

**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.D-53 of 2016
Confirmation Reference No.10 of 2016

Present:

***Mr. JUSTICENAIMATULLAH PHULPOTO
JUSTICE RASHIDA ASAD***

Date of hearing: 09.09.2020

Date of decision: 06.10.2020

Appellant: Ghulam Rasool, through Mr. Noorul Haq Qureshi, Advocate

Respondent: The State, through Mr. Shahzad Salim Nahyoon, D.P.G

J U D G M E N T

RASHIDA ASAD, J.- Ghulam Rasool appellant was indicted by the learned Sessions Judge, Badin to face trial in case FIR No.37 of 2014 dated 12.05.2014 for offence under section 302 P.P.C registered at Police Station Pangrio. On conclusion of trial, the learned Trial Court vide its' judgment dated 29.04.2016, convicted the appellant under Section 302(b) P.P.C. and sentenced him to death, subject to the confirmation by this Court. The appellant was also directed to pay compensation of Rs.300,000/- to the legal heirs of the deceased as provided under Section 544-A of the Code of Criminal Procedure. Learned trial Court made reference to this court for confirmation of death sentence, however, the appellant has preferred Criminal Jail Appeal against the said judgment. Being bound by a common thread, we intend to dispose of both the Criminal Appeal as well as Confirmation Reference made by the learned trial Court through this single judgment.

2. The facts as disclosed by the complainant Anwar Amedani in his evidence are that, in the evening of 10.05.2014, he along with his brother Munawar and nephew Aijaz came to the house of his sister Karima, married to accused Ghulam Rasool, as relations between the couple were strained. They stayed there that night. While sleeping, at about 3:00 a.m., they heard the cries of their sister Karima, got up and saw the accused, armed with spade, inflicting spade blows on head and

wrist of his sister Karima who fell down on the cot. The accused while throwing away the spade, ran away from the spot. Complainant party brought injured at Police Picket Hayat Khaskheli and obtained police letter and thereafter came at Jhudo Hospital, from where they brought the injured to Hyderabad however, she succumbed to her injuries at the gate of Civil Hospital Hyderabad. Postmortem of the deceased was conducted at Taluka Hospital Tando Bhago, the dead body was handed over to them. After completing the funeral ceremony, the complainant lodged the FIR at Police Station Pangrio. The alleged motive behind the occurrence was strained relations and differences between the spouse.

3. After usual investigation challan was submitted against the accused under section 302 P.P.C. Trial court framed charge against the accused, he pleaded guilty to the charge. His plea of guilt was recorded, however, the learned trial Court, rightly summoned the prosecution witnesses and recorded evidence of as many as eight prosecution witnesses, whereafter statement of the accused under section 342, Cr.P.C. was recorded, wherein he denied the charge, retracted from his plea of guilt and professed innocence. On conclusion of trial, the learned trial Court vide impugned judgment convicted and sentenced him, as referred to above.

4. Mr. Noorul Haq Qureshi learned counsel for appellant contended that the appellant is innocent and he has been falsely implicated in the instant case; that the conviction and sentence recorded by the trial Court to the appellant, are not sustainable in law; that prosecution case is full of doubt with material contradictions; that prosecution witnesses are closely related to the deceased therefore, they are interested. It is further argued that the prosecution story appears to be unnatural; the evidence is not confidence inspiring; that the motive has not been proved by the prosecution; that at the time of recovery of spade, it was not found bloodstained; that the medical evidence is, in conflict with the ocular account; that the children of deceased, present at home, were not cited as witnesses. Lastly, argued that despite plea of guilt burden of proof lies upon prosecution, but in this case prosecution failed to prove its' case against the appellant. In support of his contention learned counsel has placed reliance on the cases of Mehr Ali and others versus The State (1968 SCMR 161), Khalid Javed and another versus The State (2003 SCMR 1419), Liaquat Ali versus The State (2008

SCMR 95), Mst. Shazia Parveen versus The State (2014 SCMR 1197), Azhar Mehmood and others versus The State (2017 SCMR 135), Sardar Bibi and another versus Munir Ahmed and others (2017 SCMR 344), Muhammad Asif versus The State (2017 SCMR 486), Usman alias Kaloo versus The State (2017 SCMR 622), Hashim Qasim and another versus The State (2017 SCMR 986), Nazir Ahmed versus The State (2018 SCMR 787), & Abdul Jabbar and another versus The State (2019 SCMR 129).

5. Learned D.P.G contended that based on the evidence on record the prosecution has proved its' case against the appellant beyond a reasonable doubt and as such the impugned judgment did not require interference. However, when he was asked by the court whether the motive as alleged by the prosecution has been proved at trial, he conceded that motive remained shrouded in mystery, thus, he would have no objection, if the death penalty is converted into life imprisonment.

6. We have learned counsel for the parties and have minutely gone through the record.

7. Perusal of the record reveals that the alleged incident had taken place in the house of the accused-appellant on 10.05.2014 at 3:00 a.m. and was witnessed by complainant, his brother Munawar and nephew Aijaz and the matter was reported to the police on 12.05.2014 at 1400 hours. The complainant has furnished plausible explanation of such delay by stating that after postmortem examination and performing funeral ceremony of the deceased, he lodged the FIR. The postmortem of the deceased was conducted by Dr. Noor Aisha at Taluka Hospital Tando Bhago, who in her statement, recorded during trial stated that deceased died due to injuries caused by sharp cutting weapon.No question was raised regarding the efficiency of lady doctor, therefore, we are of the view that the deceased died her unnatural death as described by the WMO.Finding of trial Court on this aspect of case, requires no interference by this court.

8. The ocular account in this case was furnished by complainant Anwar and P.Ws Munawar and Aijaz. Complainant Anwar has deposed that in the evening offateful night, he along with his brother Munawar and nephew Aijaz reached at the matrimonial house of his sister Karima. They stayedthere and went to sleep. At 03:00 a.m. they woke up on

hearing cries and saw that accused-appellant inflicting spade blows to his wife Karima. She received blows on the right side of her head and on right hand wrist and went unconscious. Thereafter the complainant along with P.Ws took her to the Police Picket Hayat Khaskheli, from where she was referred by police to Jhudo Hospital, who referred her to the Civil Hospital Hyderabad, where she succumbed to her injuries. Thereafter, the dead body was brought to Jhudo Hospital. Postmortem examination was conducted at Taluka Hospital Tando Bago. After funeral ceremony, complainant went to the P.S. and lodged the F.I.R which he produced. During cross examination he denied suggestion that incident was not witnessed by him. He had also denied the suggestion that his sister had sustained injuries by falling from cot. Another eyewitness namely Munawar has deposed that in the evening of 09.05.2014, he along with complainant Anwar and nephew Aijaz went to the house of accused Ghulam Rasool. His sister Karima was married to accused Ghulam Rasool about 25 years back. The relations between husband and wife were strained. After taking the meals, they went to sleep. At 03:00 a.m. he woke up on the cries of his sister and saw, in the light of mobile phone that accused Ghulam Rasool was holding spade in his hand, inflicting blows with the same on the right side of the head and wrist of Karima. They tried to save her but the accused fled away, leaving the spade on the spot. Thereafter, injured lady was taken to the hospital where she succumbed to the injuries. After her burial, F.I.R. was lodged by the complainant. He was cross-examined at length and denied the suggestion that his sister had received injuries by falling from the cot. He has also denied the suggestion that the incident was un-witnessed. P.W. Aijaz was also the eyewitness of the incident. He has deposed that on 09.05.2014, he along with his maternal uncles Anwar and Munawar went to the house of accused Ghulam Rasool. After taking meals they went to sleep. At 03:00 a.m.he woke up on hearing cries of Aunt Karima and saw the accused inflicting spade blows on his aunt over her head and right wrist. They had taken her, in injured condition, to the hospital where she succumbed to her injuries. F.I.R. was lodged by the complainant. In the cross-examination, he has replied that the distance between his village and the village of complainant is about 5/6 kilometers, and denied suggestion that Mst. Karima died by falling from the cot. Regarding motive this P.W Aijaz has stated that the relations between husband and wife were strained. The testimony of all three eye witnesses remained consistent and largely on

the same lines. They have given sufficient explanation for their presence on the spot at the relevant time. These witnesses by and large remained consistent on all the material aspects of the case.

9. Incident had occurred in the house of the appellant who was husband of the deceased. Burden was also upon the appellant to satisfy the court that who had committed murder of his wife. Appellant at the time of framing of charge admitted his guilt that he had committed murder of his wife. Rightly, the trial court conducted full-fledged trial and it was proved that appellant had committed murder of his wife. There is nothing on the record that complainant and other eyewitnesses had motive to falsely implicate the appellant. In this case, we have no reason to disbelieve such strong ocular evidence corroborated by the medical and other corroborative pieces of evidence. In these circumstances, we have come to the conclusion that prosecution has proved its' case against the appellant beyond any shadow of doubt and the trial court rightly convicted the accused appellant.

10. The question to be considered by us now is as to whether there are mitigating circumstances available on record warranting reduction of sentence of death, passed against the appellant, to Life Imprisonment or not. In this regard we observe that the motive set up by the prosecution was unspecific and admittedly no independent evidence had been brought on record in support of the said motive. It is settled law that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran alias Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148). Nonetheless, imprisonment for life is a legal sentence provided under the law, reference can be made to the case of Khalid

Naseer versus The State Criminal Petition Nos.534 and 513 of 2019, decided by Honourable Supreme Court of Pakistan on 17.09.2020.

11. In the peculiar circumstances, the death sentence to the appellant would be harsh. A 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. Extra degree of care and caution is required to be observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case / cases as held by Honourable Supreme Court of Pakistan in the case of Ghulam Mohy-ud-Din alias Haji Babu and others v. The State (2014 SCMR 1034). The relevant portion of which reads as under:-

“20. Albeit, in a chain of case-law the view held is that normal penalty is death sentence for murder, however, once the Legislature has provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty is a normal one and shall ordinarily be awarded. If the intent of the Legislature was to take away the discretion of the Court, then it would have omitted from clause (b) of section 302, P.P.C. the alternative sentence of life imprisonment. In this view of the matter, we have no hesitation to hold that the two sentences are alternative to one another, however, awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case. There may be multiple factors to award the death sentence for the offence of murder and equal number of factors would be there not to award the same but instead a life imprisonment. It is a fundamental principle of Islamic Jurisprudence on criminal law to do justice with mercy, being the attribute of Allah Almighty but on the earth the same has been delegated and bestowed upon the Judges, administering justice in criminal cases, therefore, extra degree of care and caution is required to be observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case/cases.

21. A 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. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes 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 entertain 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. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.

Albeit, there are multiple factors and redeeming circumstances, which may be quoted, where awarding of death penalty would be unwarranted and instead life imprisonment would be appropriate sentence but we would avoid to lay down specific guidelines because facts and circumstances of each case differ from one another and also the redeeming features, benefiting an accused person in the matter of reduced sentence

would also differ from one another, therefore, we would deal with this matter in any other appropriate case, where, if proper assistance is given and extensive research is made.

In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternative course by awarding life imprisonment instead of death sentence."

12. For the foregoing reasons, we have decided to exercise caution in the matter of the appellant's sentence of death and have felt persuaded to reduce the said sentence of death to imprisonment for life. This appeal is, therefore, dismissed and the conviction of the appellant under section 302(b), P.P.C. is maintained but in the given mitigating circumstances this appeal is partly allowed to the extent of the appellant's sentence of death, which is reduced to imprisonment for life. Other sentence/compensation awarded by the trial court is maintained. We observe here that no sentence of imprisonment was passed by the learned trial Court in case of default in payment of compensation, therefore, we order that in case of default, the appellant shall undergo simple imprisonment for six months. Benefit under section 382-B, Cr.P.C is also extended to him. Reference made by trial court for confirmation of death sentence is answered in NEGATIVE.

13. With the above modification in sentence, this appeal is disposed of accordingly.

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