

IN THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD
Crl. Appeal No. D – 61 of 2010.
[Confirmation Case No.05 of 2010]

Before;

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

Appellant: Jalaluddin alias Jalal son of Allah Bux Rajput
Chohan,
through Mr. Ashfaqe Ahmed Lanjar, Advocate

Respondent: The State, through Ms. Sana Memon, A.P.G

Complainant: Muhammad Siddique in person.

Date of hearing: 10-10-2019.

Date of decision: 10-10-2019.

J U D G M E N T

IRSHAD ALI SHAH, J; The appellant by way of instant appeal has impugned judgment dated 17.02.2010 whereby he for an offence punishable u/s 302(b) PPC has been provided **death** penalty with compensation of rupees twenty lacs payable to legal heirs of deceased Asif Ali as is provided u/s 544-A Cr.P.C

2. It is alleged by the prosecution that the appellant committed **death** of deceased by strangulating his throat for that he was booked and reported upon.

3. At trial, appellant did not plead guilty to the charge and prosecution to prove it examined complainant Muhammad Siddique and his witnesses and then closed the side.

4. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, he did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

5. On conclusion of the trial, learned trial Court convicted and sentenced the appellant as is detailed above and then made a reference with this Court for confirmation of **death** sentence of the appellant.

6. Both, the appeal preferred by the appellant and reference made by learned trial Court now are being disposed of by this Court by way of single judgment.

7. After arguing the case at some length, learned counsel for the appellant was fair enough to state that he would not press the disposal of appeal of the appellant on merit, if the **death** sentence is modified into imprisonment of life with reduction of compensation.

8. Complainant sought for dismissal of the appeal of the appellant and prayed for confirmation of the **death** sentence to the appellant, while learned A.P.G for the State was fair enough to say that the mitigating circumstances are calling for modification of **death** sentence into life imprisonment with reduction of compensation.

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

10. The FIR of the incident has been lodged with delay of one day, it does not contain the name of the appellant. Admittedly, none has seen the appellant committing the alleged incident. The only thing which obviously prevailed with the learned trial Court to convict the appellant was his confessional statement, which he allegedly made before Judicial Magistrate, Tando Adam, whereby he admitted his guilt by stating that he has committed the murder of the deceased by strangulating his throat. The confessional statement of the appellant is appearing to be true and voluntarily which has rightly been believed by learned trial Court. In these circumstances, learned trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

11. 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 none has seen the appellant committing the alleged incident, the appellant has been convicted on the basis of his own confessional statement and motive of incident is shrouded under mystery, as such the **death** sentence awarded to the appellant is modified with rigorous imprisonment for life with compensation of rupee one lac payable to the legal heirs of deceased Asif Ali 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.

12. 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”.

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

Judge

Judge

Ahmed/Pa