

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

**Crl. Jail Appeal No. D – 37 of 2016**  
**[Confirmation case No.03 of 2016]**

**Before:**

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

Appellants: Mir Hyder son of Abdul Hameed Pathan and Abdul Karim son of Yar Mohammad Pathan, through Mr. Aghees-u-Salam Tahirzada, advocate.

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

Date of hearing: 29-10-2019.

Date of decision: 29-10-2019.

**J U D G M E N T**

The facts in brief necessary for disposal of instant appeal are that the appellants were found transporting / in possession 120 kg, of the charas through their Truck by police party of PS D.I.O Camp Excise Sakrand, for that they were booked and reported upon before learned Special Judge (Narcotics), Shaheed Benazirabad to face trial for the above said offence.

2. At trial, the appellants did not plead guilty to the charge and the prosecution to prove it examined PW-1 complainant Inspector Athar Hussain Khoso, and PW-2 E.J. Mukhtiar Ahmed Bhugio and then closed the side.

3. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence, they did

not examine anyone in their defence or themselves on oath to disprove the prosecution allegation against them.

4. On evaluation of evidence so produced by the prosecution, learned trial Court found the appellants guilty for the above said offence and then awarded them "death" penalty with fine of Rs.100,000/=each and in case of their failure to make payment of fine to undergo Simple Imprisonment for one year subject to confirmation by this Court and then made a reference with this Court for confirmation of death sentence.

5. The appeal preferred by the appellant is being disposed of together with the reference made by learned trial Court by way of instant judgment.

6. After arguing the instant appeal at some length, it was submitted by learned counsel for the appellants that the appellants are first offenders and he would not press the disposal of instant appeal on merit, if the death sentence awarded to the appellants is modified into imprisonment for life by taking the mitigating circumstances of the case into consideration.

7. Learned D.P.G for the State consented the proposal of learned counsel for the appellants.

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

9. It was stated by the complainant Inspector Attar Hussain Khoso and PW / mashir Mukhtiar Ahmed Bhugio that on the date of

incident when they were conducting checking at their check-post, there at about 6:00 a.m. time they found coming the truck with the appellants. On search, in secret cavity of the truck were found lying 120 packets of charas, those were weighed to be 120 kg, out of each packet of charas was taken out 100 grams of charas for chemical examination. A mashirnama of arrest and recovery was prepared and the appellants with the recovery, so made were taken to P.S D.I.O Camp Excise Sakrand, there they were booked in the present case. Whatever, they have stated is supported strongly in shape of recovery of truck and charas from the appellants. In these circumstances, learned trial Court was right to conclude that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

10. However, the sentence of death awarded to the appellants is calling for its modification for the reason that; the appellants as per their learned counsel are first offenders and learned D.P.G has also consented for such modification, therefore, by considering the mitigating circumstances the death sentence awarded to the appellants is modified with rigorous imprisonment for life with fine of Rs.100,000/-(One Lac) and in case of their failure to make payment of fine, they would undergo Simple Imprisonment for six months with benefit of section 382-B Cr.P.C.

11. 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”.*

12. The captioned appeal and death reference are disposed of accordingly.

Judge

Judge

Ahmed/Pa