

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Crl. Jail Appeal No. D – 55 of 2015
[Confirmation case No.06 of 2015]

Before:

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

Appellant: Imamuddin alias Imam Dino son of Ghulam Hyder Sheedi,
through Mr. Muhammad Jameel Ahmed, advocate.

Complainant: Through Mr. M. Akram Rajput, Advocate

Respondent: The State, through Mr. Shahzado Saleem Nahiyoan,
Additional Prosecutor General

Date of hearing: 28-10-2019.
Date of decision: 28-10-2019.

J U D G M E N T

The facts in brief necessary for disposal of instant appeal are that the appellant with one more culprit in furtherance of their common intention not only committed Qatl-e-amd of Zulfiquar Ali by causing him fire shot but caused fire shot injury to PW Muhammad Yasin with intention to commit his murder on account of their failure to pay them "Bhatta", and then went away by making fires to create terrorism. On arrest, from the appellant, it is said was secured unlicensed pistol of 9mm bore and after due investigation he was reported upon before learned Judge, Anti-Terrorism Court Mirpurkhas, to face trial for the above said offence by police.

2. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined complainant Abdul Ghaffar and his witnesses and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence, he examined himself on oath and DW Mehar in his defence and then closed the side.

4. On evaluation of evidence, learned trial Court found the appellant guilty for the above said offence and then convicted and sentenced the appellant vide judgment dated 13.06.2015, the operative part whereof reads as under;

“I, therefore, order that accused Imamuddin alias Imam Dino be punished under Section 302(b) PPC read with section 7(a) of Anti-Terrorism Act, 1997 he is therefore convicted and sentence to death by hanging him by neck till he is dead subject to confirmation by the honourable High Court of Sindh. And also in amalgamated Special Case No.13 of 2014 to suffer rigorous imprisonment for 5 (five) years and to pay a fine of Rs.1,00,000/- (Rs. One lac only) in default of payment of fine to suffer further rigorous imprisonment for one year under section 24 of Sindh Arms Act.2013.”

5. Learned trial Judge, then has made a reference before this Court for confirmation of death sentence of the appellant while appellant has impugned the above said judgment before this Court by way of instant appeal.

6. The reference and appeal now are being disposed of by this Court by way of instant judgment.

7. After arguing the instant appeal at some length, learned counsel for the appellant was fair enough to submit that he would not press the disposal of instant appeal on merit, if the death sentence is modified into imprisonment of life by taking the mitigating circumstances of the case into consideration.

8. Learned D.P.G for the State and learned counsel for the complainant consented the proposal of learned counsel for the appellant.

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

10. Evidence of the complainant and his witnesses Muhammad Arshad and Muhammad Yasin is straight forward on the point that it was the appellant who came at the place of incident together with one more person fired at the deceased and injured PW Muhammad Yasin on account of their failure to make payment of "Bhatta" and then went away by making fires to create harassment. Whatever is stated by complainant and his witnesses, on ocular premises, takes support from ancillary evidence. In that situation, learned trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond the shadow of doubt.

11. However, the sentence of death awarded to the appellant is calling for modification for the reason that there was no deep rooted enmity between the parties; the complainant party and learned counsel for the State too have recorded no objection for modification of death sentence into life, therefore, the death sentence awarded to the appellant is modified with rigorous imprisonment for life with fine of Rs.100,000/-(One Lac) payable to legal heirs of deceased Zulfiqar Ali and in case of his failure to make payment of fine, he would undergo Simple Imprisonment for six months. Needless to state that the conviction and sentence awarded to the appellant under Section 24 of Sindh Arms Act, 2013 would remain same. The conviction and sentence awarded to the appellant would run concurrently 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 captioned appeal and death reference are disposed of accordingly.

Judge

Judge