

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.D- 07 of 2010
{Confirmation Case No.01 of 2010}

Before;

Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Appellant: Ali Nawaz son of Mohammad Buksh
Khaskheli,
Through M/s. Irfan Ahmed Qureshi and
Roshan Ali Azeem Mallah Advocates.

State: Ms. Sana Memon, A.P.G

Date of hearing: 05.09.2019

Date of decision: 05.09.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant appeal are that the appellant allegedly has committed murder of his wife Mst. Khanzadi and Muhammad Rahim alleging them to be maintaining illicit relations by causing them hatchet injuries, for that he was booked and reported upon.

2. At trial, the appellant did not plead guilty to the charge and prosecution to prove it examined PW-1 complainant Noor Muhammad at (Ex.05), he produced FIR of the present case; PW-2 Muhammad Ismail at (Ex.06), he produced his 161 Cr.P.C statement; PW-3 Bhawal, he produced his 164 Cr.P.C statement; PW-4 Mashir Ghulam Muhammad at (Ex.8), he produced memo of place of incident, Danishnama, memo of arrest of the appellant, memo of recovery of the cloths of the deceased, memo of recovery of hatchet,

memo of recovery of cloth of the accused; PW-5 Tapedar Abdul Razaque at (Ex.09), he produced sketch of wardat; PW-6 Dr. Suraiya, at (Ex.10), she produced post mortem report on dead body of deceased Mst.Khanzadi; PW-07 Dr. Nek Muhammad at (Ex.11), he produced post mortem report on dead body of deceased Muhammad Rahim; PW-08 Ayaz Ali at (Ex.12), PW-09 SIO/SIP Qamar Zaman at (Ex.13), he produced sketch of hatchet, report of chemical examiner and then prosecution closed its side vide statement at (Ex.14).

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence by stating that he has been involved in this case falsely, he did not examine himself on oath but wanted to examine DWs Arbab and Benazir, his son and daughter, but closed the side without their examination.

4. On evaluation of evidence so produced by prosecution the learned Ist Additional Sessions Judge, Badin vide his judgment dated 01.01.2010, awarded "death" sentence to the appellant, for having committed murder of Muhammad Rahim and Mst. Khanzadi and then has made a reference with this court for confirmation of "death" sentence awarded to the appellant. Simultaneously, the appellant has also preferred an appeal before this court, whereby he

impugned the above said judgment; those are now being disposed of through instant judgment.

5. After arguing the appeal at some length, it was stated by learned counsel for the appellant that it was the case of sudden provocation and he would not press the disposal of instant appeal on merits, if "death" sentence, which is awarded to the appellant for having committed death of Muhammad Rahim and Mst. Khanzadi is converted into life imprisonment with benefit of Section 382-B Cr.P.C.

6. Learned A.P.G for the State readily accepted the proposal so advanced by learned counsel for the appellant.

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

8. Complainant Noor Muhammad, PWs Muhammad Ismail and Bhawal were unanimously in their version that they on hearing cries from the house of the appellant went running there and found the appellant committing death of his wife Mst. Khanzadi and Muhammad Rahim by causing them hatchet injuries. They had stood by their version, on all material points, despite lengthy cross examination. Whatever is stated by them take support from the ancillary evidence, which is produced by the prosecution before learned trial Court. In that situation, learned trial Court was right to

make a conclusion that the prosecution has been able to prove its case against appellant beyond shadow of doubt.

09. However, the sentence of “death” which is awarded to the appellant is calling for its modification for the reason that there was no deep rooted enmity between the parties and incident apparently has taken place under sudden provocation, as such the death sentence which is awarded to the appellant for an offence punishable u/s 302(b) PPC for having committed death of deceased Muhammad Rahim and Mst. Khanzadi is modified with rigorous imprisonment for life, on two counts. Additionally, the appellant will have to pay compensation of Rs.100,000/= (one lac) for each of the deceased to their respective heirs and in case of his failure to-do-so, he will have to undergo Simple Imprisonment for three months. All the sentences awarded to the appellant to run concurrently with benefit of section 382-B Cr.P.C.

10. 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”.

11. The criminal appeal and death reference are disposed of accordingly.

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