the death sentence awarded to the appellant into imprisonment for life with reduction of compensation.

5. We have considered the above arguments and perused the record.

6. The complainant Din Muhammad Shah could not be examined by the prosecution on account of his death. PW Muhammad Shah has supported the case of prosecution by stating that the appellant and co-accused Sobdar in furtherance of their common intention committed murder of deceased Shah Muhammad Shah, by causing him hatchet blows. He stood by his version, on all the material points despite lengthy cross examination. Additionally, there is recovery of hatchet from the appellant. In these circumstances, the learned trial Court was right to

conclude that the appellant is guilty of the offence for which he is charged.

7. However, the sentence of death which is awarded to the appellant for the above said offence is calling for its modification for the reason that there was no deep rooted enmity between the parties and appellant was deprived of his valuable right of defence on account of death of the complainant, as such the death sentence awarded to the appellant is modified with rigorous imprisonment for life with compensation of Rs.50,000/-(rupees fifty thousand) payable to the legal heirs of deceased Shah Muhammad Shah and in case of his failure to make payment of compensation, the appellant would undergo simple imprisonment for three months with benefit of Section 382-B Cr.P. C.

8. In case of ***Ghulam Mohiuddin alias Haji Babu & ors Vs. The State (2014 SCMR-1034)***, it has been observed by the Honourable Supreme Court that;

“---S.302(b)---Qatl-e-amd---Sentence---Death sentence or imprisonment for life—Single mitigating circumstance—Sufficient to award life imprisonment instead of death penalty---Single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment---If a single doubt or ground was available, creating reasonable doubt in the mind of Court/Judge to award either death penalty or life imprisonment, it would be sufficient circumstance to adopt alternative course by awarding life

imprisonment instead of death sentence---No clear guideline, in such regard could be laid down because facts and circumstances of one case differed from the other, however, it became the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case---If the Judge/Judges entertained some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows---Better to respect human life, as far as possible, rather than to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed”.

9. The instant criminal appeal and death reference are disposed of in above terms.

Judge
Judge